

Decision No. 332

**Yang-Ro Yoon (No. 5),
Applicant**

v.

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

1. The World Bank Administrative Tribunal has been seized of an application, received on August 9, 2004, by Yang-Ro Yoon against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Bola A. Ajibola (President of the Tribunal) as President, Jan Paulsson (a Vice President of the Tribunal) and Francisco Orrego Vicuña, Judges. A request by the Applicant to file an additional written statement was granted and the Applicant's request for oral hearings was denied. The usual exchange of pleadings took place and the case was listed on April 28, 2005.

2. This is the fifth time in as many years, not counting various procedural applications and jurisdictional controversies, that the Applicant has brought grievances before the Tribunal – not to mention numerous complaints to various organs and officials of the Bank.

3. Her first application contended that a rule introduced in the Staff Retirement Plan for early retirement with an unreduced pension (the "Rule of 50") violated the rights of staff and entailed age discrimination with respect to persons like herself who had been made redundant before reaching the age of 50. That application was rejected in *Yoon*, Decision No. 221 [2000].

4. *Yoon (No. 2)*, Decision No. 248 [2001], dealt with the Applicant's challenge to the merits of the Bank's decision to declare her position redundant. The Tribunal agreed with her that she had "been in several respects treated unfairly," in abuse of the Bank's discretion, and ordered the Bank to reinstate the Applicant. Under the version of the Tribunal's Statute then in force, the Bank was entitled to determine that reinstatement was not in the institution's best interest, in which case it would have been required to pay the Applicant a significant lump sum in lieu of reinstatement. Prior to *Yoon (No. 2)*, the Bank had invariably chosen this option whenever the Tribunal had rescinded a redundancy decision. The Applicant became the first staff member to be reinstated, in accordance with her petition.

5. In *Yoon (No. 3)*, Decision No. 267 [2002], the Tribunal rejected the Applicant's complaints about the manner in which she had been reinstated because she had failed to exhaust internal remedies by taking the matter first to the Appeals Committee. Nevertheless, the Tribunal pointed out that the application raised unusual issues and expressed its expectation that the Bank would not "seek to penalize the Applicant for having misdirected her application" by arguing that she was now out of time. The Bank indeed did not seek to raise such an obstacle.

6. Accordingly *Yoon (No. 4)*, Decision No. 317 [2004], ruled on the merits of her complaint concerning the conditions of her reinstatement. In extraordinarily lengthy pleadings, she claimed that her managers had been guilty of bias, fabricated and false appraisals of her aptitude and achievements, and retaliation. Her complaint was comprehensively dismissed. The final paragraph of the Tribunal's judgment reads as follows:

The Tribunal is reluctant to criticize staff members who come before it. In this case, however, the Applicant

has exceeded the acceptable limits to an extent which must be noted. Her reckless accusations against fellow staff members are regrettable, and unworthy of someone with the benefit of her academic qualifications. As for her lawyer, Mr. Pieler, his conduct is professionally reprehensible. His gratuitous confrontationalism, fallacious arguments, and unreliable pleadings have served no purpose but to fan the flames of litigation. In the hopes that he will reflect on his duties as an officer of the court, the Tribunal hereby censures him.

7. In the present case, the Applicant initially sought to raise 15 claims relating to her work program; her performance evaluation and salary merit increases in 2002 and 2003; her attempts to secure various alternative positions within the Bank; and allegations of stigmatization and discrimination. In *Yoon* (No. 5), Decision No. 329 [2004], the Tribunal dismissed a number of these claims as untimely or barred as *res judicata*. The present judgment deals with the merits of the remaining claims, which are set out in paragraph 39.

Factual background

8. Following the Tribunal's decision in *Yoon* (No. 2) and the Applicant's consequent reinstatement, she was assigned to the Bank's World Bank Institute (WBI) as a Senior Economist. After lengthy exchanges of views with her managers in the autumn of 2001, she served in a developmental assignment (DAIS) as a Senior Human Resources Economist, Human Development Unit, Europe and Central Asia Region (ECA), for 18 months from February 2002 to August 2003. During this assignment in ECA, the Applicant's immediate supervisor was Ms. X, Interim Chief Economist, Office of the Vice President, Human Development Network (HDN). Her reviewing manager was Ms. Y, Director of Regional Operations, Office of the Vice President, ECA.

9. The Applicant's Terms of Reference (TOR) for her DAIS in ECA were finalized on January 16, 2002. The Applicant claims, and the record indicates, that only one of the elements in the Applicant's agreed TOR (a Tajikistan Social Protection Reform Project) was part of the Applicant's work program as described in her 2003 Overall Performance Evaluation (OPE). The record further indicates that throughout her developmental assignment, the Applicant took issue with her work program. Ms. X noted in the Applicant's 2003 OPE that her "work program was in flux for much of her developmental assignment and was difficult to establish."

10. After lengthy exchanges among Ms. Y, Ms. X and the Applicant, a tentative agreement on the Applicant's work program was reached on October 22, 2002. The Applicant stated her understanding, in an e-mail to Ms. X of the same date, to the effect that she would: (i) continue to work on the Tajikistan Social Protection Reform Project and a CIS-7 HD study; (ii) produce a social assistance note for Albania; and (iii) provide cross-support to a Jamaican project. (CIS-7 refers to the seven poorest countries of the Commonwealth of Independent States.) It was agreed that her work program would be revisited so that work on education could be added, and that she would be assigned a coach to enhance her potential as a task team leader (TTL) and as a potential manager.

11. In January 2002, her Human Resources (HR) Manager had suggested that the Applicant undertake an interim evaluation. No such evaluation took place in the course of 2002. The Applicant claims that the lack of an interim evaluation was an obstacle to her job search. In the course of the autumn of 2002, the Applicant had unsuccessful interviews for three shortlisted positions in the Human Development Sector in the South Asia Region (SASHD), the Africa Region (AFTHD) and the Human Development Network Vice Presidency (HDNVP).

12. On January 12, 2003, the Applicant asked Ms. Y to replace Ms. X with another ECSHD manager because she believed that: (a) Ms. X had given biased, distorted and abusive feedback on the Applicant's interview for a position of a senior HD economist position in HDNVP; and (b) Ms. X had attempted to take away the CIS-7 HD Workshop task from the Applicant. The Applicant also raised with Ms. Y the alleged failure of Ms. X to take any action on an interim OPE.

13. On January 14, 2003, the Applicant discussed with Ms. X the format of an interim performance evaluation. It appears that although an informal write-up had been initially envisioned, Ms. X now suggested a more formal method of selecting specific individuals to provide feedback. Two days later, Ms. X and the Applicant agreed to complete the interim OPE within a month through the formal system, and to the joint selection of a group of feedback providers who would provide input to Ms. X.

14. On February 25, 2003, the Applicant met the HR Officer for ECA to discuss the OPE process. Given the time that had passed, the HR Officer advised the Applicant to opt for the regular 2002/03 OPE process, which would be initiated soon, instead of the interim OPE.

15. On March 14, 2003, the OPE process was launched, covering the period April 1, 2002 through March 31, 2003. The Applicant's work in connection with the following was included in the Results Assessment Section of her initial draft 2003 OPE: the Tajikistan Pilot Social Protection Reform Project; a Tajikistan Education Modernization Project; CIS-7 HD studies; an Albania Social Protection Report; and a Jamaica Life Long Learning (LLL) Initiative. In the final draft, the Results Assessment Section of the Applicant's OPE included the CIS-7 HD Workshop instead of the Albania Social Protection Report, which was, however, mentioned in the Supervisor's and the Staff Member's comments.

16. The present case is principally concerned with events in 2003 related to the preparation of the Applicant's OPE. It is convenient to review these events chronologically.

17. On April 29, 2003, the Applicant sent Ms. X a draft of her OPE. In this draft, the Applicant identified the key work program results and rated her contribution. The Applicant rated her performance "Superior" in three tasks (namely, the Tajikistan Pilot Social Protection Reform Project, the CIS-7 HD studies, and the Albania Social Protection Report) and "Fully Successful" in two (namely, the Tajikistan Education Modernization Project and the Jamaica LLL Initiative). Regarding the Behavioral Assessment of her performance, the Applicant rated herself "Superior" in three competencies (Client Orientation, Drive for Results, and Learning and Knowledge Sharing) and "Fully Successful" in one (Teamwork). The same day, upon receiving the draft OPE, Ms. X e-mailed the Applicant suggesting a number of colleagues who could act as "other reviewers."

18. In May and June, the Applicant and Ms. X exchanged several e-mail communications regarding the identification of "other reviewers." The Applicant claims that although she asked Ms. X to send the Applicant's own write-up of her performance to the "other reviewers," Ms. X refused to do so.

19. On June 11, Ms. X returned the draft OPE containing Ms. X's comments and OPE ratings to the Applicant. The latter states that she expected that she and Ms. X would have met and discussed the Applicant's OPE; she was therefore surprised to receive Ms. X's written draft OPE while she was on mission in Tajikistan. In the Results Assessment portion of the OPE, Ms. X rated the Applicant "Fully Successful" in three work program results (the Tajikistan Pilot Social Protection Reform Project, the Tajikistan Education Modernization Project, and the CIS-7 HD studies); "Superior" in another (Jamaica LLL Initiative); and "Partially Successful" for the Albania Social Protection Report. In the Applicant's Behavioral Assessment, Ms. X rated the Applicant "Partially Successful" for Teamwork, and "Fully Successful" in all other competencies.

20. Although Ms. X's review of the Applicant's performance was generally favorable, she commented that the Applicant was "very specific about what was acceptable as a work program and these criteria did not always mesh well with the needs and timing of ECSHD's work program." Ms. X pointed out that the Applicant turned down the human-development components of a poverty assessment in Kazakhstan, withdrew from the Albania work, and refused to take on social protection work in Armenia. Regarding the Applicant's behavioral assessment, Ms. X pointed to problems in the Applicant's client orientation, the tone in oral and written communications with clients, and "her proselytizing on issues close to her heart." She added that the Applicant's teamwork needed some attention; she did not reach out to others or work with the people around her, and was overly sensitive to feedback. Ms. X observed that the Applicant's colleagues felt that they could not give her candid feedback, and that she took umbrage at mild suggestions. In her overall comments, Ms. X stated among other things:

Yang is hard working and can be a pleasure to be around, and she feels strongly about development and her role in contributing to progress in the countries where she works. She would have been much more successful in her work program, however, if she had followed the example of her colleagues and pitched into interesting work and learned and created with them. This is an area for improvement. Indeed, by tempering her anxiety in driving for individual results she will be able to normalize her relations with clients and colleagues and improve her overall effectiveness. Her ECA experience should prove helpful in Yang's future endeavors in the Bank as she was involved in a range of tasks.

21. On June 14, while still in Tajikistan, the Applicant acknowledged the OPE feedback and reminded Ms. X that there was a procedure to send the Applicant's draft OPE to "other reviewers."

22. On July 20, upon her return from mission, the Applicant sent Ms. X a lengthy e-mail outlining her objections to Ms. X's evaluation of her performance in the draft 2003 OPE. She asserted that "[t]his is the worst OPE/PMP I ever received," that "[y]our comments border on a smear campaign," and "... are plain vicious."

23. She complained that Ms. X did not provide her with any feedback during the course of her developmental assignment and that they had not yet held a year-end discussion regarding her performance. The Applicant also suggested that Ms. X either treat the work she did on the CIS-7 HD Workshop in a supplemental assessment or incorporate relevant comments into the 2003 OPE, although she had performed this work after the OPE period, between April and June 2003.

24. On July 21, Ms. X responded that because of her travel schedule, she had postponed all OPE discussions. She suggested that one take place in the presence of the Reviewing Manager, Ms. Y.

25. On July 22, the Applicant answered, insisting that she and Ms. X should meet by themselves first, and involve the Reviewing Manager later.

26. On July 31, Ms. X restated her view that the Reviewing Manager should participate in the OPE discussion. The Applicant answered by insisting on an OPE discussion between herself and Ms. X.

27. On August 20, the Applicant met with Ms. X to discuss her OPE. Their meeting is recorded in a memorandum dated August 27, 2003, from Ms. X to Ms. Y and two HR representatives. The memorandum explains that the Applicant's work did not deserve a "Superior" rating because her performance was not better than satisfactory. Ms. X wrote that the Applicant worked hard, but that her output was modest both in comparison to the amount of time she put in and when compared to other staff at corresponding levels. The memorandum records that Ms. X shared with the Applicant the general tenor of feedback she had received from various sources regarding the Applicant's performance. With respect to the Applicant's work on the CIS-7 studies, Ms. X agreed to amend her comments. Ms. X nevertheless considered that the Applicant had not followed through on her tasks and did not merit a "Superior" rating. Ms. X told the Applicant that her work on the CIS-7 Workshop was very good, and as a "stand alone" worthy of a "Superior" rating, but that could not be said of her overall performance. Ms. X acknowledged that the Applicant had logistical problems with the TTL over the timing of the Albania mission, but faulted the Applicant for abandoning the task after preparing a TOR for someone else to do the job, given that the team was counting on her to carry the task forward. Ms. X also felt that the Applicant's claim of a lack of work program was inaccurate. Regarding the behavioral assessment of the Applicant's performance, Ms. X wrote that the Applicant was overly sensitive to comments and suggestions and that many people could not deal with her directly as she took umbrage too quickly. Ms. X further clarified to the Applicant that when she had stated that she was "proselytizing," she referred to the Applicant's frequent promotion of the Korean model as an example for development. Ms. X mentioned that she had received unsolicited feedback from African officials who had been unhappy with Korean examples in the past. Ms. X encouraged the Applicant to review some of the e-mail correspondence between the two of them as an illustration of the latter's sensitivity to feedback. Ms. X added that the Applicant's colleagues had stated that the work environment suffered as a result. Ms. X noted that her ratings were based on feedback from others as well as her own objective assessment, using the Applicant's colleagues as benchmarks.

28. On August 25, the Applicant's developmental assignment ended.

29. On September 4, after an inquiry from the Applicant the previous day, Ms. X returned the revised draft OPE, stating that she had not finalized it because she was still waiting for feedback from the Tajikistan Country Unit. She explained that she had added the CIS-7 Workshop task in her comments and that she also had re-rated to "Superior" the CIS-7 activity which combined both the CIS-7 studies and the CIS-7 Workshop. She asked the Applicant to add some narrative on the CIS-7 work and to return the OPE to her.

30. On September 11, the Applicant returned the draft to Ms. X with the CIS-7 Workshop replacing the Albania Social Protection Report; she mentioned the Albania work only in her comments.

31. On September 15, Ms. X sent the draft back to the Applicant, instructing her to incorporate the CIS-7 Workshop into the CIS-7 task, and to reinstate the Albania Social Protection Report. In so doing, Ms. X copied the Applicant's incomplete draft 2003 OPE to all of the Applicant's performance reviewers.

32. The evening of that day, the Applicant sent Ms. X an e-mail expressing concern that the draft had been circulated. The Applicant also sent an e-mail to Ms. Y suggesting that Ms. X and Ms. Y finish the OPE between themselves. She explains this message by asserting that since Ms. X's behavior was "so far from good faith and decent professionalism" she did not see a point of further discussion and did not wish to put her physical and mental health at risk.

33. On September 16, Ms. X apologized to the Applicant by e-mail (without copying the other reviewers) indicating that the circulation of the draft had been inadvertent.

34. On October 2, the Applicant sent another e-mail to Ms. Y expressing her surprise that she had not heard from her or Ms. X. She inquired how Ms. Y intended to proceed in finalizing the OPE. Two days later, Ms. Y replied, proposing that Ms. X include her assessment of the Albania Social Protection Report and the CIS-7 HD Workshop under the supervisor's comments. She invited the Applicant to send the OPE back to Ms. X for finalization.

35. On October 12, the Applicant sent the 2003 OPE back to Ms. X for final revisions.

36. On December 8, Ms. X signed and returned the OPE to the Applicant, including a note which stated that Ms. X had consulted with Ms. Y and incorporated her input in both the rankings and the narrative. Ms. X further stated that Ms. Y had advised that, in comparison with other tasks in the Unit, the CIS-7 HD Workshop activity should be rated "Fully Successful" and not "Superior." In this final Results Assessment portion of the OPE, the Applicant received four "Fully Successful" ratings (for the Tajikistan Project, the Tajikistan Education Report, the CIS-7 HD studies and the CIS-7 HD Workshop). She received one "Superior" rating (for the Jamaica LLL Initiative). Her behavioral assessment ratings remained the same as in the initial draft OPE.

37. On December 15, the Applicant refused to sign the OPE, declaring that she did not believe that the OPE had been carried out in good faith.

The claims before the Tribunal

38. The Applicant complained to the Appeals Committee about a number of aspects of her 2003 OPE. On April 14, 2004, in order to speed up the appeals process, her counsel wrote to the Appeals Committee that she was "willing to forego an Appeals Committee hearing altogether," provided her appeal was decided by May 27. On April 19, the Chair of the Appeals Committee answered that he had "no objection to the Appellant's election of a written proceeding." The Appeals Committee rendered its Report on May 25.

39. The Appeals Committee recommended that all the Applicant's requests for relief be denied on the grounds that the Bank had not abused its discretion in the evaluation of her performance in the 2003 OPE, and had

acted within the applicable rules and without improper motivation. The Applicant then seized the Tribunal. In Decision No. 329 (see para. 7 above), the Tribunal dismissed a majority of the Applicant's claims as untimely or barred by *res judicata*. The only claims to be addressed in this proceeding are therefore those arising from the alleged actions originally listed by the Applicant as follows:

[5] Decision by the Bank and the [ECA] managers to deny Applicant a timely performance assessment in the form of an OPE for FY 2003, compounded by the failure of Ms. X and Ms. Y to provide Applicant with the regular performance appraisals and feedback demanded by the Bank's rules and procedures;

[6] Decision by Ms. X and Ms. Y to wrongfully and deliberately downgrade Applicant's performance in ECA when they ultimately (and belatedly, at the very end of Applicant's development assignment) did draft and provide Applicant with a copy of an OPE;

[7] Decision by the Bank acting through Ms. X wrongfully to circulate, in violation of Bank rules, an incomplete, pejorative, draft version of Applicant's OPE to all reviewers with no protection of confidentiality, and with no remedial action on the part of the Bank and Ms. X to remedy this offense;

[11] Decision by the Bank and Applicant's ECA managers to falsely denigrate her abilities and qualifications in connection with other suitable openings in the Bank for regular positions for which Applicant applied (and for which she was eminently qualified), further obstructing Applicant's integration into any operational unit of the Bank (specifically including job postings in ECA, in HDNVP, and in SASHD); and

[15] Decision by the Bank and Applicant's ECA managers to personally denigrate her as a professional with a long track record of success in the Bank.

Regarding claims [11] and [15], Decision No. 329 emphasized that the Tribunal would examine their merits only inasmuch as they related to claims [5], [6] and [7], "i.e., to the extent that [the Applicant's] claim of denigration directly results from Bank management's handling of the Applicant's 2003 OPE."

40. The Applicant requests, among other things, \$100,000 for denial of proper working conditions, for the failure to provide a timely evaluation, and for the failure to provide necessary feedback that would have allowed her to take advantage of career opportunities as they arose. On account of alleged personal suffering, both psychological and professional, she also seeks compensation calculated at two months' salary for each month of abuse, i.e. three years' salary in total. She further asks for re-evaluation of her performance by an independent panel, and compensation for lost career opportunities. In the alternative, she requests payment of salary and benefits as if she were to continue working as a GG-level staff member until the "mandatory retirement age of 60," but with a release from her obligation to render services to the Bank "to facilitate Applicant's development of a career elsewhere."

Discussion

41. When her first application was dealt with in Decision No. 221, the Tribunal felt it appropriate to caution the Applicant not to make "trivial or frivolous arguments" (e.g., claims of denial of human rights and her attempted analogy of the choice between severance and an unreduced pension, on the one hand, and, on the other, the choice "imposed on slaves between early freedom or food"). This admonition has fallen on deaf ears. The Applicant's pleadings refer to "the truly enormous and incessant series of abuses" committed by her managers. She alleges that they are attributable to "personal prejudice, arrogance, and an institutionally ingrained pattern of cynicism and hypocrisy." She alleges that the managers approached her developmental assignment in bad faith. She asserts that: "[t]he duplicitous and manipulative nature of [Ms. X's] behavior speaks for itself," that Ms. X's conduct was one of "wrongful assumption of power through deceit," and that her views were "malicious."

42. None of these characterizations are remotely borne out by the record. To the contrary, Ms. X actively encouraged the Applicant to apply for open positions which she thought the Applicant would find interesting and

enjoyable. And as late as August 2003, Ms. Y wrote to the Applicant: “congratulations on what sounds like a very successful workshop, which should provide a real boost to our dialogue in the social sectors in the CIS-7 countries.” Ms. Y went on to suggest that the Applicant’s materials be communicated to other task forces. Moreover, the Applicant’s vision of herself as the victim of a web of conspiracy is wholly implausible. If the Bank wanted to get rid of her, all it had to do in August 2001 was to pay her a defined amount of money in lieu of reinstatement, as it had done for all previous successful applicants having suffered wrongful termination. This would without doubt have been less disruptive and less costly than concocting a scheme of persecution requiring the complicity of numerous senior managers who had no previous acquaintance with the Applicant and therefore no *a priori* hostility toward her. Once she had entered her development program in the ECA, there is no apparent reason why Ms. Y or Ms. X would have set out to ruin her career. To the contrary, the Tribunal’s review of the record in this case reveals a pattern of lengthy communications from the Applicant’s managers to her in which they exhibit interest, patience and personal concern for the Applicant’s career. If they had wanted to rid themselves of the Applicant, the easiest approach would have simply been to give her the evaluations she wanted and send her on her way after the developmental assignment was over; however excellent the Applicant’s evaluations might have been, the ECA was not required to make a permanent position for her.

43. The observations in the preceding paragraphs do not affect the Applicant’s unquestionable right to seek redress before the Tribunal. They are made simply to stress the need for care in discerning the precise complaints that fall to be dealt with by the Tribunal. They are the five matters spelled out in paragraph 39 above.

44. Of these five matters, two may be dealt with summarily: those listed as items 11 and 15 of the original application. There is no evidence whatever of an intent by the Applicant’s managers to denigrate her abilities and qualifications, whether in connection with general career reviews or with prospective applications for specific positions. The Bank cannot function without the qualitative evaluation of its personnel, and it would be intolerable to subject managers to criticism of this sort every time they fail to share a staff member’s self-opinion.

45. The next two matters to be addressed are listed as items 5 and 6 in paragraph 39, involving the allegations of a failure to provide a timely performance assessment and of an unwarranted “downgrading” of the Applicant’s performance. It is convenient to take them in reverse order.

46. The principle has been well established since the origin of the Tribunal: managerial appraisal of staff members’ performance 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.)

47. The Tribunal has made clear, most recently in *Desthuis-Francis*, Decision No. 315 [2004], para. 26, that the absence of motivation does not itself insulate a discretionary managerial act if it is done “without an observable and reasonable basis.” The Tribunal agreed in that case with the Appeals Committee’s view that comments in an annual performance review had been “arbitrary because they were not substantiated by the record.” That case, however, involved a clearly adverse evaluation: performance “below expectations.” Indeed, the passage from *Saberi* quoted above appeared in the context of a determination that the staff member’s performance had been *unsatisfactory*. It is obvious that an evaluation which may have been a factor in termination, non-confirmation or redundancy requires an unmistakable foundation. (The Applicant in *Desthuis-Francis* had in fact been declared redundant.)

48. A different situation is presented with respect to a *satisfactory but nuanced* evaluation. Of course, staff members who are convinced that their performance has been undilutedly superlative may be legitimately irritated if their evaluation contains inexplicable and unsubstantiated reservations, or even suggestions for improvement. Managers have a duty to carry out meaningful evaluations, and staff members have a

corresponding entitlement. The problem is rather that with respect to *satisfactory* performance: (a) the prejudice arising from below-superlative assessment is incomparably less manifest than in cases of termination; and (b) the feedback underlying such assessments is likely to be more subjective than instances of objective non-fulfillment of precise tasks.

49. In this case, the Applicant's OPE was balanced, with praise for her drive, written reports and output. Indeed, the Applicant received mainly "Fully Successful" ratings for her technical competencies and largely favorable comments from her supervisor regarding the assessment of her key work program results and contributions to the work of the unit. A work program result (the Albania Social Protection Report) rated as "Partially Successful" was moved to the "Supervisor's Comments" area of the OPE and replaced by another item (the CIS-7 HD Workshop) which was ultimately rated as "Fully Successful." Furthermore, with the exception of teamwork for which she received a "Partially Successful" rating, the Applicant received "Fully Successful" ratings for all behavioral categories. Even though the Applicant believed that she deserved higher ratings regarding all categories, this, as seen above, is a matter of managerial discretion. The Human Resources Guidelines for OPEs ("OPE Guidelines") articulate the expectation that most staff members on many items will be rated Fully Successful or Fully Accomplished. These Guidelines elaborate the ratings of "Fully Successful" or "Fully Accomplished" as follows:

- Staff member satisfactorily achieved work goals. Effectiveness of results, quality, quantity, outputs, and/or timeliness consistently met expectations or standards in all aspects.
- Staff member met all behavioral expectations according to standards and demonstrated behaviors were consistently effective.
- Staff member satisfactorily met agreed upon development actions.

These Guidelines also make clear that it is expected that many staff members will, on some items, be rated Partially Successful or Partially Accomplished.

50. Ms. X's comments regarding the Applicant's behavioral competencies were also balanced. Ms. X stated:

Yang works hard and is dedicated to her work. Her drive for results is unquestioned. She also feels strongly about her clients and works to make sure that their needs are prioritized and that she delivers for them. Yang's client orientation is sincere, but her single minded drive for results can compromise her relationships with them. She needs to temper her oral and written communication with them, for example in the tone of her letters, and she needs to watch her proselytizing on issues close to her heart. Her teamwork needs some attention. The new Bank values teamwork – being able to interact with a range of people, giving and taking feedback, learning together. These are areas for greater development. She is collegial in writing and responsive on narrow requests, but she doesn't reach out to others or work with the people around her, a pattern that is the norm in ECSHD/HDE, insists on stand alone work rather than joint products, and is overly sensitive to feedback. Her colleagues feel they can't give her candid feedback, and she takes umbrage at mild suggestions. Improving in these areas will strengthen all of the behaviors and make her more effective in Bank operations, which by their nature are team based.

51. Comments identifying a need to improve teamwork are inherently difficult to justify objectively. A staff member is nevertheless entitled to ask that they be the fruit of genuine feedback from colleagues in the workplace, and not contrived by the compiler of the review.

52. The fact that the sources of comments in a written performance evaluation are not specifically identified is not necessarily a ground for complaint provided that one can

adduce outside the four corners of the [review] a reasonable and objective basis for [the] adverse judgment. ... This may be provided, for example, in contemporaneous oral or written communications, or even later, in testimony before the Appeals Committee. (*Desthuis-Francis*, para. 23.)

To accuse Ms. X of fabricating adverse comments is a serious matter. It requires proof. There is no such proof. The sole written document produced for the Tribunal's *in camera* review contains not a hint of improper animus against the Applicant; it constitutes on its face a dispassionate professional evaluation which is wholly consistent with Ms. X's summary. This includes the comment that the Applicant would be well advised to resist over-personalization of the Korean approach to education and training when communicating with the Bank's clients. As for feedback given orally, it is significant to note that the Applicant herself waived the opportunity to examine witnesses before the Appeals Committee (see paragraph 38 above). (It was precisely testimony before the Appeals Committee that demonstrated that the report in the *Desthuis-Francis* case had been written without any inquiry as to the basis for the adverse judgment; three persons who had been identified as feedback providers testified that they had not discussed that applicant's work with the reviewer.) The fact that the Applicant subsequently asked for oral hearings before the Tribunal is unimpressive; it was for the Applicant to establish the factual basis of recourse to the Tribunal, and she has only herself to blame if she now regrets her counsel's unusual request to dispense with the hearing before the Appeals Committee (see paragraph 60 below).

53. The Applicant's characterization of Ms. X's evaluations as "vicious" and "a smear campaign" is quite unacceptable on the part of a senior professional. She refers to Ms. X's behavior as "duplicitous and manipulative," and accuses her managers collectively of "hostility ... manifesting itself as unwarranted psychological intimidation." Not only is there no evidence of such malice; to the contrary, the record contains many indications that Ms. X's comments were justified. The Applicant did not enter her developmental assignment at ECA in an accommodating spirit. She complained that the e-mail which announced her arrival did not contain sufficient indications of her qualifications and achievements. She complained that her colleagues did not greet her as she would have wished, and did not return her greetings in an appropriate manner. She complained about the office she was given, on the grounds that it did not befit her status, and would not accept the explanation that there was an objective shortage of better offices. She refused an assignment she thought was beneath her, and refused another because in her opinion it called for the intervention of someone with a greater degree of specialization. She accused some of her colleagues of "shamelessly" hiding communications on a project from her. She accused another colleague of appropriating credit for her work. She says she "sensed" negative attitudes about her because of her past grievances against the Bank; and says that Ms. X's insufficient appreciation of her value (in her own eyes) "confirmed [my] long-held suspicion." She writes that the leader of her most important project was known to use "notorious tactics to maintain his control" and that she was worried he "could destroy [her] career." She complained that the team leader of another project was not doing his own work on time, that his proposals contemplated only a "very secondary role" for the Applicant, and that at any rate the work was more appropriate for a "seasoned research economist."

54. The examples are numerous, and all of them cannot reasonably be detailed in this judgment. One will suffice. In July 2002, Ms. X suggested that the Applicant undertake the tasks of educational or health aspects of poverty assessment for Kazakhstan. The Applicant responded that she found this work "interesting in principle," but that she understood that the person who had previously worked on these tasks was "substantially less experienced and qualified" than herself; the assignment was thus beneath her and made her feel as though she were treated like a "second-class citizen." Ms. X responded with a lengthy and patient explanation to the effect, *inter alia*, that the predecessor on these tasks had "just completed the leadership of an excellent poverty assessment in Bulgaria." Ms. X concluded: "I'm sorry you don't feel you can take this on." The Applicant quickly retorted at length, arguing that "taking a job from a lower level colleague" would have an adverse "signaling" effect. She referred to Ms. X's message as an "unwarranted display of disrespect for my professional standing."

55. In sum, the Applicant appears to have been exceptionally prickly and demanding, and quick to find fault with her colleagues as well as her managers. Her apparently hypercritical attitude toward her assignments are surprising on the part of a person who presumably wanted to benefit from a developmental assignment.

56. The Applicant's consistent pattern of falling out with colleagues and managers whom she has found on her path makes it difficult to accept her own superlative self-evaluation. It is difficult not to question her realism.

She argues to this Tribunal that one of her papers was “highly praised” by the ECA Vice President. She presents, as “proof” of this assertion, a four-line e-mail thanking her for her efforts, saying that her presentation was “thought-provoking” and ending with the words: “I look forward to reading your paper when I have a bit of time!” And while she is acutely sensitive to any suggestion that her performance was of anything less than the highest caliber, this is the entirety of her own input on a colleague’s OPE:

I have worked with him on the Albania Social Safety Net Study. [He] is a very nice, cultured colleague. During our mission, I also found him communicating with clients effectively. Yet, it is not easy to work with him since he is very slow to respond to emails and other communications ... and tends to procrastinate. He would be more effective if he can delineate the division of labor and tasks for each team member clearly and in a reliable manner. It would be important for the teamwork that he prepares relevant documents such as issues paper and mission TOR within predictable time frame.

Disregarding the perfunctory initial damning with faint praise (which since time immemorial has been associated the adjective “nice”), one can only wonder what the Applicant would have thought of anyone writing such a directly critical appraisal of her, without any attempt to assess professional competence, or any care to explain the circumstances of whatever incidents she felt justified such a critique.

57. To conclude, the Tribunal is satisfied that those elements of a balanced appraisal with which the Applicant takes issue have an objective basis and do not come close to reflecting an abuse of discretion.

58. Nevertheless, the fact that the Applicant may have been difficult to deal with does not mean that she was not entitled to her rights to timely and meaningful feedback. The salient facts are that this Tribunal had judged that she had been seriously mistreated in the past, and that her wrongful redundancy had created a career disruption which required significant efforts on both sides to reintegrate her as a staff member making a contribution that corresponds to her abilities. The Applicant may have been over-demanding and unhelpful, but that does not mean that her managers were excused from ensuring the punctiliousness which her particular circumstances so obviously called for.

59. In response to the Tribunal’s order that feedback from all peer reviewers during FY2003 of the Applicant’s DAIS, including that from “other reviewers” in the Applicant’s OPE, be produced, the Bank stated that the persons listed as other reviewers in the Applicant’s OPE had been asked to provide the Respondent with their written input. Yet only one person produced such a document for the Tribunal’s *in camera* review (as discussed in paragraph 52 above). One of the “other reviewers” stated that because she had had limited professional contact with the Applicant, she did not provide any input to the OPE; another stated that the input she had provided to Ms. X was oral. As for the other three, the Bank blandly stated that they “did not respond.” The Tribunal considers this explanation wholly unsatisfactory. The Bank has given no account of the efforts made to contact these individuals, the reasons they may have given for not responding, or such further efforts as the Bank may have made to persuade them. In the light of this unresponsiveness to the Tribunal’s directions, it is appropriate to draw the adverse inference that these three individuals did not make a meaningful contribution to the Applicant’s evaluation. Accordingly, the sum total of the record before the Tribunal is singularly unimpressive as concerns the feedback from reviewers other than Ms. X: one written comment, one confirmation of undescribed oral feedback, one denial of sufficient contacts to provide any feedback, and three non-responses.

60. Ms. X is on record as asserting that her evaluation of the Applicant, and notably her less-than-superior teamwork skills, were properly based on feedback from “other reviewers.” The Bank seeks to rely on her assertion, but has not been able to back it up. This would be more disturbing but for the facts that the Applicant’s own efforts at reintegrating the Bank leave much to be desired; that there is extensive correspondence among Ms. X, Ms. Y and the Applicant which is replete with clear suggestions of constructive steps the Applicant might take to advance her career, and with the Applicant’s resistance to those suggestions; that the evaluation was in fact quite balanced, contrary to the Applicant’s unacceptably violent reaction to it; and that the Applicant chose to limit the factual record available to the Tribunal by opting out of a hearing before the Appeals Committee in the course of which the reality of Ms. X’s approach to the evaluation could have been

more clearly established. It is no answer to say that the Applicant subsequently asked for oral hearings before the Tribunal. (It is well established in international law that the exhaustion rule requires that complainants, before going to the international forum, avail themselves of existing procedural mechanisms – such as calling witnesses – essential to the prosecution of their case; “a litigant cannot have a second try if, because of ill-preparation, he fails in his action,” D.P. O’Connell, *International Law* (2d ed. 1970), at p. 1059. See also *Finnish Ships*, Finland v. Great Britain, 9 May 1934, III Reports of International Arbitral Awards 1479, at p. 1502; *Ambatielos*, Greece v. UK, 6 March 1956, XII Reports of International Arbitral Awards 83, at p. 120.) Still, the Bank’s failure to have ensured a proper record in an obviously sensitive case cannot be condoned.

61. In light of this finding, it becomes necessary to give critical consideration to the way the Bank acquitted itself of its unquestionable responsibility to give the Applicant a timely performance assessment.

62. The procedural history summarized in paragraphs 2-6 above should make it clear that the Tribunal has viewed the Applicant’s initial predicament with considerable sympathy. It rescinded her redundancy in *Yoon* (No. 2), and indicated in *Yoon* (No. 3) that it would not favor the Bank’s raising obstacles to her complaint about the conditions of her reinstatement. But once the Applicant has found herself in a contentious mode she appears to have lost all sense of proportion, not to mention any sense of fairness toward other staff members. She has shown herself as remarkably quick to take offense, and as a litigant has conducted herself in a manner which the Tribunal reproves, because her pleadings are replete with unsubstantiated accusations against her managers and a number of her colleagues.

63. That does not mean that she is not entitled to her rights. Because of the disruption to her career caused by her wrongful redundancy, she obviously deserved careful attention in the context of her reinstatement. Subsequently, in the wake of the insistent complaints that led to *Yoon* (No. 4), it behooved the Bank as a matter of seemingly obvious good management to be especially forthcoming with respect to a staff member who alleged with such fervor that she was the victim of a web of bias and retaliation – irrespective of the fact that her accusations were unproven. It is therefore incomprehensible to the Tribunal that the Bank did not ensure that during the Applicant’s time in ECA there was a formally proper and timely evaluation, and a proper record of that evaluation. Hers was clearly a special case, and to have treated the evaluation process lightly disserved both the interests of the Bank (now faced with yet more litigation) and the Applicant (whose continued career required proper evaluation). If a loose approach to the evaluation process was the consequence of a perception that the Applicant was only a temporary presence on a developmental assignment in ECA, that is inexcusable. Indeed, the Human Resources Guidelines stress the importance of a developmental assignment as a means for providing opportunities for Bank Group staff; it should be specifically targeted to enable a staff member to: (i) acquire new knowledge and skills, or significantly enhance current skills through on-the-job experience; (ii) gain a broader perspective of the Bank’s work; (iii) observe and work alongside more experienced staff and receive coaching and/or mentoring that results in meaningful professional growth through job enrichment; and (iv) make meaningful contributions to work programs outside his/her normal job functions. The Tribunal observes that at the time of the Applicant’s developmental assignment, the same Staff Rule and Guidelines on Performance applied equally to staff members on developmental assignments and to staff members on other appointments.

64. Against this background, the Tribunal concludes that the Applicant’s treatment by the Bank and the management of her case was problematic in a number of additional ways.

65. First, the Applicant and her Manager never had a formal meeting during the period reviewed under the 2003 OPE, namely April 1, 2002 to March 31, 2003, to discuss her performance, including her achievements, strengths, areas for improvement and future development needs as required by Staff Rule 5.03 (“Performance Management Process”), paragraph 2.02(a), and the OPE Guidelines. Even though, as the Bank states, such a discussion typically would occur at the end of the period under review or even after the launching of the 2003 OPE process in April 2003, in the Applicant’s case the discussion did not take place until August 20, 2003, almost five months after the initiation of the OPE process and almost two months after the deadline for its completion. This delay was mainly caused by Ms. X’s postponement of OPE discussions because of her travel schedule and because of her preference that the Reviewing Manager, Ms. Y, be present in this discussion. A

busy travel schedule does not justify delays of this magnitude in OPE discussions. Staff appraisals are important functions of managerial responsibility. They must not be deemed a secondary task. This is *a fortiori* so with respect to the situation of a staff member whose career has been significantly disrupted. As for Ms. X's preference to meet in the presence of Ms. Y, it is fair to say that the Applicant's unfortunate tendency to distort correspondence, and her pattern of questioning all versions of meetings but her own, may well explain why Ms. X was reluctant to pursue an increasingly confrontational dialogue with the Applicant alone. Yet under both the Staff Rule and the OPE Guidelines the role of the Reviewing Manager is simply to review the performance evaluation of a staff member and not to establish ratings or to participate in the formal OPE discussion. Ms. X's wish to involve Ms. Y may have been understandable in the circumstances, but not if that meant that this matter – perhaps an unwelcome headache for Ms. X, but still an important right of the Applicant – was treated as a low priority.

66. Second, the delay of the formal discussion of the OPE resulted in a protracted exchange of drafts of the Applicant's OPE which led to an unusually extended duration of the whole OPE process. Had a formal discussion taken place earlier, and, indeed, before the commencement of the OPE process, much of the exchange of communications between the Applicant and Ms. X might have been avoided, and the OPE process could have been completed sooner.

67. Third, all versions of the OPE Guidelines had consistently underscored the importance of feedback during the year under review in relation to a staff member's achievements, progress and needs for improvement. Under the OPE Guidelines, informal feedback sessions should serve to enable a staff member to anticipate the nature of the year-end formal discussion and resultant ratings on the OPE. Although the record indicates that the Applicant was made aware through several communications with her managers of the fact that she was not going to be offered a permanent position in ECA, it does not indicate that she was made to understand that her teamwork would be viewed as "Partially Successful" or that one of the projects (the Albania report) would receive a similarly low rating. Furthermore, it is not recorded that the Applicant was informed that her working relationship with peers was a matter of concern. The Applicant apparently learned of such problems when Ms. X sent her back the first draft of her OPE on June 11, 2003. When the OPE discussion finally took place on August 20, 2003, and the Applicant was informed in detail of this difficulty, it was, as seen, well after the expected completion date for the OPE process. It should also be noted that the few examples given by the Respondent regarding feedback offered to the Applicant show that it was either given at a very late stage (at the time of the 2003 OPE), or that it was related to the reasons for her non-selection to positions to which she had applied and therefore was not specifically associated with her performance in ECA.

68. These irregularities were potentially more prejudicial in the case of the Applicant, who was on a developmental assignment and actively applying to positions in other parts of the Bank. Early warnings regarding problems in her performance would have given her the opportunity to react effectively. Moreover, timely completion of the evaluation process would have resulted in her OPE being on record to be reviewed by her prospective employers. This was particularly important in the Applicant's case as she did not have an interim evaluation of her performance and had not received any other such record since her reinstatement in the Bank.

69. Finally, with respect to the dissemination of the Applicant's draft OPE on September 15, 2003, although there is no reason to conclude that it was anything but inadvertent, and although Ms. X immediately apologized to the Applicant, Staff Rule 2.01 ("Confidentiality of Personnel Information") provides for the confidential treatment of staff records and limits their access mainly to the staff members, their supervisors, and selecting officials. It imposes an obligation to keep such records confidential and even provides for disciplinary action in cases of unauthorized disclosure of staff records. The OPE Guidelines do not contemplate that "other reviewers" should know what their peers have said, nor what the Supervisor's evaluation of the staff member's performance may have been. In the present case, therefore, there was undoubtedly a violation of Staff Rule 2.01, resulting in an infringement of the Applicant's right to confidentiality.

70. In conclusion, the Tribunal recalls that it has in the past sanctioned the Bank for "mismanagement of [an] Applicant's career" on the basis of its "behavior towards the Applicant ... taken as a whole." See *Chhabra*,

Decision No. 139 [1994], para. 57. In this case, the Applicant has clearly sought to present herself as the victim of precisely such a comprehensive failure. Moreover, she has put her complaint in virulent terms, referring to “the sustained, collusive and intentional destruction of Applicant’s career prospects by Bank managers in various units,” and “truly endless abuses” which, she says, “seem driven by personal prejudice, arrogance, and an institutionally ingrained pattern of cynicism and hypocrisy.” The Applicant has not come close to proving such dramatic charges. Nor does she come close to demonstrating that the Bank has, on the whole, mismanaged her career. It is true that the Bank’s response to the Applicant’s reinstatement has been unimpressive, indeed to a degree which merits sanction. But the Applicant’s own contributory conduct has been so questionable that the Tribunal is unconvinced that she suffered prejudice as a result of the Bank’s deficiencies. The prosecution of her claims since the autumn of 2001 (that is to say in the proceedings that gave rise to the judgments in *Yoon (No. 3)* and *Yoon (No. 4)*) has been highly unprofessional. The record suggests that her conduct in the field was also marked by extreme negativity: the only ideas she seemed to approve were her own, the only initiatives she viewed with enthusiasm were those unaffected by the input of her colleagues or her managers, and her inability to avoid friction in her most significant professional interactions seems to have been total. These considerations, added to those set out in paragraph 60, lead to the conclusion that the Applicant’s own contribution to her difficulties was so significant that the Bank’s inadequate handling of her reinstatement cannot be considered the dominant cause of her obvious career disappointment. She remains a senior staff member. The Bank does not guarantee that individuals will attain their career objectives within the Bank. The Applicant has not proved that the Bank placed obstacles in her way. In sum, the Bank’s partial failings in this case, as recorded above, ultimately appear to have had the principal effect of exacerbating the Applicant’s dissatisfaction and litigiousness. That itself is a serious matter (although very far short of the claim of destroying a career), and merits a sanction.

71. For the foregoing reasons, the Tribunal awards compensation in the amount of US\$40,000. This amount includes costs.

72. Finally, the Tribunal notes that individuals involved in the circumstances of this case have not been identified by name in this judgment consistently with the reasoning of *Yoon (No. 4)*, para. 57.

Decision

For the above reasons, the Tribunal orders that:

- (i) the Respondent pay the Applicant compensation in the amount of \$40,000; and
- (ii) all other pleas be dismissed.

/S/ Bola A. Ajibola
Bola A. Ajibola
President

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

At London, England, May 13, 2005