



World Bank Administrative Tribunal

2020

Decision No. 632

**FN,
Applicant**

v.

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

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

**FN,
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 Andrew Burgess (President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche (Vice-President), Janice Bellace, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received on 21 January 2020. The Applicant was represented by Ryan E. Griffin of James & Hoffman, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 30 October 2020.

3. The Applicant is challenging the Bank's decision not to confirm her appointment, on the basis that the non-confirmation decision was both substantively and procedurally flawed.

FACTUAL BACKGROUND

4. The Applicant first joined the Bank in 1998 as an Agri-business Consultant. She continued to work with the Bank until 2008, serving as an Operations Analyst in Agriculture and Rural Development and later as a Consultant in Environmentally and Socially Sustainable Development. The Applicant worked elsewhere from 2008 to 2015, after which she rejoined the Bank as a Senior Agri-business Consultant in the Agriculture and the Trade and Competitiveness Global Practices. On 22 January 2018, the Applicant was offered and accepted an internationally recruited three-year Term appointment as a Senior Agriculture Specialist, Level GG, in the Agriculture Global Practice based in the Bank's country office in Monrovia, Liberia. The appointment was subject to a one-year probationary period, which could be extended by up to one additional year.

5. According to the Bank, around 30 January 2018, before the Applicant began her appointment, she met with her Manager, a Practice Manager in the Agriculture Global Practice, in Washington, D.C. According to the Applicant, this meeting was cancelled, and they did not meet until weeks later. The Bank submits that, during this meeting, the Manager “gave Applicant a clear introduction to her unit’s work and explained, in general terms, the work program which Applicant, herself, would be assigned to undertake over the coming year.” The Manager states that she explained to the Applicant that her work would likely be focused around four main projects: an Agriculture Public Expenditure Review (AgriPER); a Project Appraisal Document (PAD) for a new Bank-funded project titled “Small Agriculture Transformation and Agribusiness Revitalization Project” (STAR-P); an Implementation Completion Report for the Bank-funded project titled “LR Smallholder Tree Crop Revitalization Support Project” (Tree Crops ICR); and a regional project titled “West Africa Agriculture Transformation Project” (WAATP). The Manager also states that she explained to the Applicant that,

as the only staff member posted by the Agriculture Global Practice to Liberia, she would be expected: to develop good working relationships with the Country Management Unit, the client and other development partners; make sure that the priorities of the Agriculture Global Practice are well reflected and translated in the Liberia country program, as well as to provide support to the projects of other teams within and outside of the Agriculture Global Practice on agricultural issues relevant to Liberia.

6. It was also agreed around that time that the Applicant would begin her assignment working from Headquarters in Washington, D.C., before departing for her duty station in Liberia. This arrangement was made so the Applicant could become familiar with the team as well as attend the annual Agriculture Global Practice Forum held in early March. The Applicant began her assignment on 16 February 2018.

7. The Applicant and her Manager had one in-person meeting during the Applicant’s first month in Washington, D.C. According to the Applicant, the meeting “lasted only a few minutes” and “did not include any formal guidance as to [the Applicant’s] work program or objectives.” The Applicant maintains that she was “merely instructed” to speak with the person who held the position before her and to reach out if she had any questions. According to the Bank, during this meeting the Manager “officially welcomed Applicant to her team and, again, discussed

Applicant’s proposed work program.” The Bank submits that the Manager “also asked Applicant to reach out to the task team leaders [TTLs] for each of the four projects she had been assigned to work on so that Applicant could obtain a briefing while in Washington D.C. and get started on her work.” The Bank also states that the Manager informed the Applicant that she had an “open door” policy and that the Applicant “should feel free to reach out, or stop by, at any point with queries,” and that the Applicant “should consult other senior members of the Agriculture Global Practice,” such as a Senior Operations Officer who later was assigned to be the Applicant’s mentor (the Mentor). This meeting was the only in-person meeting between the Applicant and her Manager while the Applicant was working in Washington, D.C., at the beginning of her contract.

8. On 21 March 2018, the Applicant began working at the Bank’s country office in Liberia.

First probationary period

9. The parties offer conflicting accounts of the Applicant’s involvement with the AgriPER project. According to the Applicant, a Senior Agriculture Economist based in Washington, D.C., who was the TTL for the project (AgriPER TTL), “instructed [the Applicant] from the outset that he did not need her help with any substantive work, but merely needed her to organize in-country meetings with relevant stakeholders.” The Applicant states that she “nevertheless offered additional substantive assistance to the extent she was permitted to do so including by providing written feedback on the concept note and final report and by preparing presentations for in-country workshops.” According to the Bank, however, the Applicant was “actually expected to play a leading role in the project both technically and logistically.” The Bank submits that the “Applicant did not contribute either substantially or substantively to the AgriPER Project and, in fact, she actively resisted taking on a leading role.”

10. On 6 March 2018, the AgriPER TTL emailed the Applicant’s Manager, copying the Applicant and other members of the team, attaching the draft Mission Announcement Letter and draft Statement of Mission Objectives for the project. On the same day, the Applicant followed up with her Manager, explaining that the draft Statement of Mission Objectives did not accurately reflect her role in the project as had been previously discussed. Her Manager replied, stating, “On

the points about clarifying responsibilities and on mission dates, as well as organization of the meetings in Monrovia, I suggest that you discuss and clarify those with [the AgriPER TTL] tomorrow.”

11. On 26 March 2018, the AgriPER TTL emailed the Applicant’s Manager, copying the Applicant and other members of the team, attaching the revised drafts, which reflected a “reduced role for [the Applicant], who will remain the formal mission leader and lead the strategic dialogue with GoL/MoA but less onerous for the nuts and bolts work given conflicting demands on her time.” Again, on the same day, the Applicant followed up with her Manager, stating that she was “happy to respond” to the AgriPER TTL, but also that her previous emails had gone unanswered and that she felt her “voice seems to be ignored in all of this.”

12. The following day, the AgriPER TTL sent the email again with the drafts, this time copying another senior member of the Agriculture Global Practice in case the Manager was away on mission. The Applicant responded to the AgriPER TTL, noting that she had flagged her concerns with her Manager and that her previous emails had gone unanswered. The AgriPER TTL responded, apologizing for any offense and stating his understanding of their previous conversations. The Applicant replied, stating, “Let’s not make this personal. This is not about being offended but about being professional.” The Applicant’s Manager later explained in her written statement filed with the Tribunal that, after reviewing the correspondence between the Applicant and the AgriPER TTL, she spoke to them both separately. The Manager stated, “When I spoke with [the Applicant], I reminded her that we work as a team and that she was expected to provide support to [the AgriPER TTL’s] project because it was a priority for the Global Practice. We ultimately agreed that [the Applicant] would do so, but in a reduced role.”

13. In late March 2018, the Applicant emailed her Manager to notify her that another Bank unit was organizing a study tour to Israel and that she had been informed that she was expected to accompany the Liberia delegation. In late April 2018, the Applicant followed up with her Manager, forwarding her previous email and stating that she had been told that her participation had been approved by her Manager. The Applicant acknowledged there might have been some miscommunication and stated, “[D]o let me know if you prefer that I do not attend. I will follow

up accordingly.” Her Manager replied on 1 May 2018, stating that she did not remember approving it but telling the Applicant, “[I]f you think that the trip to Israel (which is not a priority at this stage) will not interfere with your ability to get up to speed and deliver on our priorities, feel free to go and accompany the delegation.” She also informed the Applicant that contributing to her “unit’s priorities in terms of delivery [...] is what will be considered when we will get to OPE [Overall Performance Evaluation] stage later this year.” The Applicant ultimately decided to attend the study tour.

14. On 27 August 2018, the Applicant emailed the Liberia Country Management Unit, copying her Manager, sharing information and emails from a “potential whistleblower raising red flags on an existing project handled by [the Agriculture Global Practice].” The Applicant’s Manager replied on the same day, stating that it “should have been discussed first at GP [Global Practice] level – and in particular with me – for an agreement on how to proceed” and that she would review that matter and provide guidance. (Emphasis in original.)

15. In late September and early October 2018, there was a series of emails between the Applicant and her Manager discussing the WAATP. In the first email, the Applicant updated her Manager following a meeting in Liberia, indicating that, based on the meeting, the status of the WAATP was unclear. Her Manager responded, suggesting that the Applicant might be incorrect and stating that the WAATP was a priority for the Global Practice. The Applicant followed up a few days later, sharing a series of emails between herself and the Country Management Office in which the Applicant sought clarity on the status of the WAATP. The Manager stated in her written statement filed with the Tribunal that, following this email from the Applicant, she called the Applicant to explain “to her that strategic conversations of that kind should be escalated to [the Manager] to take up directly with the Country Manager.”

16. In late October 2018, the Applicant engaged in discussions with the International Fund for Agricultural Development (IFAD) regarding partnership with the Bank on STAR-P. Following a series of emails beginning on 24 October 2018 between the Applicant and other Bank staff, copying the Applicant’s Manager, discussing financing arrangements, on 25 October 2018 the Applicant’s Manager forwarded the discussion to the Applicant’s Mentor, stating, “Looks like [the

Applicant] forgot to discuss this with me/the GP and went straight to other units” and asking if he could “call her tomorrow morning to discuss what is being proposed and give her some guidance.” On 26 October 2018, the Mentor emailed the Manager explaining that he had talked to the Applicant and stating that “she says that she will be consulting and copying me from now on.” On the same day, he emailed the Applicant, stating, “Great to talk to you[.] Please make sure you have the agreement of the PM [Practice Manager] before concluding or making any arrangement with IFAD.” On 29 October 2018, the Applicant’s Manager replied to the email chain, stating, “We need to discuss this internally before taking this conversation forward externally.” (Emphasis in original.) On 5 November 2018, the Applicant emailed her Manager, asking for clarification on whether it was “ok for this appraisal to be done jointly with IFAD.” Her Manager responded with clarification.

17. On 5 October 2018, in response to an email regarding the Applicant’s TTL-accreditation training process, the Applicant’s Manager suggested that they find a time to discuss the Applicant’s “On the Job” component and stated that they could “take this opportunity to have a conversation about your progress/performance so far.” In her written statement filed with the Tribunal, the Manager explained that this informal discussion took place around early November 2018 and stated:

I reminded her of the importance of informing me and seeking my input, as Practice Manager, when material issues arose in her work. [...] I also explained that it was important for [the Applicant] to listen to senior colleagues within the Agriculture Global Practice who offered her advice, in particular her mentor [...]. I also stressed that it was important for [the Applicant] to support the projects of other colleagues and that she was expected to work as part of a team to progress the Agriculture Global Practice’s priorities more broadly.

In her statement, the Manager also explained that she

was concerned that, in reality, [the Applicant] saw herself as part of the Country Management Unit in Liberia reporting to the Country Manager and the Country Director, rather than a member of the Agriculture Global Practice, reporting to me.

The Manager did not state whether she shared those concerns with the Applicant during this discussion.

18. According to the Applicant,

her key responsibility during her first year in Liberia was working with the relevant TTL to secure Board approval for the [STAR-P] and to thereafter ensure that the project became effective and to manage its implementation. Specifically, she was responsible for coordinating the [PAD], the primary document on which the Board relied in approving the project in January 2019.

19. On 12 October 2018, the STAR-P TTL emailed the Applicant's Manager, copying the Applicant and other team members, attaching the PAD of STAR-P for review. The Manager replied, stating that the document "still needs work" and that "from an editorial perspective this document has many inconsistencies and looks like nobody has taken the time to proof-read it." The TTL emailed a revised PAD a few days later, and the Manager responded with further comments. The Manager also emailed the Applicant's Mentor, requesting that he assist the TTL and his team in finalizing the PAD. According to the Manager, she, the Mentor, and another colleague "spent considerable time providing comments and guidance, to [the TTL], but also to [the Applicant], to finalize the document." Following the completion of the PAD, the Applicant submits that she "worked with the Liberian government and the project team to get the project up and running less than six months after Board approval, less than half the time needed for the most recent agricultural project prior to [her] joining the team."

20. On 20 January 2019, the Applicant emailed a colleague regarding her ability to provide support to a "Forestry Project" in Liberia, proposing alternative arrangements to "ensure that each of [their] work program priorities are met." The colleague replied, suggesting that concerns should be raised with the relevant practice managers. The Applicant forwarded the conversation to her Mentor, asking for any thoughts he might have. Her Mentor responded a few days later, providing clarity of what was expected of the Applicant in her role especially with regard to collaboration with other Global Practices. The Applicant replied, thanking him for the feedback, providing further details of her concerns with the particular project, and stating that she would reach out to him after he returned from a mission.

Extension of probation

21. On 3 February 2019, the Applicant's Manager emailed her Director and the Human Resources (HR) Business Partner regarding a possible extension to the Applicant's probationary period. She stated:

It has not been an easy transition for [the Applicant] and I can see that she is still struggling to understand how we work. I have had another sr. staff mentoring her, and he has reported that the situation is still challenging. [The Applicant] comes from being an individual/freelance consultant for many years and we are having some frictions about her operating in an environment where she has to implement GP priorities and report to a manager (as opposed to deciding on her own what she should do and wants to work on); working in multicultural environments (she has had difficult relationships with a couple of people of different backgrounds in our team, who themselves have been working smoothly with other team members and are not known to be difficult colleagues); understanding what her contributions should be (while she has only one task to work on – an ICR – she keeps reporting that she is overwhelmed with the amount of work and cannot cope); and understanding what is OK or not in terms of her communications with the client. I am a little bit concerned about those trends continuing after one year and it could be because she is our only staff in the Monrovia office with mentoring being provided from [a] distance. But if I compare the situation with others who joined recently (e.g. in the Conakry office), I am a little concerned. I have been providing her feedback regularly (she has not done an OPE yet due to the date at which she joined), noting that she does not take feedback very easily.

22. On 8 February 2019, the Applicant and her Manager had a mid-year conversation regarding the Applicant's performance. The following month, the Manager emailed the Applicant a write-up of the conversation, stating:

We had our mid-year conversation on February 8. We noted that the Liberia STAR-P project was successfully delivered to the Board in January 2019, and following its recent signature, the focus and priority is now to ensure its effectiveness without delays this fiscal year. With regards to the ICR for the Liberia Tree Crops project, for which [the Applicant] is the main author, we noted that the ICR mission is scheduled in late February and that the work is currently on track for delivery by the deadline of end-May. We discussed the need to start engaging with the CMU [Country Management Unit] about the WPA [Work Program Agreement] for FY20 [Fiscal Year 2020] including on priority ASA [Advisory Services and Analytics] (e.g. those included in the CPF [Country Partnership Framework]). [The Applicant] has progressed in taking the required formal trainings and she will be taking the IPF [Investment Project Financing] academy in September 2019. In the meantime,

she will be working closely with her mentor on her on-the-job program towards TTL accreditation. Once the ICR has been delivered, we discussed the need to consolidate [the Applicant's] work program and develop a full work program.

23. On 12 February 2019, the Applicant's Manager emailed her Director and the HR Business Partner again, stating:

I think that it would be reasonable to extend [the Applicant's] probation period by six months so that we have a chance to go through an OPE and have her actually deliver something (ICR in this case). However, I have looked at the probation extension memo that needs to be prepared, and it needs to list specific areas of improvement for the staff to be confirmed. Would it be enough to extend the probation on the basis that we would like to see some deliverables first, have an opportunity for a formal evaluation, for her to become more familiar with our operations and processes?

24. On 13 February 2019, the Applicant's Manager emailed the Applicant notifying her that "she was seeking advice on whether to extend [the Applicant's] probationary period due to the fact that [the Applicant] had not [yet] undergone a formal Annual Review." On 14 February 2019, the Applicant's Manager called her to discuss the extension of her probationary period. In her written statement filed with the Tribunal, the Manager stated that she "explained to [the Applicant] that management was not in a position to confirm her appointment because, on the technical front, her main deliverable was the Tree Crops ICR, which was yet to be completed and she had not yet undergone a full performance evaluation." The Manager also writes that the Applicant

asked whether there was a major issue with her performance and, in response, [the Manager] explained that her probation was extended to provide her with the opportunity to show that she could perform because [they] were not in a position to decide at that point in time.

25. Also, on 14 February 2019, the Manager emailed the Applicant written confirmation that her probationary period would be extended by six months to 16 August 2019. The Manager also wrote, "Attached is the standard memo – this is a standardized process – that will be submitted through the system (the wording is standard and the tailored section is the one referring to your work program)." The Office Memorandum stated:

1. Further to our discussions on this subject, and following my consultation with [...] Director, Agriculture GP, this is to inform you that in accordance with Staff Rule 4.02, paragraph 2.01, your probation has been extended to August 16, 2019.
2. The probationary period has been extended to provide further opportunity to assess your overall suitability for employment with the World Bank Group. To that end: You would need to focus on the delivery of the ICR for the Liberia Tree Crops project, due by the end of May 2019, for which you are the lead author, as well as providing continued support to the TTL of the Liberia STAR-P project to ensure that the project is effective without delays during the fiscal year. You would also continue to work closely with your assigned mentor, our unit's senior operations officer, to ensure that you continue to build your understanding of our policies and procedures, and your understanding of how your work contributes to the business objectives and priorities of the Agriculture GP. Finally, and for a full work program this fiscal year, you would need to contribute to the work of other teams working in Liberia including continued support to other teams in our GP.
3. If during, or at the end of your extended probationary period, it is determined that you are not suitable for confirmation based on an assessment of your achievement of the work program, technical qualifications and professional behaviors, your employment may be terminated by non-confirmation following at least sixty calendar days' notice, in accordance with Staff Rules 4.02 and 7.01.

Second probationary period

26. On 4 March 2019, the Applicant emailed her Manager regarding the Tree Crops ICR, informing her that the mission was completed and that she would begin her write-up that week. The Applicant also proposed potential peer reviewers and requested feedback.
27. In early April 2019, the Applicant and her Manager met in person at the Annual Agriculture Global Practice Forum. At this event, the Manager asked the Applicant about the progress of the Tree Crops ICR, as she had not yet seen a draft. According to the Bank, the Applicant "indicated that she was on track to provide the report in time for the May deadline."
28. On 3 April 2019, the Applicant followed up on her March email, requesting her Manager's recommendations for peer reviewers. Her Manager replied on 5 April 2019, giving her recommendations.

29. On 10 April 2019, the Applicant emailed a draft of the Tree Crops ICR to the selected peer reviewers requesting feedback, and copying her Mentor. Her Mentor responded, asking if her Manager had approved the document. Following this exchange, the Applicant forwarded the draft to her Manager. Her Manager responded, thanking her and informing her that the draft should also be sent to a broader audience along with details for the scheduled Quality Enhancement Review meeting.

30. On 17 April 2019, the Applicant's Manager, having reviewed the draft Tree Crops ICR, emailed the Applicant and her team, stating, "There are substantial issues with the story line in this ICR, and I am surprised that neither of you alerted me about where you were taking it. [...] It will probably take another 3 weeks or so before the draft is ready for a review meeting."

31. Over the next two months, the Applicant, her Manager, her Mentor, and other senior colleagues worked to revise the Tree Crops ICR. According to the Applicant, she had "initially rated the project as 'Moderately Unsatisfactory' under the Bank's ICR guidelines, a relatively unfavorable rating that gets applied to only a small percentage of the Bank's lending projects each year," but "she received considerable pushback to this conclusion, ultimately leading to a methodological change to rate different portions of the project separately so that the overall rating could be revised upward to 'Moderately Satisfactory.'" According to the Bank, the "Applicant was generally: reluctant to acknowledge that there were any issues with the quality of her work; defensive of her position; and resistant to feedback and comments from her more senior colleagues."

Non-confirmation decision

32. On 9 July 2019, the Applicant's Manager conducted her year-end annual performance discussion with the Applicant by phone call. During this discussion, the Manager informed the Applicant that she would not be confirming her appointment. According to the Applicant, her Manager

did not provide anything in writing to [the Applicant] during this meeting, nor did she give any indication of the process by which this decision was reached or

through which it would be finalized. Instead, she simply told [the Applicant] that her colleagues had described her as defensive and unwilling to incorporate feedback and that her [TTLs] had complained of her engaging in country dialogue without prior consultation. When pressed for additional information, [the Manager] would only say that [the Applicant] failed to listen to her TTL regarding the Tree Crops ICR, which [the Manager] further claimed was of poor quality. She did not provide any other examples of [the Applicant] refusing to accept feedback, nor did she provide any specific examples of [the Applicant] engaging in inappropriate dialogue with the Government.

According to the Bank, during the discussion the Manager

explained that this position was based on an assessment of Applicant's technical strength and performance and Applicant's behavior professionally, to date. [The Manager] explained that, while Applicant seemed to have developed good relationships with the Country Management Unit and broader counterparts in Liberia, on balance, Applicant's performance fell short of [the Manager's] expectations for an internationally-recruited Senior Agriculture Specialist and that she did not think Applicant was a "good fit" for the Agriculture Global Practice. [...]

[The Manager] explained that on the technical front, the draft ICR that Applicant delivered for the Tree Crops Project, being her key deliverable for the extended probation period, lacked rigor, was of poor quality, was delivered late and that significant intervention and work was required on the part of [the Manager], as well as other senior members of the Agriculture Global Practice, to improve the quality of the document and ensure delivery within the final (extended) deadline.

[The Manager] further said that, on the behavioral front, Applicant had failed, throughout her initial and extended probation periods, to consult with [the Manager], as Practice Manager, regarding important issues and developments in Liberia, despite being reminded to do so repeatedly. [The Manager] also said that she had observed, and received feedback, that Applicant was reluctant to listen and take onboard recommendations provided by senior colleagues in the Agriculture Global Practice who offered support and guidance and that Applicant seemed reluctant to fully embrace the Global Practice's agenda in Liberia by providing support to colleagues on other projects, such as the AgriPER Project.

33. On 22 July 2019, the Manager emailed the Applicant, notifying her in writing that her appointment would not be confirmed at the end of the probationary period. The Manager also informed the Applicant that her probationary period would be extended until 15 November 2019, in order to give the Applicant time to plan accordingly. The Applicant also received a formal Office Memorandum confirming the extension.

34. On 24 July 2019, the Applicant sought mediation. On 18 September 2019, mediation concluded unsuccessfully.

35. On 16 September 2019, the Manager emailed the Applicant a write-up of their performance discussion, asking her to submit any comments within three days. The Applicant submitted a detailed response on 20 September 2019, contesting the key issues raised by the Manager and stating that the “assessment of [her] technical ability, delivery of the ICR, and [her] professional behavior is both unfair and unjust.” On 23 September 2019, the Applicant received an Office Memorandum from HR on “Information/Benefits Upon Ending Employment,” which noted that her last day of service would be 15 November 2019. Around 30 September 2019, the Reviewing Official signed off on the performance evaluation.

36. Following the Applicant’s response to the performance evaluation, the Manager emailed the AgriPER TTL, the Applicant’s Mentor, and a senior colleague who had assisted with the Tree Crops ICR, requesting specific feedback on the Applicant. The AgriPER TTL responded, stating that he did not feel that he received the expected support from the Applicant. The Applicant’s Mentor responded, explaining that he did not feel the mentorship was successful and that the Applicant’s behavior was not conducive to teamwork. The senior colleague responded, stating that the Applicant was “aggressive,” “argumentative,” and stubborn, although noting that her Tree Crops ICR draft was “reasonable.”

37. Following these exchanges, on 1 October 2019 the Manager responded to the Applicant’s comments regarding the Annual Review, providing “clarifications” to the points the Applicant had raised. On 7 October 2019, the Applicant replied to her Manager’s “clarifications,” stating, “[I]t is disappointing to realize that integrity seem[s] not to be part of this process, neither from management nor colleagues,” and providing further detailed responses to her Manager’s statements.

38. The Applicant’s employment with the Bank ended on 15 November 2019.

39. Pursuant to Staff Rule 9.03, paragraph 7.03, the Applicant elected to bypass Peer Review Services and challenge the termination of her employment directly with the Tribunal. On 21 January 2020, the Applicant submitted this Application to the Tribunal. She challenges the Bank's decision not to confirm her appointment, including any underlying performance evaluation decisions on which the non-confirmation decision was based.

40. The Applicant seeks the following relief: (i) rescission of the non-confirmation decision and removal of all references to the same from her personnel file; (ii) revision of her FY19 Annual Review to remove the unsupported and unbalanced negative comments of her Manager; (iii) reappointment to a comparable, mutually agreeable position at Level GG or higher for a term of at least two years, or two years' compensation at her final salary (including Hardship Differential and Non-Family Post Premium) in lieu thereof; and (iv) in addition to any compensation in lieu of specific performance as requested above, the Applicant requests compensation in an amount deemed just and reasonable by the Tribunal to remedy the damages to her career and professional reputation and the personal hardships resulting from the premature termination of her appointment due to management's violations of the Staff Rules, denial of due process, and denial of a fair opportunity to be confirmed.

41. The Applicant claims legal fees and costs in the amount of \$25,317.63.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

Management abused its discretion by failing to fairly and objectively evaluate the Applicant's performance in connection with the confirmation process

42. According to the Applicant, management abused its discretion by failing to fairly and objectively evaluate the Applicant's performance in connection with the confirmation process. The Applicant contends that the Annual Review that she received "should be accorded little weight in this regard given that the process was only even initiated after management had apparently already made its non-confirmation decision." The Applicant further submits that, in her Annual Review,

her Manager “failed to fairly balance positive and negative factors in her assessment of [the Applicant’s] performance.” The Applicant notes that the comments her Manager received from eight of nine feedback providers “were overwhelmingly positive,” including the following comments:

- She possesses strong communication skills, delivers clear and well articulated messages and presents clear reasoning behind them.
- She seems to have solid technical skills and provides thoughtful comments.
- She is knowledgeable and quick to react on fundamental project issues taking cognizance of the Bank’s policy guidelines. [...] She was very good in collaborating across the sectors. [...] Within a short time, she was able to gain confidence of the CMU and country office colleagues as a professionally competent staff who can give enlightened leadership and guidance to the client.
- [The Applicant] must be commended for her strong client and stakeholder engagement during the year.
- [The Applicant] was very instrumental in the preparation of PAD. Take[s] a very good lead in missions activities.
- Her ability to dig deeper into market failure and design holistic practical solutions by collaborating with different units within [the Bank] and also other development organizations was noteworthy. [...] Her positive, can-do attitude will benefit her projects and her clients in Liberia.
- She brings solid technical expertise on agribusiness issues and an entrepreneurial attitude which is quite a rare combination at the Bank.
- [The Applicant] is an extremely committed professional with strong knowledge and understanding of agriculture issues. [...] [The Applicant] is a strong team player and she takes on all responsibilities in an extremely professional manner.

To the Applicant, “there is a jarring and inexplicable disconnect between the near-universal glowing feedback provided by [the Applicant’s] colleagues and the largely negative written evaluation from [the Manager] that supposedly took this feedback into account.”

43. The Applicant also contests the Bank’s assertions of technical issues and behavioral issues regarding her performance, stating such assertions are “misleading and unsubstantiated by the

evidence.” The Applicant references the positive comments from her feedback providers, contending that such feedback

not only clearly demonstrates that [the Applicant] exhibited the very types of “technical” and “behavioral” skills that [the Manager] inexplicably deemed [the Applicant] to be lacking, but that she did so to the satisfaction of the leaders of the very projects on which [the Manager] based her unfounded conclusion.

44. The Applicant finally submits on this contention that the September 2019 emails from the AgriPER TTL, her Mentor, and the senior colleague “should be afforded little weight” because they were, in the Applicant’s view, requested to support the “criticisms” that the Manager “had already committed to writing.”

The Bank’s Response

The non-confirmation decision had a reasonable and observable basis as the Applicant was not suitable for permanent employment

45. The Bank contends that the standard by which the non-confirmation decision should be reviewed is “whether Applicant has proven her suitability for the requirements of her role, having regard to her technical competence and behavior.” The Bank submits that the Applicant “failed to satisfy the requirements of her role, and therefore, to prove her suitability for continued employment at both the technical and behavioral levels.” With regard to the Applicant’s technical performance, the Bank asserts that the two technical deliverables for which the Applicant was responsible, the STAR-P PAD and the Tree Crops ICR, were of poor quality and “required significant intervention and support from other colleagues to revise the documents to management’s satisfaction.” With regard to the Applicant’s behavioral performance, the Bank contends that the Applicant “failed to prove her suitability for her role in at least three material respects”: the “Applicant was reluctant to fully support and embrace the Agriculture Global Practice’s priorities in Liberia”; the “Applicant was reluctant to consult with, and seek advice from, [her Manager] and other senior members of the Agriculture Global Practice regarding key issues affecting agriculture projects in Liberia”; and the “Applicant was reluctant to take onboard feedback and guidance from management and other senior members of the Agriculture Global Practice.” The Bank finally submits on this contention that,

while Applicant may have displayed some characteristics and skills suitable to certain limited aspects of her role, there was nonetheless a very clear, reasonable and observable basis for management's overall adverse assessment of Applicant's suitability for continued employment in her role.

The Applicant's Contention No. 2

Management failed to afford the Applicant due process with respect to both her probationary period and the non-confirmation decision

46. The Applicant contends that management failed to give the Applicant any warning of the issues purportedly leading to her non-confirmation. The Applicant submits that “[p]robatinary staff members are entitled as a matter of due process to adequate warning about any deficiencies in their work” as well as “fair opportunity to prove [their] ability” (citing *EV (Merits)*, Decision No. 599 [2019], para. 132). The Applicant also cites Staff Rule 4.02, paragraph 2.02(b), which obligates management to “provide the [probationary] staff member feedback on the staff member’s suitability and progress based on achievement of the work program, technical qualifications and professional behaviors.”

47. According to the Applicant, she “received no indication from management during her first year on the job of any potential deficiencies in her work,” and she contends that “nothing that [her Manager] said in their first midyear conversation in February 2019 gave the slightest indication that [the Applicant] should have been concerned about not being confirmed.” According to the Applicant, during the mid-year conversation, her Manager did not raise any concerns regarding the Applicant’s performance but instead reassured her that the extension was not due to performance deficiencies. The Applicant further contends that,

by failing to timely raise her concerns in the midyear conversation, [the Manager] deprived [the Applicant] of the opportunity to work with her on establishing a concrete plan for addressing these concerns and objective benchmarks against which to measure her progress over her extended probation. Instead, by the time [the Manager] eventually voiced her concerns in their year-end meeting in July 2019, the non-confirmation decision was a *fait accompli*, [...] thus denying [the Applicant] even the most minimal of opportunities to prove her capabilities with respect to these issues.

48. In response to the Bank's contention that the Applicant was adequately warned about deficiencies in her performance on multiple occasions, the Applicant submits that nothing the Bank points to constitutes an "express" warning about the possibility of non-confirmation. Rather, to the Applicant, these instances constituted "quotidian managerial guidance to a new staff member."

49. The Applicant next contends that management failed to evaluate her performance during her probationary period as required by the Staff Rules. The Applicant submits that she was "not given any structured evaluation during her first twelve months on the job." The Applicant recognizes that "the Bank can certainly structure its Performance Management Process any way it likes with respect to the introduction of new employees into that system," but she contends that the Bank "cannot simply ignore its 'feedback' obligation under Staff Rule 4.02, paragraph 2.02(b)."

50. The Applicant also contends that management unfairly denied her any meaningful opportunity to defend herself against the alleged bases for the non-confirmation decision. The Applicant cites Staff Rule 4.02, paragraph 3.02, which provides that a "staff member shall be provided an opportunity to comment on the recommendation [not to confirm]. The recommendation, together with any comments of the staff member, shall be submitted to the Manager's Manager (at Level GI or above) for decision." The Applicant submits that the written notice of her Manager's decision to recommend non-confirmation on 22 July 2019 was deficient because it did not provide reasons for the recommendation, as required by the Staff Rule. The Applicant further submits that, when she finally received a written explanation for the recommendation, on 16 September 2019, to which she was able to respond, it was too close to the date on which her probation was to expire, denying her the meaningful opportunity to defend herself.

51. The Applicant finally submits on this contention that management failed to support the Applicant with adequate supervision and guidance during her probationary period. The Applicant points to her Manager's emails with the HR Business Partner in which the Manager states, "I am a little bit concerned about those trends continuing after one year and it could be because she is our only staff in the Monrovia office with mentoring being provided from [a] distance." The

Applicant submits that “adequate guidance from proactive management could have made all the difference,” but that “management in essence set [the Applicant] up to fail by giving her inadequate support in an isolated position and then apparently faulting her for developing stronger relationships locally than with her remote Global Practice supervisors and colleagues.”

The Bank’s Response

The Applicant was afforded fair treatment and due process

52. The Bank contends that the record does not support the Applicant’s claims. First, the Bank submits that it gave the Applicant adequate warning of any performance issues. According to the Bank, the “Applicant received multiple, clear warnings throughout the duration of her initial 12 month probationary period that there were issues with her performance and approach.” It gives as examples the following: the March 2018 email exchange regarding the AgriPER project; the exchange over the Israel study tour; the August 2018 exchange over the potential whistleblower complaint; the September and October 2018 email exchanges regarding the WAATP; the October 2018 email exchanges regarding an IFAD partnership on STAR-P; the October 2018 feedback on the STAR-P PAD; the November 2018 informal performance discussion; the January 2019 email exchange between the Applicant and her Mentor; the February 2019 mid-year conversation; and the February 2019 notice of the extension of the Applicant’s probation. The Bank further points to the final paragraph in the Applicant’s notice of the extension of her probation, which states,

If during, or at the end of your extended probationary period, it is determined that you are not suitable for confirmation based on an assessment of your achievement of the work program, technical qualifications and professional behaviors, your employment may be terminated by non-confirmation.

According to the Bank, this statement constituted an express warning.

53. The Bank next contends that the Applicant’s performance was evaluated during her probationary period. The Bank first submits that it was not required by the Staff Rules to provide a written assessment of the Applicant’s performance at the end of her first probationary period. The Bank then submits that, in the context of probationary periods, its performance evaluation obligations are for the manager to “meet with the staff member as soon as practicable to establish

the staff member's work program" and to "provide the staff member feedback on their suitability and progress based on achievement of the work program, technical qualifications and professional behaviors." According to the Bank, it met these two obligations when the Applicant's Manager met with the Applicant at the beginning of her employment to explain her core projects and when the Manager, and others, gave real-time feedback to the Applicant throughout her probation.

54. The Bank also contends that the Applicant was afforded the opportunity to defend herself and respond to the recommendation not to confirm. The Bank submits that the Applicant was first notified of the recommendation orally on 9 July 2019, with a clear explanation for the reasons for the recommendation, and then received written confirmation on 22 July 2019, after which the Applicant "decided to address her concerns via mediation." The Bank then submits that the Applicant only decided to provide written comments on 20 September 2019, in response to her Manager's detailed performance evaluation write-up. To the Bank, because the Applicant's Manager's Director received these written comments, the requirements of Staff Rule 4.02, paragraph 3.02, were satisfied.

55. The Bank finally contends that management provided the Applicant with adequate supervision and guidance. The Bank submits that, despite the Applicant's senior position, she "received, and unfortunately *required*, extensive ongoing supervision and guidance throughout the full duration of her employment." (Emphasis in original.) To the Bank, the Applicant's position must fail because she was hired to perform a senior role that was knowingly not under the immediate supervision of management at Headquarters, she entered the role with previous Bank experience, she knew her unit with the Global Practice was decentralized, similarly situated staff in her unit did not require the same level of support, and management "went above and beyond to support and facilitate her success."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

WHETHER THE DECISION NOT TO CONFIRM THE APPLICANT'S APPOINTMENT WAS AN ABUSE OF
DISCRETION

56. Principle 4.1(c) of the Principles of Staff Employment states, "An appointment for more than a year shall normally commence with a probationary period to allow The World Bank or the IFC and the staff member to assess their suitability to each other."

57. Staff Rule 4.02 sets out the provisions governing the probationary period. According to paragraph 1.01 of that Rule, "[t]he purpose of the probationary period is to assess the suitability of the Bank Group and the staff member to each other."

58. In *Lusakueno-Kisongele*, Decision No. 327 [2004], para. 42, the Tribunal stated that "the essential purpose of the probationary period is to evaluate the staff member's performance and to decide whether he or she does or does not qualify for permanent employment."

59. In *McNeill*, Decision No. 157 [1997], para. 30, the Tribunal stated:

The scope and extent of the review by the Tribunal of the Bank's decisions concerning confirmation or non-confirmation of appointment during or at the end of the probationary period rest on the basic idea that the purpose of probation is "the determination whether the employee concerned satisfies the conditions required for confirmation" (*Buranavanichkit*, Decision No. 7 [1982], para. 26), that is to say, in the language of Staff Rule 4.02, the determination whether the probationer is "suitable for continued employment with the Bank Group." The probationer has no right to tenure; pending confirmation his situation is essentially provisional and his future with the Bank depends on his suitability for permanent employment. The assessment of his suitability is a matter of managerial discretion, as the Tribunal has ruled in *Salle* (Decision No. 10 [1982]):

It is of the essence of probation that the organization be vested with the power both to define its own needs, requirements and interests, and to decide whether, judging by the staff member's performance during the probationary period, he does or does not qualify for permanent Bank employment. These determinations necessarily lie

within the responsibility and discretion of the Respondent.... (para. 27).

It is, therefore, for the Bank to establish the standards which the probationer should satisfy. The Tribunal has determined that these standards

may refer not only to the technical competence of the probationer but also to his or her character, personality and conduct generally in so far as they bear on ability to work harmoniously and to good effect with supervisors and other staff members. The merits of the Bank's decision in this regard will not be reviewed by this Tribunal except for the purposes of satisfying itself that there has been no abuse of discretion.... (*Buranavanichkit*, Decision No. 7 [1982], para. 26).

It is also for the Bank to determine, at the end of the probation or at any time during the probation, whether the probationer has proven either suitable or unsuitable for Bank employment and to terminate his employment whenever it concludes that he is unsuitable. As the Tribunal has repeatedly stated, it will not review the exercise by the Respondent of its managerial discretion unless the decision constitutes an abuse of discretion, is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

60. In *McNeill* [1997], para. 34, the Tribunal stated,

Regarding probation, the problem is not so much whether the probationer has performed satisfactorily as whether he has proven his suitability to the specific requirements of the Bank regarding the work which he would have to perform if he were to be confirmed.

61. The Tribunal stated in *Zwaga*, Decision No. 225 [2000], para. 32, that it

will not substitute its own judgment for that of the Respondent on the staff member's suitability for employment. In reviewing the Respondent's decision not to confirm the Applicant's appointment, the Tribunal further notes that the concept of unsatisfactory performance as applied in the case of probation is broader than that of a confirmed staff member.

62. The Applicant contends that the decision not to confirm her appointment was an abuse of discretion, as management failed to fairly and objectively evaluate her performance in connection with the confirmation process. To the Applicant, the Manager failed to give appropriate weight to positive feedback in the evaluation of the Applicant's performance, leading to the non-

confirmation decision. The Applicant further contends that the Bank's assertions of technical and behavioral issues regarding her performance are unsubstantiated by the record. The Bank maintains that there was a reasonable and observable basis for the non-confirmation decision, namely the Applicant's unsatisfactory performance with regard to her technical deliverables and her unsuitability with regard to her behavior.

63. The record reflects that many of the Applicant's feedback providers gave positive comments in connection with her performance review, noting her strengths as relating to her communication skills, technical expertise, and strong client engagement, among other attributes.

64. The record also reflects, however, that the Applicant's Manager had concerns about the Applicant's performance throughout her probationary period. In October 2018, the Manager was not satisfied with the Applicant's first technical deliverable, the STAR-P PAD, and she enlisted the Applicant's Mentor to assist the STAR-P team in finalizing the document. In February 2019, the Manager expressed concerns with the Applicant's suitability when she emailed the HR Business Partner seeking advice on the Applicant's probation, noting that management was "constantly in 'damage-control mode'" and that the Applicant needed "to have the right reflexes and to know what's ok and not, when to ask, etc." In April 2019, the Manager concluded there were such substantial issues with the Applicant's next deliverable, the Tree Crops ICR, that the deadline for submission was pushed back to June. Multiple senior colleagues worked with the Applicant to improve the draft.

65. After informing the Applicant of the non-confirmation recommendation and receiving the Applicant's comments, the Manager sought feedback regarding the Applicant from the AgriPER TTL, the senior colleague who assisted with the Tree Crops ICR, and the Mentor. In response, the AgriPER TTL wrote:

[O]verall, I did feel that we did not secure the kind of support from [the Applicant] as I had expected. She supported on logistics and mission scheduling but had virtually no technical input into the task.

The senior colleague wrote:

Overall, I think she did come up with a reasonable first draft (nothing spectacular) but not clearly thought out and mostly one-sided. Her stubbornness, unwillingness to receive suggestions and comments with an open mind, and to not avail of the tremendous learning opportunities through interaction with you and [the Mentor] were her key failings. Mentoring really helped her and I believe that this one-on-one process is the way for her to develop as a professional.

The Mentor wrote:

[The Applicant] is a strong woman with clear cut opinion and was not as flexible as I would have wished to make the mentorship succeed. While advising her on mundane matters, she would take it very serious and made sure that her position was the one right. [...] Her behavior is definitely not conducive to team work and those who have had to deal with her can attest.

The Tribunal notes that, in the feedback submitted as part of the performance management process, the Mentor wrote:

As a mentee, [the Applicant] has tried to learn the ropes of the internal Bank processes [through] the writing and approval of the Liberia Tree Crop Project. The project has served as a good learning experience for her on what is required and I think despite the steep learning curve, she finally came up with a better understanding of the institutional requirements. She has cultivated a good working relationship with the counterpart and she should be encouraged but to make sure that the first line of entry is the immediate management and colleagues.

66. To the Bank, the concerns expressed to the Manager demonstrate

that management had a reasonable and observable basis for concluding that Applicant was not suitable for continued employment in her senior role, from either a behavioral or a technical perspective, notwithstanding that she received some positive feedback about her performance.

67. The Tribunal recalls that, when reviewing non-confirmation decisions, “the problem is not so much whether the probationer has performed satisfactorily as whether he has proven his suitability to the specific requirements of the Bank.” *McNeill* [1997], para. 34. The Tribunal also recalls that “the concept of unsatisfactory performance as applied in the case of probation is broader than that of a confirmed staff member.” *Zwaga* [2000], para. 32. In *Motabar*, Decision No. 351 [2006], para. 40, the Tribunal observed:

The Applicant is correct in saying that there were many positive comments about both his work and his behaviors in both interim OPEs. But he tends to read comments as too uniformly laudatory. It may be true that judging simply by the number of comments, the good outnumber the bad. But it is necessary to take the negative comments seriously, based particularly on their level of detail and corroboration, and one must also, of course, give weight to the negative appraisals coming from the Applicant's supervisor herself.

68. The Tribunal observes that, while the record does demonstrate that the Applicant received significant positive feedback regarding her performance from colleagues, it also demonstrates that the Manager's concerns with the Applicant's performance persisted throughout her probationary period. Noting the standard of review for non-confirmation decisions, the Tribunal concludes that there was a reasonable basis for the adverse assessment of the Applicant's performance. The Tribunal is therefore satisfied that the decision not to confirm the Applicant's appointment was not an abuse of discretion.

WHETHER MANAGEMENT FAILED TO AFFORD THE APPLICANT DUE PROCESS WITH RESPECT TO BOTH
HER PROBATIONARY PERIOD AND THE NON-CONFIRMATION DECISION

69. Staff Rule 4.02, paragraph 2.02, provides:

During the probationary period, the Manager or Designated Supervisor shall:

- a. as soon as practicable, meet with the staff member to establish the staff member's work program; and
- b. provide the staff member feedback on the staff member's suitability and progress based on achievement of the work program, technical qualifications and professional behaviors.

70. Staff Rule 4.02, paragraph 3.02, sets out the requirements for non-confirmation of an appointment at the end of the probationary period, as follows:

At any point during or at the end of the probationary period, the staff member's Manager may recommend to end a staff member's employment by non-confirmation of appointment. The written recommendation to not confirm must be supported by: prior written notice to the staff member concerning deficiencies in his/her performance, technical qualifications, or professional behaviors; reasonable

guidance and opportunity to demonstrate suitability for the position, and warning that failure to do so may result in termination. The staff member shall be provided an opportunity to comment on the recommendation. The recommendation, together with any comments of the staff member, shall be submitted to the Manager's Manager (at Level GI or above) for decision, which shall be made in consultation with the Manager, Human Resources Team and with notice to the staff member's Vice President. Termination procedures are specified in Section 6 of Staff Rule 7.01.

71. In *Salle*, Decision No. 10 [1982], para. 50, the Tribunal emphasized the importance of due process because “[t]he very discretion granted to the Respondent in reaching its decision at the end of probation makes it all the more imperative that the procedural guarantees ensuring the staff member of fair treatment be respected.”

72. In *McNeill* [1997], para. 44, the Tribunal recognized that the Bank has a

duty to meet what the Tribunal has called “the appropriate standards of justice” (*Buranavanichkit*, Decision No. 7 [1982], para. 30). While the probationer has no right to be confirmed, he has the right to be given fair opportunity to prove his ability, and the Tribunal will review whether this right has been respected and whether the legal requirements in this regard have been met.

73. In *Zwaga* [2000], para. 38, the Tribunal held

that one of the basic rights of an employee on probation is the right to receive adequate guidance and training (*Rossini*, Decision No. 31 [1987], para. 25) and that it is its duty to make sure that the Bank's obligation to provide a staff member on probation with adequate supervision and guidance has been complied with in a reasonable manner. (*Salle*, Decision No. 10 [1982], para. 32.)

See also Liu, Decision No. 387 [2008], para 19.

74. In *Samuel-Thambiah*, Decision No. 133 [1993], para. 32, the Tribunal recognized the elements of due process, in the context of probation, as follows:

First, the staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached. Second, the staff member must be given adequate opportunities to defend himself.

75. The Applicant contends that management failed to afford her due process with respect to both her probationary period and the non-confirmation decision when they failed to give any warning of the issues purportedly leading to her non-confirmation; failed to evaluate her performance during her probationary period as required by the Staff Rules; denied her any meaningful opportunity to defend herself against the alleged bases for the non-confirmation decision; and failed to support her with adequate supervision and guidance during her probationary period.

76. The Tribunal will first consider whether management failed to support the Applicant with adequate supervision and guidance during her probationary period.

77. The Tribunal recalls “that one of the basic rights of an employee on probation is the right to receive adequate guidance and training” and “that it is its duty to make sure that the Bank’s obligation to provide a staff member on probation with adequate supervision and guidance has been complied with in a reasonable manner.” *Zwaga* [2000], para. 38.

78. The Applicant claims that she was sent to work in Liberia with little direction and minimal guidance and supervision. The Applicant notes her Manager’s email to the HR Business Partner, in which her Manager admits that she was “a little bit concerned about those [negative performance] trends continuing after one year and it could be because she is our only staff in the Monrovia office with mentoring being provided from [a] distance.”

79. The Tribunal notes that the Applicant’s position was an internationally recruited senior role. While being in a senior position does not negate the right of probational employees to receive adequate guidance and training, the Tribunal considers that the level of guidance necessary to be adequate must be proportionate to the seniority of any particular position. For instance, in *McNeill* [1997], para. 47, the Tribunal observed,

A probationer aged 49, with 25 years of professional experience, a good academic background and a good knowledge of Brazil and of the Portuguese language was not expected to require the same degree of training and guidance as an inexperienced newcomer.

See also, Motabar [2006], para. 52. In the present case, the Applicant joined the Bank with “nearly twenty-five years of experience in the agribusiness and development sectors, with approximately half of those years spent in staff and consultant roles with the World Bank.” Like the probationers in *McNeill* [1997] and *Motabar* [2006], the Applicant was an experienced professional who “was not expected to require the same degree of training and guidance as an inexperienced newcomer.” Therefore, while it is true the Applicant was the only representative of her unit in the Liberia country office, this was precisely the senior role she was recruited to serve.

80. The record shows that the Applicant and her Manager met at least once at the beginning of her appointment to discuss her work program and the projects she was expected to complete during her probationary period. The Applicant was also assigned a Mentor who contacted her several times throughout her probationary period to provide guidance on specific matters. The record also reflects that the Applicant was supported by senior colleagues on multiple occasions in finalizing her deliverables, namely the STAR-P PAD and the Tree Crops ICR.

81. Given these considerations, the Tribunal is not convinced that the Bank failed to provide the Applicant with adequate supervision and guidance during her probationary period.

82. The Tribunal will next consider whether the Bank failed to evaluate the Applicant’s performance during her probationary period as required by the Staff Rules. Staff Rule 4.02, paragraph 2.02(b), provides that during the probationary period the manager or supervisor must “provide the staff member feedback on the staff member’s suitability and progress based on achievement of the work program, technical qualifications and professional behaviors.”

83. The Tribunal notes that Staff Rule 4.02, paragraph 2.02(b), was revised in 2011 to remove the requirement that the staff member be provided with a written assessment of his or her performance every six months during probation. As such, the Applicant’s contention that a written performance evaluation was required is not persuasive. The Tribunal will still assess whether the feedback provided to the Applicant was consistent with the requirements of Staff Rule 4.02, paragraph 2.02(b), as in force during the Applicant’s probation.

84. The record reflects that the Applicant's Manager conducted an informal performance discussion with the Applicant in November 2018 during which, according to the Manager, they discussed the importance of keeping the Manager informed and seeking her input, as well as taking advice from and supporting the projects of other colleagues. The Applicant submits that the focus of this discussion was to discuss her progress on TTL accreditation and that "it was not in any way a critique of [her] performance." The record also reflects that the Manager conducted a mid-year conversation in February 2019 in which the Applicant's work program for the upcoming year was discussed.

85. The Tribunal concludes that, while performance discussions were held during the Applicant's probationary period, they did not satisfy the requirements of Staff Rule 4.02, paragraph 2.02(b), as the Manager did not use these opportunities to address the Applicant's suitability for confirmation.

86. The Tribunal will next determine whether the Applicant was given adequate warning of the deficiencies in her performance in accordance with Staff Rule 4.02, paragraph 3.02.

87. The Bank avers that,

throughout the duration of her initial probation period, Applicant received clear feedback about deficiencies in her performance from both a technical and behavioral perspective and, further, that Applicant was expressly informed of the possibility of non-confirmation if she failed to demonstrate her suitability for the role.

As examples of such feedback, the Bank submits the following: the March 2018 email exchange regarding the AgriPER project; the exchange over the Israel study tour; the August 2018 exchange over the potential whistleblower complaint; the September and October 2018 email exchanges regarding the WAATP; the October 2018 email exchanges regarding an IFAD partnership on STAR-P; the October 2018 feedback on the STAR-P PAD; the November 2018 informal performance discussion; the January 2019 email exchange between the Applicant and her Mentor; the February 2019 mid-year conversation; and the February 2019 notice of the extension of the Applicant's probation.

88. The Applicant contends that these exchanges do not constitute an express warning about the possibility of non-confirmation, but rather “quotidian managerial guidance to a new staff member.”

89. Having reviewed the record with respect to the referenced exchanges, the Tribunal is not convinced that any of the above instances could reasonably be considered to have provided the Applicant the type of warning contemplated by Staff Rule 4.02, paragraph 3.02. The Tribunal recalls that, under the Staff Rule, the non-confirmation recommendation must be accompanied by

prior written notice to the staff member concerning deficiencies in his/her performance, technical qualifications, or professional behaviors; reasonable guidance and opportunity to demonstrate suitability for the position, and warning that failure to do so may result in termination.

90. In *Venkataraman*, Decision No. 500 [2014], para. 66, the Tribunal noted that, even where the applicant received feedback explicitly informing him of performance deficiencies, the “question, however, is whether the [a]pplicant was provided with warning that failure to demonstrate his suitability for the position may result in termination as required by the Staff Rule.” The Tribunal further explained that

not informing the Applicant of the grave consequences of his failure to improve his performance may have denied him the opportunity to fully realize the seriousness of his situation and thereby increase his efforts to prove his suitability for continued employment. (*Id.*, para. 73.)

91. The Tribunal considers that the Applicant’s Manager had the opportunity to provide the Applicant with such a warning during the February 2019 mid-year conversation and in the February 2019 notice of the extension of the Applicant’s probation, especially as, at the same time, the Manager had expressed her concerns regarding the Applicant’s suitability in an email to HR. When the Manager first emailed the Applicant regarding the possibility of an extension of the probationary period, she wrote:

We have a situation, due to the date at which you joined, where you have not had an OPE yet and we therefore do not have a formal evaluation of your performance (and your main, first “personal and measurable” deliverable, the ICR for the Tree Crops project, is yet to come). I have therefore sought advice on this situation and

whether we may need to extend the probation period until we have the ICR delivered and have been able to do an OPE. I will revert to you during the week.

The Tribunal further notes that the Manager indicated in her written statement filed with the Tribunal that, when the Applicant asked her if the probation was being extended because of an issue with her performance, the Manager did not identify any such issues. When the Manager emailed the Applicant confirming the extension of the probationary period, she wrote:

Further to my earlier email on this topic, and after consultation with [the Manager's Director] and with HR, we will be extending your probation period by six months from February 16 to August 16, 2019. This will enable us to carry out a full evaluation cycle (OPE) at the end of the fiscal year.

During this time, your work program would remain as we discussed during our call a few days ago, i.e.:

1. Focus on the delivery of the ICR for the Tree Crops project, for which you are taking the lead and are the main author;
2. Continued support to the TTL of the STAR-P project to ensure that the project becomes effective this FY without delays;
3. Continued support to our other teams working on the Liberia program; and
4. Continue to build your skills and knowledge of our procedures/programs including through mentoring by [the Mentor] (I do not include a reference to the IPF academy as we know that you will not be able to take it during that period/before September).

Attached is the standard memo – this is a standardized process – that will be submitted through the system (the wording is standard and the tailored section is the one referring to your work program).

The Tribunal notes that nothing in these communications identifies any deficiencies in the Applicant's performance, let alone warns the Applicant that a failure to address such deficiencies could result in non-confirmation.

92. The Tribunal also considers the Manager's emails to the HR Business Partner, in which she asked if extending the Applicant's probation is "something that is relatively standard or would this raise specific concerns." In the same exchange, the Manager stated:

I have looked at the probation extension memo that needs to be prepared, and it needs to list specific areas of improvement for the staff to be confirmed. Would it be enough to extend the probation on the basis that we would like to see some deliverables first, have an opportunity for a formal evaluation, for her to become more familiar with our operations and processes?

93. The Tribunal notes that, if there were “specific concerns” with the Applicant’s performance at this time, as the record suggests there were, this was the appropriate time for the Manager to have raised them with the Applicant. Instead, the Office Memorandum notifying the Applicant of the extension simply listed her work program without identifying any deficiencies to be addressed. The Bank contends that the Office Memorandum provided a written warning consistent with the Staff Rule, stating,

If during, or at the end of your probationary period, it is determined that you are not suitable for confirmation based on an assessment of your achievement of the work program, technical qualifications and professional behaviors, your employment may be terminated by non-confirmation following at least sixty calendar days’ notice.

The Tribunal notes, however, that such a warning is ineffective when not accompanied by the specific deficiencies which need to be addressed, as the purpose of any such warning is to give the staff member the opportunity to improve. Unlike the applicant in *Venkataraman* [2014], who was notified of performance deficiencies but not warned that a failure to improve could result in termination, the Applicant here was informed that a failure to demonstrate suitability could result in non-confirmation, but was not warned of the deficiencies which needed to be improved.

94. The Tribunal therefore concludes that the Applicant was not provided with adequate warning of performance concerns as contemplated by Staff Rule 4.02, paragraph 3.02.

95. The Tribunal will finally consider whether the Applicant was denied any meaningful opportunity to defend herself against the bases for the non-confirmation decision.

96. Staff Rule 4.02, paragraph 3.02, provides:

The staff member shall be provided an opportunity to comment on the recommendation. The recommendation, together with any comments of the staff

member, shall be submitted to the Manager's Manager (at Level GI or above) for decision, which shall be made in consultation with the Manager, Human Resources Team and with notice to the staff member's Vice President.

97. The Tribunal has emphasized the importance of affording staff members the opportunity to defend themselves prior to decisions being made which affect their employment. *See, e.g., FH*, Decision No. 624 [2020], para. 67; *EV (Merits)* [2019], para. 180; *AI (No. 2)*, Decision No. 437 [2010], para. 60.

98. The Bank submits that the Applicant was afforded the opportunity to comment on the recommended non-confirmation through her emails of 20 September 2019 and 7 October 2019, which were provided to the Manager's Director.

99. The Tribunal is not satisfied that these emails meet the requirements of Staff Rule 4.02, paragraph 3.02.

100. The Tribunal observes that, on 9 July 2019, the Applicant was verbally notified during her annual performance discussion with the Manager (conducted by phone) that her appointment would not be confirmed. During this conversation, the Manager discussed the perceived deficiencies in the Applicant's performance and presented these as the bases for the non-confirmation decision. The Applicant was not given anything in writing at this time. On 22 July 2019, the Manager emailed the Applicant, stating:

As discussed in the context of your OPE discussion on July 9, we will not be confirming your contract at the end of your probation period. Bank policies require that we give you a sixty day notice period for termination on non-confirmation. I will proceed with a second extension of your probation period until November 15, 2019, in order to give you more time than what our policies require to get organized and to plan your move.

101. On the same day, the Applicant received an Office Memorandum from her Manager on the "Extension of Probationary Period," which stated, "Further to our discussions on this subject, and following my consultation with [the Manager's Director], this is to inform you that in accordance with Staff Rule 4.02, paragraph 2.01, your probation has been extended to November 15, 2019."

The Memorandum also stated, “We discussed on July 9, 2019, a three month extension of the probationary period to provide you with sufficient time to plan your next move prior to the termination of your contract for non-confirmation.”

102. The Tribunal considers that these communications did not notify the Applicant that her Manager was recommending non-confirmation; “[t]hese notices rather announced to [her] a final decision.” *Venkataraman* [2014], para. 67. In this regard, the Tribunal observes that, in its pleadings, the Bank states “that Applicant was first informed that [the Manager] had decided not to confirm Applicant’s appointment during her year-end performance review discussion, which took place on July 9, 2019.” The Tribunal further observes that neither the 9 July nor the 22 July communication provided written reasons for the non-confirmation decision to which the Applicant could substantively reply, nor was the Applicant invited to make such a reply.

103. When the Applicant was finally provided the written bases for her non-confirmation in the form of her Manager’s 16 September 2019 performance discussion write-up (notably just sixty days before the Applicant’s appointment ended and two months after the Applicant was first notified of the Manager’s decision), she was allowed only a short time in which to respond. Notably, the Manager’s write-up stated:

Having reviewed those elements (technical background, quality of deliverables, professional behaviors), the Practice Management Team concluded that [the Applicant] would not be a good fit for the Agriculture GP. [The Applicant] was informed of this decision during our OPE discussion, and she was also informed that her probation period would be extended to November 2019 to give her sufficient time to plan her move. She was advised to consult with HR on matters related to leaving the Bank.

104. The Tribunal finds that this statement further supports that the non-confirmation of the Applicant’s appointment was at this point a *fait accompli*. While the Applicant submitted a detailed response to the Manager, copying the Manager’s Director, on 20 September 2019 and again on 7 October 2019, the Tribunal finds that these were considered too late to have “any realistic opportunity to affect the outcome.” *AI (No. 2)* [2010], para. 60.

105. The Tribunal recalls its decision in *Venkataraman* [2014], para. 75, in which the applicant was only given the opportunity to respond to the bases for his non-confirmation during the OPE process, which occurred after the non-confirmation decision had been made. As with the applicant in that case, here the Applicant was not afforded the opportunity to respond effectively to the reasons that led to her non-confirmation prior to the decision being made.

106. Noting the requirements of Staff Rule 4.02, paragraph 3.02, the Tribunal finds that the Applicant was not given a meaningful opportunity to defend herself against the bases for non-confirmation.

REMEDIES

107. In *CK*, Decision No. 498 [2014], para. 101, the Tribunal held that the

failure of the Bank to adhere to its own rules represents an irregularity which, when affecting the rights of a staff member, may merit compensation as one form of a remedy. In assessing compensation the Tribunal considers the gravity of the irregularity, the impact it has had on an applicant and all other relevant circumstances in the particular case.

108. The non-confirmation of a staff member's appointment is a serious matter, which has grave consequences for a staff member's professional life. It is not a decision to be taken lightly. In *Motabar* [2006], paras. 58–59, the Tribunal concluded that, even where the decision of management not to confirm an applicant's appointment was determined to be based on facts and not arbitrary, the applicant is still entitled to compensation if his or her treatment "fell far short of the standards of the Staff Rules and the [a]pplicant's due process rights."

109. The Tribunal finds the following procedural irregularities and failures in due process in the course of the Applicant's probationary period: the failure to evaluate her performance during her probationary period as required by the Staff Rules; the failure to give adequate warning of the issues purportedly leading to her non-confirmation; and the failure to give the Applicant a meaningful opportunity to defend herself against the alleged bases for non-confirmation. The Tribunal recalls that "[t]he very discretion granted to the Respondent in reaching its decision at

the end of probation makes it all the more imperative that the procedural guarantees ensuring the staff member of fair treatment be respected.” *Salle* [1982], para. 50. In this respect, the Tribunal considers that the Bank’s failures in this case served to deny the Applicant the opportunity to succeed during her probation. As these are serious procedural failures, the Tribunal concludes that the Applicant is entitled to compensation.

110. The Tribunal recalls its decision in *Liu* [2008], para. 31, where it held, “Reasonable compensation in these circumstances should include payment corresponding to the balance of time he would have served on the contract had his employment not been prematurely terminated.” In determining compensation, the Tribunal takes into account the circumstances of this case, the gravity of the procedural irregularities and failures in due process, and the amount of time the Applicant would have served on the contract had her appointment been confirmed.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of fifteen months’ net salary based on the last salary drawn for procedural irregularities and failures in due process;
- (2) The Bank shall contribute to the Applicant’s legal fees and costs in the amount of \$10,000.00; and
- (3) All other claims are dismissed.

/S/ Andrew Burgess

Andrew Burgess

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., * 16 November 2020

* In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.