

Summary in DG v. IBRD, Decision No. 528 [2016]

The Applicant, who joined the Bank in 1980, worked as an Operations Analyst, Level GE, at the Board Secretariat – Policies and Operations (SECPO) from 2008 to 2014. After the appointment of a new Director for SECPO in June 2012, the Applicant's duties were realigned with those of other Level GE analysts. In March 2013, the Director, SECPO, received written feedback from two staff members who had worked with the Applicant which included criticism of the Applicant's performance. Also in March 2013, meetings and exchanges of communications took place between the Director SECPO and the Applicant where he gave her critical feedback regarding her performance. Following the launch of the Overall Performance Evaluation (OPE) process on 12 June 2013 and despite reminders from the Director SECPO, the Applicant did not submit her draft OPE until 16 September 2013. In her draft OPE the Director gave the Applicant three "Partially Successful" ratings. He also provided extensive comments and focused on the need for the Applicant's performance to improve in many areas. On 1 October 2013, the Director and the Applicant had the 2013 OPE discussion, after which the Director shortened his Overall Comments. Later in the process, the Director received feedback on the Applicant's performance from the designated feedback providers in her OPE. At the end of the performance evaluation process, the Applicant received a Salary Review Increase (SRI) rating of 3.1. Following discussions in August and September 2013, on the possibility for the Applicant to enroll in the Institutional Staff Resources Program (ISRP), the Applicant was able to secure an ISRP assignment with the Independent Evaluation Group (IEG) Corporate Services (IEGCS) for 12 months. By signing the ISRP agreement, the Applicant acknowledged that she accepted its terms and conditions and retired from the Bank effective 16 January 2015. Around the fall of 2014 and at the end of her one-year assignment the Applicant was contemplating applying for Short Term Disability (STD) but did not do so until 27 January 2015 after the termination of her employment under the ISRP. Thereafter the Applicant's request for "Sick leave for Absence over 20 working days" was approved with effective date on 10 December 2014. Thus, the Applicant's start of disability was established as of 10 December 2014. The Applicant is mainly challenging: (i) her 2013 OPE and SRI; (ii) the validity of the ISRP agreement under which the Applicant would retire on 16 January 2015; (iii) the Bank's alleged breach of the ISRP agreement; and (iv) the termination of her employment despite her placement on STD status. The Bank filed a Preliminary Objection to the

Applicant's Application. The President of the Tribunal decided that the Preliminary Objection shall be joined to the merits.

Regarding the Preliminary Objection, the Tribunal found that (i) in relation to the challenge to the Applicant's OPE and SRI the Applicant was late in filing her Application but she had shown through contemporaneous records that exceptional circumstances existed which justified such late filing; (ii) the Applicant's challenge of the validity of the ISRP agreement and the termination of her employment under the ISRP was inadmissible because it was not filed in a timely manner and because the Applicant had not proven the existence of any exceptional circumstances; and (iii) the Applicant's claims regarding the Bank's non-compliance with the terms of the ISRP agreement and the termination of her employment even though she had been placed on STD were admissible.

Regarding the merits of her claims, the Tribunal found, *inter alia*, that: (i) the ratings and comments in the Applicant's OPE were based on the feedback of feedback providers and her manager's personal observations all of which were supported by the record; (ii) although the Applicant's supervisor could have made more efforts to seek feedback from the Applicant's feedback providers designated in her OPE in writing, as well as a written assessment by the Applicant's other supervisor at an earlier stage in the process their views on the Applicant's performance were in the end reflected in her OPE; (iii) even though the Applicant was given the opportunity to have the annual OPE discussion and designate the feedback providers in her OPE, she failed to take this opportunity in a timely manner, and, as a result, the preliminary OPE and SRI ratings were set without the required OPE discussion having taken place first and without the feedback providers in her OPE having given their comments; (iv) the Applicant's claims regarding the breach of the ISRP agreement were without merit; (v) Staff Rule 6.22 in the manner that it is currently written supports the Applicant's view that staff while on STD remain in the employ of the Bank for the duration of the STD period with the exception of staff members holding Term appointments; (vi) because the Bank does not appear to have at the moment rules applicable to the Applicant's specific situation it has created a special legal regime for her according to which she is being treated as if she is on LTD when she is not and as if she is a Term employee whose appointment has expired, when she is not; (vii) the Applicant, by virtue of the incorrect application of the Staff Rule to her, is in effect deprived of pay to which she would have otherwise been entitled; (viii) as the Applicant is on STD status with a starting day preceding that of the effective termination of her employment under the ISRP, and according to Staff Rule 6.22 in its current

version such staff remain in the employ of the Bank and benefit from the relevant provisions applicable to them, the Applicant should remain in the employ of the Bank as of the date of the start of her disability and be treated as a staff member on STD as of that date; and (ix) in case the Applicant recovers and is allowed to return to work the provisions of the ISRP are still applicable to her and she will remain at work for the remainder of the days after she was officially approved for STD until the date of her separation under the ISRP.

The Tribunal decided, *inter alia*, that: (i) the Bank shall reinstate the Applicant to its employ and treat her as a staff member on STD whose start of disability or “first day of absence due to illness or injury which leads to disability” is 10 December 2014; (ii) while on STD, the Bank shall allow the Applicant prospectively to exhaust her accrued sick leave at 100% of her net salary before becoming eligible to receive disability pay at 70% of her net salary; (iii) for the period that the Applicant has been on STD after her separation from the Bank, the Bank shall pay her the difference between the pay under her accrued sick leave at 100% of her net salary and the disability pay that she has been receiving since then at 70% of her net salary, namely the 30% of her net salary; and (iv) the Bank shall include any applicable annual adjustments pursuant to paragraph 5.01 of Staff Rule 6.22. The Tribunal also awarded the Applicant attorney’s fees in an amount of \$35,000.