



**World Bank Administrative Tribunal**

**2014**

**Decision No. 501**

**Abdelmoula Ghzala,  
Applicant**

**v.**

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

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

**Abdelmoula Ghzala,  
Applicant**

v.

**International Bank for Reconstruction and Development,  
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, and Mahnoush H. Arsanjani.
2. The Application was received on 13 December 2013. The Applicant was represented by Stephen C. Schott, Schott Johnson, LLP. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant contends that his 2012 Overall Performance Evaluation (OPE) and Salary Review Increase (SRI) were arbitrary and procedurally flawed. He also challenges the Bank's decision not to undertake a salary review at his request.

FACTUAL BACKGROUND

4. The Applicant retired from the Bank's employment on 31 October 2012, at the then mandatory retirement age of sixty-two after nineteen years of service.
5. The Applicant consistently performed well as a Bank employee. His OPE ratings for the three years prior to the contested 2012 evaluation were as follows:

2009

- Four "Outstanding" Ratings
- Three "Superior" Ratings
- Two "Fully Successful" Ratings

2010

- Four "Outstanding" Ratings

- Four “Superior” Ratings
- One “Fully Successful” Rating

2011

- Two “Outstanding” Ratings
- Five “Superior” Ratings
- Two “Fully Successful” Ratings

6. On 1 February 2011 Ms. X became the Sector Manager of the Applicant’s Sector Group and thus the Applicant’s manager. On 20 June 2012 the period for completion of the 2011–2012 OPE commenced. On 29 June 2012 the Applicant submitted to his manager a list of nineteen feedback providers. This list did not include the Country Director, Mr. Y, or the Country Program Coordinator, Ms. AB, for a project the Applicant had worked on (the “Mashreq project”). Ms. X requested that the Applicant include these individuals. The Applicant responded stating that he had little interaction with them, and did not include them in his list of feedback providers.

#### *2012 OPE Process*

7. An in-person OPE discussion between the Applicant and Ms. X was scheduled for 31 July 2012. According to the Applicant this meeting lasted no longer than five minutes. The Bank asserts that the meeting lasted 30 minutes. Both parties nevertheless agree that the OPE discussion was cut short because Ms. X had to leave to address a family emergency.

8. A second meeting was scheduled for 8 August 2012. Prior to this meeting, Ms. X and the Applicant met with Mr. Y to discuss the Mashreq project. Subsequently, the Applicant and his manager attempted to continue the OPE discussion. This meeting was again interrupted due to Ms. X being called away for a family emergency. The Bank and the Applicant disagree on the duration of this second meeting. According to the Applicant this meeting lasted “only a few minutes,” while the Bank asserts that the meeting was interrupted “after perhaps 20 minutes.”

9. On 20 August the Applicant sent Ms. X an e-mail message in which he reminded her that they were yet to complete the OPE discussion “as it was suspended at two occasions after just a

few minutes start both times.” Ms. X responded on 21 August stating: “... my apologies again for this. We can schedule a call during the morning of this coming Thursday. Would 10am work for you?” The Applicant responded on the same day stating: “[m]any thanks. If you don’t mind, I think a meeting in person when you come back early September would be better.” In her response on 24 August Ms. X again apologized for the interrupted OPE discussions, and informed the Applicant that “it would be good to talk” before she returned from her annual leave as the OPE had to be “in the system by next Tuesday.” The Applicant responded on 26 August noting that he would be out of the office most of the week and would “not be able to discuss over the phone.” He added “I still think that a meeting in person early September when you come back is more adequate, given the issues still to be discussed. I guess you may want to postpone my OPE until we finish the discussion.”

10. Ms. X responded on 27 August that she was in the same location as the Applicant and could make herself available to see him that Wednesday. The Applicant responded on 28 August stating: “Many thanks [...]. I’m not here on Wednesday and Thursday, if you don’t mind, it really could work better on September 4.” In her e-mail response the same day Ms. X stated “OK, Let’s have the discussion on Tuesday morning after the team meeting.”

11. In order to comply with the Human Resources (HR) guidelines and timeline for the OPE process, Ms. X inserted preliminary OPE ratings for the Applicant into the OPE database.

12. On 4 September 2012 the Applicant and Ms. X met to complete the OPE discussion. The Bank and the Applicant disagree on the length and content of this OPE discussion. According to the Bank, the discussion lasted “approximately 40 minutes, and repeated to some extent the performance discussions held during the July 31 meeting.” The Applicant on the other hand contends that the third meeting was “again cut short by a pre-scheduled administrative meeting.” On 5 September 2012 the Applicant sent an e-mail message to Ms. X stating:

I hope we will have soon time to complete the discussion (which was shortened by the unit meeting that took longer than expected and by your planned meeting) especially with my feedback as you requested. My OPE may be perceived as not relevant as, in principle, I will be retiring soon, but I think it is important as it shows the consistency of my performance over the years.

13. Ms. X responded on 30 September 2012 apologizing for the delayed response and stating that they could find some time once she returned from mission to discuss the Applicant's feedback on her as a manager. She included her draft comments on the Applicant's OPE and asked for his comments on the following:

[The Applicant] continued his efforts to develop Regional Integration programs in both the Mashreq and Maghreb. Given the uncertain situation in the Mashreq the regional integration agenda was put on hold in the Mashreq countries, and only the Iraq component made progress, which would consist of upgrading trade corridors in Iraq and the cross border facilities at the KRG/Turkey border as well as institution building of the various government agencies and ministries involved. [The Applicant] delivered a high quality regional study on Trade Facilitation and Infrastructure for Maghreb countries, which culminated in a well attended Ministerial workshop in June 2012. Feedback received is that [the Applicant] is a good team player who mentors more junior colleagues well. Furthermore, [the Applicant] has an excellent capacity to engage in dialogue in the region and build trust with many clients. [The Applicant] however could try to create more synergies with other sectors and operations, and share his knowledge and experience more widely. Furthermore, for successful delivery of operations and programs, consensus-building is an important prerequisite in order to ensure that key decision makers are on board.

14. The Applicant responded on 4 October stating:

Thanks [Ms. X]. It's indeed a pity that our discussion about my OPE was cut short three times without being completed. As you know, the OPE is very important for me. Without completing the OPE, you cannot decide on the right salary increase, commensurate with the performance. It is also important to have a fair due process that witnesses the big picture of what, in my opinion, is a consistent outstanding performance (over the years) despite the Region's circumstances. The quality results, the strategic and much appreciated advice to the clients, working across sectors and Regions, the integrator skills, the efficient mentoring and the effective leadership skills are all supporting evidence of the high performance and can be documented by specific activities and examples. This should be reflected in any write up that respects fair and due process. Our discussion is mainly to be specific on comments with facts and concrete examples and on feedback and responses to comments. We could meet when you come back to complete the discussion.

15. Ms. X did not respond. On 19 October 2012, the Applicant received his OPE with the ratings and his manager's comments. He received five "Superior" and four "Fully Successful" ratings. On the same day, the Applicant sent Ms. X an e-mail message expressing surprise and

noting that “as mentioned in my previous [e-mails] (my last [e-mail] on this was of October 4 and which you didn’t answer) we have never completed my OPE discussion as you had to interrupt them (very short) at three occasions. I therefore don’t see how you could put the write up and the ratings and how fair and due process could be done (especially the SRI) without first completing the OPE discussion.”

16. Ms. X responded on 23 October 2012 stating that she had suggested a meeting on 19 October and would request a meeting to be scheduled that week. The Applicant responded on 24 October stating that at the time he sent her his 4 October e-mail message he was unaware that she had already inserted her comments and ratings into the OPE system and that his SRI had already been decided. He added: “I realize that you went ahead with the write up and the ratings and with putting the OPE in the system, without completing the OPE discussion that you stopped very short at three occasions and that you are now asking me to discuss my OPE after you already entered it into the system. It also seems to me that my [e-mails] reminding that the process should be completed were ignored.” The Applicant stated that he would not sign the OPE because in his view it did not follow and respect due process. He added that “some of the write up and the ratings you put in is arbitrary, biased and unfounded.” The Applicant also addressed this e-mail message to the Performance Management Hotline and his Sector Director.

17. On 25 October, Ms. X responded informing the Applicant that a further OPE meeting has been scheduled for them that afternoon for 45 minutes. The Applicant responded stating that he was awaiting her response to his e-mails about the OPE process. He added:

You surely understand that you are asking me to meet after you have already entered the OPE in the system and you have decided the SRI without completing the discussion. What would a meeting change at this stage? Would you change the write up, the ratings and especially the SRI? In any meeting now with you, I will only say and ask what I have already stated in my previous [e-mails]. Time is running out and as you know I’m retiring next week on October 31. Also, please note that I had an appointment with HR at 4:30 pm today.

18. Ms. X responded stating:

We have met three times, on July 31 for about 30 minutes, which was interrupted by a family emergency, then again the following week for about 20 minutes, which was again interrupted due to same family emergency. I then offered to meet you during my [annual leave] in August, but you preferred to meet after Labor Day. We met on September 4 after the team meeting for about 40 minutes. In my opinion we concluded your performance review, and agreed that we would meet for coffee to receive your feedback on how I could be a better manager for you. The DMT OPE review was on September 4 – 5, when we had already concluded the performance review (except for your feedback on me). ...I shared your write up for you on September 30, asking for feedback, to which you responded that you would like another discussion after I came back from mission.

19. The Applicant responded the same day stating:

It is rather shocking to see such an answer after a number of my reminders. According to your [e-mail] we have met for 90 minutes! This would of course have been great, had it been true, and there would surely have been nothing else to discuss. The fact is that we have met for just few minutes each time, and each time you even forgot what we started talking about the previous time. All your previous [e-mails] agreed that we never completed the OPE discussion. As you know, the third time our meeting was scheduled for 10:30am. The Unit meeting, which was started at 9:30am (and which was held in the MC building) lasted until past 11am. When we got back to your office, we just started the meeting and then you told me you had to leave. Once again, would a meeting change anything at this stage to the write up, the SRI and the salary increase? As you know, time is running very short as I am retiring next week.

20. There were no further e-mail exchanges between the Applicant and Ms. X until 30 October when the Applicant received his SRI rating. He sent an e-mail message to Ms. X expressing surprise that his SRI was 3.3:

I cannot understand on what basis you made the decision for my salary increase. I have not had a chance to discuss any feedback prior to the management meeting and the decision of my SRI and salary increase. How could then have decided the SRI and salary increase? This particularly because I looked at the Tribunal Decision 462 and Decision 463 which highlight the importance that OPE/PEP discussions should take place before Management Review Meetings (SRI). I welcome the chance to discuss this with you and understand the rationale behind your decision, but please note, as I mentioned previously, that there was a procedural violation and that due and fair process is already violated.

21. He noted for the record some results and achievements during the OPE year, and added that

these and other results were achieved during the considered year, during which I was managing one of the largest (if not the largest) number of activities, of team members and of budget in the whole ... Region. I was expecting a 5 SRI and the highest salary increase given my outstanding performance in my last year of service, especially that you mentioned this to me last year and highlighted that my salary was rather strikingly low for GH international staff. A rewarding salary increase was also important to me for my Pension as it impacts my revenue for the rest of my life.

22. On 31 October Ms. X responded apologizing that she was unable to give the Applicant his SRI rating face to face. She added “[w]e briefly spoke this afternoon before I left for the airport. As discussed, my understanding of where we were in the OPE process before going to the DMT OPE meeting is different from yours. If helpful, we could meet once I am back from mission in mid-November. Please let me know if you would like to meet.”

23. The Applicant responded stating: “Thanks [Ms. X]. As I mentioned in the four minutes (I timed them) that you spent in my office on your way out to the airport (I guess): we simply never completed the OPE discussion before the management meeting and therefore there was a procedural violation.”

24. The Applicant retired on 31 October 2012.

25. On 22 November 2012 the Applicant contacted Ms. X to request a salary review. She responded on 6 December that she submitted the Applicant’s request to HR. On 12 December 2012, the Applicant received an e-mail message from a Senior Human Resources Business Partner who stated: “I am responding to your request for a salary review sent to your manager. Please note that corrections to salary misalignments are always done prospectively. Since you no longer work at the Bank this is not possible any longer.”

26. On 20 December 2012 the Applicant filed a Request for Review with Peer Review Services (PRS). In his claim he challenged the 2012 OPE, the SRI rating of 3.3 and



corresponding salary increase. The Applicant also claimed that his manager retaliated against him for expressing his “negative opinion on her proposal ... to create coordinator positions within [the] MENA Transport Unit.” On 20 February 2013, the Applicant and his supervisor attempted mediation but this was unsuccessful and the case returned to PRS for review.

27. On 10 July 2013 the PRS Panel issued its report and recommendation. The Panel found that the Bank acted consistently with the Applicant’s former contract of employment and terms of appointment in assessing his performance. The Panel determined that there was an “observable and reasonable basis for both the 2012 OPE and the 2012 SRI and that management followed the applicable procedures.” The Panel also concluded that there was no “ill animus in making the assessments.”

28. On 13 December 2013 the Applicant filed this Application before the Tribunal. He requests the Tribunal to order: a) a salary increase at the highest level within the Bank’s salary matrix; b) the Bank to demonstrate why the Applicant’s salary increase should not have been based on an SRI of 4 or 5; and c) the Bank to award the Applicant moral damages for the aberrant and unfair OPE/SRI review in the amount of two years’ net salary. Furthermore, the Applicant requests the Tribunal to order the Bank to conduct a salary review and provide such equitable relief as may be indicated by the results of that review. The Applicant requested attorney’s fees in the amount of \$28,900.

## SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

### *The Applicant’s main contentions*

29. The Applicant argues that the Bank failed to follow the proper process in conducting his 2012 OPE. The Applicant relies on Staff Rule 5.03, paragraph 2.02 which provides that “[a]t least once in a twelve month period, the designated supervisor and the staff member shall meet and discuss the staff member’s performance, achievements, strengths, areas of improvement and future development needs.” The Applicant asserts that in contravention of the Staff Rules he never had a substantive OPE discussion with his supervisor prior to the management meeting on 4 September 2012 where the OPE and SRI ratings were set.

30. The Applicant further argues that he was not adequately notified in a timely manner about criticisms of his work during the year. In his view, the “downgrading” of his OPE ratings came as a surprise since his manager never undertook a mid-term performance review to signal to him that she had higher or different expectations for his performance, and they did not complete the mandatory OPE discussion.

31. The Applicant contends that the Bank failed to demonstrate a reasonable basis for the SRI rating he received. Referring to the feedback provided by the “agreed feedback providers” the Applicant contends that this feedback shows a “clear pattern of praise, for [his] work ethic, leadership, accomplishments and mentoring staff.” The Applicant avers that the “praise from colleagues is varied, substantive and profound. It defines the ideal task team leader, a true leader who respects colleagues, works cooperatively and is a leader in his field.” According to the Applicant the burden of proof is on the Bank to demonstrate that the Applicant’s performance had slipped and he no longer merited an SRI of 4 or 5.

32. The Applicant also argues that the Bank failed to provide a justifiable reason to refuse a salary review. According to the Applicant the Bank’s refusal violated the Principles of Staff Employment, particularly Principle 6 which provides that the basic objectives of the Organization’s compensation policy include providing “levels of compensation that are equitable internally.” The Applicant further argues that Staff Rule 6.01, paragraph 6.07 provides for retroactive adjustment of salary. He submits that it is “implicit in the Principles of Staff Employment and in Compensation Policy that a compensation review looks to issues of equity in matters of compensation and where inequity is found the management may provide a retroactive increase in the level of compensation.”

*The Bank’s main contentions*

33. The Bank first contends that the 2012 OPE was not procedurally flawed. According to the Bank the Applicant received adequate notice of criticism about his performance, particularly pertaining to the Mashreq project. Relying on Ms. X’s response to the PRS Panel, the Bank argues that the Applicant was counseled by his manager to be more flexible and work better with

his clients. The Bank further relies on Ms. X's handwritten notes purportedly of the 31 July and 4 September meetings as well as her testimony before the PRS Panel as evidence that the Applicant and his manager concluded the required OPE discussion.

34. The Bank contends that there was a reasonable basis for the Applicant's OPE and SRI ratings and the SRI rating of 3.3 given to the Applicant by the departmental and regional managers was a proper exercise of managerial discretion. Furthermore, the Bank notes that the Applicant's 2012 OPE and SRI ratings were not significantly disproportionate to prior performance ratings since his overall ratings underwent a slight decline in 2011, and then again in 2012 – the last two years of his career. According to the Bank this gradual decline does not demonstrate a sudden precipitous drop in the Applicant's annual OPE ratings in his last year of employment at the World Bank.

35. The Bank observes that the Applicant is not challenging any "negative" ratings, since all of his ratings are positive. According to the Bank, given that there are no procedural or substantive flaws in the evaluation process, there is no basis for the Tribunal to step in and make a discretionary, subjective and unsupported assessment of the Applicant's work and to order that the Applicant's "fully successful" assessments be amended to something higher so that the Applicant might qualify for a higher salary increase.

36. Finally, the Bank argues that the Applicant's claims concerning a salary review should be dismissed. Referring to the 2005 Ad Hoc Increase Guidelines concerning extraordinary salary adjustments, the Bank further argues that salary increases cannot be applied retroactively to retired staff.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

37. The Applicant's principal claims are as follows: 1) the 2012 OPE process was procedurally flawed; 2) the 2012 OPE was arbitrary, unfair and unbalanced; 3) his due process rights were violated; 4) his SRI rating of 3.3 was an abuse of managerial discretion; and 5) the Bank erred in its refusal to conduct a salary review.

*The 2012 OPE Process*

38. Staff Rule 5.03, paragraph 2.01 on the Performance Management Process provides that

- (a) At least once in a twelve month period, the Manager or Designated Supervisor and the staff member shall meet and discuss the staff member's performance, achievements, strengths, areas for improvement, and future development needs (...)
- (b) The Manager or Designated Supervisor shall provide the staff member with a written summary assessment of the staff member's performance during the review period.

39. The Tribunal has emphasized the importance of conducting a formal OPE discussion in accordance with the Staff Rules. *See BY*, Decision No. 471 [2013], para. 29; *Prasad*, Decision No. 338 [2005], paras. 25-27; *Yoon (No. 5)*, Decision No. 332 [2005], para. 65; and *Mpoy-Kamulayi (No. 4)*, Decision No. 462 [2012], para. 46. The Tribunal recently clarified in *CD*, Decision No. 483 [2013] that, though preferable, the OPE discussion need not be held in person where circumstances prevent a face to face meeting. In such a situation a telephone conversation could satisfy the requirement in Staff Rule 5.03, paragraph 2.01. *Id.*, para. 17.

40. In the present case, both parties acknowledge that the Applicant and his manager met on three occasions to conduct the required OPE discussion. They dispute the duration of these meetings and whether, collectively, these three meetings satisfy the requirement in Staff Rule 5.03, paragraph 2.01. The Bank relies on notes submitted by Ms. X which she asserts were taken contemporaneously with the meetings of 31 July and 4 September. The Applicant for his part relies on e-mail messages he sent Ms. X on 20 August, 5 September, 4 October and 19 October 2012, and Ms. X's replies to them. Resolution of this dispute therefore requires an evaluation of the evidence proffered by the parties.

41. The record shows that on 20 August 2012, after the first two OPE discussions were interrupted, the Applicant sent an e-mail message to his manager reminding her that they were yet to complete the OPE discussion "as it was suspended at two occasions after just a few minutes start both times." Ms. X did not challenge this statement. Instead she apologized to the

Applicant and attempted to reschedule the OPE discussion. The record also demonstrates that after the third OPE meeting was interrupted on 4 September, the Applicant sent Ms. X an e-mail message the following day expressing his desire to complete the OPE discussion. Again, Ms. X's e-mail response does not indicate any disagreement with the Applicant's view that the OPE discussion had again been interrupted after only a few minutes. Following the Applicant's e-mail messages of 4 and 19 October 2012 in which he reiterated his concern that the OPE discussions were never completed, Ms. X sent the Applicant an e-mail message on 23 October 2012 stating that she would request a further OPE meeting to be scheduled. The Tribunal notes that Ms. X's offer on 23 October 2012 of another OPE meeting came after the Applicant's OPE and SRI ratings had been established on 4 September 2012.

42. The Tribunal finds that Ms. X's actions and e-mail responses are inconsistent with her subsequent assertion that she believed the OPE discussion was actually completed on 4 September 2012. Weighed against the abovementioned e-mail correspondence, the Tribunal finds that Ms. X's handwritten notes and her declaration in support of the Bank's contentions do not support a finding that the OPE discussion required pursuant to Staff Rule 5.03, paragraph 2.01 was completed. On the assumption that these notes are indeed a record of issues discussed with the Applicant, the Tribunal observes that these neither record a discussion of the positive or negative feedback the Applicant received, nor do they provide evidence that the Applicant was provided with an opportunity to respond to the criticism. Without more, the handwritten notes cannot be viewed as evidence of a completed OPE discussion.

43. The Tribunal also observes that Ms. X herself discounts the discussion on 8 August 2012 given her involvement addressing family emergencies. This honest reflection about the amount of time spent in discussion with the Applicant further casts doubt on the completeness of the OPE meetings.

44. In light of the above, the Tribunal finds that the 2012 OPE process was procedurally flawed. At the same time, the Tribunal observes that the Applicant's supervisor made considerable efforts during her annual leave in August 2012 to meet with the Applicant prior to the Departmental Meeting on 4 September 2012. The Applicant declined both the offer of a

telephone conversation and a face to face meeting. The Tribunal considers that the Applicant himself bears some responsibility for the fact that his OPE discussion was not completed prior to the establishment of his OPE and SRI ratings.

*The 2012 OPE Assessment*

45. The Tribunal now addresses the content of the Applicant's 2012 OPE. The Tribunal has held that its assessment of performance evaluations centers on the determination of whether the evaluation was arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure. *See BY*, para. 33 and *Prudencio*, Decision No. 377 [2007], para. 73. As held in *Desthuis-Francis* "what constitutes satisfactory performance is to be determined by management ... and management's appraisal in this respect is final absent an abuse of discretion." Decision No. 315 [2004], para. 19. *See also BI*, Decision No. 439 [2010], para. 22.

46. While an abrupt change in a staff member's performance evaluation may suggest "a disturbing degree of inconsistency in the exercise of managerial responsibilities," (*Marshall*, Decision No. 226 [2000], para. 24), such a change cannot "in and of itself, be regarded as an abuse of discretion." *Malekpour*, Decision No. 322 [2004], para. 21. The Tribunal maintains its view that "[a] staff member is entitled to a fair and proper performance evaluation every year, but there is no rational basis for supposing that a high performance rating in one year gives rise to a presumption that the same rating would carry over to the next or subsequent years." *Id.*

47. In the present case, the Applicant argues that his 2012 OPE was unbalanced and he was given insufficient credit for positive achievements during the year. He argues that his supervisor failed to consider all the circumstances of the year prior to completing her OPE comments and challenges the change in his OPE ratings after years of consistently good performance.

48. The Tribunal observes that, once put in context, the Applicant's arguments appear misplaced. The Applicant is not challenging any negative ratings in his OPE, nor was he awarded a negative OPE. On the contrary, he received five "Superior" ratings and four "Fully Successful" ratings. Though the Applicant's 2012 OPE ratings contain fewer "Superior" and

“Outstanding” ratings compared to previous years, the record shows that there was also some slippage in the Applicant’s performance ratings between 2010 and 2011. The Applicant has not established that the change in the positive ratings he received indicates arbitrariness on the part of his manager. As was held in *Mpoy-Kamulayi (No. 8)*, Decision No. 480 [2013], para. 22, “[r]endering judgment on the appropriateness of a Fully Successful versus a Superior rating comes close to a microscopic review” of the Applicant’s performance. This is a task which would involve an “unwarranted intrusion on managerial discretion.”

49. The Tribunal further finds that there is insufficient evidence to support the Applicant’s contention that his supervisor did not balance the positive and negative feedback she received in a manner which was fair to him. The Applicant’s OPE ratings appear commensurate with the positive feedback he received. For instance, the Applicant was praised for his “persuasive intervention” in preventing the cancellation of a project, and was also credited for building “excellent working relationships with the client.” Another feedback provider praised the Applicant’s work, stating that it was “done to high standard and delivered on time. [It] was well received and appraised by both the team and the client.” The Applicant was awarded a “Superior” rating for this results assessment category. The Applicant was also widely praised for coaching junior staff, and received a “Superior” rating in that category. The feedback comments on the Applicant’s behavioral competencies (“Drive for Results,” “Client Orientation,” “Teamwork,” and “Learning and Knowledge Sharing”) were positive, hence the two “Superior” and two “Fully Successful” ratings the Applicant received.

50. The Applicant’s main contentions center on Ms. X’s comments. In the comments section of the 2012 OPE, Ms. X noted:

[The Applicant] however could try and create more synergies with other sectors and operations, and share his knowledge and experience more widely. Furthermore, for successful delivery of operations and programs, consensus-building is an important prerequisite in order to ensure that key decision makers are on board.

51. The Tribunal observes that these comments were influenced to a large extent by the perception of the Applicant’s performance on the Mashreq project. The record shows that two of

the Applicant's feedback providers made direct comments on his performance on this project. One feedback provider stated that the Applicant "was very thorough and [paid] careful attention to details," while the second stated that he was very efficient in assessing and analyzing the situations, delivered quality products on time and applied his technical knowledge and managerial skills admirably.

52. The record also shows that these positive comments were balanced with the criticisms of the Applicant's performance Ms. X received from two individuals, Mr. Y and Ms. AB. The Applicant challenges the "late inclusion" of these views after the deadline for receipt of feedback. He further contends that he did not have much interaction with these individuals, and by including their views his supervisor failed to consider the overall context of the Mashreq project. According to the Applicant "this speaks volumes about the Manager's intentions towards me and my OPE."

53. The Tribunal finds that the Applicant cannot legitimately complain about the late inclusion of feedback from Mr. Y and Ms. AB. While the Applicant is correct that there is no written feedback from either of them, the record shows that his supervisor requested, on two occasions, that he include these two individuals as feedback providers for his OPE and he refused. On 30 June 2012 Ms. X requested that the Applicant limit his nineteen feedback providers to fifteen pursuant to recommendations from Human Resources, and to include three individuals including Mr. Y and Ms. AB. Ms. X repeated her request on 13 July. Ultimately, the Applicant did not reduce the number of feedback providers. He also did not include the three individuals his supervisor requested him to include as feedback providers.

54. Furthermore, the Tribunal is not persuaded by the Applicant's assertion that his supervisor failed to consider the overall context of the Mashreq project. The Applicant was awarded a "Fully Successful" rating for his performance. While Ms. X's comments could have emphasized more of the Applicant's positive contributions, in recognition of his service, the Tribunal is not persuaded that her comments were arbitrary, discriminatory or improperly motivated.



*The Applicant's due process rights*

55. The Applicant has argued that his due process rights were violated. The Tribunal recalls that basic guarantees of due process in the context of performance include 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. *See also Prasad*, para. 30. Additionally, the 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 [and] adequate opportunities to defend himself.” *Samuel-Thambiah*, Decision No. 133 [1993], para. 32. *See also B*, Decision No. 247 [2001], para. 21.

56. The record in the present case contains limited evidence that criticisms of the Applicant’s performance in general were brought to his attention throughout the 2012 OPE period. The Tribunal observes that the Bank failed to produce proof of its assertion that there was “ample evidence that [the Applicant’s] Manager ... counseled him throughout the 2012 performance period about the need for [him] to be more flexible and work better with his clients, including in connection with [the Mashreq project].”

57. Nevertheless, the Tribunal considers that the Applicant was aware of some concerns regarding the team for which he was responsible, particularly as he himself notes that there were difficulties surrounding the Mashreq project. Furthermore, the Tribunal observes that the requirement that a staff member is provided adequate warning about criticism of his performance is to preempt any surprises in relation to an adverse performance decision, and to provide the staff member adequate opportunities to defend himself. The Applicant did not receive any adverse ratings, but rather received a “Fully Successful” rating. The record also demonstrates that the Applicant had an opportunity to defend himself against any criticism Mr. Y may have raised, when he, Mr. Y and Ms. X met on 31 August 2012.

58. As a result, the Tribunal does not find that the Applicant’s due process rights were violated.

*The 2012 SRI rating*

59. The Tribunal observes that the process of establishing SRI ratings is generally based on a comparative assessment of staff members within the same unit. *Mpoy-Kamulayi (No. 8)*, para. 39. The Tribunal has recognized that “[g]iven the various decisional elements that are properly taken into account in making such a comparative assessment, it is difficult to support a claim of abuse of discretion.” *Marshall*, para. 24. However, SRI ratings must have a “reasonable and observable” basis, and ratings which are based on arbitrary OPE processes will be set aside. *See BY*, para. 31.

60. Having found that the 2012 OPE was not arbitrary, the Tribunal considers that the Applicant’s SRI was commensurate with a fully successful OPE. Unlike the applicant in *Desthuis-Francis* whose OPE contained positive comments but was nevertheless awarded an SRI rating of 3.1 which was “marginally satisfactory...below...expectations,” the Applicant in the present case received an SRI rating which is deemed to reflect a fully successful performance. The record also reflects that the Applicant’s SRI was determined taking into account his performance compared to that of his peers at the same grade and level of responsibility.

*The Applicant’s Request for a Salary Review*

61. The final issue to address is whether the Applicant, having retired, was entitled to a salary review. The Applicant, relying on Staff Rule 6.01, paragraph 6.06, does not accept the Bank’s position that a salary review is prospective only. The Bank on the other hand relies on the 2005 Ad Hoc Increase Guidelines to support its contention that salary reviews cannot be performed for retired staff members as there is no future salary to be adjusted. The Bank also submits that there was a “legitimate, non-discriminatory reason why [the Applicant’s] retirement salary might be lower than other H grade staff at retirement.” The Bank points out that the Applicant was demoted in 2004 from grade H to grade G as a result of a finding of misconduct. Pursuant to one of the disciplinary measures imposed the Applicant was declared ineligible for promotion until 2007. These disciplinary measures were upheld by the Tribunal. The Bank suggests that the Applicant’s demotion and ineligibility for promotion for several years could be the reason the Applicant’s salary might have been lower than that of his peers.

62. Staff Rule 6.01, paragraph 6.06 provides that:

Any retroactive adjustment of salary will take into account any changes in personnel status that have taken place during the period of retroactivity, as though the adjusted salary level had been in effect at the time of the change in status. Entitlements and deductions resulting from the change in status shall be recomputed in like manner.

63. The 2005 Ad Hoc Increase Guidelines provides that:

Ad hoc increases may be applied retroactively where they are designed to correct an error that occurred at a particular point in time. Ad hoc increases designed to address salary alignment issues are not applied retroactively, but are effective following the approval of the ad hoc increase.

Ad hoc increases are handled on an exceptional basis and are not an entitlement.

64. The Tribunal observes that Staff Rule 6.01, paragraph 6.06 does not specify that a salary review can only be conducted prospectively. The Tribunal further observes that the 2005 Ad Hoc Increase Guidelines do not address the conduct of salary reviews. The Guidelines only address the discretionary decision to apply an ad hoc salary increase. In other words, they apply once a salary review has already been conducted. There is therefore a two-step process, namely: 1) the conduct of a salary review; and 2) the subsequent determination of whether a salary adjustment should be made. The Tribunal notes that neither the Staff Rules nor the Ad Hoc Increase Guidelines shed any light on whether a salary review can be conducted for a retired staff member.

65. The Tribunal finds that in the absence of a clearly stated policy concerning salary reviews for retired staff members, it is necessary to assess the purpose of the Applicant's request for a salary review. The record shows that the Applicant requested a salary review to know if "he was not properly aligned with his peers," and "whether he has been treated fairly in comparison with his peers." The Applicant does not assert that an error occurred at a particular point in time. The Tribunal notes that in the event a salary review demonstrated misalignment with the Applicant's peers, the 2005 Ad Hoc Increase Guidelines expressly state that "ad hoc increases designed to address salary alignment issues are not applied retroactively, but are effective following the

approval of the ad hoc increase.” Since, as a retired staff member, the Applicant no longer receives a salary, an ad hoc salary increase could not apply to him. The Tribunal therefore finds the Bank’s reason for denying the Applicant’s request for a salary review a legitimate one with a reasonable basis.

*Concluding remarks*

66. The Tribunal observes that the Applicant has been successful in one of his five principal claims, namely the flawed 2012 OPE process. The Tribunal considers that any compensation to the Applicant should be reduced as he bears some responsibility for the fact that his OPE discussion was not completed prior to the establishment of his OPE and SRI ratings.

DECISION

The Tribunal decides that:

- (1) The Bank shall pay the Applicant compensation in the amount of two months’ net salary.
- (2) The Bank shall contribute to the Applicant’s attorney’s fees in the amount of \$5,780.
- (3) All other pleas are dismissed.

*/S/ Stephen M. Schwebel*

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Stephen M. Schwebel

President

*/S/ Zakir Hafez*

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Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 26 September 2014