



**World Bank Administrative Tribunal**

**2018**

**Decision No. 585**

**Katie Moss,  
Applicant**

**v.**

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

**(Merits)**

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

**Katie Moss,  
Applicant**

**v.**

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

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Mónica Pinto (President), Mahnoush H. Arsanjani (Vice-President), and Ahmed El-Kosheri.
2. The Application was received on 24 October 2016. The Applicant represented herself. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges the following: (i) denial of her request for Compensatory Leave; (ii) failure to follow proper procedures regarding her forced reassignment; (iii) that her new job description of Office Manager is not in line with the Bank's guidelines; and (iv) irregularities in her Fiscal Year 2015 (FY15) mid-year performance review, which also constitute retaliation.

#### FACTUAL BACKGROUND

4. Since September 2013, the Applicant has been a Senior Program Assistant in the Global Facility for Disaster Reduction and Recovery (GFDRR) unit of the Bank. From July to October 2014, she was supervised by the Manager of GFDRR; and, from October 2014 to April 2015, she was supervised by a Task Team Leader (TTL) in GFDRR.
5. According to the Applicant, there was a lack of regular communication with the Manager about the work program, which "affect[ed] [her] ability to anticipate and coordinate the overall administrative support." For example, by email dated 17 September 2014, the Applicant sent the Manager information regarding his travel schedule and hotel arrangements, requested his agenda

while travelling, and asked if he needed any other support. She also noted administrative matters, such as staff leaves and information relating to meeting times and attendees.

6. Later that evening, the Manager responded to the points in the Applicant's email, telling her that her email came "too late in the day." In response to her request for compensatory time off because she worked on a sick day, he stated that she should let him and the TTL know earlier and "there is no such thing as compensatory day for sick leave day during which you worked."

7. By email dated 24 September 2014 to the Applicant, the Manager summarized their discussion from the previous week, when he informed the Applicant that "spending the night in the office is not acceptable. [...] In case, you feel that your backlog becomes to[o] extreme, please let [the TTL] or me know and we will try to assign someone in the office to help." He also recalled "a growing number of instances where basic follow-up was lacking to ensure quality delivery" and cited, as an example, an issue with the audio-visual equipment and meetings not starting on time. Finally, the Manager reminded the Applicant that leave requests should be discussed further in advance and reminded her about the rules for requesting overtime and administrative leave.

8. By email dated 22 October 2014, the Manager informed the unit of the Applicant's new role as Office Manager and set out her roles and responsibilities in the context of the unit's organizational matrix.

9. Referring to the Applicant's summary of a meeting on 17 November 2014, to which a colleague requested clarification and changes, the TTL stated in an email dated 19 November 2014 that he "noticed lots of mistakes [...] overall. [...] These notes were not reviewed by anyone. I will ask [the Applicant] to clear them before circulation. This one, for example, is useless." The Applicant was copied on this email.

10. By email dated 18 January 2015, the TTL informed the Applicant that he did not think they needed to have a meeting about her mid-year performance review because he had "had plenty of exchange and feedback on [her] RA [Results Agreement]." Instead, he directed the Applicant to

meet with the Manager and informed her that he would provide his views to the Manager in advance.

11. Further to a request from the Manager to his team in late January, the Applicant scheduled her mid-year performance review for 27 March 2015. The Manager asked the Applicant to reschedule the review for a later date, which she did.

12. On 30 March 2015, the Applicant met with the Manager. According to the Bank, at this meeting, the Applicant received feedback about her performance during the first half of FY15. According to the Applicant, the Manager did not discuss her work until she initiated a conversation about her position and the possibility of extending her contract, at which point the Manager informed her that she had received a bad review from the TTL. The Manager subsequently sent the TTL's review to the Applicant via email.

13. The Manager also sent an email to the Applicant on the same day, summarizing his mid-year review of her performance. He noted her responsibilities, her contributions, and areas for improvement.

14. On 31 March 2015, the Applicant had a mid-year performance review conversation with the TTL, at her request. They discussed the contents of his review of her performance, with which the Applicant expressed discontent. He asked her to draft a mid-year review that reflected her understanding of their conversation. She did so and sent it to him later that evening.

15. By email dated 1 April 2015, the TTL suggested to the Manager that the text of the Applicant's mid-year performance review be modified, taking into account his conversation with the Applicant and modifying her suggested text. The Manager advised the TTL that the system "is already shut."

16. On 3 April 2015, the Applicant called Human Resources (HR) Operations, requesting that her mid-year performance review be reopened. HR Operations asked her to submit an email from her Manager supporting such request.

17. On 19 April 2015, the Applicant reported the Manager and the TTL to the Office of Ethics and Business Conduct (EBC), and her complaint was categorized as “Harassment/Hostile Work Environment,” including retaliation.

18. On 21 April 2015, the Applicant was placed on Short Term Disability (STD).

19. By email dated 1 May 2015, the Manager informed the Applicant that he had made changes to the text of her mid-year review document and asked her to “have a look and complete the process.”

20. The Manager never finalized the comments on the mid-year review document and on 4 May 2015, HR closed the document. The text of those comments is as follows:

During the first half of FY15, [the Applicant] was assigned with broader responsibilities for office administration and ACS [Administrative and Client Support] support to the management team, where her skills and interests are most suitable. She provided an important contribution to the organization of the office administration team, which helped better define her role in GFDRR. Given the upcoming growth and complexity in GFDRR, we count on [the Applicant] to enhance her capacity for monitoring, coordination and compliance with office guidelines and policies, and anticipate-solve potential bottlenecks that may affect the effective functioning of the management team.

21. By email dated 15 May 2015 to the Manager, the Applicant informed him that she was not able to see his comments on the mid-year review document.

22. On 22 May 2015, the Manager sent the Applicant the proposed text of her mid-year review. However, the Applicant took issue with a comment that she needed to “anticipate-solve potential bottlenecks that may affect the effective functioning of the Management team,” as it was her position that this was not her responsibility as the Office Manager.

23. On 1 June 2015, EBC closed the case regarding the Applicant’s claim of harassment, hostile work environment, and retaliation, finding

that there was no evidence of retaliation as the Reporter did not engage in any protected activity. [...] Many of the examples of harassment/hostile work environment and retaliation described by the Reporter were performance related. [...] Accordingly, many of the alleged work performance related issues (e.g., no mid-year evaluation, challenging substance of performance evaluation) identified by the Reporter are more appropriately addressed with Peer Review Services.

24. On 1 July 2015, the Applicant received a Salary Review Increase rating of 3 for FY15.
  
25. On 28 July 2015, the Applicant submitted Request for Review No. 258 to Peer Review Services (PRS) challenging the procedure and substance of her FY15 mid-year performance review and her reassignment.
  
26. By memorandum dated 5 August 2015, the Acting Executive Secretary to PRS informed the Applicant that PRS did not have jurisdiction to review her claim regarding the reassignment because her Request for Review with respect to this decision was filed more than 120 days after 22 October 2014, the date on which Administrative and Client Support (ACS) staff, including the Applicant, were sent an organizational matrix of their new roles and responsibilities. PRS accepted jurisdiction over the Applicant's claim regarding her FY15 mid-year performance review.
  
27. On 13 May 2016, the PRS Panel provided its report to the Senior Vice President, Operations. The PRS Panel concluded that "management acted consistently with [the Applicant's] contract of employment and terms of appointment in assessing her performance as set forth in her mid-year review" and recommended that the Applicant's requests for relief be denied.
  
28. By letter dated 18 May 2016, the Senior Vice President, Operations provided the Applicant with the PRS Panel report dated 13 May 2016 and informed her that he accepted the PRS Panel's recommendation.
  
29. On 14 September 2016, the Applicant requested an extension of time to file her Application. The Tribunal granted her request and gave her until 24 October 2016 to file her Application.

30. On 24 October 2016, the Applicant filed this Application, challenging the following: (i) denial of her request for Compensatory Leave; (ii) failure to follow proper procedures regarding her forced reassignment; (iii) that her new job description of Office Manager is not in line with the Bank's guidelines; and (iv) irregularities in her FY15 mid-year performance review, which also constitute retaliation.

31. The Applicant seeks the following relief: (i) compensation for loss of income since going on disability; (ii) compensation for a two-year contract extension or to extend her STD with 20% online work and full pay in a different unit; (iii) payment for any relevant neck or arm/shoulder surgery in the future and the cost of home care, if necessary, until she recovers fully; (iv) compensation "for the torment and suffering and increased medical expenses and relocation to [a] warmer climate"; and (v) an order to reopen and correct her overall performance evaluation.

32. By email dated 16 March 2017, the Climate Group Director informed the Applicant that her contract would not be extended past 19 September 2017 because "there is no business need for a GD level Program Assistant neither within GFDRR nor anywhere else in the Climate Change CCSA."

33. At the end of April 2017, the Applicant was placed on administrative leave pending a decision on the end of her two-year STD leave. On 1 July 2017, the Applicant's appointment was terminated due to disability, as she had reached the maximum of two years on STD, and she was placed on Long Term Disability.

34. On 7 December 2016, the Bank filed a preliminary objection to the admissibility of this Application. It contended that the only claim that is properly within the Tribunal's jurisdiction is the Applicant's claim regarding her FY15 mid-year performance review. The Bank argued that her other claims were not admissible because the Applicant did not exhaust all prior remedies nor has the Bank agreed to the submission of the complaints directly to the Tribunal.

35. In *Moss (Preliminary Objection)*, Decision No. 571 [2017], the Tribunal held that only the Applicant's claim regarding irregularities in her FY15 mid-year performance review is admissible.

## SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

*The Applicant's Contention No. 1**The mid-year performance review was flawed in substance*

36. The Applicant claims that the mid-year performance review was not measured against her performance objectives, but “on phony criteria.” She also disputes the statement that she should “anticipate-solve potential bottlenecks that may affect the effective functioning of the Management team” because, according to her, this is not the Office Manager’s responsibility; she was not part of the management team; and she was excluded from management team meetings. As well, she claims that the Manager and the TTL did “everything to avoid providing [her with] the tools to accomplish this very thing.”

37. The Applicant submits that the Manager “failed to communicate with [her] regularly” and claims that the emails relied upon by the Bank do not constitute notice of poor performance. First, she contends that the email exchange on 17 September 2014 with the Manager does not constitute notice of “performance that fell behind the expectations,” but rather is an example of the Manager’s refusal to meet with her or answer her questions, thus necessitating that she send the email. Second, regarding the email of 24 September 2014, she claims that she had made the Manager and the TTL aware that she was staying late because she had a lot of work and claims that she never received the promised additional help, despite the increased workload. She also explains that she stayed late to help a colleague and to ensure that the audio-visual arrangements for a meeting the following day would run smoothly. The Applicant further disputes the remaining criticisms in that email. Third, regarding the email of 19 November 2014, the Applicant argues that “this email is not an example of my poor performance. I was doing exactly what I was supposed to do and in the right manner” and points out that she obtained clearance from the TTL and another colleague before the summary was sent.

38. In sum, the Applicant contends that the Bank’s examples of her poor performance “are just excellent examples of maliciousness directed towards [the Applicant] and contains no truth when you look at the full picture and was carried out within a framework of retaliation because [she] dared to ask to sit in on the Management Team meetings to inform [her]self.”



***The Bank's Response***

*The mid-year performance review was fair and reasonable*

39. The Bank submits that the Applicant was “given ample warning about criticism of her performance and deficiencies in her work,” notwithstanding that she may not have been aware of the wording of the Manager’s comments on her mid-year performance document.

40. The Bank contends that, although the Applicant disputed the wording of the comments, “the substance of the feedback did not change over the course of the debate on wording.”

41. The Bank further contends that the mid-year review “fulfils the standard for performance feedback throughout the year.” Specifically, the Bank notes that, on 30 and 31 March 2015, the Applicant had two conversations about her performance with the Manager and the TTL, respectively, and the Applicant received feedback on her performance, indicating areas for improvement, via email from the Manager on 17 and 24 September 2014 and the TTL on 19 November 2014.

***The Applicant's Contention No. 2***

*The proper process was not followed in conducting the mid-year review*

42. The Applicant contends that both the Manager and the TTL “were not interested in having any conversation. They just wanted to write their own pre-conceived views without any verification or basis.” She also claims that she did not have any opportunity to comment on her mid-year performance review. She submits that the TTL did not meet with her to discuss her performance. Instead, he criticized her poor performance in writing and sent it to the Manager who entered it into the mid-year performance document, without discussing it with the Applicant.

43. She states that the mid-year review “was written without an individual discussion with me by the TTL or any discussion by the Manager. Then they sneaked it into the mid-year write-up and ignored my requests to change it.” She claims that the Manager attended the “mid-year review

with no points to discuss, except to say that [the TTL] wrote it and he does not know anything about it, does not have a copy and did not give it to [the Applicant] ahead of time.”

44. The Applicant invokes Staff Rule 5.03, paragraph 2.01(c), which states: “The Manager or Designated Supervisor, in consultation with the staff member, shall establish in writing the development priorities for and the results to be achieved by the staff member during the upcoming review period.” She claims that, since the TTL identified a performance issue, namely her need to “anticipate-solve potential bottlenecks,” it was incumbent on the TTL to identify “the results to be achieved” and how to obtain the necessary information to accomplish this. She further argues that this “new requirement, should ideally have been put into [her] objectives [...]. It should not have been put into [her] mid-year review as a performance failure without the tools being provided to accomplish such a task.”

45. The Applicant claims that she tried to access the ePerformance system several times, “but it would not allow [her] to do anything” nor could she see the Manager’s comments when she logged in after their meeting on 30 March 2015.

46. The Applicant states that, when she contacted HR Operations about her mid-year review document, they told her “that mid-year can be opened but only via email from the Manager. They never qualified it by stating that they could only open staff section/Manager section or any such details.” Moreover, when the Manager informed the Applicant that it was open and that he had entered his comments, she remained unable to access the document and informed him of this but he did not do anything. She notes that, at this time, she was very ill and in pain, taking medication, receiving therapy, and working on her request to PRS. She asserts that, if her Manager had “just forwarded my email to HR operations and said, please follow up, I would have followed up with HR. As it is, I received no acknowledgment or response from him.”

***The Bank's Response***

*The Bank observed the proper process in conducting the mid-year review*

47. The Bank submits that the mid-year conversation is “an informal feedback conversation during the year” and should be distinguished from the Annual Review, which requires a manager or designated supervisor to meet with the staff member at least once a year to discuss the staff member’s performance, pursuant to Staff Rule 5.03, paragraph 2.01(a), “Annual Review.”

48. According to the Bank, the mid-year performance review is not “an ultimate judgment on a staff member’s performance,” but functions “to assess [a staff member’s] performance to date [...] to review [a staff member’s] performance objectives to ensure they are still applicable and appropriate and raise any unexpected challenges or performance issues in a timely manner and make course corrections to reduce the odds of surprises at year end.”

49. Notwithstanding the Bank’s rejection of the mid-year conversation as coming within the scope of Staff Rule 5.03, paragraph 2.01(a), the Bank claims that the requirements of that provision would have been fulfilled in this case since all that is required is a discussion of performance, which took place, in this case, on 30 and 31 March 2015.

50. The Bank argues that the Applicant had adequate opportunity to defend her views, noting that it is the staff member’s responsibility to indicate whether a mid-year conversation has taken place and to summarize that conversation in the system, prior to 31 March of each year. In this case, the Bank notes that the Applicant did not enter her comments about the mid-year conversation into the system before the 31 March deadline, even though she exchanged emails with her Manager about his draft comments. The Bank contends that, distinct from the Manager’s comments on the mid-year review document, “it would have been for Applicant to submit her own comments about the mid-year review feedback.” However, the Bank asserts that there is no evidence that the Applicant intended to enter her own comments. Rather, the Bank suggests that the Applicant appears to have wished to comment on or suggest edits to her Manager’s comments, which is not how the performance evaluation process works.

51. Moreover, the Bank points out that the Manager informed the Applicant on 1 May 2015 that she should look at his text in the mid-year review document and complete the process. According to the Bank, the Applicant was aware of the option to reopen the mid-year review document, with the Manager's approval, but did not take advantage of this option.

52. The Bank claims that the Applicant's redraft of the Manager's mid-year review comments, which she provided to the TTL on 31 March 2015, was taken into account and constituted an opportunity for the Applicant to express her views.

53. Regarding the Applicant's claim that criticism of her performance should have led to a change of her performance objectives, the Bank states that "it is not apparent from the material submitted that Applicant ever expressed interest in a productive use of the feedback such as an adaptation of the Applicant's performance objectives." The Bank submits that, if the Applicant wanted to change her performance objectives, she should have modified and submitted them to the Manager.

### ***The Applicant's Contention No. 3***

#### ***The Manager retaliated against the Applicant***

54. The Applicant claims to be the target of the Manager's retaliatory behavior because she was selected for the position in GFDRR instead of another colleague whom the Manager preferred. As further support, she relies on the TTL's statement to her: "How is your relationship with the Manager? If he is cold toward you, you are 'dead meat.'"

55. The Applicant further claims that she was retaliated against by the Manager "because [she] dared to ask to sit in on the Management Team meetings to inform [herself]."

***The Bank's Response***

*The Applicant's mid-year feedback does not constitute retaliation*

56. The Bank argues that the Applicant has not described any protected conduct that might be linked to the Manager's mid-year feedback. The Bank also rejects, as a basis for retaliation, the Manager's alleged unhappiness that the Applicant was selected for a position in GFDRR instead of another colleague.

57. The Bank submits that the mid-year feedback "was grounded in objective facts and balanced positive and negative aspects." The Bank relies on emails from the Manager and the TTL, dated 17 and 24 September and 19 November 2014, as reflecting "sufficient basis for some criticism in the mid-year performance review."

58. The Bank repeats and relies upon EBC's conclusion that the Applicant's claim of retaliation relates, instead, to performance issues.

***The Applicant's Contention No. 4***

*The Applicant has suffered harm*

59. The Applicant claims that the actions of the Manager and the TTL towards her "have had severe mental and physical repercussions and suffering," specifically, she was unable to lift her head up one day, has only limited ability in her right hand, and has permanent damage to her cervical spine. She notes that she suffers from anxiety, depression, and lordosis. She also claims harm to her career, including a 30% decrease in her income, and that she incurred medical expenses, moving expenses for having to move to a warmer climate because of her poor health, lost rental income, and other financial losses.

***The Bank's Response***

*The Applicant has not been harmed*

60. The Bank notes that the Applicant has not argued that the mid-year review impacted her FY15 Annual Review, nor was there such an impact, in fact. The Bank claims there was no impact because the Manager never finalized the mid-year review comments in the system and no overall performance evaluation was completed for FY15 because the Applicant was placed on disability. The Bank also notes that the “closed” and “cancelled” status of the Applicant’s mid-year and annual review documents for FY15 are not reflected in her Staff Record so they do not have any implications for her.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

THE SUBSTANCE OF THE APPLICANT’S MID-YEAR PERFORMANCE REVIEW

61. According to the “Staff Guide: Your Guide for Effective Mid-Year and Ongoing Performance Conversations” (the Guide), the mid-year conversation is

an opportunity to assess your performance to date with your supervisor(s). It is a chance to review your performance objectives to ensure they are still applicable and appropriate and raise any unexpected challenges or performance issues in a timely manner and make course corrections to reduce the odds of surprises at year-end.

Use the mid-year conversation to:

1. Discuss progress and seek feedback on how you are meeting your individual performance objectives thus far;
2. Clarify performance expectations for the remainder of the year;
3. Review professional development objectives and learning needs and agree on next steps and development plan; [and]
4. Discuss longer-term career goals as appropriate[.]

62. The Tribunal will examine whether the Applicant’s mid-year performance review accords with the description set out above, having regard to the Applicant’s individual business objectives. The Applicant’s individual business objectives for FY15 consist of the following: office management, guidance to ACS and all staff on workplace integration, retention of key documents,

oversight of event management, assistance in monitoring Japan program, and assistance with all human resources–related activities in the unit.

63. The text of the mid-year review at issue states:

During the first half of FY15, [the Applicant] was assigned with broader responsibilities for office administration and ACS support to the management team, where her skills and interests are most suitable. She provided an important contribution to the organization of the office administration team, which helped better define her role in GFDRR. Given the upcoming growth and complexity in GFDRR, we expect [the Applicant] to enhance her capacity for monitoring, coordination and compliance with office guidelines and policies, and anticipate-solve potential bottlenecks that may affect the effective functioning of the management team.

64. The Applicant claims that her mid-year performance review was measured against “phony criteria,” disputes the phrase that she should “anticipate-solve potential bottlenecks [...],” and claims that the Manager and the TTL “did everything to avoid providing [her with] the tools to accomplish this very thing.”

65. With the exception of the reference to supporting the management team, the Tribunal finds that the activities described in the mid-year review are consistent with the Applicant’s individual business objectives. The only phrase in dispute, which could reasonably be construed as critical of the Applicant, is the expectation that the Applicant should “enhance her capacity for monitoring, coordination and compliance with office guidelines and policies, and anticipate-solve potential bottlenecks that may affect the effective functioning of the management team.” The Applicant’s assistance to the management team is not specifically listed as a business objective, and the Applicant argues that this is not the Office Manager’s responsibility, especially as she was not part of the management team and was excluded from management team meetings. In the organizational matrix dated 22 October 2014, where the Applicant is identified as “Office Manager/HR,” under “Management Support,” she is listed as being responsible for “organiz[ing] staff recognition events like birthdays, farewells, socials etc.” and “[f]ollow through on actions requested at Stand up meetings.” The Tribunal finds that the Applicant’s mid-year performance was not measured against the objective of providing assistance to the management team nor was she criticized for

failing to do so. Rather, it was brought to her attention at the mid-year review that she would be expected to provide such assistance going forward. Therefore, the Tribunal finds that the mid-year conversation was properly used to discuss the Applicant's progress on her individual performance objectives and to clarify performance expectations for the remainder of the year.

66. Regarding the three examples of poor performance cited by the Bank and disputed by the Applicant, i.e., email exchanges from 17 September, 24 September, and 19 November 2014, the Tribunal finds that it does not need to determine whether these are evidence of the Applicant's poor performance since they are not reflected in the mid-year review. The review is mostly positive except for the disputed phrase, which is reasonably interpreted as instructions to guide the Applicant's performance for the remainder of the year.

67. The Tribunal finds that the Applicant's mid-year performance review was fair and accords with the purpose of such a review, as articulated in the Guide.

#### THE PROCESS OF THE MID-YEAR REVIEW

68. The Bank submits that the mid-year conversation is "an informal feedback conversation during the year" and should be distinguished from the year-end discussion, the latter being mandated by Staff Rule 5.03, paragraph 2.01(a).

69. The mid-year conversation, while not a formal discussion *per se*, is an integral component of the performance management process. The Tribunal is mindful that, according to the Frequently Asked Questions section of the Guide, the mid-year conversation is "not intended to be formal or process-intensive and should be viewed as opportunities for staff and supervisor to touch base, celebrate successes and identify areas of opportunity throughout the performance management process—potentially correcting performance issues before they become habits."

70. In FY15, the deadline for staff and supervisors to complete the mid-year review conversation and to document the conversation was 31 March 2015. While it is regrettable that the Manager and the TTL waited until the very end of the mid-year review period to have this



conversation with the Applicant, the Tribunal finds that the Applicant's conversations with the Manager on 30 March and the TTL on 31 March 2015 satisfy the requirements of the mid-year conversation.

71. The Applicant claims that she did not have any opportunity to comment on her mid-year performance review and that it was written without any discussion. She also refers to problems that she had accessing the ePerformance system and the inability to see the Manager's comments when she logged in after the meeting on 30 March 2015.

72. According to the Guide, after the mid-year conversation, the following sequence of events should take place:

- Record whether you had a mid-year conversation with your supervisor and provide a brief summary of the conversation in the ePerformance System.
- Ask your supervisor to reopen the objective setting form, in case you need to modify your objectives. Remember, objectives can be modified at any time throughout the performance year until the end-year evaluation starts, subject to your supervisor's approval.
- Continue to have conversations with your supervisor and ask for input and feedback[.]

73. The Kiosk Announcement dated 4 March 2015 noted that "[i]t is recommended that supervisors wait for staff to provide comments before they themselves complete the form."

74. There is no evidence in the record that the Applicant recorded or tried to record a summary of the mid-year review conversation, whether in the ePerformance system, which she claims was inaccessible, or in email exchanges with the Manager or the TTL. Instead, the Applicant engaged the Manager and the TTL in trying to amend their mid-year review comments. The Tribunal finds that this was contrary to the performance review process, which contemplates two distinct sections in the mid-year review document: one for the staff member's comments and the other for the supervisor's comments.

75. Regarding the Applicant's claim that she was told by HR Operations that her mid-year review document could only be opened via an email from the Manager and the Manager's failure

to send such an email, the record shows that the Applicant was informed of this on 3 April 2015. However, there is no evidence of the Applicant requesting her Manager to reopen the document. Instead, the record shows that the Manager himself communicated with HR to reopen the document so that he could change the text of the mid-year review and then told the Applicant by email dated 1 May 2015 to “have a look and complete the process.” The Applicant informed the Manager by email dated 15 May 2015 that she was not able to see his comments on the mid-year review document. This was because HR had already closed the document on 4 May 2015. The Tribunal finds that, while there was some confusion regarding the reopening of the Applicant’s mid-year review document, there is no evidence that the Applicant was trying to reopen the document to input her comments on the mid-year review conversation. Rather, the Applicant wanted to change the text of the Manager’s comments, which she had been made aware of through her conversations with the Manager and the TTL on 30 and 31 March 2015.

76. The Applicant contends that the Manager and the TTL were not interested in discussing her performance, that they had preconceived views, and that she did not have any opportunity to comment on the mid-year review document. The record shows that both the Manager and the TTL met with the Applicant to discuss her performance, although the Applicant might not have been satisfied with the conversation. The record also shows that, after their meeting, the Manager sent the Applicant the TTL’s review of her performance and another email summarizing his mid-year review of her performance. Finally, the Applicant and the TTL discussed his review of her performance, and he invited her to draft a mid-year review that reflected her understanding of their conversation, which she did. The Tribunal finds that these meetings and exchanges provided the Applicant with ample opportunity to discuss her performance and that the Staff Member Comments section of the mid-year review document would have been the proper forum for the Applicant to express her own views about her performance, rather than attempting to redraft her Manager’s comments.

77. The Tribunal notes that the Applicant did not avail herself of the opportunity to input her comments on the mid-year review conversation, choosing instead to focus on redrafting her Manager’s comments. The Tribunal finds that the mid-year review was conducted in accordance with the procedure set out in the Guide.

## RETALIATION

78. The Applicant contends that her mid-year feedback constitutes retaliation by her Manager because she was selected for the position in GFDRR instead of another colleague and because she asked to sit in on management team meetings.

79. Retaliation is prohibited under the Staff Rules. Staff Rule 3.00, paragraph 7.06 states:

Retaliation by a Staff Member against any person who provides information regarding suspected misconduct, who cooperates or provides information in connection with a preliminary inquiry or investigation conducted under Staff Rule 8.01, "Disciplinary Procedures," or in connection with an initial review or subsequent procedures set forth in Sections 8 through 10 of this Rule, or who uses the Internal Justice Services, is expressly prohibited and shall result in proceedings under this Rule.

80. The Bank's Code of Conduct describes retaliation in the workplace as follows:

Retaliation is "any direct or indirect detrimental action recommended, threatened, or taken because an individual engaged in a [protected activity]." (SR 8.02) [...].

Retaliation in the workplace encompasses a range of behavior, from something as small as a remark to something as serious as an administrative action affecting a staff member's work program or employment. When taken as a means of retaliation, other examples can include: reprimand, discharge, suspension, demotion, denial of promotion, and denial of transfer. Any staff member who in good faith raises a concern is protected from retaliation.

81. In *O*, Decision No. 337 [2005], para. 47, the Tribunal articulated the burden of proof in retaliation cases as follows:

The burden lies with an applicant to establish facts which bring his or her claim within the definition of retaliation under the Staff Rules. An applicant bears the onus of establishing some factual basis to establish a direct link in motive between an alleged staff disclosure and an adverse action. A staff member's subjective feelings of unfair treatment must be matched with sufficient relevant facts to substantiate a claim of retaliation, which in essence is that the allegation of poor performance is a pretext to mask the improper motive.

82. Likewise, in *Bodo*, Decision No. 514 [2015], para. 77, the Tribunal required that “an applicant asserting discrimination or retaliation must still make a *prima facie* case with some evidence to show the discriminatory or retaliatory motives behind the impugned decision.”

83. In this case, there is insufficient evidence to conclude that the Applicant has made a *prima facie* case of retaliation. There is no evidence that the Manager preferred the other colleague to the Applicant or that there is any link between the Applicant’s request to sit in on management team meetings and her mid-year review. The Tribunal finds that there are no bases for the retaliation alleged by the Applicant.

#### HARM AS A RESULT OF THE MID-YEAR REVIEW

84. The Applicant claims that the actions of the Manager and the TTL have caused her physical, emotional, and financial harm. For its part, the Bank claims that the Applicant has not argued that the mid-year review impacted her FY15 Annual Review nor was there such an impact because no overall performance evaluation was completed for FY15 because the Applicant was placed on STD.

85. The Applicant has challenged a number of decisions and actions by the TTL and the Manager, but only the mid-year performance review is reviewable by this Tribunal. On the basis of the record, the Tribunal does not find that the Applicant suffered harm as a result of the mid-year review, which was ultimately closed without any comments.

#### DECISION

The Application is dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 May 2018