

## Summary of EN v. IFC, Decision No. 579 [2018]

The Applicant challenged: (i) her Fiscal Year 2016 (FY2016) Annual Review; (ii) her FY2016 performance rating of 2; and (iii) the Opportunity to Improve plan (OTI).

In response to the Tribunal's order to the IFC to produce further explanation, with supporting documentation, of the Manager's comments in the Applicant's Annual Review, the IFC failed to give any explanation or supporting documentation. Based on the record, the Tribunal was not persuaded that the IFC provided a reasonable and observable basis for its performance evaluation of the Applicant. On balance, the Tribunal did not find it reasonable to criticize the Applicant for the lack of deals, when she did work on three deals in FY2016 but they did not close because of circumstances beyond her control. The Tribunal found that the Applicant acted upon the feedback from her mid-year conversation, including in the areas of business development and proactive portfolio management. The Tribunal could not sustain the IFC's adverse performance evaluation when the IFC failed to provide a reasonable basis for such an evaluation. The Tribunal further found that the Applicant's performance rating of 2 could not be sustained since the Annual Review did not have a reasonable and observable basis. Furthermore, the Applicant's due process rights were violated in that she did not receive sufficient notice about criticisms of her performance and her performance rating was finalized before the year-end discussion took place.

Having found that the Applicant's Annual Review and performance rating were arbitrary, the Tribunal also found that her placement on an OTI was arbitrary. The Tribunal further found that placing the Applicant on an OTI, while she was on Short Term Disability, for more than half of the planned OTI period and failing to remove the OTI from her personnel file for nine months, after a decision had been made to rescind the OTI and remove it from her personnel file, was unreasonable and not consistent with Principle 2.1 of the Principles of Staff Employment.

**Decision:** The IFC was ordered to pay the Applicant compensation in the amount of one year's net salary based on her salary at the time of the contested decisions, plus \$25,000.00. The IFC was ordered to pay the Applicant's legal fees and costs in the amount of \$17,768.69. All other claims were dismissed.