



World Bank Administrative Tribunal

2019

Decision No. 622

**EO (No. 2),
Applicant**

v.

**International Finance Corporation,
Respondent**

(Preliminary Objection)

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**EO (No. 2),
Applicant**

v.

**International Finance Corporation,
Respondent**

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Janice Bellace, and Lynne Charbonneau.
2. The Application was received on 19 March 2019. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The International Finance Corporation (IFC) was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges (i) his Fiscal Year 2017 (FY2017) Annual Review, (ii) his FY2017 performance rating of 2, (iii) the decision not to shortlist him for the Financial Officer position, Job # 170929, (iv) the decision not to select him for the Financial Officer position, Job # 170929, and (v) the refusal to provide feedback on the reasons why he was not shortlisted for the Financial Officer position, Job # 170929.
4. The IFC has raised a preliminary objection to the admissibility of this Application. This judgment addresses that preliminary objection.

FACTUAL BACKGROUND

5. In July 2009, the Applicant began a term appointment as Associate Financial Officer of the IFC Treasury's Quantitative Analysis Department. In July 2011, the Applicant was promoted to Financial Officer. On 1 April 2016, the Applicant was transferred to a different unit.
6. On 29 September 2016, the Applicant was informed by his Supervisor that he would be receiving a performance rating of 2 for his Fiscal Year 2016 (FY2016) Annual Review. On 11

October 2016, the Applicant and his Supervisor discussed an Opportunity to Improve (OTI) plan running from 11 October 2016 to 1 May 2017. However, the OTI was not submitted into the system until 28 November 2016, after discussions between the Applicant and his Supervisor.

7. In November 2016, the Applicant began the process of challenging the FY2016 Annual Review, the performance rating of 2, and the OTI through an Administrative Review (AR) and then a Performance Management Review (PMR). On 24 March 2017, the Applicant was informed that the IFC agreed with the PMR recommendations supporting the FY2016 Annual Review, the performance rating, and the OTI.

8. On 27 March 2017, the Applicant had a Mid-Year Conversation for FY2017 with his Supervisor; the meeting was also attended by the Applicant's Director (who was also the reviewing official for the FY2016 and FY2017 Annual Reviews), a Human Resources (HR) Business Partner, and a Staff Association Representative. At this meeting, the Applicant was informed by his Supervisor that he had failed the OTI and that his appointment would be terminated. In a meeting the next day, the Applicant was informed by the Director that he should look for another job immediately, and that the OTI process was taking up too much of the Supervisor's time.

9. On 3 April 2017, the Applicant was informed that the OTI would be terminated immediately and that the OTI termination would be initiated in the system.

10. On 6 April 2017, the Applicant filed for sick leave, and was later approved for Short Term Disability (STD) in June 2017. The Applicant remains on disability benefits under Long Term Disability (LTD).

11. On 20 June 2017, the Applicant was informed by his Supervisor that his appointment would not be extended past its current end date of 27 January 2018.

12. On 17 October 2017, the Applicant submitted his first application to the Tribunal, challenging (i) the FY2016 Annual Review, (ii) the FY2016 performance rating of 2, (iii) the OTI,

(iv) the April 2017 recommendation that his appointment be terminated, and (v) the June 2017 notice of non-extension.

13. On 3 October 2017, the Applicant received an automated message from ePerformance telling him that the Annual Review had been submitted to the reviewing official for approval for his FY2017 Annual Review. On 11 October 2017, the Applicant received another automated message indicating that the Director, as reviewing official, had approved the Annual Review.

14. In the FY2017 Annual Review, the Applicant's Supervisor stated, under the heading "Individual Business Objectives Summary," that

[the Applicant] had a documented "Opportunity to Improve" (OTI) from October 11, 2016 to May 01, 2017. As mentioned in the mid-year review, the overall assessment of the OTI completion process was not satisfactory. [The Applicant] has been on a short term disability leave since the beginning of April 2017. Accordingly there is no further update.

Under the heading "Overall Supervisor Comments," the Supervisor only wrote, "The overall assessment of the OTI completion progress for [the Applicant] is not satisfactory."

15. On 27 October 2017, the Applicant received an email from his Supervisor stating: "Just wanted to let you know that your SRI [Salary Review Increase] rating for FY2017 is 2." Because of this performance rating, the Applicant received no salary increase for FY2017.

16. The Applicant had no end-of-year conversation to discuss the FY2017 Annual Review, he was not asked to complete a self-evaluation, his colleagues were not asked to provide any feedback to inform the Annual Review, and he was not sent the Annual Review for comments.

17. In May 2018, the Tribunal issued *EO*, Decision No. 580 [2018], paras. 169–71, stating:

The Tribunal concludes that the Applicant's FY2016 Annual Review and performance rating were not arbitrary, unfair, or unbalanced. However, the participation of the Director, who was the Reviewing Official, at the year-end meeting constitutes a violation.

The Tribunal finds that the OTI process was unfair and did not give the Applicant a “genuine chance to succeed.” In light of the flawed OTI process, the Tribunal further finds that the non-renewal of the Applicant’s appointment due to poor performance constitutes a failure in the proper exercise of managerial discretion.

The Tribunal finds that the Applicant has not made a *prima facie* case that he was the subject of retaliation.

18. The Tribunal then decided that

[t]he IFC shall have 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;

and that

[t]he IFC shall rescind and remove all records of the OTI from the Applicant’s personnel records.

19. After the March 2017 Mid-Year Conversation and subsequent instruction to look for another job, the Applicant began searching for other positions within the World Bank Group. On 22 May 2017, the Applicant applied for the position of Financial Officer, Level GF-GG, Job # 170929, in the IFC’s Client Solutions Global Support unit.

20. On 24 March 2017, during a townhall meeting with the IFC Treasury Vice Presidency staff, the IFC Vice President and Treasurer (CFIVP), issued guidance to managers providing that, during the hiring process for positions within the Vice Presidential Unit, current IFC Treasury staff should be shortlisted. This guidance was repeated in an email to all Treasury staff on 5 June 2017.

21. On the same day the Financial Officer position was announced, the hiring manager designated a Principal Financial Officer to lead the hiring process. A Shortlisting Committee (SLC) was created, composed of the Principal Financial Officer, a Senior Financial Officer, and a third member who left the IFC before the SLC met to review the applications which had been submitted. The Principal Financial Officer noted that he and the Senior Financial Officer were the two most senior members of the same unit. The Principal Financial Officer provided oral guidance

to the Senior Financial Officer to select candidates for the short list. There was no long list of candidates compiled, and, as stated by the Principal Financial Officer, there

were no written summations produced regarding the assessment of the candidates ultimately chosen to be short-listed and interviewed. [The Senior Financial Officer] and [the Principal Financial Officer] did the short-listing directly [themselves] and work in the same office, thus obviating the need for any written communication.

22. The shortlisting process was completed in July 2017 and four candidates were shortlisted; the Applicant was not shortlisted for the position. According to the Principal Financial Officer, the Applicant was not shortlisted based on feedback the Principal Financial Officer had received from a former supervisor of the Applicant in April 2017 indicating that the Applicant had performance issues and was on an OTI.

23. The Applicant was not informed of the decision not to shortlist him, and, on 20 October 2017, the Applicant emailed the hiring manager requesting an update on the shortlisting process. On 23 October 2017, he forwarded the email to the HR contact for the position since he had not yet received a response. Later that day, he received an email from the hiring manager informing him that the Principal Financial Officer was responsible for the hiring process for the position. The Principal Financial Officer then emailed the Applicant informing him that they had already “shortlisted, interviewed, and hired someone for [the] position.” The Applicant responded to the email requesting feedback on why he was not shortlisted. On 8 November 2017, the Applicant received an email from the HR contact informing him the selection process for the position was finalized. The Applicant also responded to this email requesting feedback on why he was not shortlisted.

24. Neither the Principal Financial Officer nor the HR contact responded to the Applicant’s request for feedback. The Principal Financial Officer later stated “that he made the decision not to provide feedback to [the Applicant] as there was a ‘tribunal process [filed by the Applicant] at the time.’”

25. On 26 December 2017, the Applicant filed a request for an AR of his FY2017 Annual Review and performance rating, challenging the “unfairness of the OTI; [...] that his positive

accomplishments were not taken into account; and [...] that the rating of ‘2’ hindered applications for other employment within the World Bank Group.” On 8 May 2018, the AR reviewer forwarded his recommendation to the Applicant, concluding that he had “not found any evidence of either noncompliance with the annual performance management process, nor [the Applicant’s] overall performance having been inappropriately assessed and evaluated.”

26. On 17 May 2018, the Applicant requested a PMR challenging the FY2017 Annual Review and performance rating. Finding that the FY2017 Annual Review “was based entirely on [the Applicant’s] performance in implementing the OTI,” the PMR recommendation concluded

that there was not a reasonable and observable basis for awarding a performance rating of “2” since the OTI on which it was based did not meet the requirements of Staff Rule 5.03. Accordingly, [the PMR] recommend[ed] a reassessment of [the Applicant’s] FY17 performance evaluation, an upgrade of his FY17 performance rating from “2” to at least “3”, and financial compensation by an amount equal to the difference, for the time that he was employed by IFC in FY18, between the salary associated with a rating of 2 and one associated with a rating of 3.

27. On 13 July 2018, the Applicant was informed by the CFIVP that he

[does] not accept the PMR recommendation as it is inconsistent with and already covered by the Tribunal’s decision in this matter, especially given the fact that IFC has decided to pay damages rather than reinstate [the Applicant]. Further, the Tribunal concluded that [the Applicant’s] performance review and rating were not arbitrary, unfair or unbalanced. With respect to [the Applicant’s] performance evaluation record, this will be addressed according to the Tribunal’s decision. Further, [the Applicant] already will have received compensation from the Tribunal with respect to [the Applicant’s] performance management concerns. Therefore, this entire matter is *res judicata* and moot.

28. On 9 August 2018, the PMR reviewer emailed the CFIVP, clarifying that “[t]he recent Tribunal decision was concerning [the Applicant’s] FY16 performance evaluation and not FY17’s which was the subject of [the] review.” The CFIVP replied on 9 August 2018, thanking the reviewer for the clarification. No further action was taken.

29. On 16 February 2018, the Applicant filed a Request for Review with Peer Review Services (PRS) challenging the “non-shortlisting for Job # 170929; his consequent non-selection; and IFC’s refusal to give him feedback regarding his not being shortlisted.”

30. On 18 October 2018, the PRS Panel issued its Report, concluding

that the non-shortlisting decision was made on a reasonable and observable basis and that there was no evidence of bad faith in making the decision. [...] [H]owever, [...] management did not follow a proper process in the manner in which it conducted the shortlisting process for the position. [...] [I]n this way, the WBG [World Bank Group] did not act consistently with [the Applicant’s] former contract of employment and terms of appointment.

Specifically, the Panel concluded that

i) the composition of the Shortlisting Committee (SLC) was not diverse; ii) there was no contemporaneous and detailed documentation of the shortlisting process; and iii) management failed to provide feedback to [the Applicant] regarding the outcome of his application for the position upon his request.

The Panel recommended “that the WBG provide [the Applicant] with compensation in the amount of three (3) months of his net salary.”

31. On 15 November 2018, the Applicant was informed by the IFC Chief Executive Officer (CEO), that he

[does] not accept the Panel’s recommendation. [The IFC CEO] consider[s] this matter to be covered and resolved by the World Bank Administrative Tribunal’s Decision No. 580 concerning [the Applicant’s] Opportunity to Improve. The Tribunal provided [the Applicant] full compensation for all wrongs that stem from that performance management exercise. Therefore, this matter is moot.

32. In the meantime, on 23 October 2018, considering the pending PRS Request for Review, the Tribunal informed the Applicant that it had granted his request for an extension of time to file a consolidated application. On 29 November 2018, the Tribunal informed the Applicant of the 19 March 2019 deadline to file a consolidated application with the Tribunal.

33. On 19 March 2019, the Applicant submitted this Application to the Tribunal. He challenges (i) the FY2017 Annual Review, (ii) the FY2017 performance rating of 2, (iii) the decision not to shortlist him for the Financial Officer position, Job # 170929, (iv) the decision not to select him for the Financial Officer position, Job # 170929, and (v) the refusal to provide feedback on the reasons why he was not shortlisted for the Financial Officer position, Job # 170929.

34. The Applicant seeks the following relief: (i) rescission of the FY2017 Annual Review and the removal of all records of it from his personnel files, (ii) rescission of the FY2017 performance rating of 2 and the removal of all records of it from his personnel files, (iii) the award of a performance rating of at least 3 for FY2017, (iv) a retroactive salary increase of at least 4% consistent with a performance rating of 3 for FY2017, and (v) “[s]uch additional compensation as the Tribunal deems just and appropriate for the extraordinary stress caused by management’s continuing unfair treatment of [the Applicant] and the further damage to his reputation.”

35. On 30 April 2019, the IFC filed a preliminary objection.

36. For the preliminary phase of the proceedings, the Applicant claims legal fees and costs in the amount of \$16,626.95.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The IFC’s Main Contention

37. The IFC contends that the Tribunal lacks jurisdiction because the claims of the Application are barred by the principle of *res judicata*.

38. The IFC submits that the Applicant is challenging the CFIVP’s decision not to accept the recommendation of the PMR and the IFC CEO’s decision not to accept the recommendation of the PRS Panel. According to the IFC, “[b]oth decisions above denied the Applicant additional compensation for alleged procedural flaws in his FY17 performance review and non-shortlisting process.” The IFC submits that the Applicant was compensated in the amount of three years’ salary

for its actions related to the OTI (as determined by the Tribunal in Decision No. 580), and that this compensation covers all harms resulting from the OTI. Therefore, because the Applicant's current claims arise from the same OTI, according to the IFC, any further payments would be duplicative and barred as *res judicata*.

39. The IFC cites Tribunal precedent on *res judicata*, specifically *González Flavell (No. 4) (Preliminary Objection)*, Decision No. 597 [2018], para. 40, citing *B (No. 2)*, Decision No. 336 [2005], para. 39, where the Tribunal stated: "The two conditions that must be met for the application of *res judicata* are 'that the parties are the same in both cases and that the substance of the claim is essentially the same in both applications.'" The IFC contends that the Application

fails to show that the operative facts which formed the basis of Decision No. 580, namely Applicant's FY16 performance evaluation as well as the FY17 Opportunity to Improve ("OTI"), are any different from the facts which are the basis for the decisions challenged in this second Application.

40. The IFC submits that the Applicant's contention that the FY2017 Annual Review was incomplete because it was based solely on the OTI, which was only in effect for part of the year, is misleading. According to the IFC, the "tasks for the period before the OTI were the very same tasks he had failed to perform in FY16, for which the Tribunal already ruled in Decision No. 580 that he was properly rated a 2." The IFC contends, then, that a review of the IFC's decision regarding the PMR recommendation would result in a *de novo* review of the Applicant's FY2017 Annual Review, which would result in "re-litigating the same facts for the same OTI." To the IFC:

A performance review and OTI process are two sides of the same coin, and linked by a common nucleus of facts. They occur in parallel: the same official manages both processes; Applicant was assessed on the same tasks; the period for review was likewise the same. It will be impossible to reconcile the lack of "genuine opportunity to succeed" in Applicant's FY17 OTI with a different conclusion in this review of Applicant's FY17 performance review process that Applicant seeks here.

Ultimately, the IFC views the Applicant as already having been awarded compensation by the Tribunal for the alleged harms, and further review would only result in double compensation. The IFC further suggests that the Applicant might have consolidated his claims regarding the FY2017 Annual Review and performance rating with his prior Tribunal case.

41. Regarding the challenge to the non-shortlisting decision, the IFC contends that the Applicant is attempting to reopen the Tribunal's determination in Decision No. 580 that "the Applicant's FY2016 Annual Review and performance rating were not arbitrary, unfair, or unbalanced." The IFC contends that the non-shortlisting decision was a consequence of the FY2016 Annual Review, therefore any challenge to that decision would in effect be a challenge to the Tribunal's findings regarding that Annual Review. To the extent that the non-shortlisting decision was a consequence of the FY2017 OTI, the IFC contends that, because the OTI covered the same tasks as the FY2016 Annual Review, the Applicant's challenge would result in relitigating the facts of Decision No. 580.

The Applicant's Response

42. The Applicant submits that the IFC's contention that his claims are barred by the principle of *res judicata* "is entirely devoid of merit because [the Applicant's] current claims are completely separate from his original case and are based on [the IFC's] abusive actions that post-date that first Application." The Applicant contends that his first case before the Tribunal concerned (i) his FY2016 Annual Review and performance rating, (ii) the resulting OTI, and (iii) his threatened termination; whereas his current Application concerns (i) his FY2017 Annual Review and performance rating, and (ii) "the abusive treatment he received when he applied for an alternative position but was not shortlisted and was denied any feedback on the reasons for his non-shortlisting." The Applicant further contends that the decisions which he is contesting regarding those claims "post-date not only the filing of his first application, but also the Tribunal's decision in Case 580." The Applicant responds to the IFC's contention that the challenge to the FY2017 Annual Review and performance rating should have been consolidated with his first application by referring to the Tribunal's requirement that all internal remedies must first be exhausted.

43. The Applicant contends that the IFC's argument regarding the *res judicata* effect of the Tribunal's decision upholding the FY2016 Annual Review and performance rating on the Applicant's current challenge to the FY2017 Annual Review and performance rating is "logically absurd," as the Tribunal made "no findings and expressed no opinion whatsoever about the quality of [the Applicant's] work during the OTI period – or at any other period during FY17" and the

similarity of tasks performed “says nothing at all about [the Applicant’s] performance of that work in FY17, or whether [his Supervisor’s] assessment of the work in FY17 ‘was arbitrary, discriminatory, improperly motivated, or carried out in violation of a fair and reasonable procedure.’”

44. The Applicant further contends that the numerous claims being made regarding the FY2017 Annual Review and performance rating – including

that they were entirely based on the abusive OTI which the Tribunal rejected; that the OTI only covered a few months of FY17 (November to March) and that he was not assessed for any of the rest of the year; that management did not ask [the Applicant] for his own self-evaluation; that management did not gather any feedback at all from other staff with whom [the Applicant] worked; that management did not discuss the final evaluation with him; that he was not given any opportunity to review the written evaluation or provide any comments – or even to receive it; and that – once again – the Reviewing Official had actively participated in the evaluation before reviewing it –

were not considered by the Tribunal in Decision No. 580, “which looked solely at the previous year’s evaluation and rating, and at the terms of the OTI.” (Emphasis in original.) To the Applicant, then, it is “manifestly not the case here” that the substance of the claim is essentially the same as that in the case previously considered by the Tribunal.

45. In response to the IFC’s contention that the compensation paid to the Applicant as a result of Decision No. 580 was meant to cover all harms resulting from the OTI, the Applicant contends that “the Tribunal never considered the further additional impact [the OTI] would have on the following year’s evaluation.” The Applicant contends that the compensation awarded was only in consideration of the Applicant’s termination. The Applicant submits that the use of the OTI as the basis for the FY2017 Annual Review and performance rating resulted in the Applicant receiving no salary increase for FY2017, which caused the amount the Applicant receives under STD and LTD, the amount awarded by the Tribunal, and the amount contributed to his pension to be less than those amounts would have been had the Applicant received a fair performance rating in FY2017. The Applicant also contends that the FY2017 performance rating will damage his future employment opportunities.

46. Regarding the IFC's argument concerning the non-shortlisting decision, the Applicant contends that the IFC did not address the majority of the Applicant's claims. Specifically, the Applicant challenges

(1) that he was not automatically shortlisted for the position as required by IFC practice and the rule established by the VP; (2) that the reasons given for his non-shortlisting were arbitrary and discriminatory; (3) that the shortlisting process violated virtually all of the mandatory procedures; (4) and that the hiring officer refused to give [the Applicant] feedback on the reasons for not shortlisting him in retaliation for filing his first Tribunal case.

The Applicant contends that "[n]ot one of these claims has any connection whatsoever with the *EO* case" such that the IFC's claim that they should be barred by the principle of *res judicata* "is quite simply absurd."

47. Finally, the Applicant contends that,

if the [IFC's] logic were to be accepted, it would mean that once a staff member has filed a Tribunal application, management could retaliate with impunity claiming that any other abusive decision which conceivably could have some association with the first case could be dismissed as *res judicata*.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

48. Article XI(1) of the Statute of the Tribunal provides, "Judgments shall be final and without appeal."

49. In *Pal (No. 2)*, Decision No. 406 [2009], para. 34, citing *Madabushi*, Order No. 2002-10 [2002], para. 4, the Tribunal recalled that "previously adjudicated claims that an applicant attempts to submit again in another application are 'irreceivable under the principle of *res judicata*.'"

50. For the purposes of this Tribunal, "[t]he two conditions that must be met for the application of *res judicata* are 'that the parties are the same in both cases and that the substance of the claim is essentially the same in both applications.'" See *González Flavell (No. 4) (Preliminary Objection)*, para. 40, and *B (No. 2)*, para. 39.

51. In a recent *res judicata* decision, *González Flavell (Nos. 5 and 7) (Preliminary Objection)*, Decision No. 603 [2019], paras. 101–02, the Tribunal dismissed the Bank’s preliminary objection, finding that

the claims and issues raised by the Applicant in Decision No. 570 differ from those in Application No. 5. The issues at stake in that case concerned the Applicant’s employment status pending the resolution of her return to work claim. In the present case, however, the Applicant is challenging the use of her annual leave without her consent while she was on STD. The Tribunal considers that “the substance of the claim” is not the same in Decision No. 570 and the present Application.

52. In *González Flavell (No. 8) (Preliminary Objection)*, Decision No. 605 [2019], para. 51, the Tribunal found “that the [a]pplicant’s claims concerning her FY2014 and FY2015 OPEs [Overall Performance Evaluations] are a matter that the Tribunal has already examined in Decision No. 553 and are, therefore, excluded from the Tribunal’s review on the basis of the principle of *res judicata*.” However, at para. 52, the Tribunal held “that the [a]pplicant’s claim that the Bank failed ‘to afford [her] her right to an Overall Performance Evaluation after she returned from Short Term Disability leave in 2017’ constitutes a new claim that was not the subject of review by the Tribunal in Decision No. 553.”

53. The Tribunal, therefore, will examine the facts and claims in *EO*, Decision No. 580 and compare them to those in the present Application.

54. In Decision No. 580, para. 3, the Applicant challenged

(i) his Fiscal Year 2016 (FY2016) Annual Review, (ii) his FY2016 performance rating of 2, (iii) the Opportunity to Improve (OTI) plan dated 28 November 2016, (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.

55. At paras. 169–70, the Tribunal held

that the Applicant’s FY2016 Annual Review and performance rating were not arbitrary, unfair, or unbalanced. However, the participation of the Director, who was the Reviewing Official, at the year-end meeting constitutes a violation.

[...] that the OTI process was unfair and did not give the Applicant a “genuine chance to succeed.” In light of the flawed OTI process, the Tribunal further finds that the non-renewal of the Applicant’s appointment due to poor performance constitutes a failure in the proper exercise of managerial discretion.

56. The Tribunal did not consider any of the decisions which the Applicant challenges in the present Application (see paragraph 33, above). As such, it cannot be said that the “substance of the claim” is the same in Decision No. 580 and the present Application.

57. The IFC contends that the substance of the claim must be the same between Decision No. 580 and the present Application because it is the same OTI which was challenged in that Decision which formed the basis for the presently challenged FY2017 Annual Review and performance rating. The Applicant is not, however, challenging the OTI for a second time before the Tribunal. Instead, the Applicant is asking the Tribunal to review decisions, several of which he claims were influenced by the subsequently invalidated OTI.

58. The IFC contends that allowing the Application to proceed “will result in a *de novo* review of Applicant’s FY17 performance rating review. [...] [T]his same nucleus of facts was decided upon in Decision No. 580 and there is no reason to relitigate the matter here.” This argument is without merit, however, as the Tribunal did not consider the FY2017 Annual Review or performance rating in Decision No. 580.

59. Finally, the IFC “submits that the extent of compensation awarded to Applicant in Decision No. 580 were intended for all alleged harm that arose from the same flawed OTI.” There is no basis in the Tribunal’s Decision to support this claim. In Decision No. 580, the Tribunal ordered:

(1) The IFC shall have 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;

(2) The IFC shall rescind and remove all records of the OTI from the Applicant’s personnel records.

The compensation awarded in Decision No. 580 was meant to compensate the Applicant for the decisions challenged in Decision No. 580. In fact, had the Tribunal intended that the order of reinstatement or three years' net salary be a complete remedy for the flawed OTI, it would not have ordered it rescinded.

60. The Tribunal finds that the present Application is not barred by the principle of *res judicata*.

DECISION

- (1) The IFC's preliminary objection on the principle of *res judicata* is dismissed; and
- (2) The IFC shall pay the Applicant's legal fees and costs in the amount of \$16,626.95.

/S/ Andrew Burgess
Andrew Burgess
Vice-President

/S/Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 25 October 2019