

Decision No. 341**Michael Oraro,
Applicant**

v.

**International Finance Corporation,
Respondent**

1. The World Bank Administrative Tribunal has been seized of an application, received on December 9, 2004, by Michael Oraro against the International Finance Corporation (IFC). The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Elizabeth Evatt (a Vice President of the Tribunal) as President, Jan Paulsson (a Vice President of the Tribunal), Sarah Christie and Florentino P. Feliciano, Judges. The usual exchange of pleadings took place. The Applicant's requests for documents and the Respondent's request for oral proceedings were denied. The case was listed on August 30, 2005.

2. The Applicant contests the decision to terminate his employment, following his completion of a Performance Improvement Plan (PIP). He claims that the decision was unfair and abusive, and in violation of the relevant Staff Rules.

History

3. The Applicant joined the IFC on February 1, 1996, as a Level 22 (now Level F) Investment Officer. He was assigned to the Corporate Finance Services (CFS) Department and worked in the Privatization Policy and Transactions Group (PSAPT), which was part of the Private Sector Advisory Services Department (PSAS).

4. The Applicant's first Manager, "A," assessed his performance at the end of 1996 as less than fully satisfactory. The Applicant had performed well during field assignments, but otherwise his work was below expectations. The Manager made similar comments in the Applicant's evaluation for 1997, namely that he had failed to show the initiative and creativity required and needed more supervision than could be sustained indefinitely. The Applicant recorded his disagreement with this evaluation.

5. The Applicant's next Manager, "B," rated him as "effective" for the period ending March 1999, but noted that the Applicant had had limited opportunities to demonstrate the full range of his abilities due to the lower level of activity in the Department.

6. The Applicant's assessment for the period to March 2000 was signed by his next Manager, "J," and also by Manager B. This assessment said that the Applicant had been effective and had made a significant contribution to the CFS Kenya initiative. He needed to be more assertive, and had not been tested in a senior role in transactions. The assessment also referred to the positive feedback which the Applicant had received from a 360 Degree assessment.

7. Manager B stated in a written declaration signed in May 2004 that in his opinion the Applicant had strong accounting skills, but was struggling to reach the level of performance of an Investment Officer. During 1999 and 2000 he had encouraged the Applicant to look for opportunities in support functions within the Bank, and had offered to assist him in his search. The Applicant denies any such discussion with Manager B.

8. In October 2000, "C" became the Manager of PSAPT. He had previously been the Applicant's team leader.

The Applicant alleges that Manager C immediately showed a hostile attitude towards him. In the Applicant's 2000-01 Performance Appraisal, Manager C indicated that although the Applicant was courteous and respectful to peers, he needed to work on assertiveness, improve his communication skills, achieve more precision and attention to detail in his written work, and "demonstrate the drive for results that is expected at this level." He commented that after six years the Applicant could not produce work that could be sent unsupervised to clients, and had missed some important deadlines. He recommended a Performance Improvement Plan (PIP). The Applicant's comments on this evaluation expressed concern about what he considered misrepresentations by his Manager.

The informal PIP, July to December 2001

9. On May 30, 2001, the PSAS management team, which included the Director, Manager J and Manager C, as well as an HR Officer, agreed to place the Applicant on an informal PIP, from July 1 to December 31, 2001. The Applicant's Manager informed him that if the informal PIP was not successful, he would be placed on a formal PIP.

10. Manager C met with the Applicant regularly throughout the informal PIP period to discuss his progress. The Applicant received help from four experienced Investment Officers, D, E, F and G. He received motivation and assertiveness training and was assigned to work with a mentor, H, an Investment Officer in the Corporate Finance Services Department. The four colleagues expressed reservations about the Applicant's ability to perform at the level required. For example, D, a Principal Investment Officer who was the Applicant's team leader, commented on the Applicant's uncritical approach to consultants, his poor writing and teamwork, and his resistance to criticism.

11. Manager C told the Applicant on January 29, 2002, that although he had improved in some areas, he was still not achieving core competencies and would need to go on a formal PIP. He noted that the Applicant accepted that his future lay outside the Department, and that he did not want a formal PIP. On March 13, the Manager discussed with the Applicant the outcome of the informal PIP and informed him that he could either go through a formal PIP or resign from the Department.

12. The Manager's final written review of the Applicant's informal PIP, on March 25, 2002, noted some positive aspects of the Applicant's performance. He had good working relationships with clients and consultants, executed administrative tasks effectively, was courteous and professional, and showed increased initiative and assertiveness. On the other hand, the Applicant lacked many core competencies, and had not met the objectives of the informal PIP. Critical weaknesses included his inability to analyze information in order to form an independent understanding of the underlying business aspects of a deal, to judge consultants' work, to assess financial information critically, and to communicate concisely and clearly. A formal PIP was envisaged.

Assessing the Applicant's core competencies

13. In late 2001, the IFC assessed the core competencies of its Investment Officers. Manager C discussed the Applicant's Competency Assessment with him on October 26, 2001. He had scored well in "team-related" disciplines, but with respect to many core competencies the Manager had rated him as only partially successful. The Manager told the Applicant that after five or six years in the Department he was not demonstrating the judgmental skills needed to progress further, and would be better suited working elsewhere.

14. As part of the assessment, staff were asked to designate individuals who had worked with them as "validators" of their skills and performance. The Applicant had designated mainly external clients and consultants, on the basis that he was sometimes alone in the field and working only with such persons. At his request, the Manager obtained feedback from his validators. The Manager observed later that the external validators were in general positive, whereas the Departmental validators were more critical of the Applicant. He commented that "people outside the organization are much less likely to understand the level of performance that is expected of our staff, and much less likely to express criticism."

Deciding on a formal PIP

15. The Manager informed the Applicant on March 27, 2002 that as his performance under the informal PIP had not met the required standards, he would be placed on a formal PIP. The Applicant contested the informal PIP evaluation with his Manager. Mediation failed to resolve their differences.

16. The Applicant received his 2001-02 Performance Appraisal in June. It was unsatisfactory and concluded that he should be placed on a formal PIP. The Applicant refused to sign this evaluation, asserting that it was unfair. He contested the need for a formal PIP and requested that the Director of PSAS evaluate his work. After reviewing his case, the Director concluded, on July 30, 2002, that the evaluation was correct, and agreed with the recommendation for a formal PIP. However, he wanted the Applicant's work under the formal PIP to be partially supervised by the second manager, J, to provide another perspective on his work. When the Director signed off on the Applicant's Performance Evaluation on July 31, 2002, he directed that the PIP be structured in such a way as to allow the Applicant to perform jobs for both Manager C and Manager J. This would be an additional safeguard for him.

17. On July 11, 2002, the Applicant complained to the Vice President of Human Resources (HR), IFC, about victimization and misstatements by Manager C. During July and August 2002, the Applicant discussed his concerns with the HR Manager. She later stated in a written declaration signed in May 2004 that she had suggested that the Applicant explore other career options within the Bank Group, but his response was that he did not want to entertain other alternatives. She also stated that in October or November 2002, he had told her that although he wished to move to another department he was not interested in any support functions, but rather only in operations.

18. The Applicant denies that he turned down offers of help. He says that he informed the HR Manager that he had been short-listed for World Bank Africa in June 2002. But when it was decided in June that he be placed on a PIP, he says he was removed from the list and could no longer apply. The IFC responds, however, that he could have been transferred until the PIP was in place, on November 4.

19. On July 23, 2002, the Applicant filed an appeal (Appeal No. 1233) against both the decision to place him on a formal PIP and his alleged removal from the Air Tanzania Corporation (ATC) project. The Appeals Committee's recommendation that his requests be denied was accepted on March 21, 2003.

20. The Applicant's formal PIP began on November 4, 2002, and was due to run until May 2, 2003. Manager C informed the Applicant that his failure to improve his performance could lead to the termination of his employment. During the PIP, the Applicant worked on several projects and completed a writing improvement course. The Manager met with the Applicant periodically to discuss his progress.

21. On December 18, 2002, Manager C told the Applicant that, based on the feedback from his two colleagues on the Kenya Railways Survival Plan project (KRC), his performance was deemed satisfactory at the Grade F level. However, for someone who had been with the Department for six years at that level, he should have been able to articulate a clearer and more complete picture of the project. The Applicant challenged this evaluation. The Respondent alleges that the Applicant approached the colleagues who had provided feedback in a confrontational manner, as a result of which he was asked in January 2003 to take up any further queries or concerns he might have about his colleagues' views with the Manager.

22. The Applicant also worked during this time on the African Railway Concessions (ARC) project and Electricity Africa. For the other Manager, J, he performed a Quality at Entry project and a Russian Railroad Review.

23. On April 14, 2003, the Applicant's formal PIP was extended by one month to June 6, 2003. The reasons for this are disputed, and the Respondent's alleged failure to comply with the relevant Staff Rules is an issue in this case. The Applicant also began to work on the Amman Water Project (AGWA) during this extension period.

24. On June 16, 2003, the Manager provided the Applicant with his Performance Appraisal for the period 2002-03. It concluded that although some of his work had been satisfactory (including KRC), he had not reached a satisfactory level in all dimensions of his performance. The Applicant had already been informed that the Performance Appraisal for the period to November 1, 2002 would not affect the outcome of his PIP. The Applicant did not sign the appraisal.

Evaluation of the PIP

25. Under the relevant Staff Rules, a written evaluation should be provided within fourteen working days of the end of the PIP (Staff Rule 5.03, paragraph 3.02(c)). After his formal PIP ended on June 6, 2003, the Applicant approached the Director twice to ask for an independent review of his performance. On June 17, he contacted Manager C about queries he had raised about his evaluations. On June 20, Manager C told the Applicant that he would not finalize the evaluation until he had met with the Applicant. The management team (Manager C, the Director, Manager J, and the HR Officer) met at about this time, and agreed that the Applicant's performance under the PIP had not met the requirements of an Investment Officer at Level F, and that termination of his employment should be recommended.

26. A meeting between the Applicant and Manager C scheduled for June 24 did not take place, as the Applicant was on sick leave. On June 27, Manager C informed the Applicant that his performance was unsatisfactory and that termination would be recommended. The Applicant sent two e-mails, one asking Manager C to discuss the AGWA assessment with him before the overall evaluation was finalized, and the second asking for the evaluation not to be finalized until he had spoken to the Director of PSAS. The Applicant claims that Manager C promised to give him the AGWA evaluation on July 2, but did not do so.

27. The Applicant saw the Director on July 9 and asked him to look into his concerns regarding Manager C's evaluation of his work.

28. The Applicant received Manager C's written concluding evaluation of his PIP on July 14, 2003. The evaluation covered all the work he had done under the PIP. It was drawn from Manager C's own assessments, from an evaluation by Manager J, from confidential assessments provided by the Applicant's colleagues on each project, and from the report on his writing improvement course.

29. The evaluation assessed the Applicant against each Specific and General Objective of the PIP, taking into account the comments made by colleagues in relation to particular projects. In summary, Manager C made the following assessments:

Specific objective 1) (Improving the quality of financial analysis and modeling): the Applicant did not meet the standards required – mainly in regard to the AGWA project.

Specific objective 2) (Improving grasp of major project issues, and allocation of risks and rewards): this remained elusive for the Applicant.

Specific objective 3) (Improving ability to apply knowledge of comparable deals or current industry development to an active mandate): there were mixed results; the Railway Concessions piece had problems, however, the Quality at Entry and Russian Railways piece (for the other Manager) were good.

Specific objective 4) (Strengthening ability to communicate logically, both orally and in written form): improvements had been made, but there were some concerns.

General objective 1) (Demonstrating more effective negotiation skills): the Applicant was successful in meeting this objective.

General objective 2) (Understanding what other people have said, and accurate representation of this): the results were mixed; his work in regard to KRC was satisfactory, but there were problems in the

Railway Concessions and AGWA projects.

General objective 3) (Keeping team leader informed of progress; sharing key information with team leader and other team members; and demonstrating the ability to work closely with all team members non-competitively): there were no issues on collaboration, but the Applicant was defensive to criticism, and failed to comply with a request from Manager C.

30. Some reviewers had considered the Applicant's performance satisfactory, or even good, including Manager J. However, on projects which were more challenging and which tested his analytical abilities, the reviewers considered that he "did not meet the standards that would be expected from a Grade F2 Investment Officer." Manager C observed that the Applicant had worked hard during the PIP period, and could produce good work, but that his production was still slow and the analytical basis for his conclusions not properly and logically argued. "The core of our business is the ability to draw conclusions about financial and business aspects of our work. Here your performance has still exhibited problems." Manager C's view was that in some respects the Applicant was struggling and did not readily accept critical feedback. Manager C concluded that since the Applicant had spent seven years at the Department at the same grade, it was clear that the Applicant was not going to grow as an Investment Officer. He recommended termination.

31. Manager C gave the Applicant feedback on his performance on the AGWA project on the same day as the final PIP evaluation, July 14. Manager C concluded that: (i) the Applicant had not demonstrated the ability expected for his grade in analyzing raw data and focusing on the relevant issue; (ii) he had appeared to have difficulty understanding the scope of the exercise; (iii) he had been unable to build a simple model with the information provided to him; and (iv) he had not demonstrated the analytical skills that were expected at his grade level.

32. On July 18, 2003, Manager C recommended to the Vice President of Operations at the IFC (OVP) that the Applicant's employment be terminated. The OVP accepted the recommendation on August 14, and on August 18, 2003, he informed the Applicant by letter that his employment would be terminated on October 17, 2003, sixty days from the date of the letter.

33. The Applicant met with the OVP to raise his concerns and was subsequently referred to mediation, which was unsuccessful. At the Applicant's request, the termination date was later postponed by one month. The Applicant's employment with the IFC ended on November 17, 2003.

Appeal and Application

34. On December 16, 2003, the Applicant filed an appeal with the Appeals Committee contesting the Respondent's decision to terminate his employment. On June 30, 2004, the Appeals Committee concluded that the decision had not been arbitrary or discriminatory. The Appeals Committee concluded, however, that management had abused its discretion because it did not follow Staff Rule 5.03, paragraphs 3.02 (a) and (c), in carrying out the termination decision. It had failed to obtain the OVP's approval to extend the Applicant's formal PIP, and it had failed to provide the Applicant with a final written evaluation within 14 working days from the date on which the formal PIP ended. The Panel recommended that the Applicant be awarded \$10,000 for attorneys' fees, costs and expenses as compensation for the procedural violations.

35. On July 8, 2004, the Acting Vice President of HR at the Bank accepted the Appeals Committee's recommendation and notified the Applicant accordingly.

36. On December 9, 2004, the Applicant filed an application with this Tribunal. He contests the Respondent's decision to terminate his employment on the ground of unsatisfactory performance based on the evaluation of his work during the formal PIP. He claims that the decision was an abuse of discretion, that it was unfair and improperly motivated. He also challenges the aforementioned procedural irregularities. The Applicant seeks reinstatement, lost pay and benefits, compensation, and three years' remuneration in lieu of reinstatement. He also seeks costs.

Claim of unfairness and improper motivation

37. The Applicant's main substantive complaint is that the criticisms of his work by Manager C which led to his termination "were arbitrary in that they were tainted by widespread falsehoods and errors of fact, and were unfair, manifestly unreasonable and improperly motivated, and amounted to an abuse of discretion." The Applicant has made numerous interwoven and overlapping claims challenging virtually every negative statement about his performance. Though the detail of every claim is not discussed here, each has been considered by the Tribunal.

38. The Respondent contends that the Applicant failed to meet virtually all seven objectives of the PIP, and that Manager C's evaluation of his performance was accurate. Manager C used feedback from everyone who had direct knowledge of the Applicant's work during the informal and formal PIP periods. The Respondent argues further that the Applicant's employment record showed that he had had difficulties in meeting the requirements of his position from the beginning. He had been given support and offered help in finding other employment, but had declined to pursue other alternatives.

39. In matters involving the evaluation of staff performance, the Tribunal will not substitute its judgment for the discretionary decisions of management. In general, it considers that the "Administration's appraisal in that respect is final, unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure." (*Saberi*, Decision No. 5 [1981], para. 24; *Suntharalingam*, Decision No. 6 [1981], para. 27; *Durrant-Bell*, Decision No. 24 [1985], para. 25; *Lopez*, Decision No. 147 [1996], para. 36.)

40. Although the Applicant's claims relate mainly to the evaluation of his formal PIP, he has relied also on earlier material to support his claim that Manager C was improperly motivated against him, including several examples from the period of the informal PIP. The Tribunal has considered the relevant material, which shows that there were both favorable and critical comments about the Applicant's performance by Manager C and by the Applicant's colleagues in the earlier period. It does not establish improper motivation at that time.

The Kenya Railways Survival Plan (KRC)

41. During the formal PIP, the Applicant's work on the KRC Report was supervised by two Senior Investment Officers, K and G, the team leader. Manager C used their feedback in his assessments of the Applicant's work. The Applicant submits that Manager C unfairly misused their feedback.

42. He claims, first, that Manager C wrongly quoted K as giving negative feedback about him, when K had in fact disagreed with the way in which Manager C had presented his comments.

43. The record shows that K amended the draft of comments which Manager C had attributed to him and G jointly. The Tribunal notes, however, that although K did not accept all the statements which Manager C had attributed to "both" Senior Investment Officers, K's views about the Applicant, both favorable and critical, were along the same lines as Manager C's draft. K made a Declaration in May 2004 supporting Manager C's assessment of the Applicant, saying that the Applicant was "hard working and professional," but required substantial direction beyond what was usual for a Level F staff member; his documents had to be redrafted and he was defensive to criticism. There is thus no substance to this claim by the Applicant.

44. The Applicant also disputes as unfair Manager C's reliance on G's view that he was uncritical towards consultants. He quotes positive comments from a consultant to the project which acknowledge his challenging and critical input. The Tribunal notes that G had acknowledged the Applicant's commendable work with consultants (including the one cited by the Applicant) but had also observed that he could have been more effective in this; too much extra effort had been needed from the team leader. The Tribunal finds that G's comments are balanced and that it was not unfair for Manager C to rely on them.

45. The Applicant claims further that Manager C refused to substantiate the alleged “shortcomings” of his KRC Report, thus denying him due process. He had asked Manager C to justify the negative comments in the assessment, including the comments of K and G, by making specific references to the Report. The Respondent says, in reply, that Manager C discussed the evaluation with the Applicant in detail and gave him specific examples.

46. The Tribunal notes that the evaluation includes both positive and negative points about the Applicant’s performance during the KRC project. They are drawn from the observations of professional colleagues who worked closely with the Applicant. Their general comments cannot necessarily be linked to particular parts of the Applicant’s Report. The claim of non-substantiation is therefore not made out.

47. The Applicant challenges a statement made in the final evaluation that members of the KRC team had to intervene to keep him focused and to help interpret the work correctly with regard to the broader picture. The Applicant says that this observation was not made in the December 18, 2002 evaluation, and that as a result he was deprived of the opportunity to respond to it. The Tribunal considers that this claim lacks substance. The observations in question were similar to comments in the earlier evaluation, such as that “the team had to rework the draft” and that there were “weaknesses and limitations in putting together and communicating and articulating the bigger picture.”

48. The Applicant claims that Manager C’s final evaluation did not measure his performance on the KRC project against the full breadth of the PIP’s objectives, and that it was unreasonable to use it as the basis for termination. The Tribunal notes that the final evaluation does not mention every project under each of the seven objectives of the PIP. However, it deals with significant points for each project, including those favorable to the Applicant. The failure to deal with the KRC project under each objective of the PIP did not result in the evaluation being unfair or abusive.

49. The Applicant makes a number of other specific claims about the KRC evaluation, all of which involve the exercise of judgment by those with competence in the field. The record shows that both Senior Investment Officers who worked with the Applicant on this project had favorable comments on his work. They also pointed out areas for improvement and problems. It does not appear that either was ill-motivated, or that their reports were misrepresented by Manager C. The Applicant has not made out a claim of malice, unfairness, bias or significant error which would make the assessment of his work on the KRC project an abuse of discretion.

The African Railway Concessions (ARC) Report

50. The Applicant challenges Manager C’s March 2003 evaluation of his ARC Report as unreasonable, arbitrary and based on factually erroneous claims. The evaluation drew on the comments of three IFC staff who had reviewed the Report, G, L and M. The Manager’s evaluation stated that the Report was relatively complete and would provide a useful summary, but was disappointing in terms of its depth of coverage, analysis and understanding. It was below standard.

51. In October 2003, the Applicant asked the Ombudsman to help him to obtain other opinions about his ARC Report. He argues that three outside experts found the conclusions in the Report defensible and had disagreed with Manager C’s assessment. One of the experts had said that the quality of the paper did not appear to be grounds for dismissal, and that the arguments made in it were defensible. The Applicant claims that their opinions should be given weight. He claims also that Manager C used part of the Report in a proposal to the Tanzanian government.

52. The Respondent says that Manager C’s evaluation reflected the comments of the three internal reviewers, who were experienced in the railway industry. All had been critical of the Report because it lacked in-depth research and analysis. The Applicant’s conclusions were not disputed, but were obvious and generally known. The Respondent contends that the outside experts could not judge whether the Report met required IFC standards. They had not been asked to comment on the analytical depth and understanding of the business which was reflected in the Report, and did not know how much guidance the Applicant had required or that he

was supposed to deliver an in-depth analysis of issues and relate it to Kenya. The Respondent accepts that parts of the Report were used in a proposal to the Tanzanian government, but asserts that this was for generic background information only and does not negate the Report's shortcomings.

53. The Tribunal notes that the outside reviewers were asked to respond to a set of specific questions set by the Applicant largely about factual issues. The expert referred to above actually said that the paper contained a number of interesting facts and some defensible (if not wholly valid) arguments and observations.

54. It is not the task of the Tribunal to inquire into Manager C's assessment itself, only to consider whether it was arrived at fairly. Manager C's criticisms relate largely to the lack of relevant analysis of the issues, rather than to the conclusions. A review of the material leads the Tribunal to conclude that it was not unfair or arbitrary for Manager C to place reliance on the views of the IFC team, and that the Applicant has not substantiated his claim that the evaluation of the ARC Report was arbitrary, erroneous or unfair.

The Electricity in Africa project

55. The Applicant claims that it was unreasonable and unfair for Manager C to use criticisms of his Electricity in Africa paper against him in the PIP evaluation. He had prepared an outline for the paper, as suggested in his report writing course. But his Manager had criticized his work and cancelled the task. The Respondent contends that the Applicant had been asked to prepare a draft "scope of work" for the project and to elaborate on the defining factors and possible solutions to three questions. But he had produced only a page of headings for an outline. It was not a scope of work, as he had made no attempt to address the three questions. The Tribunal finds nothing arbitrary or unfair in Manager C's criticism of the Applicant's approach to his task.

Claim of unfair criticism of the Applicant's work on the Amman Water Authority (AGWA) project

56. One of the Applicant's main complaints concerns Manager C's criticisms of his work on the short-term financial viability of the AGWA. This project, which included financial analysis and modeling, was undertaken during the extension period of the formal PIP, from May 5 to June 6, 2003. Manager C's assessment was drawn largely from the June 18, 2003 report of "N," an Investment Officer who had worked on the project with the Applicant. N's report described the support he had given the Applicant to get the project moving, and commented on the Applicant's apparent inability to build the model requested due to his lack of analytical skills. Manager C's evaluation was that the Applicant did not have the necessary skills to analyze the data or build the model, despite extensive instruction and guidance.

57. The Applicant claims that Manager C's criticisms were improperly motivated, lacked technical merit and were unfair. He argues that his progress was hampered because he had limited information. He had put together parameters to use for the model, but did not get the data he had asked for until the last few days. The work was then completed. The Applicant claims that as the extension of the PIP was *ultra vires*, the assessment of his work on this project should not be considered. He also claims that he was denied an opportunity to respond to the evaluation. These claims are dealt with in the context of the Applicant's procedural claims.

58. The Applicant asked the Ombudsman to seek the views of an outside expert, Professor Peasnell, who examined the AGWA Report and concluded that it conformed to good practice and that Manager C's criticisms were illogical and inconsistent with the stated objectives of the exercise. Prof. Peasnell also considered the criticisms to be inconsistent with the position which had been taken on the ATC and KRC projects. The Respondent argues that Prof. Peasnell had never worked directly with the Applicant and did not know what was expected of IFC Investment Officers. He had no knowledge of the guidance and correction that the Applicant had needed over a month to produce the final product. The Respondent also states that the purpose of the AGWA project was quite different from that of the KRC and ATC projects.

59. The Tribunal's role is not to assess questions of technical competence, but to consider whether there is evidence of unfairness or arbitrariness in the approach of Manager C or other supervisors. Although Prof.

Peasnell took a different view about the Report, N's feedback and Manager C's assessment convey clearly that the Applicant required a considerable amount of supervision and assistance to perform the tasks requested of him. In this, their views are similar to those of other colleagues with whom the Applicant had worked. It does not appear to the Tribunal on these facts that there was unfairness or improper motivation in the evaluation of the Applicant's work on this project. (See *Lysy*, Decision No. 211 [1999], para. 57.)

60. The Applicant's claim that he was "set up to fail" in this project is not borne out by the record. Although the AGWA project was not identified until the last stage of the PIP, it was covered in general terms by the original PIP outline, which included a project involving financial analysis and modeling.

Claim that favorable views were not given proper weight

61. The Applicant asserts that the other PSAS Manager, J, other colleagues and outside experts, and the 360 Degree Feedback Report all give a view of his performance different from that of Manager C, thus supporting his claim of improper motivation.

62. The Applicant argues that although the Director had brought Manager J into the PIP process as a safeguard for him, his own Manager downplayed her role. Her positive feedback on the work he had performed for her during the PIP was given less weight than his Manager's views.

63. The Respondent denies that the involvement of Manager J was considered to be a "safeguard" for the Applicant, and that her positive comments had to be balanced with the other feedback. Manager J had agreed with the other members of the management team that the Applicant was not performing at the level of an Investment Officer. The Applicant asserts, however, that Manager J agreed to the recommendation to terminate his employment only because Manager C had persuaded her on the basis of his own flawed opinion, tainted by malice.

64. The record shows that the Director did suggest Manager J's involvement in the PIP process as a safeguard for the Applicant (see para. 16 above). Manager J later said that she had agreed with Manager C's recommendation to terminate the Applicant's employment after being informed that he had not performed on the bulk of his other assignments. She explained that the jobs he had done for her were short and did not test him for financial analysis. The Tribunal observes that Manager J's positive comments were duly noted in the final evaluation, where they were set against other, more critical views. The failure to give primacy to her views does not establish unfairness or improper motivation in Manager C's evaluation.

65. The Applicant argues that he had scored well in a 360 Degree Feedback Report completed in 2000 before he started working for Manager C. This was mentioned in his Performance Appraisal in March 2000. He says that this evidences his capabilities and shows that Manager C was motivated by malice. The Respondent contends that the 360 Degree Feedback Report was not relevant to the PIP evaluation. In any event, the comments of the feedback providers had noted areas of concern similar to those identified in 2003. The Tribunal considers this issue to be of marginal relevance. It shows that the Applicant was able to perform good work at a certain level, a fact not in dispute. But a general review of that nature cannot of itself establish unfairness or improper motivation in the concluding evaluation of his PIP.

66. The Applicant alleges that Manager C maliciously obtained negative assessments of his performance from staff under the Manager's sphere of influence, and that those staff fabricated unfavorable comments about his work. He asserts that outside experts and those not under Manager C's influence had a different view of his capabilities. He refers to the positive views expressed by a number of identified IFC and IBRD staff with whom he had worked on a range of projects before he came under the direction of Manager C, and argues that their views support his claim that his Manager was unfair and motivated by malice.

67. The Respondent says that the Applicant's quotations are selective, and that his annual appraisals between 1996 and 1999 show that he was struggling to meet the requirements of his job from the time he began work at the IFC. The Applicant contests the Respondent's statements.

68. The Tribunal notes from the record that the Applicant's first Manager, A, gave him less than satisfactory evaluations for 1996 and 1997, while a later Manager, J, was positive about his performance in the period to March 2000. The Applicant always performed well in some respects, and his qualities were recognized. But areas for further improvement were also noted by his managers. It appears that Manager C was of the view that the Applicant had not reached the level of performance he expected from him at that stage of his employment. That view was supported by the views of several colleagues who had worked with the Applicant during the PIP. The Tribunal thus finds no substance in these claims by the Applicant.

Claim of unfair criticism of the Applicant's writing skills

69. The Applicant complains that it was unfair of Manager C to take into account his work on the KRC Report and the ARC Report when assessing his writing skills in the final PIP evaluation. Those reports had been written before the Applicant had successfully completed a writing course in February 2003.

70. The Tribunal notes that Manager C's evaluation refers to all of the Applicant's written work during the PIP, both before and after the writing course. It makes both critical and positive comments, and it quotes the commendation of the Applicant's writing tutor. The comment on this objective concludes: "[Y]our writing has shown improvements, largely thanks to your own efforts. There are still concerns, however, over your development in written pieces of analysis and logical arguments that sustain the conclusions you develop, and the manner in which you draw out key issues." The Tribunal does not consider that the assessment of Manager C was unfair or biased.

Claim that it was unfair to say that the Applicant did not accept criticism

71. The Applicant contests Manager C's comments in the concluding evaluation that he had always been extremely defensive towards criticism, and that this was a major factor limiting his effectiveness in team environments. The Applicant asserts that this comment demonstrates bad faith and is inconsistent with views expressed by his former colleagues and with the positive comments from Manager J. He says, further, that he had no opportunity to challenge this criticism, as he was unaware of it until it was included in his final evaluation.

72. The Respondent discounts the comments of colleagues who did not work with the Applicant during the PIP period, and points out that Manager C had told him in January 2003 not to contact his two colleagues on the KRC project in order to raise problems about their critical feedback on his performance. The Respondent denies bad faith or malicious intent.

73. It appears from the record that the Applicant became increasingly defensive after he was placed on the informal PIP; he reacted not only to his Manager's comments, but also to those of his colleagues; two of these described the Applicant as defensive. The Tribunal does not consider that Manager C's comment was unfair.

Claim of bad management

74. The Applicant claims that he was given negative evaluations because his Manager was a poor performer. He relies in part on comments made by the Director of PSAS at a retreat held in September 2002, criticizing management for a lack of objectivity in staff evaluations and for arbitrary promotion criteria. The staff later asked for a review of management and for fair and transparent staffing and evaluation procedures. The Applicant says that the results of a staff survey in 2003 showed that PSAPT management was rated below the norm for the Bank Group.

75. The Respondent answers that senior management acknowledged staff dissatisfaction in 2003. The causes included changes in premises, in management and in performance goals. The Respondent contends that the Applicant's Manager was generally highly regarded. He had been chosen to turn around performance and was not the cause of the problems referred to by the Applicant. The Respondent denies that Manager C was later

removed from his position. His position had been abolished and he had been asked to manage the Africa Unit.

76. The Tribunal does not consider that a general level of staff dissatisfaction can be relied on to establish in and of itself an abuse of discretion in any particular case, though it may give rise to a need for scrutiny.

77. The Applicant makes a number of other claims which are of marginal relevance to his main assertion that his final PIP evaluation was unfair and arbitrary. None of these other claims has any substance.

General conclusions on the final evaluation of the Applicant's PIP

78. Considering the Applicant's claims as a whole, it appears to the Tribunal that during the Applicant's employment he performed in a satisfactory way in some respects, made contributions that were appreciated, and did acceptable work. But there were issues about his performance from the earliest days, including problems with his writing style and his ability to perform in-depth financial analysis modeling. These were mentioned by Manager C in the draft of the Applicant's competency assessment on October 25, 2001. Efforts were made at several points to help the Applicant lift his performance to the level required. Nevertheless, many of the staff who worked with the Applicant, particularly in the later period, found his performance to be lacking. Manager J was an exception, but she acknowledged that the work he did for her did not test him fully. The Applicant dismisses all the negative comments, and relies on the views of outside experts to justify his claims of malice and improper influence on the part of Manager C in regard to his assessment. The record does not substantiate his claims.

Claim of abuse of discretion in failing to follow Staff Rules

79. The Applicant claims that the procedures adopted by Manager C in regard to the PIP violated fair, proper and reasonable procedures, fell short of appropriate standards of procedural justice, and were an abuse of discretion.

80. The Applicant contends that his Manager extended his PIP from May 2, 2003 to June 6, 2003 without seeking the approval of the OVP, thus violating Staff Rule 5.03 ("Performance Management Process"), paragraph 3.02 (a) which provides in part:

Normally, the performance improvement period shall not exceed six months. An extension beyond six months must be approved by the Vice President responsible for the position.

81. The Respondent does not dispute this claim, but argues that the omission was inadvertent and that it did not prejudice the Applicant. The Respondent asserts that the PIP was extended to meet the Applicant's request to carry out tasks for Manager J which had not been included in the original PIP plan.

82. The Applicant claims that he was prejudiced, because he was assigned the AGWA project during the extension, and the negative assessment of this project was the main factor in the decision to terminate his employment. Since the extension was *ultra vires*, his work on the project should not be included in the evaluation.

83. The Respondent's argument that it was the Applicant's request to work with J which led to the extension is not supported by the record. Although the PIP plan had contemplated a financial analysis and modeling exercise (such as AGWA), Manager C did not ensure that it would be carried out within the six-month period. He did not comply with the Rule which required him to explain in writing to the OVP the grounds for the extension. He assigned a significant new project to the Applicant in the extension period. The extension was thus more than a technical breach. Yet it does not follow, in the Tribunal's view, that the evaluation of the project should be discounted.

84. The Applicant's second procedural contention is that the Respondent failed to provide him with the written evaluation of the PIP within fourteen working days, as specified in the relevant portion of Staff Rule 5.03, paragraph 3.02(c):

No later than fourteen working days after the end of the performance improvement period, the Manager or Designated Supervisor shall discuss and provide the staff member with a written evaluation.

The Applicant's formal PIP ended on June 6, 2003, but he did not receive his written evaluation until July 14, 2003, twenty-five working days later.

85. The Respondent contends that the Applicant contributed to the delay; a meeting was postponed when he was on sick leave, and he had asked for discussions with his Manager and the Director before the matter was finalized.

86. The Tribunal notes that part of the delay arose because the Applicant wanted to discuss certain issues and, in particular, to respond to the feedback on the AGWA project before the PIP evaluation was finalized. But this does not explain the whole period of delay. The Respondent must accept responsibility for not following the Staff Rules.

87. The Applicant claims further that he was denied due process because management decided to recommend his termination before he received any feedback on the AGWA project and before he received the final written evaluation. He was told of the termination decision on June 27, 2003, but did not receive the evaluation until July 14. As a result, he was denied an opportunity to respond before the decision was made to recommend termination.

88. The Respondent acknowledges that the Applicant was informed of the decision to recommend termination on June 27, 2003, and asserts that it is normal practice for management to hold discussions before informing staff of management's views. The Respondent contends that the Applicant could have taken his objections to the final evaluation to the OVP, as the decision to accept the recommendation had not been made at that point. The Applicant's reply indicates that he did approach the OVP, but it is not clear whether this was before or after August 18; the OVP accepted the recommendation to terminate the Applicant's employment on August 14.

89. The Tribunal considers that staff members affected by a PIP should have an opportunity to discuss the evaluation and to comment on the written evaluation *before* a recommendation is made to the final decision maker, in this case the OVP. That is the only period in which there is any realistic opportunity to affect the outcome. In this case, the management team met before the Applicant's discussions with his Manager, and he had no opportunity to comment on the written evaluations before the termination recommendation went forward. The Applicant's sense of having been denied a hearing was accentuated by the fact that Manager C failed to fulfill his promise to let the Applicant have the AGWA assessment on July 2. The AGWA project was undertaken in the extension period of the PIP, and the Applicant had little if any feedback on it before the end of the PIP itself.

90. The delays in providing the Applicant with the written evaluation constitute a failure of due process which had substantive effects for the Applicant. He is entitled to compensation for the loss of his opportunity to respond.

91. The other procedural contention of the Applicant is that the Respondent failed to take the termination decision within the period specified in Staff Rule 5.03, paragraph 3.02(d):

Within thirty days after receiving a recommendation of termination from the Manager or Designated Supervisor, the decision that a staff member shall be terminated from service shall be made by the Vice President responsible for the position, with the concurrence of the Director, Human Resources Operations or the Manager, Human Resources Service Center for Bank Staff or with the concurrence of the Associate Director, Human Resources Development or the Manager, Compensation and Policy Implementation for IFC staff.

The written recommendation that the Applicant's job be terminated was dated July 14, 2003. However, the Applicant claims that the OVP did not sign the notice of termination until August 18, 2003. The termination was

then notified to the Applicant on August 19, 2003. The Respondent asserts that the recommendation was forwarded to the OVP on July 18, 2003, and was approved by him on August 14, 2003, within the period specified. The record supports this. The Applicant has not made out a case on this issue.

Conclusions

92. The Respondent asserts that since the Bank, upon the recommendation of the Appeals Committee, has already granted the Applicant compensation for two minor procedural errors (i.e., under Staff Rule 5.03, paragraphs 3.02(a) and (c)), the Tribunal should not grant him any additional relief. The Tribunal considers that the Respondent's failure to follow the Staff Rules was more than a minor error. The fact that management determined its recommendations before the Applicant had discussions or received written feedback meant that he could not defend himself or comment on issues before they were decided against him.

93. The Tribunal concludes that the Respondent failed to follow the Staff Rules relating to termination following a PIP. It is not necessary to show that the outcome for the Applicant would have been any different had the rules been followed, as the objective of the Rules is to ensure that procedures are transparent and that those affected are dealt with according to a fair process. The Applicant is entitled to be compensated for the Respondent's failure to observe the Staff Rules; this should be in addition to the amount received following the Appeals Committee's recommendation.

Decision

For the above reasons, the Tribunal decides that:

- (i) the Respondent shall pay the Applicant compensation in the amount of four months' net salary;
- (ii) the Respondent shall pay the Applicant the amount of \$2,000 in respect of costs and disbursements; and
- (iii) all other pleas shall be dismissed.

/S/ Elizabeth Evatt
Elizabeth Evatt
President

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

At Washington, DC, November 4, 2005