



**World Bank Administrative Tribunal**

**2013**

**Decision No. 480**

**L.T. Mpoy-Kamulayi (No. 8),  
Applicant**

**v.**

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

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

**L.T. Mpoy-Kamulayi (No. 8),  
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), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Jan Paulsson, Ahmed El-Kosheri, Andrew Burgess and Abdul G. Koroma.
  
2. This Application, the Applicant's eighth before the Tribunal, was received on 27 November 2012. The Applicant was represented by Stephen C. Schott of Schott Johnson, LLP. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
  
3. The Applicant challenges his 2010 Overall Performance Evaluation ("OPE") covering the period 1 April 2009 to 30 June 2010, and 2010 Salary Review Increase ("SRI") rating and corresponding increase.

FACTUAL BACKGROUND

4. The Applicant joined the Bank as Counsel in 1984 and worked in the Bank's Legal Vice Presidency until his retirement in 2012. At the time of his retirement he held the title of Lead Counsel (level GH).
  
5. As this Application concerns the Applicant's 2010 OPE and 2010 SRI, only the facts relevant to these challenges are recited below.
  
6. During the 2010 OPE period, the Applicant worked in the Africa Region ("LEGAF") and the Europe, Central Asia, Middle East and North Africa unit ("LEGEM") of the Legal Vice Presidency. While working in LEGAF, he was assigned to serve as Lead Counsel in the Bank's Country Office in Abuja, Nigeria. He officially reported for duty in Abuja in October 2008. One

year later, in November 2009, the Applicant was recalled from Abuja to the Bank's headquarters in Washington, DC. He filed an application challenging the recall and the Tribunal found that the Bank had a reasonable basis for the recall and that it was not an abuse of discretion.

7. On his return to headquarters, the Applicant was reassigned from LEGAF to LEGEM in January 2010. From January 2010 until 30 June 2010 (the end of the 2010 OPE period), he worked in LEGEM in the portfolios of Egypt and Djibouti. The Chief Counsel of LEGEM served as the Applicant's supervisor during his time in LEGEM.

8. In June 2010, the Legal Vice Presidency launched the 2010 OPE process. The Chief Counsel of LEGEM served as the Applicant's OPE Manager and held an OPE discussion with the Applicant on 14 October 2010. The process was completed on 29 October 2010 when the Chief Counsel of LEGEM and the Applicant signed the OPE.

9. In this 2010 OPE, in the Results Assessment section, the Applicant listed five Work Program Results. The ratings he received are as follows:

- (i) Legal services for Nigeria until November 2009 – Fully Successful
- (ii) New operations handled for Nigeria – Fully Successful
- (iii) Country lawyer for Egypt and Djibouti – Superior
- (iv) New operations handled for Egypt and Djibouti – Superior
- (v) Special assignments for Nigeria, Egypt and Djibouti – Fully Successful.

10. In the Behavioral Assessment section of the OPE, the Applicant was rated as follows:

- (i) Client Orientation – Superior
- (ii) Drive for Results – Fully Successful
- (iii) Teamwork – Fully Successful
- (iv) Learning and Knowledge Sharing – Fully Successful.

11. On 28 October 2010, the Applicant was notified that his SRI rating was 3.2. On 1 November 2010, he received notice that he would receive the corresponding salary increase of 2.4%.

12. On 22 February 2011, the Applicant filed a Request for Review (No. 47) with Peer Review Services (“PRS”) challenging mainly his 2010 SRI.

13. In its Report of 17 July 2012, PRS recommended the denial of the Applicant’s requests for relief concluding that:

[T]he Panel finds that management’s decision issuing Mr. Kamulayi a 2010 SRI of 3.2 and corresponding salary increase of 2.4 percent was reasonable, that management followed a proper process in the manner in which it made the decision, and that management did not retaliate against Mr. Kamulayi.

14. By a letter of 30 July 2012, the Bank informed the Applicant that it had accepted PRS’s recommendation.

15. On 27 November 2012, the Applicant filed the present Application with the Tribunal challenging his 2010 SRI as well as some aspects of his 2010 OPE. His main claims are that his OPE and SRI ratings lack a reasonable basis and are discriminatory, vindictive and retaliatory. As remedies, he seeks specific performance in the form of a 5.9% salary increase, compensation, moral damages and costs.

16. The Bank answers that the Applicant’s ratings were reasonable and there is no evidence of discrimination or retaliation or other improper motive.

## THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

### *2010 OPE*

17. The Applicant challenges the three “Fully Successful” ratings he was awarded in the Results Assessment section and the three “Fully Successful” ratings he was awarded in the Behavioral Assessment section of his 2010 OPE. He claims that the Bank “lacks any valid or observable basis for a rating of less than ‘superior’ in all categories of performance.” The Bank rebuts stating that it has a proper basis for the Applicant’s OPE ratings.

18. The Tribunal has stated in *Desthuis-Francis*, Decision No. 315 [2004], para. 19, that:

The evaluation of a staff member's performance is in principle a matter within the Respondent's discretion. What constitutes satisfactory performance is to be determined by management (*e.g.*, *Buranavanichkit*, Decision No. 7 [1982], para. 26; and *Buyten*, Decision No. 72 [1988], para. 44) and management's appraisal in this respect is final absent an abuse of discretion.

19. In *Desthuis-Francis*, the Tribunal also stated that a staff member's performance evaluation or ratings would be considered arbitrary if the Bank fails to provide an adequate or reasonable basis for its decision. At paragraph 23, the Tribunal held that:

The Tribunal considers that failure on the part of the Respondent to submit a reasonable basis for adverse evaluation and performance ratings is evidence of arbitrariness in the making of such an evaluation and rating. Lack of a demonstrable basis commonly means that the discretionary act was done capriciously and arbitrarily.

20. It is useful to set out at the beginning what "Fully Successful" means in the Bank's OPE language. Human Resources ("HR") defines a "Fully Successful" rating as follows:

1. Staff member satisfactorily achieved work goals. Effectiveness of results, quality, quantity, outputs, and/or timeliness consistently met expectations or standards in all aspects.
2. Staff member met all behavioral expectations according to standards and demonstrated behaviors were consistently effective.
3. Staff member satisfactorily met agreed upon development actions.
4. It is expected that most staff members on many items would be rated fully successful or fully accomplished.

HR defines a "Superior" rating as follows:

1. Staff member consistently performed beyond expectations. Effectiveness of results, quality, quantity, outputs, and/or timeliness were consistently above standards or expectations.
2. Staff member consistently exceeded behavioral expectations according to standards. Demonstrated behaviors were extremely effective in bringing about desired results.

3. It is expected that a few staff members on a few items would be rated superior.

21. There is no basis for considering a “Fully Successful” rating as adverse or negative. The Bank’s guidelines state that it is expected “that most staff members on many items would be rated fully successful or fully accomplished” and “that a few staff members on a few items would be rated superior.” In sum, the Applicant’s overall OPE ratings are positive.

22. Can the Applicant’s OPE ratings be called arbitrary because he believes that he should not have received less than “Superior” ratings in any category? In *BI*, Decision No. 439 [2010], para. 32, the Tribunal emphasized that: “It is not the Tribunal’s role to undertake a microscopic review of the Applicant’s performance, and to substitute its own judgment about the Applicant’s performance for the Bank’s.” Rendering judgment on the appropriateness of a Fully Successful versus a Superior rating comes close to a microscopic review. Ordinarily, to allow petitions to the Tribunal regarding disagreements as to the correctness of “Fully Successful” versus “Superior” ratings would involve unwarranted intrusion on managerial discretion. *See Yoon (No. 5)*, Decision No. 332 [2005], paras. 47-48; *BI*, Decision No. 439 [2010], para. 33.

23. The record before the Tribunal provides a reasonable basis for the Applicant’s “Fully Successful” ratings. The Applicant’s OPE is based on his performance in LEGAF where he served as Lead Counsel in the Bank’s Country Office in Nigeria, as well as on his performance in LEGEM. He received “Fully Successful” ratings for the work involving Nigeria. The Applicant’s OPE Manager, the Chief Counsel of LEGEM, explained as follows:

The 2010 OPE is based solely on the performance across the period April 2009 – June 2010. The first 9 months of that period Mpoy worked in LEGAF, and was based in the Country Office in Abuja, Nigeria. As documented in the Administrative Tribunal Decision (case No. 457), the team in Abuja, including the Country Director raised a number of concerns about Mpoy’s performance during that period, his relationship with the team was rapidly deteriorating in 2009, and this resulted in his recall from the Abuja Office by the General Counsel in November 2009 and reassignment to another position.

24. The issues with the Applicant's performance are detailed in *Mpoy-Kamulayi (No. 2)*, Decision No. 457 [2011], where the Applicant challenged the decision to recall him. At para. 61 the Tribunal noted that:

After her discussions with the Applicant, the Chief Counsel, the Deputy General Counsel, the Country Director, and the Vice President of the Africa Region, the General Counsel had come to the conclusion that the Applicant was no longer in a position to provide effective service as a country lawyer in Nigeria and that "the tensions between the Applicant and his clients in Abuja were negatively impacting the work program of the World Bank in that area." Accordingly, on 5 November 2009, the General Counsel informed the Applicant that she had decided to recall him and reassign him to another position.

25. Both PRS and the Tribunal concluded that the General Counsel had a reasonable basis to recall the Applicant.

26. It is unnecessary here to recount the shortcomings management found regarding the Applicant's performance in Nigeria. The Tribunal upheld the decision to recall him from Nigeria. That is sufficient basis for the conclusion that management cannot be faulted for rating the Applicant's performance involving Nigeria-related work as less than "Superior."

27. The Applicant claims that "neither [the Chief Counsel of LEGEM] nor the so-called LEG management team members had personally or directly observed Applicant's work performance in LEGAF. None of them had reviewed any feedback provided by those identified as feedback providers by Applicant for his 2010 OPE review period." Therefore, in the Applicant's view, the ratings regarding his Nigeria-related work lack any basis.

28. The Tribunal concludes that the record does not support the Applicant's claim. The Chief Counsel of LEGEM, the Applicant's OPE Manager, was aware of the circumstances of the Applicant's recall as he was assigned to LEGEM after the recall from Nigeria. In addition, the OPE Manager discussed the Applicant's performance in Nigeria with the Chief Counsel of LEGAF. Furthermore, the OPE Manager sought and received written feedback from the Applicant's chosen feedback providers on his performance for the entire 2010 OPE period, including his performance in Nigeria. This feedback forms part of the record before the Tribunal.

The Applicant's claim that his OPE Manager had no basis to rate his performance regarding Nigeria is therefore unpersuasive.

29. The Applicant also raises the allegation that "no one evaluated his work on Nigeria, no one wrote a critique in the OPE form, no one discussed his accomplishments or any alleged failings. No manager provided [the OPE Manager] with any comments on Applicant's work on Nigeria."

30. The Tribunal finds that the record does not support the Applicant's allegations. The Tribunal notes that when the Applicant challenged his recall he made similar arguments. In Decision No. 457, paras. 71-72, the Tribunal found that "based on the record, it cannot be said that management failed to bring to the Applicant's attention the issues relating to his performance ... he cannot credibly claim that he was never given any opportunity to improve his performance." The Applicant seems to suggest that management should have repeated the same process when completing his 2010 OPE. It is questionable whether the Applicant was interested in it. The Applicant wanted a "clean" start in LEGEM after the recall and wanted to make sure the experience in Nigeria did not negatively influence his OPE ratings. In any event, the OPE Manager had a discussion with the Applicant about his performance during the 2010 OPE period. In this regard, the Tribunal finds that the Bank's answer is persuasive:

If Applicant were really interested in obtaining written feedback from his LEGAF Chief Counsel [about performance in Nigeria] he could easily have obtained it, merely by naming that Chief Counsel in his OPE form. Instead, Applicant apparently chose to avoid soliciting input from any feedback provider whom he suspected might have been critical of his performance. That was his right, but he should not be heard to complain about the consequences of this choice now.

31. Finally, relying on Staff Rule 5.03, paragraph 2.01(d), the Applicant claims that he should have received two OPEs: one covering his work in LEGAF and other covering LEGEM.

32. Staff Rule 5.03, paragraph 2.01(d), states as follows:

If during the review period the staff member has reported to more than one Supervisor for a period of three months or more, the staff member, the Manager



or the Designated Supervisor may request the other supervisor(s) to provide supplemental written performance evaluations to the staff member.

33. In the Tribunal's view, based on the language of the Rule, a supplemental OPE covering the Applicant's work only in LEGAF could have been requested by the Applicant or his OPE Manager. This was an option; the Staff Rule does not mandate it. If the Applicant were genuinely interested in it, he could have requested it. The Bank notes that "there is virtually no likelihood that Applicant would have accepted the validity of anything written by his LEGAF Chief Counsel, based on Applicant's strong animus against his former manager," and that the Applicant never requested a supplemental written performance evaluation for his Nigeria work and this "is consistent with the decision not to even solicit OPE feedback from the LEGAF Chief Counsel." In sum, given the optional nature of the Rule and the absence of any request by the Applicant for such a supplemental evaluation, the Tribunal finds no violation of Staff Rule 5.03, paragraph 2.01(d).

#### *2010 SRI*

34. The Applicant claims that his 2010 SRI rating of 3.2 and the corresponding salary increase of 2.4% are arbitrary, discriminatory and retaliatory. The Bank answers that it has a proper basis for its decisions and rejects the allegation of discrimination and retaliation.

35. A staff member's SRI is generally determined according to the staff members' performance and position in the salary range. The 2010 SRI Guidelines and Process explains that "the distribution of the overall pay increase is determined by the performance category assigned to staff, the salary zone in which the staff member's pre-increase salary falls, and the range of increase available through the salary increase matrix."

36. Under the Bank's rules, there are four performance categories or SRI ratings in the Salary Review Matrix: 2, 3, 4 and 5. Managers are allowed to use three sub-categories within category 3 (3.1, 3.2 and 3.3) to facilitate budget distribution. There is no precise definition of each category or rating. The 2010 SRI Guidelines and Process state that: "Because SRI ratings are an indication of relative performance, there is no definition attached to the SRI performance categories, with the exception of performance category 2. The rating 2.2 is used to denote unsuccessful

performance and [a] rating 2.1 may be used for unconfirmed staff.” In other words, SRI ratings of 3 and above denote good performance or a satisfactory level of performance.

37. As to whether the Applicant’s SRI rating of 3.2 is arbitrary, as stated in *Desthuis-Francis*, paras. 19 and 23, this sort of determination belongs to the discretion of management. The Tribunal will not overrule the exercise of that discretion unless it lacks a reasonable basis.

38. In considering whether there is a reasonable basis for the SRI rating, it is instructive to take into account the Bank’s guidelines in this matter. The 2010 SRI Guidelines and Process states that:

The SRI performance categories do not directly correspond to the ratings generated by the Overall Performance Evaluation (OPE) process. When assigning staff to a given performance category, managers should take into account the individual’s performance compared to that of peers at the same level of responsibility and at the same grade. In contrast, OPE ratings reflect achievement of results and behaviors in comparison to criteria commensurate to the level of responsibility expected at the staff member’s grade. Also, the SRI produces a single overall performance rating, whereas the OPE provides a series of ratings on different objectives and behaviors. Thus, while the two evaluations should be broadly consistent, they are not equivalent.

39. Therefore, under the Bank’s guidelines, an SRI rating is reasonable if it is “broadly consistent” with the OPE and management took “into account the individual’s performance compared to that of peers at the same level of responsibility and at the same grade.” The record reflects that management determined the Applicant’s SRI based on these considerations.

40. The Chief Counsel of LEGEM explained before PRS that during the 2010 OPE period, “Mpoy worked 9 months in LEGAF and 6 months in LEGEM. Taking together the performance of the first half of the OPE year and second half of the year, as well as comparing his performance to other lawyers at GH level in LEG VPU, the overall satisfactory SRI of 3.2 was derived.”

41. Given the shortcomings of the Applicant’s performance during his stint in Nigeria, it cannot be said that his OPE ratings and SRI ratings are so inconsistent as to call those ratings

into question. Moreover, the peer comparison aspect of the SRI was taken into account in determining the rating. The Chief Counsel of LEGEM explained as follows:

Comparison of Mpoy's performance to other lawyers at GH level in the Department also supports the approved SRI 3.2. Lead Counsels in the LEG VPU, in addition to handling projects and assignments of particular complexity, are expected to actively assist Chief Counsels in mentoring and supporting other lawyers, leading policy initiatives and effectively assume Managers' responsibilities during Managers' absence. The ability of Lead Counsels to perform these tasks is taken into account during their performance evaluation. During the 2010 OPE period, Mpoy has not demonstrated such abilities of the Lead Counsel at the level which would justify the SRI higher than 3.2, whereas the other Lead Counsels did demonstrate such performance consistently throughout the year.

42. The Tribunal, based on the record, finds that there was a reasonable basis for the Applicant's SRI rating and the corresponding salary increase.

43. The Tribunal as well finds no procedural violation regarding the Applicant's 2010 SRI. His SRI was determined after the OPE discussion and it was reviewed by the management team of the Legal Department. The Chief Counsel of LEGEM explained that:

The purpose of a collective approval of OPE ratings and SRIs was to give the Management Team members an opportunity to participate in the assessment of staff in a transparent manner, as well as to ensure that the outcomes reflected the contribution of each staff, were consistent across units, and were collectively agreed upon by the entire Management Team. As a result, Mpoy's SRI rating was reviewed not only in comparison with performance of other staff within LEGEM unit, but also across other units in the Legal Department.

44. The Applicant asserts that such a review meeting was "conducted within a secret and undocumented forum with no chance for Applicant to defend himself against criticism of his performance." The Bank answers that, consistent with Bank practice, individual staff members are not allowed a seat at the table of deliberations of management review meetings where the comparative performance of their colleagues is discussed.

45. The Tribunal finds nothing inherently wrong with the deliberations of a management review meeting remaining confidential. Due process was respected in that the Applicant had a

chance to discuss criticisms of his performance with his OPE Manager in a timely fashion. The record is clear that the OPE Manager met twice with the Applicant to discuss his OPE results: she met with him before assigning OPE ratings, and she met with him again when informing him of his SRI rating and salary increase. The Tribunal finds nothing in the record to suggest any procedural irregularities in the determination of the Applicant's SRI.

46. Finally, the Applicant claims that his performance evaluation and SRI were discriminatory, vindictive and retaliatory. The Tribunal finds that these assertions are not supported by evidence. The Chief Counsel of LEGEM, whom the Applicant found very "objective and fair," played a substantive role in setting his OPE and SRI ratings. She cannot at once be "objective and fair" and "discriminatory, vindictive, and retaliatory." Given the overall satisfactory ratings of the Applicant's performance, and considering the reasonable basis of such ratings and the record as a whole, the Tribunal finds no discrimination or retaliation.

#### DECISION

The Application is dismissed.

/S/ Stephen M. Schwebel  
Stephen M. Schwebel  
President

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Washington, D.C., 3 October 2013