



World Bank Administrative Tribunal

2012

Decision No. 461

**Satish Ratnam,
Applicant**

v.

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

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

**Satish Ratnam,
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, Francis M. Ssekandi, and Ahmed El-Kosheri.

2. The Application was received on 15 April 2011. The Applicant was not represented by counsel. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges the Bank's decision not to confirm his probationary appointment.

FACTUAL BACKGROUND

4. On 22 March 2010 the Applicant began a three-year Term appointment as a Senior Forensic Accountant, level GG, in the Department of Institutional Integrity ("INT"). His Letter of Appointment stated that his "appointment will be subject to a probationary period of up to one year."

5. He was assigned to INT's Forensic Services Unit ("FSU"). According to the Bank, FSU was created in 2009 and operates under INT's Director of Strategy and Core Services to provide forensic accounting expertise to support INT's regional investigative teams in carrying out external investigations related to Bank-funded projects.

6. The Applicant complains that he was never given a written work program. The Bank states that his main duties as a Senior Forensic Accountant were set out in the job advertisement for the position to which he successfully applied in 2009. According to the

Bank, as listed in the job advertisement, the Applicant was expected to plan and conduct special forensic audits as part of INT's investigations in areas in which fraud, waste or abuse is alleged or suspected, including, but not limited to, the auditing of contractors' or consultants' accounts as they relate to Bank projects. The Bank adds that as a Senior Forensic Accountant, the Applicant "was not only expected to deliver technically high quality and timely financial analyses and reports of investigative findings but also to demonstrate leadership in delivering forensic accounting services, mentor and coach junior staff, and take a proactive role in providing recommendations to improve financial management systems and mitigate control weaknesses in the development of fraud and corruption prevention strategies."

7. INT's Director of Strategy and Core Services ("the Director") was the Applicant's manager during his tenure at the Bank. According to the Director, she met with the Applicant on several occasions to discuss, monitor and guide the Applicant's work program during his probationary period at the Bank.

8. The Director states that on 22 April 2010, one month after the Applicant joined the Bank, she met with him to discuss his work program. In a Declaration submitted to the Tribunal, the Director states that:

I explained to Applicant that FSU was a new unit created to enhance INT's investigative capabilities through forensic expertise. ... I also explained to Applicant that the unit was expected to meet forensic needs of the investigative teams that previously relied largely on consultants to address their forensic requirements. INT thus had high expectations on FSU's performance, and I looked forward to Applicant's contributions in meeting these expectations. I further explained to Applicant that to facilitate close collaboration between the external investigative teams and the FSU, the FSU would be organized along regional lines, with each forensic specialist assigned to one or more regional teams. The regional teams, and particularly the regional team leaders, were therefore expected to play an important role in identifying assignments within each region that required forensic inputs and in assessing performance of each FSU staff. During this meeting I also shared with Applicant the importance of establishing and maintaining a clear working schedule and hours.

9. During the 22 April 2010 meeting, the Director told the Applicant that his first assignment would be to support INT's South Asia Region ("SAR") team on the

Lucknow-Muzafarpur project. The Applicant successfully completed his assignment for SAR, conducting a review of the use of consultants and sub-consultants on the project which enabled the investigators to identify cases of curriculum manipulation. According to the Director: “Although the SAR team was ultimately satisfied with his work, Applicant failed to provide me a summary of his results until July 9, 2010, following several requests for his report including during an FSU staff meeting on May 22, 2010 and again on June 22, 2010.”

10. In May 2010 the Applicant was assigned to support INT’s East Asia Pacific (“EAP”) Region investigative team as the primary FSU specialist for the EAP work. The main EAP work items assigned to the Applicant were: “(i) a review of complaints and relevant documents relating to an important community-driven development (CDD) project in Indonesia (task assigned to Applicant in mid-May); and (ii) a review of a procurement package subject to a complaint in the context of a road project in Indonesia under investigation (task assigned to Applicant on June 17, 2010).”

11. On 26 May 2010 the Director followed up with the Applicant by e-mail on the first EAP assignment relating to the CDD project, emphasizing the work’s importance and providing the Applicant guidance on how to proceed. In response, the Applicant expressed his appreciation for the additional guidance and indicated that he would proceed accordingly to complete the initial work by 8 June 2010. The Director stated, however, that the “Applicant failed to follow-up with me regarding this commitment by June 8 or thereafter, despite several inquiries from me in the monthly FSU meetings regarding his progress on the work.”

12. To ensure that the Applicant’s work for the EAP team was on track and to help assess EAP’s overall needs for further forensic support, the Director on 29 July 2010 held a status meeting with the EAP team and the Applicant. The next day the EAP Investigative Team Leader sent an e-mail message to the Director, copied to the Applicant and other relevant staff, summarizing the discussion held on 29 July in which the EAP Investigative Team Leader provided a detailed chart describing the forensic work to be provided by FSU to EAP. The chart specifically listed the CDD work assigned to the Applicant in May 2010 and the procurement review work assigned to the Applicant in June 2010.

13. On 12 August 2010 the EAP Investigative Team Leader met with the Director and complained that the Applicant had not been following through with his assigned tasks for EAP. The Team Leader expressed concern that the Applicant's failure to complete his work was causing significant delays in the team's responses to the region, which had negatively impacted the EAP team's relationship with its regional clients. The Team Leader told the Director that, although the Applicant did submit a review report relating to EAP after much delay and repeated reminders, the report was insufficiently detailed and lacked any back-up working papers to substantiate its findings.

14. On 23 August 2010 the Director and a Lead Forensic Specialist met with the Applicant to discuss the concerns raised by the EAP team regarding his performance. The Director states that:

During this meeting, Applicant was provided specific details of his unsatisfactory performance record with the EAP team, in particular the issues of his timeliness and responsiveness; his lack of constructive engagement with the team; his failure to demonstrate breadth and depth of analysis, including detailed supporting documentation; and the lack of pro-activity and effort level expected of a senior specialist.

15. According to the Applicant, the Director's evaluation of his work relating to EAP was one-sided. He adds that: "I was not asked for any explanations and no review of any work conducted by me was done. I was not provided anything in writing as to exactly what the perceived deficiencies might be." The Director, however, states that she "expressly invited Applicant to respond or comment on his performance deficiencies. The Applicant did not offer any substantive comments on either the concerns with the quality and timeliness of his work, or about his non-responsiveness to the team and his work hours."

16. In any event, after the 23 August meeting, the Applicant went on annual leave. Both the Applicant and the Director hoped that the annual leave would give the Applicant an opportunity to reflect and have a "fresh" start.

17. The Applicant came back from annual leave in early September 2010. The Director and the Lead Forensic Specialist identified a new assignment for the Applicant, supporting an FSU audit for the Africa Region (“AFR”). The Director states that she also requested the Lead Forensic Specialist to consider additional work assignments that would give him an opportunity to perform. The Director adds that: “Unfortunately, Applicant failed to keep me informed of the difficulties he was having with AFR audit work despite several requests for a status report.” The Applicant, however, states that after he returned from the annual leave, he heard from the Lead Forensic Specialist that “the Director ‘had lost all faith’ in [him] and that [he] should start making alternative plans or ‘Plan B.’”

18. The Director states that, from late September through early October 2010, she made several written and oral requests to the Applicant to initiate an Interim Overall Performance Evaluation (“Interim OPE”) covering his first six months at the Bank (22 March 2010 to 21 September 2010). On 5 October 2010 the Director met with the Applicant to discuss the status of his work and to help him understand the OPE process.

19. On 7 October 2010 the Applicant sent his proposed “narrative” for his OPE and the Director returned it to him with comments on 16 October 2010. The Director declares that:

Meanwhile, however, I had requested and received feedback on Applicant’s first six months of work from INT staff familiar with his work. The feedback which I received included confirmation that Applicant had not succeeded in performing the Africa audit assignment, thereby heightening my concern given Applicant had been tasked with just this one assignment since early September. Moreover, Applicant had been on notice since August that his performance needed to improve yet by October he had still produced nothing. After consulting with [a] Human Resources Officer ... I determined that despite guidance and feedback, Applicant was not performing up to the standard for a Senior Forensic Accountant at level GG and therefore his appointment should not be confirmed.

20. On 21 October 2010 the Director and a Human Resources Officer met with the Applicant to inform him that given his unsatisfactory performance a decision had been made to proceed with non-confirmation of his appointment. As an alternative to non-

confirmation, the Applicant was offered the opportunity to resign and allowed until 28 October 2010 to decide on the option he would prefer to take.

21. The Director states that after the Applicant failed to respond with his decision regarding the options presented, she inserted her ratings into the OPE form sent to her by the Applicant on 18 October 2010 and returned the Interim OPE to the Applicant on 3 November 2010. As it turned out, in the process of returning the Interim OPE to the Applicant, the Interim OPE form with her ratings was also sent to the Applicant's feedback providers. The Applicant viewed the circulation of the Interim OPE to his feedback providers as a deliberate and malicious attempt by the Director to malign him. However, the Director explained that the interim OPE was circulated in error.

22. As described in the Interim OPE, during his first six months, the Applicant worked on five main tasks:

- (1) review of the use of consultants and sub-consultants for the SAR team;
- (2) support to the EAP team on "the PNPM and BOS-KITA CDD projects";
- (3) support to EAP team reviewing roads project in Indonesia;
- (4) support to EAP team in review of Red River Delta project in Vietnam; and
- (5) assistance with FSU audit of project in Kenya.

23. Based on the views obtained from the feedback providers familiar with the Applicant's work, and her own experience working closely with the Applicant, the Director rated the Applicant's performance as "fully successful" on the SAR work, "partially successful" on three EAP tasks, and "unsuccessful" on the AFR (Kenya) task. In terms of behavioral assessment, she rated the Applicant as "partially successful" on all four segments of that category (client orientation, drive for results, teamwork, and learning and knowledge sharing). The Director explained her reasons for the ratings in the "Overall Comments" section of the Interim OPE. She concluded her comments in the Interim OPE by recommending non-confirmation of the Applicant's appointment.

24. Upon receiving the Interim OPE, the Applicant sought a meeting with INT's Vice President, which took place on 5 November 2010. At their meeting, the Vice President advised the Applicant to address his work issues with the Director. The Applicant then met with the Director, on 8 December 2010, who reiterated that the Applicant was free to resign from his post rather than have his employment terminated. However, after discovering that the Director had circulated the Interim OPE with her ratings to all of the Applicant's feedback providers, he wrote to the Vice President of INT to inform him that under the circumstances he was unable to accept the offer to resign and would rather challenge the decision to terminate his employment before the Tribunal. On discovering the error, the Director conveyed her regrets to the Applicant her regrets explaining that the Interim OPE with her assessment and ratings had been circulated in error and this error had been rectified by withdrawing the Interim OPE from circulation. The Applicant was not satisfied and never submitted his resignation.

25. On 1 December 2010 the Vice President formally notified the Applicant of the decision not to confirm his appointment.

26. On 15 April 2011 the Applicant filed his Application with the Tribunal. The Bank filed its Answer on 20 June 2011. Despite being granted an extension of time to file his Reply, the Applicant failed to do so. Therefore the Application and the Respondent's Answer are the only written submissions that are under consideration by the Tribunal.

SUMMARY OF THE PARTIES' CONTENTIONS

The Applicant's contentions

27. The Applicant claims that: (i) he was never given a written work program and there was no formalized written agreement in this regard; (ii) he was never informed in writing about his perceived deficiencies in performance; (iii) management assured him of a performance improvement plan but reversed that decision two weeks later in an arbitrary and discriminatory manner; and (iv) the act of circulating the Director's final OPE ratings and assessment ("which was scathing but also insulting in nature") to the feedback providers was "vindictive and done in bad faith" and resulted in serious reputational damage. In sum, the Applicant claims that the decision to terminate his

employment was arbitrary, contending that it was “clearly taken with factors beyond performance in mind” and “highly discriminatory.” He also asserts that the decision to maliciously and willfully damage his reputation in the process was clearly “not conscionable.”

28. As remedies the Applicant requests the following from the Tribunal: (i) rescission of the non-confirmation notice and its removal from his personnel file; (ii) compensation for the remaining period of contract; and (iii) compensation in the amount of five years’ salary for discriminatory treatment and for the serious damage to his professional reputation.

The Bank’s contentions

29. The Bank answers that the performance evaluation and subsequent non-confirmation decision were reasonable actions by management and the record does not support the conclusion that management abused its discretion. The Bank adds that the Applicant was not suitable for confirmation due to his less than fully satisfactory performance and the decision to not confirm his appointment was made in accordance with the applicable Staff Rules. The Bank also states that his performance was not consistent with what was expected of a level GG Senior Forensic Accountant. According to the Bank, the Applicant was afforded opportunities to demonstrate his abilities and was provided guidance on how to improve but, unfortunately, his efforts did not sufficiently persuade his managers that he was suitable to be confirmed as a Senior Forensic Accountant for FSU. As for the sharing of the OPE ratings with the feedback providers, the Bank states that the circulation of the Interim OPE was clearly an unfortunate error that was corrected as soon as it was found out.

30. The Bank accordingly requests the Tribunal to dismiss all of the Applicant’s claims.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

31. As regards the decision by the Bank not to confirm a probationary appointment, the Tribunal held in *McNeill*, Decision No. 157 [1997], para. 30, that:

The scope and extent of the review by the Tribunal of the Bank's decisions concerning confirmation or non-confirmation of appointment during or at the end of the probationary period rest on the basic idea that the purpose of probation is "the determination whether the employee concerned satisfies the conditions required for confirmation" (*Buranavanichkit*, Decision No. 7 [1982], para. 26), that is to say, in the language of Staff Rule 4.02, the determination whether the probationer is "suitable for continued employment with the Bank Group." The probationer has no right to tenure; pending confirmation his situation is essentially provisional and his future with the Bank depends on his suitability for permanent employment. The assessment of his suitability is a matter of managerial discretion, as the Tribunal has ruled in *Salle* (Decision No. 10 [1983]):

It is of the essence of probation that the organization be vested with the power both to define its own needs, requirements and interests, and to decide whether, judging by the staff member's performance during the probationary period, he does or does not qualify for permanent Bank employment. These determinations necessarily lie within the responsibility and discretion of the Respondent. ... (para. 27).

It is, therefore, for the Bank to establish the standards which the probationer should satisfy. The Tribunal has determined that these standards

may refer not only to the technical competence of the probationer but also to his or her character, personality and conduct generally in so far as they bear on ability to work harmoniously and to good effect with supervisors and other staff members. The merits of the Bank's decision in this regard will not be reviewed by this Tribunal except for the purposes of satisfying itself that there has been no abuse of discretion. ... (*Buranavanichkit*, Decision No. 7, [1982], para. 26).

It is also for the Bank to determine, at the end of the probation or at any time during the probation, whether the probationer has proven either suitable or unsuitable for Bank employment and to terminate his employment whenever it concludes that he is unsuitable. As the Tribunal has repeatedly stated, it will not review the exercise by the Respondent of its managerial discretion unless the decision constitutes an abuse of discretion, is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

Work program

32. The Applicant claims that he was never given a written work program and that there was no formalized written agreement in this regard.

33. Paragraph 2.02 of Staff Rule 4.02 (effective at the relevant period) states that: “During the probationary period, the Manager or Designated Supervisor shall ... as soon as practicable, meet with the staff member to establish the staff member’s work program.” The Applicant joined the Bank on 22 March 2010 and a month later, the Director met with him to discuss his work program. Moreover, in the Declaration filed with the Tribunal, the Director states that:

During his tenure in FSU, I met with the Applicant ... on several occasions to discuss, agree on, modify, guide and monitor his work program. These meetings included one-on-one discussions, weekly review of the status of the ongoing and upcoming work assignments of each FSU Staff (including Applicant), meeting with FSU staff and their assigned investigative teams, as well as e-mail exchanges on the status of the work program.

34. The Applicant has not challenged this Declaration and the Director’s assertion is consistent with the record before the Tribunal. In addition, contemporaneous e-mail exchanges among the Applicant, the Director and other staff members who have worked with the Applicant support the conclusion that the Applicant knew what his work program was and what was expected of him. He in fact provided a detailed account of his work assignments during the probationary period in the Interim OPE itself. Based on the record, therefore, it is not plausible for the Applicant to claim that he was never given a work program or that he was prejudiced by a lack of knowledge regarding the tasks he was expected to undertake during his probationary period.

Assessment of the Applicant's performance

35. The Applicant further alleges that he was never informed in writing of the deficiencies in his performance and that the evaluation of his performance was arbitrary and discriminatory.

36. Paragraph 2.02 of Staff Rule 4.02 (effective at the relevant period) states in this regard, that the Manager or Designated Supervisor shall “at the end of each six months of the probationary period, or earlier, share with the staff member a written assessment of the staff member’s suitability and progress based on achievement of the work program, technical qualifications and professional behaviors.”

37. In the present case, the Director stated in her Declaration that she provided the Applicant with a written assessment of his performance at the end of the six-month probationary period. The record demonstrates that in late September 2010 the Director contacted the Applicant to provide her written evaluation through the process of an Interim OPE. On 5 October 2010 she met with the Applicant as part of the OPE process. In the course of the evaluation of the Applicant’s performance, the Director sought and received feedback on the Applicant’s first six months of work from the Team Leaders and other INT staff familiar with his work. The Director then proceeded to record her ratings on the Applicant’s Interim OPE and also provided a detailed assessment of his performance in the “Overall Comments” section of the OPE.

38. In the Interim OPE, the Applicant’s performance on the assigned tasks was rated mostly “partially successful.” He was rated “fully successful” on one item (the SAR work) and “unsuccessful” on another (the AFR (Kenya) task). In terms of behavioral assessment, she rated the Applicant as “partially successful” in all four segments of that category. It is on the basis of those relatively poor ratings that the Director determined that the Applicant had failed to perform at the level of a Senior Forensic Accountant and decided not to recommend him for confirmation.

39. As was observed by the Tribunal in *Zwaga*, Decision No. 225 [2000], para. 32:

In reviewing the Respondent's decision not to confirm the Applicant's appointment, the Tribunal further notes that the concept of unsatisfactory performance as applied in the case of probation is broader than that of a confirmed staff member. As the Tribunal held in *McNeill*, Decision No. 157 [1997], paragraph 34: "Regarding probation, the problem is not so much whether the probationer has performed satisfactorily as whether he has proven his suitability to the specific requirements of the Bank regarding the work which he would have to perform if he were to be confirmed."

40. In *Desthuis-Francis*, Decision No. 315 [2004], para. 23, stated that there must be "a reasonable and objective basis for ... adverse judgment on a staff member's performance." The question, therefore, is whether management had a proper basis for the negative assessment of the Applicant's performance and the resulting non-confirmation decision. In this case the Tribunal finds that there was a reasonable basis for management's adverse evaluation of the Applicant's performance and the ultimate non-confirmation decision. The Director made the evaluation based not only on the feedback from the Applicant's colleagues but also on her own direct experience in supervising the Applicant's work. In her Declaration she provided a detailed and specific account of her dissatisfaction with the Applicant's performance, which has not been specifically challenged by the Applicant.

41. Furthermore, the Director's evaluation is consistent with that of other staff members who worked with the Applicant directly and provided feedback on his performance. The Director documented other staff members' concerns about the Applicant's performance in the Interim OPE itself. For example, in the "Overall Comments" section the Director noted:

The main concerns expressed by the EAP team were: a lack of "responsiveness" throughout all assignments, tardiness/delays in output, inferior quality of ultimate outputs (a lack of depth, scope, etc.), and absence of proper recording and documentation to support the ultimate outputs and recommendations expected to senior professionals. Some team members also expressed a concern over Satish's "lack of motivation" and his unavailability when they tried to reach him. While one of the team members noted that Satish appeared to have good "instinct", his overall contributions and outputs were assessed as inadequate, compared to the

expected quality, depth, and scope of forensic work of the team normally received from senior forensic experts

42. Contemporaneous e-mail messages from staff members who worked with the Applicant demonstrate that his Team Leaders shared similar concerns about the Applicant's performance. For example, in an e-mail message dated 23 June 2010, the EAP Investigative Team Leader wrote to the Applicant:

Dear Satish,

Could you please respond to [staff member (Mr. X's)] request ASAP because this is the 3rd time he has asked for this and I really don't want this to come back to INT in any negative way. [Mr. X] is the main focal point to INT and our main "client" in EAP.

You are the "lead" on this PNPM and BOS Kita projects as these are FCU projects linked to the Information Item numbers. I will contact [Ms. Y] to assist you on the ground as discussed, but you need to send me the Terms of Reference and have her contract processed through the system with the RM team. It's not for me to take the lead on actions relating to these projects, as you know better than I what needs to be done.

43. In addition, there are subsequent e-mail exchanges that show that the Applicant did not respond to the repeated requests to improve. In an e-mail message dated 13 August 2010 the EAP Investigative Team Leader complained to the Director as follows:

Dear [Director],

Further to our discussion, I am forwarding you an e-mail I sent Satish after three requests for his outline on what information items he wanted to do the PNPM review. It was embarrassing and I apologized to [Mr. X] for the delay.

As of the date of the e-mail – June 23 – till today, I still have not received any Terms of Reference from him.

I also told him about the INTIS information item numbers and how any developments on the project should be tracked in the INTIS file any time. I only recently found out that he had not even loaded the INTIS icon, or

spoken to anyone ... his FCU colleagues, or RAU or me about how to work in INTIS.

44. Another staff member provided the following feedback on the Applicant's performance in an e-mail message dated 20 October 2010 to the Director which in part reads, as follows:

In my limited interaction with Satish I have found him lacking in initiative, an inability to think laterally (to attack a problem a different way), and find his lack of communication a concern. His unwillingness to perform detailed analytical work of the nature described above may also be an issue.

45. The Tribunal concludes that there was a reasonable basis for the adverse assessment of the Applicant's performance and for the decision not to confirm his appointment. In the absence of a showing that the decision not to confirm the staff member was unfounded, violated the Staff Rules or was marred by impermissible motivations, the Bank's decision must stand. In *Salle*, Decision No. 10 [1983], para. 27, the Tribunal stated:

It is of the essence of probation that the organization be vested with the power both to define its own needs, requirements and interests, and to decide whether, judging by the staff member's performance during the probationary period, he does or does not qualify for permanent Bank employment. These determinations necessarily lie within the responsibility and discretion of the Respondent.

Due process

46. The Applicant claims that his due process rights were not respected by the Bank.

47. In *Zwaga*, Decision No. 225 [2000], paras. 37-38, the Tribunal held that:

In connection with probation, the Tribunal has singled out "[t]wo basic guarantees" as "essential to the observance of due process":

First, the staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being

ultimately reached. Second, the staff member must be given adequate opportunities to defend himself. (*Samuel-Thambiah*, Decision No. 133 [1993], para. 32.)

In addition, the Tribunal has held that one of the basic rights of an employee on probation is the right to receive adequate guidance and training (*Rossini*, Decision No. 31 [1987], para. 25) and that it is its duty to make sure that the Bank's obligation to provide a staff member on probation with adequate supervision and guidance has been complied with in a reasonable manner. (*Salle*, Decision No. 10 [1982], para. 32.)

48. In a case of confirmation or non-confirmation, the assessment must be based on a work program that permits an objective evaluation of performance in compliance with the Staff Rules. The performance evaluation process must be formally correct, and it must also be fair and impartial. These requirements have been met here. In this regard, the record is fully buttressed by the Declaration of the Director filed with the Tribunal.

49. The record indicates that the Director met with the Applicant a number of times to discuss his work program, the status of his specific assignments, and the concerns about the Applicant's performance. In fact, since May 2010 the Director initiated the practice of weekly FSU meetings to review the status of ongoing and upcoming work assignments of each FSU staff member including the Applicant and to provide guidance or instruction as warranted.

50. The record also includes an e-mail message to the Applicant from the Director dated 26 May 2010 in which the Director provided guidance to the Applicant on how to proceed on his first EAP assignment. In response, the Applicant indicated his appreciation of the Director's guidance and clarification. Moreover, the record also includes e-mail messages from other senior staff members providing guidance to the Applicant and asking him to contact them if he needed any guidance on any assignment. The Director held a meeting with the Applicant on 23 August 2010 in which she raised concerns regarding the Applicant's performance. The Director states in her Declaration:

[O]n August 23, 2010, the Lead Forensic Specialist ... and I met with Applicant to discuss the concerns raised by the EAP team regarding his performance. During this meeting, Applicant was provided specific details of his unsatisfactory performance record with the EAP team, in

particular the issues of his timeliness and responsiveness; his lack of constructive engagement with the team; his failure to demonstrate breadth and depth of analysis, including detailed supporting documentation; and the lack of pro-activity and effort level expected of a senior specialist. I informed Applicant that pursuant to the EAP team and INT Operations' management's request he would be reassigned from the EAP team. I also advised Applicant that he needed to take these concerns very seriously and that in order for his appointment to be confirmed he would need to improve his performance to a satisfactory level on his new work assignments, which we would identify after his return from annual leave. By this time, Applicant's attendance had also become cause for concern and the need to conform to expected work hours was raised with Applicant at the August 23rd meeting as well as on several previous occasions.

At the August 23rd meeting, I expressly invited Applicant to respond or comment on his performance deficiencies. Applicant did not offer any substantive comments on either the concerns with the quality and timeliness of his work, or about his non-responsiveness to the team and his work hours. Rather, he was contrite, indicated that he understood the seriousness of the situation and suggested that his leave would provide an opportunity for him to reflect and return with renewed energy and commitment. Applicant appeared committed to turning a new leaf, and we thus ended the meeting on a productive note agreeing to discuss his revised work program upon his return.

In early September 2010, after Applicant returned from annual leave, [we] identified a new assignment for Applicant supporting an FSU audit for the Africa Region being led by an FSU colleague in Kenya which would provide Applicant an opportunity to prove his abilities without the pressure of demands from a client external to the FSU. ... Unfortunately, Applicant failed to keep me informed of the difficulties he was having with the AFR audit work despite several requests for a status report.

51. The Tribunal notes that the Applicant does not explain why the warning about his performance deficiencies and guidance provided by management was not heeded or in what way it was not sufficient. In his case, as a Senior Forensic Accountant at level GG, the extent of guidance from management cannot be expected to be at the same continuous level as that of a newcomer who joins at an entry-level position. *See McNeill*, Decision No. 157 [1997], para. 47.

52. In any event, the record indicates that for each assignment, management and senior staff members told the Applicant to contact them if had any questions or needed guidance. There is not a single instance in the record or one that the Applicant has cited where he sought assistance or guidance and was refused. The Applicant has not demonstrated that his rights were violated in any manner.

53. The Applicant claims that he was never given a fair opportunity to prove his capability. The Tribunal is unconvinced. In the interim OPE the Director in the Interim OPE provided a detailed account of how she provided different opportunities to the Applicant. She first assigned him to the SAR team. The Applicant's performance in this respect was rated "fully successful," but the Director noted the Applicant "could have accomplished his task in a more expeditious and timely manner, and that, as a G level staff member, he should have taken more initiative in analyzing and developing the results." The Director then provided him opportunities to work with EAP and AFR teams. But his performance in these two teams received numerous complaints that have already been discussed. In sum, over the six-month probationary period, the Director did provide him opportunities to demonstrate his capabilities but the Director did not find that he met the standard that was expected of a level GG Senior Forensic Accountant.

54. In conclusion, the Tribunal is satisfied that the Bank's actions were consistent with the standard of evaluation established by the Tribunal in its jurisprudence and the Applicant was treated fairly.

Sharing of OPE with feedback providers

55. The Applicant claims that "the act of circulating the supervisor's final assessment ... to feedback providers ... was vindictive and done in bad faith."

56. According to the Director's Declaration, "on November 8, 2010, after meeting with Applicant, I learned that when I sent the Interim OPE complete with my ratings to Applicant on November 3, 2010, by pressing one wrong button I had inadvertently also sent the completed OPE form to Applicant's feedback providers. Immediately upon realizing my unfortunate error, I directed Human Resources to have the view of the

Applicant's OPE form restricted such that feedback providers would not be able to access the ratings and comments."

57. Under the Bank's policy, the Director was not supposed to share her ratings and comments in the OPE with the feedback providers. The Tribunal, however, does not find any evidence that the circulation of the OPE was done in bad faith on the part of the Director. The Bank has characterized the mistake as a "regrettable but non-material mistake." The Applicant has not challenged this characterization.

DECISION

The Applicant's claims are dismissed.

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

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Paris, France, 27 June 2012