

Summary of DC (No. 2) v. IBRD, Decision No. 558 [2017]

The Applicant challenged his 2013 Overall Performance Evaluation (OPE), Salary Review Increase (SRI), and the decision to place him on an Opportunity to Improve Unsatisfactory Performance Plan (OTI).

The Tribunal found that on balance the Applicant's 2013 OPE did not reflect a fair review of his performance during that OPE cycle. The Tribunal was not persuaded that a reasonable basis existed for the "Partially Successful" ratings he was given. Though the Applicant's managers maintain that they regularly gave him feedback over the years on his perceived poor performance, this feedback was not reflected in prior OPEs in which the Applicant received "Superior" and "Fully Successful" ratings. The Tribunal held that the fact that the Applicant's managers recorded significant improvement in the Applicant's performance in his prior OPEs and in email exchanges with him does not correspond with the assertions, now being made, that the Applicant consistently performed poorly. Furthermore, the Tribunal found that the Applicant's due process rights were violated in that he was not given advance notice of the possibility of a negative performance review, and was effectively denied the opportunity to defend himself and improve upon the perceived performance deficiencies.

With respect to the Applicant's 2013 SRI, the evidence showed that the Applicant's SRI was set prior to the requisite OPE discussion. The Tribunal held that this was a procedural irregularity. The Tribunal has repeatedly held that the "established order of things in the Bank's procedures and requirements concerning a staff member's career development" begins with a "proper performance evaluation embodied in an OPE [...] followed by performance ratings and an SRI [...]."

Finally, the Tribunal considered whether the decision to place him on an OTI was arbitrary and an abuse of managerial discretion. The Tribunal observed that the institution of an OTI is based on the performance ratings and assessments completed during the OPE cycle. Having found that the 2013 OPE lacked a reasonable and observable basis, and that the Applicant was not provided with advance notice of the adverse performance review, the Tribunal found that the decision to institute an OTI was equally flawed. The Tribunal expressed concern that the Applicant was placed on an OTI but also assigned the tasks of another staff member who had left the unit on a Developmental Assignment. The Tribunal emphasized that a "decision to place a staff member on an OTI is not one to be taken lightly," and stressed that when instituting an OTI a staff member must be given a genuine chance to succeed, which was lacking in the present case.

In determining the amount of compensation to award the Applicant, the Tribunal recalled that the Applicant had signed a Memorandum of Understanding with the Bank regarding the termination of his contract. The award of compensation in this case therefore did not address the termination of the Applicant's contract.

Decision: The Bank shall (1) pay the Applicant compensation in the amount of three years' net salary; (2) rescind and remove all records of the 2013 OPE and OTI; and (3) pay the Applicant's legal fees and costs.

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