



World Bank Administrative Tribunal

2022

Decision No. 680

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

v.

**International Bank for Reconstruction and Development,
Respondent**

(Merits)

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

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

v.

**International Bank for Reconstruction and Development,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Mahnoush H. Arsanjani (President), Marielle Cohen-Branche (Vice-President), Janice Bellace (Vice-President), Andrew Burgess, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.
2. The Application was received on 12 October 2021. The Applicant was represented by Stephen C. Schott of Schott Law Associates, LLP. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 23 May 2022.
3. The Applicant challenges his non-promotion, alleges that he was not fairly graded, and claims retaliation.

FACTUAL BACKGROUND

4. The Applicant joined the World Bank Group (WBG) in 2003 as an Information Technology (IT) Assistant, Client Support, Resident Mission in China. In 2018, the Applicant became a Senior IT Assistant, Grade Level GD, in Information and Technology Solutions (ITS), Regional Client Services, based in Beijing, China.
5. The Applicant served as a member of a team of five IT professionals in the Beijing Office. According to the Bank, four of these five IT professionals provide first-level IT support while the fifth member of the team, a Grade Level GF Location Lead, Beijing Office (Location Lead), is primarily responsible for IT service management, Country Office IT infrastructure management, and business continuity during crisis, among other functions. Further, according to the Bank,

“Senior IT Officers, at [Grade] Level GG staff, are primarily responsible for independently managing [the] budget for a team of around 15 to 20 staff and ensuring cohesive delivery of IT support services across all the COs [Country Offices] in the Region.” The Applicant’s supervisor was a Senior IT Officer and Regional Lead, East Asia and Pacific (Supervisor).

6. For Fiscal Year 2017 (FY17), the Applicant received a performance rating, also known as a Salary Review Increase rating (SRI), of 2.

7. For FY18, the Applicant received a performance rating of 2. The Applicant filed a request to challenge his FY18 performance rating and performance evaluation through the Administrative Review process and the Performance Management Review process before filing an application with the Tribunal in which he challenged his FY18 performance rating of 2.

8. In *FH*, Decision No. 624 [2020], para. 55, the Tribunal stated that it was “not convinced that the rating of 2 had a reasonable and observable basis.” Further, the Tribunal concluded that

the Applicant’s due process was violated during the performance management process because his performance rating was decided before he was given the opportunity to have a performance discussion, and he was not provided a timely opportunity to comment on his perceived deficiencies before his performance rating was decided. [*Id.*, para. 70.]

Accordingly, the Tribunal ordered, *inter alia*, that the Applicant’s FY18 performance rating be rescinded and that all references to it be removed from his personnel file.

9. As a result of the Tribunal’s judgment in *FH* [2020], the Applicant’s final performance rating for FY18 was changed from a 2 to a 3.

10. The Applicant was on Short-Term Disability leave from 22 February 2018 to 9 January 2019.

11. The Applicant’s performance rating for FY19 was a 9. According to the Bank, pursuant to Section 3.01 of the WBG Procedure on Annual Pay Increases for Staff Ineligible for Performance

Ratings, “[a] Staff Member who has been on the Disability Insurance Program, including the return to work provision of the Disability program, for longer than six months cumulatively during the performance cycle [...] is not eligible for a performance rating.” According to the Bank, because the Applicant was on Short-Term Disability leave from 22 February 2018 to 9 January 2019, he was “ineligible for the regular performance rating” and thus “received a special rating of 9 for FY19.”

12. On 13 May 2020, the Senior Manager, ITS Client Services (Senior Manager) emailed the Applicant, copying the Supervisor’s Manager and stating:

We just concluded discussions on [...] staffing needs for [...] Sofia and are actively building capacity of the team. In-light of our earlier discussions and your interest in re-locating out of Beijing, I wanted to bring it to your attention. We could explore here a permanent re-assignment for you to Sofia.

Give this some thought and let us know if any questions. We can also consider once travel bans are lifted, a DA [Developmental Assignment] in Sofia for a couple of months as a first step before [the] final decision.

According to the Bank, the Applicant declined this opportunity.

13. On 1 June 2020, the ITS Vice President and WBG Chief Information Officer sent an email to “ITS VPU [Vice Presidential Unit] All Staff” concerning “FY20 Year-[E]nd Talent and Performance Review” and summarizing the process for progression and promotion. In particular, the email included the following:

- June 29–July 17: Individual meetings with staff to review self-assessment, provider [*sic*] inputs and discuss performance. For a proper process, it is necessary that supervisors/managers have an initial performance discussion with staff prior to the management review meeting(s). [Emphasis in original.]
- July 20–July 24: Departmental review meetings. During these meetings, the departmental management team will discuss developmental actions focusing on top talents and those whose performance have not met expectations. Each department will also discuss the staff proposed for in-situ promotions applicable only to Grade D to E, and E to F; and progression from F1 to F2, and G1 to G2.

14. On 17 July 2020, the Applicant had his “End of Year Performance Discussion” with his Supervisor and the Supervisor’s Manager.

15. The Applicant’s SRI for FY20 was an 8. According to the Bank, “given the unprecedented[ed] situation resulting from the COVID[-]19 pandemic, the Senior Leadership of the World Bank Group adopted a one-time exceptional change to the year-end performance review process to use a special rating for ‘all staff in good performance standing and eligible for a performance rating.’” According to the Bank, “[a]s such, every staff member of the WBG who was in good performance standing received an SRI of 8 for FY20.”

16. According to the Applicant and as he stated in the “Staff’s Comments” in the “Overall Contributions” section of the Applicant’s “FY20 Annual Review,” wherein he referenced himself by name:

During the extremely challeng[ing] time of the pandemic in China, [the Applicant] shows strong sense of responsibility and remarkable initiative, demonstrates high capability in both technical solution and communication skill to coordinate with the management and respective productive team to secure the Beijing office running smoothly and prevent the potential risk in advance. As a D level staff [the Applicant] has better professional sense than the location lead and regional lead with F and G grade, [the Applicant] always takes the business need and clients’ request as the high priority. [...]

[The Applicant] takes lead on the [T]-mobile eSIM testing in Beijing and helps user to set up the eSIM with the WBG iPhone. [The Applicant] is experienced in the [T]-mobile service support in China and instructs the users to work with the service properly and efficiently. But at the same [the Supervisor] refused to provide the [T]-mobile plan and device to [the Applicant], and asked the team to escalate the [T]-mobile service request to the location lead, who even has no idea on how the [T]-mobile plan works with the China government firewall and declares to the regional team that eSIM is not supported in China. Even being treated with obvious bias [the Applicant] still keeps contributing with his high quality service. [...]

[The Applicant] has proven good communication skill with the clients, local and remote team members, HQ [headquarters] project and product teams, as well as the management of local office and ITS management, that is why [the Applicant] can run the biggest number of users smoothly through so many years, and why [the Applicant] can resolve so many tough issues together with the technique team and management.

The supervisor still keeps targeting on [the Applicant] with selective manner and cannot provide necessary support to [the Applicant] to accomplish the achievements smoothly. To mitigate the negative impact to [the Applicant], hope the management can provide more opportunity to [the Applicant] including assignment in HQ to restore the close relationship with the product team, and the necessary system access privilege for better service to the clients.

17. The Applicant further stated in the “Staff’s Comments” in the “Overall Contributions” section of the Applicant’s “FY20 Annual Review”:

Through so many years [the Applicant] shows outstanding capability to handle double size or even 3 times [the] number of clients rather than his peers with higher grade, but [the Applicant’s] remarkable performance is never recognized with deserved grade and always granted with the lowest level among the team. On the other hand, the regional lead was granted with his current high grade when he promised to lead the whole EAP [East Asia and Pacific] IT team, but today it is proven that he cannot undertake his full duty and now only take care half region, but he can still maintain his grade which is supposed to handle the double work load. Comparing the situation of these 2 cases, obviously there is something unfair and not that reasonable.

18. In the Applicant’s “FY20 Annual Review,” the Supervisor in the “Supervisor’s Comments” in the “Overall Contributions” section stated:

[The Applicant] has had good success in certain areas of his performance. Client feedback in the Beijing office is also very positive. We have seen thousands of BRAVO Points being awarded for significant contribution [...]. To keep China users productive during HBW [home-based work] while COVID-19 pandemic measures are in place, the team relied on [the Applicant’s] technical advice, testing and feedback on AnyConnect and to get Global Protect working. [The Applicant] quickly proposed a Global Protect VPN Solution for Mobile devices, in anticipation of changes to the Internet filtering in China. [The Applicant] took independent initiative to develop a solution directly with ITSNI [ITS Network & Infrastructure Delivery] engineers, pulling together technical engineers to discuss and plan technical aspects of the project - seemingly without any help or involvement of the Client Services Regional Leader. [The Applicant] worked directly with the Windows Engineering team to propose a special image for China Country Office, to include a number of customizations including language packs and configuration changes. Colleagues from around EAP have also recognized [the Applicant’s] efforts to [...] make things more efficient for users. This all demonstrates a positive ability and confirms that [the Applicant] is fully capable to work well within a team setting.

19. The Supervisor in the “Supervisor’s Comments” in the “Behaviors and Skills to [D]evelop” section of the Applicant’s “FY20 Annual Review” noted:

Relationships, teamwork and trust remain strained and the cooperation is not at the level we expect. Regarding daily work, I have feedback indicating that [the Applicant] can do the same as others on the team by trying to do his best as much as he can, thus taking some workload from others. We have worked together to try to leave the past behind us with input from [the] Regional Cluster Manager to ensure that no targeting behavior is taking place. I recommend that [the Applicant] finds a way to move forward and cooperate more effectively, keeping those particular work relationships in mind.

20. Further, in the Applicant’s “FY20 Annual Review,” the “Supervisor’s Manager’s Comments” stated:

While technically [the Applicant] is solid and is appreciated by his clients and peers, he continues to have unresolvable issues with his [Location Lead] and Supervisor, in spite of repeated interventions by Manager, [Senior] Manager and Director.

[...]

Given the ongoing issues that [the Applicant] continues to have with his [Location Lead] and [Supervisor], ITS Management has facilitated a one[-]year DA for [the Applicant] with ITSCU [ITS Unified Communications].

21. The Applicant began a one-year Development Assignment as a Senior IT Assistant in ITSCU on 1 October 2020.

22. On 13 October 2020, the Applicant emailed the Supervisor to inquire whether he would be promoted in the FY20 performance evaluation cycle. The Supervisor’s Manager was copied on the Applicant’s 13 October 2020 email.

23. On 14 October 2020, the ITS promotions and progressions for FY20 were announced via an email from the ITS Vice President and WBG Chief Information Officer to “ITS VPU All Staff.” According to the email, 38 staff received *in situ* promotions, 20 staff progressed in their grades, and 17 staff were promoted through a competitive process. The email also outlined the process

followed with respect to the *in situ* promotions and progressions. According to the Bank, no one on the Applicant's team received a promotion in FY20.

24. On 16 October 2020, the Supervisor's Manager responded to the Applicant's email of 13 October 2020, stating:

As regards promotion please note that all Promotion/Progression decisions are made by ITS Management based on [the] following criteria:

- a. Competency levels (deliver results for clients; collaborate within teams & across boundaries; lead and innovate; create, apply, and share knowledge; and make smart decisions);
- b. Performance track record;
- c. Business needs for the positions on the next grade level;
- d. Modeling WBG Core Values (Impact, Integrity, Respect, Teamwork, and Innovation).

We completed the Management Review meetings in July 2020 for FY20 where ITS promotions and performance were discussed and finalized. We do not think that there was a case to be made for your promotion this year based on the criteria mentioned above. However, we will be happy to discuss your career aspirations when we meet next.

25. On 28 October 2020, the Director, ITS Global Telecoms & Client Services (ITSGC Director), emailed the Applicant thanking him for his contributions to ITS, congratulating the Applicant on being recognized during an ITSGC Team Awards ceremony of 27 October 2020, presenting the Applicant with his recognition eCertificate, and wishing the Applicant continued success.

26. On 28 October 2020, the Applicant responded to the ITSGC Director's email, stating:

It is my honor to get recognized and listed together with you and our intelligent product team in HQ and Chennai.

Furthermore hope my contributions can also be recognized with a deserved grade and position. As you know this GlobalProtect solution has been implemented in Beijing many years ago with my proposal, effort and your support, but

unfortunately was not recognized in time because of the reason that we all know today.

27. On 30 October 2020, the ITSGC Director responded to the Applicant's email, stating:

[The] ITSGC Awards ceremony is all about celebrating our successes [...]. It doesn't mean that everyone congratulated deserves a promotion.

Frankly I don't believe that you haven't been promoted in 5 years because someone works against you. There are tens of other hard working and high performing competent staff who have been in their grade level for a long time. Your managers and I accepted that you do not get along with [the Supervisor] and don't wish to work with him as your supervisor. We put a lot of effort to accommodate your request by arranging a totally new opportunity ([developmental] assignment) as a member of a technical team under a different supervisor.

I wish you great success, and hopefully this DAIS assignment leads to a permanent reassignment to [the] ITSCU unit with [the] prospect of reaching [a] higher grade level down the road. Before any promotion consideration, you need to demonstrate mastery of technical competencies and appropriate soft skills.

28. On 2 November 2020, the Applicant filed a Request for Review with Peer Review Services (PRS). He stated the "Disputed Employment Matter(s)" as "Non-promotion in FY20," and further stated in his Request for Review, "The supervisor and manager refuse to promote [the Applicant] to the deserved grade, [the Applicant's] performance was not fairly evaluated in the past years due to distorted information from the malicious supervisor." In addition, the Applicant claimed "[r]etaliation from the supervisor and unfair performance evaluation."

29. On 22 June 2021, the PRS Executive Secretary issued an Office Memorandum to the Applicant and the Supervisor's Manager regarding "Request for Review No. 533 [the Applicant] Peer Review Panel's Decision to Dismiss the Request for Review." The PRS Panel dismissed the Applicant's Request for Review in its entirety, stating that it did not have jurisdiction under Staff Rule 9.03.

30. On 12 October 2021, the Applicant filed this Application with the Tribunal.

31. In this Application, the Applicant states that he

seeks a Tribunal decision that the Non-Promotion decision: 1. was unfair and an abuse of discretion by his Managers despite [the] Applicant's strong performance and the fact that [the] Applicant's performance was not in the past fairly evaluated by his supervisors; 2. That [the] Applicant was not fairly graded [vis-à-vis] other staff in his peer group and the refusal to grade him at the appropriate level violated his rights to fair consideration in employment matters. [Emphasis in original.]

The Applicant further states:

[The] Applicant believes this was a retaliatory act by his [Supervisor] as the denial of promotion ignored [the] Applicant's strong performance which was superior to higher level staff performing the same or similar functions.

32. The Applicant seeks the following:

- Salary increase reflecting the higher-Grade level to be paid for a period to be determined, but not less than from and after his 2019 APR [Annual Performance Review] a period of about 2 years.
- Order that [the Bank] – HR [Human Resources] audit his position to determine his proper grade, that [the] Applicant contends should be Level F.
- Recommendation of promotion to the next Grade Level, i.e. Level E, and salary for two years at that grade level.

33. The Applicant also states that he

requests moral damages for unfair treatment, particularly the failure to consider his right to be graded on the basis of his responsibilities and performance and his claim that the failure to do so is proof of retaliation as may be equitably assessed by the Tribunal.

34. The Applicant claims legal fees and costs in the amount of \$15,987.20.

35. Finally, the Applicant “requests the Tribunal to recommend a move to Headquarters to give [the] Applicant a fresh start away from the current hostile work environment, which has over the years affected his career prospects and even his health.”

36. On 11 November 2021, the Bank filed its preliminary objection and requested that the Tribunal summarily dismiss the Application pursuant to Rule 7(11) of the Tribunal's Rules.

37. In *FH (No.2) (Preliminary Objection)*, Decision No. 676 [2022], the Tribunal dismissed the Bank’s preliminary objection, explaining that “the Tribunal is satisfied that the Applicant has presented a plausible claim of the Bank’s violation of his rights and that the circumstances warrant an examination of the merits of the allegations” (*id.*, para. 48), and further noting that “[t]he issues [...] include the Applicant’s claim that he has been unfairly treated in violation of Principle 2.1 of the Principles of Staff Employment [...] [and his] claim of retaliation” (*id.*, para. 49).

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant’s Contention No. 1

The failure to promote the Applicant is unfair and unreasonable and constitutes an abuse of discretion by the Bank

38. The Applicant submits that the Bank has violated his rights as a staff member under Principle 2.1 of the Principles of Staff Employment in its “failure to consider him for promotion despite fulfilling the set requirements.” The Applicant asserts that “there has been [a] gross abuse of managerial discretion.” The Applicant contends that while

[p]romotion is a quintessentially management decision [...] [t]he Tribunal can, however, find that [the] failure to consider [the] Applicant for promotion was an abuse of discretion and can order as remedy that [the] Applicant’s position and responsibilities be audited to determine whether he is correctly graded and provide compensation for the WB’s [World Bank’s] failure to act on [the] Applicant’s grade level.

39. The Applicant submits that the evidence shows that he “is a highly competent IT expert in a poorly managed unit.” The Applicant further asserts that he “has repeatedly complained that he was ranked lower than his peers while handling as much or more workload as his peers.” In the Applicant’s view, “[a] comparison of [the] Applicant with [the Supervisor] shows that [the] Applicant’s lack of promotion is unfair and unreasonable.”

40. The Applicant asserts that, “during the extremely challenging time of the pandemic in China, [the] Applicant showed a strong sense of responsibility and remarkable initiative.” He

submits that “as a D level staff [the] Applicant has better professional capabilities than the location and regional leads who hold F and higher grades.” He avers that “his Management did not seek to contradict his claims and largely implicitly accepted his description of his contributions to the department as well as acknowledging his high skills level.” In the Applicant’s view, “his managers have never given him an opportunity to act in a position above his current one despite the fact that he is more than capable,” and he asserts that the Bank “cannot deny the fact that [the] Applicant is a high performer and has been consistently supporting the largest number of clients efficiently and to a high standard.”

41. The Applicant submits that Staff Rule 5.05, paragraph 3.01, which addresses promotions, does not require that he request a promotion. The Applicant states that “[m]ost times it is the manager’s discretion to propose promotion if the staff member has met all the set requirements,” and the Applicant submits that “a lot of staff members” were promoted through the ITS VPU *in situ* promotion process. The Applicant contends that “his managers have been abusing their discretion by not including his name for promotion over the years as well as in FY 20 despite his high performance.” The Applicant submits that “[h]e has sought promotion to reflect his contribution to the IT department,” and he contends that he should have received a promotion.

42. Further, the Applicant stresses that his managers “did not take any steps to obtain advice from HR” on his claim to promotion, and the Applicant contends that “HR has neither audited [the] Applicant’s position nor taken other actions to determine whether [the] Applicant’s own claims were supported, despite [the] Applicant reaching out to HR.” The Applicant underscores that he has been at the same grade level—GD—for eight years “despite his high consistent performance over the years,” and he posits that “this can be summed up as abuse of managerial discretion.”

The Bank’s Response

There was a reasonable and observable basis for the non-promotion decision

43. The Bank asserts that the decision to promote or not to promote a staff member is a matter of managerial discretion. The Bank submits that the Applicant did not meet the established criteria for an *in situ* promotion when his work was evaluated by ITS management at the end of FY20.

The Bank submits that “[t]he evaluation criteria applicable to the assessment of each staff member’s performance and readiness for promotion [...] were communicated to all ITS staff members through an open and transparent process.” Further, the Bank asserts that “[a]ll administrative decisions on promotions in ITS were taken in adherence to these criteria and a clear and objective process.”

44. The Bank submits that

[a]ny ITS staff member who was under consideration for an *in-situ* promotion from Level GD to Level GE for FY20 must obtain at least one SRI rating of 4 or 5 in the preceding three years, namely from FY17 to FY19. [...] [The] Applicant’s SRI ratings for these three fiscal years prior to FY20 were, respectively, 2, 3, and 9.

To the Bank, the “Applicant’s past SRIs are the most objective indicator, which shows that he clearly did not meet the ‘performance track records’ criteria” for promotion.

45. Additionally, the Bank references the “HR Guidance for Promotion” and contends that, “for any promotion to occur, the nominated staff ‘would need to meet all competencies/criteria required at the current level and at the next level as determined by their VPU” (emphasis added by the Bank). The Bank further posits that, pursuant to the HR Guidance for Promotion, “*in situ* promotions ‘occur when the normal requirements of the job have evolved to a higher grade level [...] and the current incumbent has consistently demonstrated, over a sustained period, the level of knowledge, skills and experience required to execute the role effectively.’” The Bank submits that the record demonstrates that the “Applicant did not merit candidacy for promotion when any of these criteria was applied to assess his performance.”

46. The Bank further submits that, “over the course of several years, [the] Applicant was put on notice several times that he failed to follow institutional guidelines or comply with instructions from his superiors, resulting in serious consequences.” Additionally, the Bank stresses that the Applicant had “behavioral issues,” which the Bank notes included “a lack of interpersonal skills to work within a team or properly communicate with his Supervisor and colleagues.” The Bank submits that, “[a]lthough [the] Applicant was constantly reminded of the behavioral deficiencies in his performance, there was little improvement or any sign of improvement on these deficiencies

that could be demonstrated by [the] Applicant in FY19 and FY20.” Instead, according to the Bank, the Applicant “continued acting in an unprofessional manner by sarcastically or directly insulting his co-workers with unfounded allegations.”

47. In the Bank’s view, the “Applicant’s self-assessment of his abilities is not a substitute for factual evidence,” and the Bank submits that “[t]he record shows that [the] Applicant struggled with at least one very important skill—teamwork.” The Bank maintains that, pursuant to the ITS evaluation criteria for *in situ* promotion, candidates nominated for promotion must show “outstanding competency levels and commitment to WBG core values.” The Bank asserts that, with respect to competency, the Applicant failed to collaborate within teams and across boundaries, lacked the leadership and interpersonal skills essential for being promoted, and “did not make smart decisions.” The Bank notes that, with respect to WBG core values, the Applicant “failed to observe the values of respect and teamwork over the years.”

48. The Bank also contends that “[t]here was no significant change in [the] Applicant’s work program or the business needs of [the] Applicant’s team to justify the creation of a position or a promotion to a higher grade,” and further submits that “[t]here had not been any new position at Level GF advertised or otherwise to which [the] Applicant applied or could be considered for prior to FY20.”

49. With respect to the Applicant’s contentions that he has more work and is performing better than his Supervisor and colleagues, the Bank submits that the Applicant “could not offer any concrete evidence for this claim,” and it states that “[t]he ITS management have, over the years and acting in good faith, repeatedly explained to [the] Applicant that his role was different than that of Level GF or GG staff members.”

50. In sum, the Bank asserts that there was no business need for a promotion of the Applicant and that his technical competence and behavioral assessment could not justify an *in situ* promotion in FY20. The Bank avers that the “Applicant’s performance was given the same consideration as all other staff of the ITSVPU.”

The Applicant was treated fairly and impartially and without abuse of discretion by the Bank

51. With respect to the issue of fairness, the Bank submits that it did not violate the Principles of Staff Employment or the Applicant's contract of employment or terms of appointment. Specifically, the Bank asserts that "the administrative decision to maintain [the] Applicant at [the] same grade by the ITS management in FY20 was fair, without abuse of discretion," and that the Applicant, "as an ITS staff member, has always been treated fairly and impartially by the ITS management."

52. In the Bank's view, it followed a fair and proper process with respect to the administrative decisions regarding FY20 promotions within the ITS VPU. The Bank highlights the 1 June 2020 email from the ITS Vice President and WBG Chief Information Officer detailing the FY20 end-of-year performance evaluation process. The Bank submits that "the ITS management worked extensively with HR" and operated "in [strict] observance of the promotion and progression process." The Bank also notes that on 14 October 2020 the ITS Vice President and WBG Chief Information Officer sent an email to all ITS staff in which the final announcement on promotions and progressions was communicated and in which "he explained, in detail, the process and criteria observed during the promotion cycle for FY20."

53. The Bank submits that it "established, and followed, a clear and objective process in evaluating the proposals for promotions and progressions for FY20," and contends that the Applicant was aware of the process and the evaluation criteria. The Bank submits that the "Applicant does not challenge the fairness or impartiality of this established promotion process" but rather "simply feels he deserves a promotion."

54. The Bank also submits that the Applicant was always treated fairly and impartially and without any abuse of discretion by the Bank, including during the promotion cycle of FY20. The Bank acknowledges that the "Applicant is entitled to fair treatment and to assessments that are not an abuse of discretion, arbitrary, discriminatory, or improperly motivated." The Bank submits that "[t]here is no evidence to support any claim that the performance assessment for [the] Applicant

was arbitrary or manifestly unreasonable,” noting that comments from the Supervisor and managers “balanced positive and negative factors.”

55. With respect to the decision to maintain the Applicant at the same grade level in FY20, the Bank contends that HR and ITS management “carefully and rigorously assessed” the Applicant’s performance against the criteria for ITS promotions. The Bank submits that management has always carefully explained the ITS promotion process to the Applicant and underscores that, when the Applicant raised the question of promotion via email of 13 October 2020, management responded and provided “a detailed explanation on the promotion criteria and process and the reasons for non-promotion, and offered [the] Applicant an opportunity for further discussion on his career.” The Bank notes that, when the final promotion decisions were announced, “the head of [the] ITSVPU explained the process and criteria observed and clarified that the decisions were made collectively, and that each candidate was discussed with due diligence.”

56. To the Bank, it “acted fairly, and in accordance with the established, and transparent process.” The Bank further states that “the ITS management has been extremely professional and supportive in addressing [the] Applicant’s concerns and helping [the] Applicant to explore his career prospects and ambitions over the years.” The Bank submits:

Notably, major engagements the ITS management has done for [the] Applicant includ[e] facilitating a DAIS program for [the] Applicant in another ITS team and exploring opportunities for [the] Applicant in other Country Offices. Management has also had extensive communications with [the] Applicant discussing career opportunities, including at the director level.

The Applicant’s Contention No. 2

The Applicant’s managers have not awarded the Applicant a grade level commensurate with his work because of bias and resentments regarding the Applicant’s first case before the Tribunal

57. The Applicant submits that, “[d]ue to some bias and malicious attitude on the part of his supervisor [...], [the] Applicant’s outstanding performance has never been recognized fully and fairly.” He contends that “his managers are very much aware of his role in the IT office but because of their own biases and resentments including his first Tribunal case [...], have chosen not to award

him a level commensurate with his contributions.” To the Applicant, management’s abuse of discretion in not including his name for promotion despite his high performance “itself can also be construed as a form of retaliation by management.” Specifically, the Applicant stresses that he has been at the same grade level—GD—for eight years “despite his high consistent performance over the years,” and he submits that, in addition to an abuse of managerial discretion, “this can be summed up as [...] a *prima facie* case of retaliation.”

The Bank’s Response

The non-promotion decision was not based on retaliation

58. The Bank asserts that the Applicant has not met the Tribunal’s standard for establishing a *prima facie* case of retaliation, and submits that “nothing in the record supports [the] Applicant’s own speculation that he was retaliated against.” The Bank submits that the “Applicant exclusively relies on a general statement that he was treated unfairly because of alleged biases and resentments from his Supervisor or his Managers, due to his first Tribunal case.” To the Bank, the Applicant has failed to produce “any concrete or specific evidence to support this allegation.” The Bank further contends that the Applicant did not make a claim of retaliation before PRS or the Ethics and Business Conduct Department.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

59. In *FH (No.2) (Preliminary Objection)* [2022], the Tribunal dismissed the Bank’s preliminary objection and noted that “[t]he issues [...] include the Applicant’s claim that he has been unfairly treated in violation of Principle 2.1 of the Principles of Staff Employment [...] [and his] claim of retaliation” (*id.*, para. 49). Accordingly, the issues now before the Tribunal on merits are twofold. The first issue is whether the decision not to promote the Applicant in FY20 was an abuse of discretion by the Bank in that it violated the Bank’s obligation of fairness toward the Applicant. The second issue is whether the decision not to promote the Applicant was retaliatory.

WHETHER THE DECISION NOT TO PROMOTE THE APPLICANT IN FY20 WAS AN ABUSE OF DISCRETION
BY THE BANK

60. In *GL (Merits)*, Decision No. 677 [2022], para. 67, the Tribunal stated:

The Tribunal recognizes that decisions relating to progression or promotion are discretionary decisions. The Tribunal has consistently held that it will not overturn a discretionary managerial decision, unless it is demonstrated that the exercise of discretion was “arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack[ed] a reasonable and observable basis, constitute[ed] an abuse of discretion, and therefore a violation of a staff members’ contract of employment or terms of appointment.” See *AK*, Decision No. 408 [2009], para. 41; see also *Desthuis-Francis*, Decision No. 315 [2004], para. 19.

61. In the instant case, the Applicant contends that “his managers have been abusing their discretion by not including his name for promotion over the years as well as in FY 20 despite his high performance.” He contends that the Bank has violated his rights as a staff member under Principle 2.1 of the Principles of Staff Employment in its “failure to consider him for promotion despite fulfilling the set requirements.”

62. The Bank responds that there was a reasonable and observable basis for the non-promotion decision and that the decision to maintain the Applicant at Grade Level GD was fair. The Bank submits that the Applicant did not meet the established criteria for *in situ* promotion when his work was evaluated by management at the end of FY20. The Bank further asserts that the ITS VPU FY20 promotions process was fair and proper, and that the Applicant was treated fairly and impartially during this process.

63. The Tribunal recalls that Principle 2.1 of the Principles of Staff Employment provides:

The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members. They shall not differentiate in an unjustifiable manner between individuals or groups within the staff and shall encourage diversity in staffing consistent with the nature and objectives of the Organizations. They shall respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal.

64. Further, the Tribunal observes that the Bank states, and the record supports, that *in situ* promotion and progression decisions in the ITS VPU were made on the basis of the following criteria:

- a. Competency levels (deliver results for clients; collaborate within teams & across boundaries; lead and innovate; create, apply, and share knowledge; and make smart decisions);
- b. Performance track record;
- c. Business needs for the positions on the next grade level;
- d. Modeling WBG Core Values (Impact, Integrity, Respect, Teamwork, and Innovation).

65. The Tribunal will now review the record to determine if there was a reasonable and observable basis for the Bank's decision not to promote the Applicant in FY20.

66. With respect to criterion (b), "[p]erformance track record," the Bank states and the record supports that, pursuant to ITS VPU practice, candidates for promotion must have obtained at least one high SRI in the past three years, excluding the year of promotion. The Tribunal observes that the "ITSGC FY20 Promotion List" provided by the Bank indicates that seven ITSGC staff members at Grade Level GD were promoted in FY20, and specifies the SRIs for FY17, FY18, and FY19 for these staff members. The Tribunal observes that, of these seven staff members, six had at least one SRI of 4 or 5, and one staff member had SRIs of 3, 3.5, and 3.5 for FY17, FY18, and FY19, respectively, and had been at Grade Level GD for 11.1 years. By contrast, the Tribunal observes that the record indicates that the Applicant's SRIs for FY17 and FY18 were 2 and 3, respectively, and the Applicant's SRI for FY19 was 9 as he was ineligible for the regular performance rating as noted in paragraph 11 of this judgment.

67. The Tribunal observes that the documentation concerning the departmental review meetings of July 2020 at which promotions and progressions were discussed shows that the Bank took account of the Applicant's original FY18 SRI of 2, which the Tribunal ordered rescinded in *FH* [2020]. The Tribunal considers that the Bank cannot invoke an FY18 SRI rating of 2 for the Applicant because this rating was already set aside by the Tribunal in *FH* [2020]. *See generally,*

EO (No. 3) (Merits), Decision No. 673 [2022], paras. 32–34. However, the Tribunal considers that, even if the Applicant’s revised and final SRI of 3 for FY18 had been duly considered by management, this rating would still be below those of the other seven ITSGC staff members referenced above, all of whom had better performance ratings than the Applicant for the fiscal years in question. The Tribunal finds that the record shows that the seven ITSGC staff members who were promoted from Grade Level GD to Grade Level GE in FY20 had higher performance track records than the Applicant.

68. The Tribunal next observes that the Bank states that, pursuant to the aforementioned ITS evaluation criteria for *in situ* promotion, candidates nominated for promotion must show “outstanding competency levels and commitment to WBG core values.” With respect to competency, the Bank contends that the record shows that the Applicant “did not make smart decisions,” lacked leadership or interpersonal skills essential for promotion, and failed to collaborate within teams and across boundaries. With respect to WBG core values, the Bank submits that the “Applicant has clearly failed to observe the values of respect and teamwork,” and contends that he had “behavioral issues” which he “failed to modify.”

69. The Tribunal notes that the Applicant’s “FY20 Annual Review” indicated that the Applicant was a competent and efficient IT professional. The Supervisor’s Comments stated that “[c]lient feedback in the Beijing office is also very positive,” and underscored that the team relied on the Applicant’s technical advice during the pandemic period of home-based work. Further, the Supervisor’s Manager noted that “technically [the Applicant] is solid and is appreciated by his clients and peers.”

70. In view of these comments, the Tribunal observes that the record indicates that management considers the Applicant to be technically competent and that this competence was recognized in his FY20 performance evaluation. It is also evident from his submissions that the Applicant believes his capabilities and performance are strong and above those of his peers and his superiors who hold higher grade levels. The Applicant states that he bases his claim to promotion on his “competencies and accomplishments,” which he himself listed in the “Staff’s Comments” section of his performance evaluations and which he details in his Application.

71. The Tribunal considers that a promotion decision is not limited only to a staff member's technical performance. *See, e.g., K. Singh*, Decision No. 188 [1998], para. 9. In this regard, with respect to the Bank's contention that the Applicant had "behavioral issues," the Tribunal observes that the record is indeed replete with examples which support the Bank's position that the Applicant's behavior did not model the WBG core values of respect and teamwork.

72. For instance, the record indicates that the Applicant repeatedly challenged management's decision to hold regular team meetings. In an email of 5 December 2019 to his Supervisor, the Applicant stated:

If you do not want to or cannot tell us if you see any significant improvement in our client service because of your enforcement on this extra meeting, please say so. I hope that this is not your intent.

I have made proven record of delivering high quality and efficiency in the client support throughout years, and have developed important solutions rather than your F level location lead. Hope you can recognize my achievement with proper grade before asking me for further improvement. If you can contribute in servicing our clients more smoothly by providing me necessary resource and help in coordination, when you see our clients are benefit by our efforts you will find yourself to be more empowering rather than calling the extra meetings.

73. And, again, on 22 January 2020, the Applicant stated in an email to his Supervisor:

We should spend valuable production hours with our clients rather than the extra meetings you enforced, after quite several months, there is no evidence shows that our man-hours spending on your additional meetings brings any significant improvement into our client service. I believe that is why other offices do not make it so frequently, so in future we will also only meet when necessary.

74. The Tribunal also observes an email exchange between the Applicant and his Supervisor concerning the Applicant's request for annual leave. On 27 January 2020, the Supervisor stated:

Taking it a step further, would you also consider coordinating leave with [the Location Lead] before submitting. Put yourself in his shoes for a bit and consider that incoming requests for leave may be difficult to plan across team members.

75. On 3 February 2020, the Applicant responded, stating:

I understand the management request you to take care the leave approval just because your location lead should not have the authority to handle it. Can you remind me how many times your location lead provides incorrect information to the team and leads unnecessary cost? [...]

I think I am following the standard steps on the leave request. I hope it does not bring workload beyond the capability of you and your location lead. Rather than putting me into the shoes, maybe putting me into the position can be a better option, if you like to.

76. Other examples in the record include the Applicant's 28 November 2019 email providing his comments on the meeting minutes of the monthly meeting sent to him by his Supervisor. The Applicant's comments, wherein he referenced himself by name, included the following:

Why don't you make [the Applicant] as the focal point for the [T]-mobile related issue. [The Applicant] devoted in the mobile service support during the past years with significant achievement on the issue identifying and solution, while the location lead almost contribute nothing and provided incorrect information to the team. There are proven records that [the Applicant] keeps monitoring the [T]-mobile service on the critical China network, identifying the issue and best practice in time. [The Supervisor] may need to improve his capability of assigning right task to the right person, stop asking the experienced expert to escalate to the inexperienced person.

77. The Tribunal considers that the above communications from the Applicant support the Bank's contention that the Applicant had problems with his senior colleagues, which manifested in the form of the Applicant "acting in an unprofessional manner by sarcastically or directly insulting his co-workers." The record supports that the Applicant had issues with his hierarchy, in particular his Supervisor and his Location Lead, and establishes that the Applicant demonstrated a pattern of behavior of resisting, without proper basis, managerial decisions, instructions, and processes.

78. In view of these findings, the Tribunal considers that the Bank's contention that the Applicant had "behavioral issues" and that he "clearly failed to observe the values of respect and teamwork" to be reasonable. The Tribunal finds that it was fair and proper for the Bank to consider this particular behavior of the Applicant in its decision not to nominate him for promotion. Indeed,

the Tribunal is convinced that, on the facts of this case, the record supports the Bank's contention that the Applicant's behavior did not meet all the established criteria for ITS promotions.

79. Based on the evidence in the record, the Tribunal accepts that there was a reasonable and observable basis for the Bank's decision not to promote the Applicant in FY20. Further, the Tribunal notes that the Bank submits that the "Applicant was not nominated for progression or promotion as it was determined that primarily, there was no significant change in the staff's work program or business needs of the team to justify the creation of a position or the promotion to a higher grade." The Tribunal considers that this determination by the Bank is supported by the record.

80. Additionally, the Tribunal is satisfied that the Bank followed a fair and proper process in making the decision not to promote the Applicant in FY20. The record indicates that the Applicant was aware of the established criteria for promotions in the ITS VPU. Further, in line with the 1 June 2020 email from the ITS Vice President and WBG Chief Information Officer concerning the FY20 performance review process, the Tribunal observes that the record indicates that the Applicant met with his Supervisor and the Supervisor's Manager on 17 July 2020 for his "End of Year Performance Discussion." The record does not suggest, and the Applicant does not contend, that the FY20 ITS process concerning promotions and progressions was itself unfair or improper.

81. In view of the foregoing discussion, the Tribunal finds that the decision not to promote the Applicant in FY20 was not an abuse of discretion by the Bank and was not inconsistent with the Bank's obligation of fairness toward the Applicant.

WHETHER THE DECISION NOT TO PROMOTE THE APPLICANT IN FY20 WAS RETALIATORY

82. The Tribunal observes that retaliation is expressly prohibited under the Staff Rules. Staff Rule 8.02, paragraph 3.01(a), provides:

Where a [s]taff [m]ember has made a *prima facie* case of retaliation for an activity protected by this Rule (i.e., by showing that the [s]taff [m]ember reported suspected misconduct under this Rule and has a reasonable belief that such report was a

contributing factor in a subsequent adverse employment action), the burden of proof shall shift to the Bank Group to show—by clear and convincing evidence—that the same employment action would have been taken absent the [s]taff [m]ember’s protected activity.

83. Further, in *Bauman*, Decision No. 532 [2016], para. 95, the Tribunal stated:

As the Tribunal has frequently observed, the Staff Rules are clear that retaliation against any person “who provides information regarding suspected misconduct or who cooperates or provides information in connection with an investigation or review of allegations of misconduct, review or fact finding, or who uses the Conflict Resolution System” is prohibited. *See* Staff Rule 3.00, paragraphs 6.01(g) and 7.06, and Staff Rule 8.01, paragraph 2.03; *see also* *CS*, Decision No. 513 [2015], para. 104; *Sekabaraga (No. 2)*, Decision No. 496 [2014], para. 60. This prohibition extends also to retaliation against any person who is believed to be about to report misconduct or believed to have reported misconduct, even if such belief is mistaken.

84. The Tribunal has recently confirmed that, once an applicant has established a *prima facie* case or has pointed to facts “that suggest that the Bank is in some relevant way at fault,” then “the burden shifts to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner.” *GL (Merits)* [2022], para. 102, quoting *de Raet*, Decision No. 85 [1989], para. 57.

85. The Tribunal has also established that “[i]t is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person” (*AH*, Decision No. 401 [2009], para. 36), and has recognized that, “[a]lthough staff members are entitled to protection against reprisal and retaliation, managers must nevertheless have the authority to manage their staff and to take decisions that the affected staff member may find unpalatable or adverse to his or her best wishes” (*O*, Decision No. 337 [2005], para. 49).

86. In the instant case, the Applicant contends that “his managers are very much aware of his role in the IT office but because of their own biases and resentments including his first Tribunal case [...], have chosen not to award him a level commensurate with his contributions.” He further asserts that management’s abuse of discretion in not including his name for promotion despite his high performance “itself can also be construed as a form of retaliation by management.”

87. In response, the Bank avers that the Applicant has not met the standard for establishing a *prima facie* case of retaliation and submits that “nothing in the record supports [the] Applicant’s own speculation that he was retaliated against.”

88. The Tribunal finds that there is a lack of evidentiary support for the Applicant’s contention that he was not promoted in FY20 because of retaliation. While the record does indicate that the Applicant had interpersonal issues with his Supervisor, the facts in the record do not establish a *prima facie* case for the Applicant’s claim of retaliation. Therefore, the Tribunal is unpersuaded that “the Bank is in some relevant way at fault.” *de Raet* [1989], para. 57. Moreover, the Tribunal has already held that it was not an abuse of discretion for management not to propose the Applicant for promotion in FY20 and, as such, that decision cannot be “construed as a form of retaliation by management” as the Applicant proffers. Accordingly, the Tribunal finds that the Applicant has failed to establish a *prima facie* case of retaliation.

DECISION

The Application is dismissed.

/S/ Mahnoush H. Arsanjani

Mahnoush H. Arsanjani

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 November 2022*

* Judge Burgess attended deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.