

Summary of EO v. IFC, Decision No. 580 [2018]

The Applicant challenged: (i) his Fiscal Year 2016 (FY2016) Annual Review, (ii) his FY2016 performance rating of 2, (iii) the Opportunity to Improve plan (OTI), (iv) the recommended termination of his appointment in accordance with Staff Rule 7.01, Section 11, and (v) the non-extension of his term appointment.

The Tribunal confirmed that it is ultimately the decision of the manager to balance positive and negative factors and to assess a staff member's performance. On balance, the Tribunal found that there was not enough evidence in the record to show that the Applicant's Annual Review was arbitrary, unfair, or unbalanced.

The Tribunal found that, while the Applicant may not have been explicitly warned in his Annual Reviews since FY2013 that he might be given a performance rating of 2, the issues of timeliness and failure to complete projects were repeatedly flagged and noted as areas for improvement, thus constituting sufficient notice to the Applicant. As well, the Tribunal found that the Applicant had the opportunity and did avail himself of such opportunity to address management's concerns about his performance before his performance rating was set and before his Annual Review was finalized. Therefore, the Tribunal found that the year-end discussion was in accordance with the Applicant's rights. However, the Tribunal found that the attendance of the Director, who was the Reviewing Official, at the Applicant's year-end meeting was in breach of Staff Rule 5.03, paragraph 2.01(g).

The Tribunal stated that the OTI is a serious exercise with significant consequences for the career of a staff member. The OTI cannot be conducted casually or taken as a mere formality which managers must go through as a first step in ridding themselves of a staff member whose appointment they have already concluded should be terminated. In this case, the Tribunal found that the poorly drafted OTI, the fact that it was issued on 28 November 2016 although it appeared to cover the period from 11 October 2016, the lack of clarity about deadlines and tasks, and the early termination of the OTI, demonstrated that the Applicant was not given a genuine chance to succeed. In light of the flawed OTI process, the Tribunal found that the non-renewal of the Applicant's appointment, due to poor performance, constituted a failure in the proper exercise of managerial discretion.

The Tribunal found that the Applicant failed to make a *prima facie* case that he was the subject of retaliation.

Decision: The IFC was given the option of reinstating the Applicant to a position in the World Bank Group similar to the one he was occupying at the time of the non-renewal of his appointment, but in a different unit, or paying the Applicant compensation in the amount of three years' net salary based on the last salary drawn by the Applicant. The IFC ordered to rescind and remove all records of the OTI from the Applicant's personnel records. The IFC was ordered to contribute to the Applicant's legal fees and costs in the amount of \$30,000.00. All other claims were dismissed.

This summary is provided to assist in understanding the Tribunal's decision. It does not form part of the reasons for the decision. The full judgment of the Tribunal is the only authoritative document. Judgments are available at: www.worldbank.org/tribunal