



World Bank Administrative Tribunal

2022

Decision No. 677

**GL,
Applicant**

v.

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

(Merits)

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

**GL,
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 29 June 2021. The Applicant was represented by Nat N. Polito of Law Offices of Nat N. Polito, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 19 October 2021.

3. The Applicant challenges the Bank's decision not to progress him to Grade Level GG2 at the end of Fiscal Year (FY) 2019 (the Non-Progression Decision).

FACTUAL BACKGROUND

4. The Applicant is a Senior Information Technology (IT) Officer, Engineering I, Grade Level GG1, in the Information and Technology Solutions, Systems, and Infrastructure Management (ITSSM) unit in the World Bank Group (WBG) office in Chennai, India. The Applicant joined the Bank on 18 July 2001 as an IT Analyst, Grade Level GE. On 1 November 2014, he commenced his current role as a Senior IT Officer in ITSSM.

5. In January 2018, according to the Applicant, he participated in a town hall meeting for WBG staff in Chennai. He described his participation in the meeting as follows:

In January of 2018, an open Town Hall meeting was convened in Chennai for the benefit of [staff] in Chennai to interact with the Chief Information Officer ("CIO");

it was an open forum to raise the concerns of WBG [staff] in Chennai. Approximately, 300 persons attended the meeting.

[The Vice President and WBG Chief Information Officer], and other Directors and Managers, attended the Town Hall meeting. I was given a list of questions that Chennai [staff] had prepared to read at the meeting. [...] At the time, I had no reason to believe that speaking about these issues was somehow forbidden or that voicing the concerns of the WBG [staff] in Chennai would be used against me but there is no doubt that the Senior Management Team (“SMT”) in attendance took great issue with my participation at the Town Hall meeting.

6. The Applicant states that in June 2018 he was proposed for progression to Grade Level GG2. Additionally, he received a Salary Review Increase (SRI) rating of 4 and was assessed as a “Solid Talent” on the Talent Review for FY 2018.

7. In September 2018, according to the Applicant, the Director of Information and Technology Solutions, Enterprise Services (ITSEN), to whom he directly reported at the time, informed him “that he was not progressed [to Grade Level GG2] in FY 2018 because of the comments he made during the January [2018] Town Hall.” The Applicant states that “[the Director] also said that [the Applicant] should continue working and wait until 2019 for another opportunity to be progressed.”

8. On 1 October 2018, the Vice President and WBG Chief Information Officer announced by email to all Information and Technology Solutions (ITS) staff that 51 staff members received promotions and 37 staff received progressions in their grades for FY 2018. The Vice President and WBG Chief Information Officer provided a list of the staff members who received promotions or progressions, and the Applicant was not included in either category.

9. On 6 June 2019, the Vice President and WBG Chief Information Officer sent an email to “ITS VPU [Vice Presidential Unit] All Staff” entitled, “IMPORTANT – FY19 End-Year Performance Evaluation Process,” stating in part:

The end of the fiscal year marks the beginning of the annual talent and performance review for staff and managers. Let me reiterate the crucial importance of this process, which enables staff and supervisors to engage in conversations and share

feedback on performance. More importantly, it also provides a structured opportunity to jointly assess staff against strengths and areas for improvement that help to inform actions to be captured in the professional development plan. Our year-end evaluation is a key component of our tools and processes geared at managing and developing staff on an ongoing basis.

10. The Vice President and WBG Chief Information Officer's email also contained a timeline detailing important dates for management and staff in the FY 2019 performance evaluation process, including the following key dates:

- 25 June–12 July 2019: Individual meetings with staff to review self-assessment, provide inputs, and discuss performance.
- 15–22 July 2019: Departmental review meetings. During these meetings, each staff will be reviewed and discussed relative to their peers with recommendations for Talent and Performance Ratings. These meetings help establish consistency in ratings and balance across broad categories of staff. For a proper process, it is absolutely necessary that supervisors/managers have an initial performance discussion with staff prior to the management review meetings. Each Department will be asked to produce a fully curved performance rating distribution for all their staff at levels GA to GH.
- 25–26 July 2019: First VPU Management Review Meeting to review proposed Talent and Performance Ratings across all Departments.
- Early September: Second VPU Management Review Meeting to finalize Performance Ratings (all managers must have a performance conversation with their staff member before that date).
- 12 September 2019: Institutional deadline for finalizing Performance Ratings.
- 30 September 2019: WBG-wide completion deadline for Reviewing Official to sign off on FY 2019 Performance Evaluation documents, and approve FY 2020 Objectives.
- 4 October 2019: Final Performance Ratings should have been communicated to staff.
- 1 November 2019: Effective date for *in situ* promotions.

11. On 15 July 2019, the Applicant's Manager met with a Senior Human Resources (HR) Business Partner and the Director to conduct the ITSEN departmental management review

meeting. During the meeting, the Senior HR Business Partner recorded the comments and results in an Excel spreadsheet that was consolidated by a Senior HR Assistant.

12. On 17 July 2019, the Manager sent an email entitled “SRI comments” to the Senior HR Business Partner, the Senior HR Assistant, and the Director containing a spreadsheet with the Manager’s proposed Talent Review and SRI ratings for all the staff members under his supervision for FY 2019, including the Applicant.

13. On 23 July 2019, the Manager on behalf of the Director sent the final nominations for progression and promotion for FY 2019 to HR. Four staff members were nominated from ITSEN:

- Candidate 1 (Senior IT Officer): GG1 to GG2, FY 2018: Emerging Talent/SRI: 4, FY 2019: Top Talent/SRI: 4
- Candidate 2 (IT Officer): GE to GF, FY 2018: Emerging Talent/SRI: 4, FY 2019: Top Talent/SRI: 5
- Candidate 3 (IT Officer): GF1 to GF2, FY 2018: Solid Talent/SRI: 4, FY 2019: Emerging Talent/SRI: 4
- Candidate 4 (IT Officer): GE to GF, FY 2018: Emerging Talent/SRI: 4, FY 2019: Top Talent/SRI: 3.5.

14. The Applicant was not nominated for progression or promotion in FY 2019.

15. On 10 September 2019, HR finalized the Talent Review and SRI ratings for ITSEN.

16. On 27 September 2019, the Manager finalized his FY 2019 Staff Annual Review (also referred to as the Overall Performance Evaluation (OPE)) comments for the Applicant in the system. The Applicant did not sign his FY 2019 OPE. The Applicant received an SRI rating of 3.5 for FY 2019.

17. In the OPE, under the section entitled “Mid-Year Conversation – Supervisor Comments,” the Manager wrote:

[The Applicant] is managing a fairly large team with a diverse portfolio and doing a very good job at it. [The Applicant] is responsive [...] and does a good job prioritizing his many responsibilities. I had a good mid-year discussion with him and my primary recommendation to him was to take the operational maturity of the team to the next level wherein the team can operate independent of HQ [headquarters] oversight.

My recommendation to [the Applicant] is to be more flexible and receptive about differing opinions and continue to work closely with management to help him prioritize his time allocations.

Overall[,] I am [happy] with the technical leadership being provided by [the Applicant].

18. In the “Strengths” section of the OPE, the Manager wrote, “[The Applicant] has had a good year and delivered on many fronts. He built technical expertise on Splunk and helped the team to make it operational.” In the “Areas of Development” section, the Manager added, “[The Applicant] needs to show greater flexibility in terms of approach. The VM [Virtual Machines] operations will also benefit with more attention to both engineering and operations from [the Applicant].”

19. In addition to his OPE and SRI rating for FY 2019, the Applicant was assessed as a “Solid Talent” on the Talent Review for FY 2019.

20. On 11 November 2019, the Vice President and WBG Chief Information Officer announced to all ITS staff by email that 22 staff members received promotions and 16 staff members received progressions in their grades at the end of FY 2019. The Vice President and WBG Chief Information Officer provided a list of the staff members who received promotions or progressions, and the Applicant was not included in either category.

21. In the same email of 11 November 2019, the Vice President and WBG Chief Information Officer explained the process that was followed in making the promotion and progression decisions as follows:

1. Following unit level discussions between managers and their respective supervisors, each ITS department held its own management review meetings in mid-July, where all proposals for promotions and progressions were presented and discussed based on:

- 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).

2. Managers prepared the documentation in a standard template for each proposed case that was approved at the departmental level. This documentation formed the basis for the next level of review by the ITSMT [ITS Management Team].

3. The ITSMT met on July 25–26 and September 6 to review all proposals from all departments across ITS. All nominations were discussed with due diligence, and decisions were taken collectively by the MT members.

[...] As announced in May, a decision was made to adopt a competitive approach to promotions into the GG and GD grade levels. In line with this decision, all GD and GG opportunities will be open to a competitive process in alignment with the approved ITS workforce plans.

22. On 14 November 2019, the Applicant emailed the Director to ask why he had not been progressed to Grade Level GG2, stating:

Although [...] we discussed my OPE and G2 progression, there were some questions that I felt were still not clear –

[...] G2 progression[:] based on the discussions you and I had on the reasons why the last year's (2018) progression did not go through and your assurance for the same this year, I wanted to understand why I was not even considered for progression this year? Even though I successfully delivered the work program assigned, took [a] more technical leadership role, added technical capabilities (stepped in [as] a team lead for Splunk and monitoring, while we looked for a hire[,] increased my role in AMG activities [...]). I also carefully ensured my activities in the CLF [Chennai Leadership Forum] capacity were positive. I would like to

understand why I was [not] progressed to a G2 even though I have been performing in that role successfully for the last 3 years? [...] I did raise a concern that my evaluation at the SMT [Senior Management Team] level was not being objective.

[...]

Even though I am trying hard to see the rationale, I find [that] the changes in stripping my role away [and] not being evaluated fairly in comparison to my [peers'] role, wherein I handled more volatile teams (including diving into technical aspects) and still delivered successful results[,] were not objective enough and [I] feel all this has come to a naught.

23. On 17 November 2019, the Director replied to the Applicant's email, stating:

As part of the OPE process, all staff are considered for progressions/promotions. You were, and will be given the same consideration. That is the only assurance I have provided and can provide.

You did expand your technical role in FY19 and stepped up when the Splunk/monitoring lead position was vacant. Thank you. However, you were not the acting team lead for Splunk/monitoring; [another colleague] was.

I shared my frustration with the slow pace of improvements in the Windows/Virtualization operations, where we would benefit from stronger technical leadership.

You have repeatedly stated that you have significant demands on your time from both supervisory and technical aspects, and your delivery should not be compared to colleagues that focus only on one. That is a fair statement, and was taken into consideration for your performance review.

However, the work program [cannot] wait. We have technical work in Chennai operations that needs to be done, you are qualified to do it, and we want you to have the time and space to do it.

24. On 3 February 2020, the Applicant filed Request for Review No. 523 with Peer Review Services (PRS) requesting a review of the Bank's decision not to progress him to Grade Level GG2 at the end of FY 2019.

25. On 12 February 2020, the Applicant emailed the Ethics and Business Conduct Department (EBC) Ethics Helpline alleging “victimization, retaliation, systematic bias[,] and discrimination.”

With regard to his retaliation allegation, the Applicant wrote:

My progression in FY18-19 was withheld because I voiced the concerns of the staff in a townhall. I was specifically informed by [the Director] [...] that the reason was the townhall when [the Vice President and WBG Chief Information Officer] visited Chennai. Staff had previously written questions anonymously that were passed to me to be read out. My only crime was reading them out verbatim. I was alleged to be behind the same. [...] My profile along with my peer [...] was passed for progression from G1 to G2 and my manager clearly stated that this was the only issue. There were no performance issues, and that he asked me to be careful in the future and that [I] would be considered. But this year too it was not considered. A separate PRS request has been also made in this regard. Now that [my manager] is part of the MT, I feel he was either hesitant or under the directive to ignore my work.

26. On 14 February 2020, a Senior Counsel and an Investigative Analyst in EBC replied to the Applicant’s email and scheduled an intake discussion for 18 February 2020.

27. On 21 May 2020, the Senior Counsel in EBC wrote to the Applicant informing him of EBC’s decision to close the matter at the preliminary inquiry phase, stating:

We just wanted to follow up [on] our conversation from earlier today. As we discussed, we have concluded our review of the allegation you brought to our attention. After interviewing several witnesses and reviewing related correspondence, we have determined that there is insufficient evidence to substantiate [your] allegation that you were not progressed in retaliation for asking questions at a 2018 townhall. [...] As we mentioned previously, we did not review the remaining concerns you noted below. Those issues should be raised with management, PRS and/or mediation. Please also note that you may appeal EBC’s decision to the World Bank Administrative Tribunal within 120 days from the date of this email.

28. On 11 November 2020, the Applicant emailed the Senior Counsel and the Investigative Analyst in EBC to inform them that “additional information regarding the recent case that you concluded” had been “brought to [his] notice.”

29. On 23 November 2020, the Senior Counsel in EBC responded to the Applicant, scheduling a call for 2 December 2020.

30. On 7 December 2020, the Applicant emailed the Senior Counsel and the Investigative Analyst in EBC “a brief note” summarizing the “additional information” he provided to EBC during their 2 December 2020 call. He stated that the points he raised were “based on the previous context [of] bias, discrimination[,] and retaliation.”

31. On 8 December 2020, the Senior Counsel in EBC emailed the Applicant to inform him that EBC was closing the matter at intake, stating:

We have reviewed and considered what you reported during our interview and the [7 December 2020] email below. Based on our review of the issues presented and the basis underlying your concerns, we have determined that this matter is more appropriately addressed by PRS. [...]

Please also note that pursuant to Staff Rule 3.00 Annex A, “EBC investigators may not conduct preliminary inquiries on allegations unless sufficient detail or supporting evidence has been provided such that the matter can be pursued responsibly.”

Accordingly, EBC is not assigning this matter to investigators to undertake a preliminary inquiry. We are closing this matter at intake.

32. On 7 April 2021, the PRS Panel issued “Peer Review Panel’s Report in Request for Review [No. 523].” Under the “Introduction” section of the report, the PRS Panel stated:

[The Applicant] [...] filed a Request for Review No. 523 (RFR) with the Peer Review Services (PRS) requesting a review of the WBG’s decision not to progress him to [Grade] Level GG2 (Non-Progression Decision) at the end of Fiscal Year (FY) 2019. [The Applicant] further alleged that the Non-Progression Decision was motivated by discrimination, retaliation, and bias towards him.

33. The PRS Panel’s Report articulated the scope of its review as follows:

In accordance with PRS’ mandate pursuant to Staff Rule 9.03, and for purposes of determining whether the WBG acted consistently with [the Applicant’s] contract of employment and terms of appointment in connection with the [2019] Non-

Progression Decision, the Panel examined whether management: (a) provided a reasonable and observable basis for the Non-Progression Decision; (b) followed a fair and proper process; and (c) acted in good faith in making the [2019] Non-Progression Decision.

34. The PRS Panel first considered whether there was a reasonable and observable basis for the 2019 Non-Progression Decision.

35. The PRS Panel noted that the ITSVPU allows for in-grade and *in situ* promotions, unlike other vice presidencies at the WBG. The Panel noted the Director's testimony during the PRS hearing explaining how same grade progressions and promotions are made in the ITSVPU. According to the Director, management considers which staff members are eligible and deserving of a same-grade progression or next-grade promotion as opposed to deciding not to progress or promote any staff member.

36. The PRS Panel noted the Director's testimony that staff members do not have a right to be progressed and that not all staff members in a unit are considered for progression or promotion; rather, management decides which staff members to put forward for progression based upon the criteria described in the Vice President and WBG Chief Information Officer's 11 November 2019 email. The PRS Panel also noted that the Director, the Manager, and the Senior HR Business Partner provided concurring statements that the progression decisions were made on the basis of the criteria listed in the Vice President and WBG Chief Information Officer's 11 November 2019 email.

37. The PRS Panel noted that the Manager, the Director, and a Grade Level GG2 Senior IT Officer in ITSSM (with supervisory functions over the Applicant) stated that, while they appreciated the Applicant's technical skills, his performance during FY 2019 was unsatisfactory in terms of his communication with other staff and his teamwork. The Manager testified that he found that the Applicant would often push back on any changes that the Manager had asked to be made to work or projects in which the Applicant was involved, and that it often took a while to reach consensus regarding these changes. Further, the Manager stated during the PRS hearing that, in order for a staff member to be progressed, he or she must be performing at the next grade level

over a couple of years, as underscored by the HR Guidance on Promotions. The Manager told the PRS Panel that the Applicant was not performing at Grade Level GG2 during FY 2019.

38. The PRS Panel noted that two of the Applicant's colleagues testified at the PRS hearing that they found the Applicant to be "collaborative" and "open to other staff members' suggestions," respectively. Both staff members provided positive feedback on the Applicant's ability to work across teams, his ability to accept feedback, and his technical ability.

39. Finally, the PRS Panel made the following observations:

The [PRS] Panel noted that [the Manager] focused primarily on talent reviews, SRI ratings and performance – modeling WBG values, such as teamwork – as the determinative criteria and, specifically, as described in [the Vice President and WBG Chief Information Officer's 11 November 2019 email]. The [PRS] Panel also noted that management appreciated [the Applicant's] technical skills. For instance, [the Manager] stated at the Hearing that [the Applicant] had a good performance track record but not one that stood out enough to warrant a progression.

40. Based on the record, including the documentary and testimonial record, the PRS Panel concluded that there was a reasonable and observable basis for the 2019 Non-Progression Decision.

41. Next, the PRS Panel considered whether a fair and proper process was followed in making the 2019 Non-Progression Decision.

42. The PRS Panel noted that Principle 2.1 of the Principles of Staff Employment provides that the WBG "shall at all times act with fairness and impartiality and shall follow a proper process in [its] relations with staff members."

43. With regard to the progression and promotion process, the PRS Panel noted the following:

The Panel observed that there is no prescribed WBG-wide policy on the process to be followed when progressing or promoting a staff member. Rather, the process differs by the VPU. [The Senior HR Business Partner], [the Manager], and [the

Director] stated at the Hearing that in the ITS VPU, the process starts with a unit-level meeting followed by a department-level meeting at which each Manager and Director discusses the Talent Review and performance ratings of staff members under his or her purview, as well as the staff members that are being considered for progression or promotion. [The Senior HR Business Partner], [the Manager], and [the Director] stated that at this meeting, proposals for progression and promotion are made, and a write-up is prepared for those proposals. After the department level meeting, there is a VPU-level Management Team meeting, during which [the Vice President and WBG Chief Information Officer] would be present and where the respective managers' written proposals for progression and promotion would be considered. [The Senior HR Business Partner] stated that a staff member's eligibility for a progression or promotion would not be discussed during the Management Team meeting if he or she was not proposed for progression or promotion at the department-level meeting.

[The Senior HR Business Partner] and [the Manager] provided concurring statements that [the Applicant's] case for progression was not discussed at the department-level meeting, and that each Manager has the discretion to propose or not to propose a staff member for progression or promotion. [The Manager] stated that the department-level meeting took place in mid-July 2019 after prior unit-level meetings. [The Manager] asserted that during the department-level meeting, all proposals for progression and promotion were presented and discussed based on the criteria listed above in [the Vice President and WBG Chief Information Officer's 11 November 2019 email]. According to [the Manager], "Managers prepared the documentation in a standard template for each proposed case that was approved at the departmental level. This documentation formed the basis for the next level of review by the ITSMT (ITS Management Team[)]." The ITSMT met on July 25–26, 2019 and September 6, 2019 to review the proposals for progression and promotion across all departments in ITS. At these meetings, the ITSMT members collectively decided which staff members to progress or promote. [The Manager], [the Director], and [the Senior HR Business Partner] stated at the Hearing that [the Applicant's] case for progression was not discussed at the department-level meeting, and since a proposal for his progression was not made at that level, his case for progression was also not discussed at the ITSMT.

44. The PRS Panel concluded that the process for the 2019 Non-Progression Decision – as explained by the Manager, the Director, and the Senior HR Business Partner at the PRS hearing and as detailed in the Vice President and WBG Chief Information Officer's 11 November 2019 email – was followed.

45. Finally, the PRS Panel considered whether management acted in good faith in making the 2019 Non-Progression Decision. The PRS Panel noted the Applicant's contention that the 2019

Non-Progression Decision was not made in good faith, and that he was “subject to retaliation, discrimination, and bias.”

46. The PRS Panel observed:

In support of his claim of retaliation as a basis for the Non-Progression Decision, [the Applicant] claimed that [the Director] told him [...] that he was not progressed in FY 2018 because of certain questions he had asked during a [...] 2018 Town Hall in Chennai at which [the Vice President and WBG Chief Information Officer] was present. At the Hearing, [the Director] denied making that statement to [the Applicant].

47. After reviewing “the whole record thoroughly,” the PRS Panel found

that it includes no evidence that the [2019] Non-Progression Decision was made directly or indirectly because of [the Applicant’s] actions and/or statements at the 2018 Townhall. In this regard, the [PRS] Panel noted the Tribunal’s precedent 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. There must be a direct link between the alleged motive and the adverse action to amount to retaliation.” Consequently, the [PRS] Panel found that [the Applicant’s] allegation of retaliation is not supported by the record.

48. Further, the PRS Panel did not find that the Applicant had been subjected to discrimination or bias.

49. Based on its above findings, the PRS Panel concluded that there was no evidence in the record to prove that the 2019 Non-Progression Decision was based on retaliation, discrimination, or bias. The PRS Panel, therefore, concluded that management acted in good faith in making the 2019 Non-Progression Decision.

50. Under the “Overall Conclusion, Lessons Learned, and Recommendations of the Panel” section of the report, the PRS Panel stated:

Upon considering the totality of the evidence, the Panel found that the Non-Progression Decision had a reasonable and observable basis; followed a fair and proper process; and was made in good faith without any retaliation, discrimination,

or bias. The Panel determined, based on the documentary evidence in the RFR and testimony of witnesses, that the Non-Progression Decision did not violate [the Applicant's] contract of employment and terms of appointment. The Panel, therefore, recommends dismissal of RFR No. 523 in its entirety and does not recommend that any relief be granted to [the Applicant].

[...]

The Panel recommends that management provide clear criteria and a specific process for progression in writing to staff members in advance of the announcements of the progression decisions. The Panel underscores the importance of managing the expectations of staff members for progression and promotion by communicating with them in clear terms about how progression and promotion decisions are to be made for each FY.

51. On 15 April 2021, the Managing Director and WBG Chief Administrative Officer notified the Applicant in writing that he “accepted the Peer Review Services recommendation.” The letter added, “If you are dissatisfied with this decision, the next step [...] would be recourse to the Administrative Tribunal, which has its own rules and procedures for the filing of claims.”

52. On 29 June 2021, the Applicant submitted this Application to the Tribunal contesting (i) the 2018 Non-Progression Decision, (ii) the 2019 Performance Management Decision, (iii) EBC’s decision to close its review at the preliminary inquiry stage due to insufficient evidence, and (iv) the 2019 Non-Progression Decision.

53. The Applicant requests the following specific performance: “[P]rogression to a [Grade] Level GG2 and reassignment to another unit other than ITS.”

54. The Applicant requests compensation for lost career opportunities, reputational damage, inconvenience, emotional distress, and physical/mental stress, equivalent to three years of salary, and further relief as “this Tribunal deems just and appropriate under the circumstances.”

55. The Applicant further claims legal fees and costs in the amount of \$31,295.00.

56. On 6 August 2021, the Bank filed preliminary objections requesting that the Tribunal “limit [the] proceeding to only the 2019 Non-Progression Decision” and dismiss all of the other claims in the Application in full “on the basis that each of those claims is inadmissible due to [the] Applicant’s failure to timely exhaust internal remedies and because they are time-barred.”

57. In *GL (Preliminary Objection)*, Decision No. 666 [2021], the Tribunal considered all four of the Applicant’s claims and determined that three – the 2018 Non-Progression Decision, 2019 Performance Management Decision, and EBC Decision – were inadmissible on the grounds of untimeliness or failure to exhaust internal remedies.

58. The Tribunal determined that the claim concerning the 2019 Non-Progression Decision was admissible.

SUMMARY OF THE CONTENTIONS OF THE PARTIES ON MERITS

The Applicant’s Contentions

59. The Applicant contends that the 2019 Non-Progression Decision is an abuse of discretion because there is no rational basis to explain why the Applicant “would be proposed for progression in 2018 but not in 2019.” The Applicant asserts that there is “no reasonable explanation” as to why the Applicant was proposed for progression in 2018 and not in 2019 “despite an even better performance in 2019 and his primary supervisory role with more responsibilities.” To the Applicant, “proof of [his] performance and qualification to be nominated for progression in 2019 is his OPE rating and review in September of 2018.” Specifically, the Applicant asserts that his SRI rating of “4” in 2018, along with the “highly complementary [*sic*] and detailed supervisor’s comments establish that [the Applicant] was a high performer critical to the Chennai operation and entitled to be nominated for progression to GG2.”

60. The Applicant contends that there “is no credible basis for the failure to nominate [the Applicant] for progression in 2019 as he had been nominated in 2018.” The Applicant avers that

the record, including his 2019 OPE, establishes that in 2019 the Applicant “shouldered the responsibility of a supervisor in Chennai and his work performance [was] stellar.” To the Applicant, “[h]e therefore earned the progression and the right to be nominated for progression.”

Further, the Applicant contends:

[The Bank] puts forth a number of theories and conclusory allegations inconsistent with the evidence, including that [the] Applicant was not ready to be progressed or that others were more deserving of progression but these arguments readily fail. The record shows that [the Applicant] was already in a supervisory role and that between 2018 when he was nominated and 2019 when he was not his functions were only expanding; his team was increased with more areas of work and responsibility. How can a staff member be ready for progression in 2018 and then not be ready the following year? Similarly, the contention that there was no business need in 2019 is not explained or supported and does not consider the business need that existed and justified [the Applicant’s] nomination for progression in 2018. Did the business needs somehow change in 2019? Furthermore, there is no proof that others were more deserving of nomination and the Bank has not introduced such proof other than the submission of *in camera* documents.

61. Finally, the Applicant avers that there is no transparency with the talent mapping and that this was not the basis for the failure to nominate the Applicant for progression in 2019. The Applicant asserts that, if talent mapping was the basis, he would not have been nominated in 2018 due to his “Solid Talent” rating in that year despite his “4” SRI rating. The Applicant asserts that the “FY19 Progression Nomination Form” does not contain a blank space for the talent mapping category and “therefore should not now be considered a factor in determining whether a staff member should be nominated for progression.”

The Bank’s Response

62. The Bank maintains that it had a legitimate and reasonable basis for its decision not to nominate the Applicant for progression in FY 2019. The Bank asserts that “there is no inherent right, or entitlement as [the] Applicant suggests, to promotion and, absent abuse of authority, decisions relating to promotion are solely within the discretionary powers of management.” The Bank notes the Applicant’s assertion that there was no “rational reason” that the Applicant would

be proposed for progression in FY 2018 and not in FY 2019, and that the “failure to propose or nominate [the] Applicant for progression was an abuse of discretion.” However, the Bank avers that the Applicant has not produced any evidence to support these claims other than the Applicant’s “anecdotal beliefs” that he was a better performer than some of his peers. Further, the Bank avers:

In *Malekpour*, Decision No. 322 [2004], para. 21, the Tribunal confirmed that “a change in the assessment of a staff member by his supervisors cannot, in and of itself, be regarded as an abuse of discretion.” A staff member is “entitled to a fair and proper performance evaluation every year, but there is no rational basis for supposing that a high-performance rating in one year gives rise to a presumption that the same rating would carry over to the next or subsequent years.”

63. The Bank asserts that “management does not *reject* a staff member promotion, but rather *recognizes* a staff member’s outstanding performance track record, competency levels, and commitment to the WBG Core values by nominating that staff [member] for promotion/progression.” (Emphasis in original.) The Bank asserts that the Applicant’s performance record and competency levels were “satisfactory, but not outstanding,” as compared to the four ITSEN candidates nominated for progression/promotion in FY 2019 and that accordingly “he did not merit nomination for progression in 2019.” Further, with regard to the aforementioned comparison, the Bank asserts that

the candidates nominated for progression/promotion in FY19 demonstrated better competency levels compared to Applicant. The staff members nominated for progression/promotion had strong communication skills and were recognized by clients and peers for their remarkable accomplishments when: (i) delivering results for clients; (ii) collaborating within teams, and [(iii)] sharing knowledge. [The] Applicant, however, lacked the leadership and interpersonal skills essential for being promoted to a GG2 level. In particular, as demonstrated in [the] Applicant’s performance evaluation, [the] Applicant had difficulty: (i) receiving feedback from his supervisor and Manager, (ii) collaborating within teams and across boundaries, (iii) setting priorities with a WBG corporate perspective in mind, and (iv) giving credit where credit was due.

64. Finally, the Bank avers that it followed “a clearly established and transparent process in making the promotion/progression decisions.” The Bank contends that it applied known and objective criteria equally to all staff members of ITS when nominating and evaluating ITS staff

for promotion and progression. In the Bank's view, the Applicant was given the "same considerations and held to the same level of accountability as any other staff member."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

65. In *GL (Preliminary Objection)* [2021], the Tribunal held that it would address only the claim of the 2019 Non-Progression Decision on merits.

66. The Applicant contends that the Bank abused its discretion and violated the Applicant's contract of employment or terms of appointment in three ways: (i) it failed to provide a reasonable and observable basis for the Non-Progression Decision; (ii) it failed to follow a fair and proper process in making the Non-Progression Decision; and (iii) the Non-Progression Decision was based on retaliation. The Tribunal will now examine the Applicant's three main claims.

67. 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.

WHETHER THERE WAS A REASONABLE AND OBSERVABLE BASIS FOR THE NON-PROGRESSION DECISION

68. The Tribunal will now examine the record to determine whether there was a reasonable and observable basis for management's decision not to progress the Applicant in FY 2019.

69. At the relevant time, promotions were governed by Staff Rule 5.05, paragraph 2.01, which stated:

Promotions may occur as a result of:

- a. job review or evaluation under Rule 6.05, “Job Evaluation”;
- b. decision to promote a staff member to a higher grade during an annual review conducted under Rule 5.03, “Performance Management,” section 2;
or
- c. decision to reassign a staff member selected for a position at a higher grade through the myJobWorld posting system.

70. According to the HR Guidance on Promotions, for any promotions to occur, the following principles and guidelines are applicable:

- A strong business need for a position at the next level (determined through workforce planning);
- A strong performance track record as demonstrated by the annual performance evaluations and performance ratings; [and]
- Nominated staff would need to meet all competencies/criteria required at the current level and at the next level as determined by their VPU.

71. The Applicant contends that management’s failure to nominate him for progression in FY 2019 was an abuse of discretion because there is no rational reason why he “would be proposed for progression in 2018 and not in 2019.” The Applicant asserts that, because his work performance in 2019 was “stellar” and his supervisory and technical job functions increased, he was therefore “entitled to be nominated for progression to GG2” in 2019. The Applicant asserts that he “earned the progression and the right to be nominated for progression.”

72. The Bank contends that there is no inherent right or entitlement to promotion or progression. The Bank further contends that it carefully and rigorously assessed the Applicant’s performance against the well-established and publicized criteria for ITS promotions and progressions and concluded that the Applicant was not among the top candidates for promotion and/or progression in FY 2019. The Bank maintains that ITS management does not reject a staff member for promotion, but rather recognizes a staff member’s outstanding performance track

record, competency levels, and commitment to the WBG core values by nominating that staff member for promotion or progression. The Bank avers that the Applicant's performance record and competency levels were satisfactory, but not outstanding, as compared to other staff members. The Bank contends that the Applicant's performance was given the same consideration as all other staff in the ITSVPU.

73. Further, in support of its decision not to nominate the Applicant for progression in FY 2019, the Bank cites *Malekpour* [2004], para. 21:

The Tribunal has in the past stated that a change in the assessment of a staff member by his supervisors cannot, in and of itself, be regarded as an abuse of discretion (*see Marshall*, Decision No. 226 [2000], para. 24). A staff member is entitled to a fair and proper performance evaluation every year, but there is no rational basis for supposing that a high performance rating in one year gives rise to a presumption that the same rating would carry over to the next or subsequent years.

74. The Tribunal observes that the record demonstrates that ITS management at various points documented and explained the basis for its assessment of the Applicant's FY 2019 performance, including its (i) decisions regarding the Applicant's Talent Review and SRI ratings, and (ii) non-progression decision. Further, the record shows that, although ITS management considered the Applicant technically strong in FY 2019, it consistently documented areas for improvement both technically and behaviorally.

75. The Tribunal observes that on 17 July 2019, following an ITSEN departmental review meeting, the Manager emailed the Senior HR Business Partner, the Senior HR Assistant, and the Director the final draft of an Excel spreadsheet detailing his preliminary Talent Review and SRI ratings for staff under his supervision, including the Applicant. In the spreadsheet, the Manager explained the basis of his preliminary ratings under a section entitled "Development Comments." The Manager noted that the Applicant had strong technical core competencies in Windows and VM but needed to be more open to feedback and recommendations. He stated that, although the Applicant was responsive to work demands, there were some concerns about the Applicant's dealings with other staff members. The Manager further stated that the Applicant needed to work on his interpersonal skills.

76. The Tribunal observes that, on 10 September 2019, HR finalized the Talent Review and SRI rating for ITSEN. For FY 2019, the Applicant was assessed as a “Solid Talent” and received a 3.5 SRI rating.

77. The Tribunal further observes the Manager’s generally positive OPE comments, submitted on 27 September 2019, acknowledging the “good job” the Applicant was doing in (i) managing a relatively large team with a diverse portfolio, (ii) being responsive, and (iii) prioritizing his many responsibilities. The Manager stated that overall he was happy with the Applicant’s technical leadership. The Manager also noted that the Applicant “had a good year and delivered on many fronts” and that he “built technical expertise on Splunk and helped the team to make it operational.” With regard to areas of improvement, the Manager recommended that the Applicant “be more flexible and receptive about differing opinions,” as well as approaches, and that he should continue to work closely with management to prioritize his time. The Manager further noted that the VM operations would benefit with more attention to both engineering and operations from the Applicant.

78. The Tribunal notes that the Director also submitted comments on the Applicant’s OPE on 28 September 2019. He stated:

[The Applicant] had a productive year, delivering on his program. In particular, his increased engagement in Splunk helped the team deliver. Going forward, [the Applicant] should play a key role in improving the quality and agility of our operations. Thank you for your contribution, [the Applicant]. I am looking forward to working with you.

79. The record shows that, on 11 November 2019, the Vice President and WBG Chief Information Officer emailed all ITS staff announcing promotions and progressions for FY 2019. The Applicant was not on either list. In the same email, the Vice President and WBG Chief Information Officer detailed the criteria for ITS promotions and progressions, including

- 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; [and]
- d. Modeling WBG Core Values (Impact, Integrity, Respect, Teamwork, and Innovation).

80. The record shows that, on 14 November 2019, the Applicant emailed the Director asking why he was not nominated for progression to Grade Level GG2. The Applicant also queried the Director about why his supervisory functions were being removed.

81. The Tribunal observes that the Director responded to the Applicant on 17 November 2019 informing the Applicant that all staff, as part of the OPE process, are considered for promotions and progressions. He added, “You were, and will be given the same consideration. That is the only assurance I can provide.” The Director credited the Applicant for expanding his technical role in FY 2019 and “stepping up” when the Splunk lead position was vacant, but clarified that the Applicant was not the acting team lead for the Splunk project; he mentioned that another colleague was the team lead. Further, the Tribunal observes that the Director explained the basis of management’s decision to decrease the Applicant’s supervisory responsibilities and put more emphasis on his technical leadership, stating:

I shared my frustration with the slow pace of improvements in the Windows/Virtualization operations, where we would benefit from stronger technical leadership.

You have repeatedly stated that you have significant demands on your time from both supervisory and technical aspects, and your delivery should not be compared to colleagues that focus only on one. That is a fair statement, and was taken into consideration for your performance review.

However, the work program [cannot] wait. We have technical work in Chennai operations that needs to be done, you are qualified to do it, and we want you to have the time and space to do it.

82. The Tribunal observes that during the PRS hearing the Director testified that staff members do not have a right to be progressed and not all staff members in a unit are considered for progression or promotion; rather, management decides which staff members to put forward for progression based upon the criteria listed in the Vice President and WBG Chief Information Officer's 11 November 2019 email. The Tribunal observes that the PRS Panel noted that the Director, the Manager, and the Senior HR Business Partner provided corroborating statements that progression decisions were made on the basis of the criteria listed in the Vice President and WBG Chief Information Officer's 11 November 2019 email.

83. The Manager also testified before PRS that other determinative criteria for a progression or promotion were (i) Talent Reviews, (ii) SRI ratings, (iii) performance, (iv) modeling WBG values such as teamwork, and (v) performing at the next grade level over the course of a couple years, pursuant to the HR Guidance on Promotions.

84. The Tribunal notes that the Manager, the Director, and a Grade Level GG2 Senior IT Officer in ITSSM, all tasked with supervisory and managerial responsibilities over the Applicant, testified before PRS that, while they appreciated his technical skills, his performance during FY 2019 was lacking in terms of his teamwork and communication with other staff. The Manager also testified that the Applicant often pushed back on changes the Manager asked to be made to projects in which the Applicant was involved and that it took "a while" to reach consensus. The Tribunal notes that this feedback is consistent with the feedback given by the Manager in his preliminary Talent Review and SRI rating in July 2019 and OPE comments in September 2019.

85. Further, the Tribunal notes that the Manager testified that the Applicant was not performing at a GG2 Grade Level in FY 2019.

86. The Tribunal observes that two of the Applicant's colleagues testified before PRS that they found the Applicant to be collaborative and open to other staff members' suggestions, but there is no indication in the record that these staff members had any supervisory or managerial responsibilities over the Applicant.

87. The Tribunal observes that the PRS Panel noted that management appreciated the Applicant's technical skills. For example, the Manager testified before PRS that the Applicant had a good performance track record but not one that stood out enough to warrant a progression.

88. The Tribunal considers that the record supports the Manager's testimony that the Applicant's performance did not stand out enough to warrant a progression in FY 2019. The record shows that the Applicant's FY 2019 performance was below the four ITSEN candidates who were nominated for promotion or progression in FY 2019. For example, all four candidates had a better combined Talent Ranking and SRI rating than the Applicant in FY 2019:

- The Applicant – FY 2019: Solid Talent/SRI: 3.5
- Candidate 1 – FY 2019: Top Talent/SRI: 4
- Candidate 2 – FY 2019: Top Talent/SRI: 5
- Candidate 3 – FY 2019: Emerging Talent/SRI: 4
- Candidate 4 – FY 2019: Top Talent/SRI: 3.5.

The four talent categories for developing staff – from low to high – are “Attention Needed,” “Solid Talent,” “Emerging Talent,” and “Top Talent.”

89. In addition, the record shows that management recognized the four nominated ITSEN staff members for their strong communication skills, openness to new ideas, and interpersonal skills – all areas that management had informed the Applicant he needed to improve.

90. On balance, based on the documentary and testimonial evidence in the record, the Tribunal is satisfied that there was a reasonable and observable basis for ITS management's FY 2019 Non-Progression Decision.

WHETHER MANAGEMENT FOLLOWED A FAIR AND PROPER PROCESS IN MAKING THE NON-
PROGRESSION DECISION

91. The Tribunal will now consider whether a fair and proper process was followed in making the Non-Progression Decision.

92. Principle 2.1 of the Principles of Staff Employment provides that the WBG “shall at all times act with fairness and impartiality and shall follow a proper process in [its] relations with staff members.”

93. The Tribunal observes that, on 6 June 2019, the Vice President and WBG Chief Information Officer sent an email to all ITS staff detailing the FY 2019 end of year performance evaluation process whereby decisions on progressions and promotions would be made. The email set various milestones for different steps in the process, including (i) individual meetings with staff and managers (25 June to 12 July 2019), (ii) departmental review meetings where ITS management proposed talent and performance ratings (15 to 22 July 2019), (iii) ITS senior management review meetings (late July and early September 2019), (iv) final performance ratings communicated to staff (4 October 2019), and (v) effective date for progressions and promotions (1 November 2019).

94. The Tribunal further observes that the Vice President and WBG Chief Information Officer sent an email to all ITS staff on 11 November 2019 announcing the staff members who received progressions and promotions and explaining the process that was followed in making the promotion and progression decisions, stating:

1. Following unit level discussions between managers and their respective supervisors, each ITS department held its own management review meetings in mid-July, where all proposals for promotions and progressions were presented and discussed based on:

- 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; [and]
- d. Modeling WBG Core Values (Impact, Integrity, Respect, Teamwork, and Innovation).

2. Managers prepared the documentation in a standard template for each proposed case that was approved at the departmental level. This documentation formed the basis for the next level of review by the ITSMT [ITS Management Team].

3. The ITSMT met on July 25–26 and September 6 to review all proposals from all departments across ITS. All nominations were discussed with due diligence, and decisions were taken collectively by the MT members.

[...] As announced in May, a decision was made to adopt a competitive approach to promotions into the GG and GD grade levels. In line with this decision, all GD and GG opportunities will be open to a competitive process in alignment with the approved ITS workforce plans.

95. The Tribunal observes that the PRS Panel noted the following testimony from the Manager, the Director, and the Senior HR Business Partner regarding the 2019 promotion and progression process:

The Panel observed that there is no prescribed WBG-wide policy on the process to be followed when progressing or promoting a staff member. Rather, the process differs by the VPU. [The Senior HR Business Partner], [the Manager], and [the Director] stated at the Hearing that in the ITS VPU, the process starts with a unit-level meeting followed by a department-level meeting at which each Manager and Director discusses the Talent Review and performance ratings of staff members under his or her purview, as well as the staff members that are being considered for progression or promotion. [The Senior HR Business Partner], [the Manager], and [the Director] stated that at this meeting, proposals for progression and promotion are made, and a write-up is prepared for those proposals. After the department level meeting, there is a VPU-level Management Team meeting, during which [the Vice President and WBG Chief Information Officer] would be present and where the respective managers' written proposals for progression and promotion would be considered. [The Senior HR Business Partner] stated that a staff member's eligibility for a progression or promotion would not be discussed during the Management Team meeting if he or she was not proposed for progression or promotion at the department-level meeting.

[The Senior HR Business Partner] and [the Manager], provided concurring statements that [the Applicant's] case for progression was not discussed at the

department-level meeting, and that each Manager has the discretion to propose or not to propose a staff member for progression or promotion. [The Manager] stated that the department-level meeting took place in mid-July 2019 after prior unit-level meetings. [The Manager] asserted that during the department-level meeting, all proposals for progression and promotion were presented and discussed based on the criteria listed above in [the Vice President and WBG Chief Information Officer's 11 November 2019 email]. According to [the Manager], "Managers prepared the documentation in a standard template for each proposed case that was approved at the departmental level. This documentation formed the basis for the next level of review by the ITSMT (ITS Management Team[])." The ITSMT met on July 25–26, 2019 and September 6, 2019 to review the proposals for progression and promotion across all departments in ITS. At these meetings, the ITSMT members collectively decided which staff members to progress or promote. [The Manager], [the Director], and [the Senior HR Business Partner] stated at the Hearing that [the Applicant's] case for progression was not discussed at the department-level meeting, and since a proposal for his progression was not made at that level, his case for progression was also not discussed at the ITSMT.

96. The record shows that ITS managers have discretion regarding which staff members to propose for progression or promotion subject to criteria such as Talent Review and SRI ratings, overall performance, modeling WBG core values, and other criteria laid out in the Vice President and WBG Chief Information Officer's 11 November 2019 email. Further, the record shows that, at the departmental review meeting between the Manager and the Director, they decided not to propose the Applicant for progression in FY 2019 and, consequently, the ITSMT did not discuss the Applicant's case for progression, in line with ITS policy.

97. The Tribunal notes that the PRS Panel concluded the following regarding the process:

The Panel concluded that the process for the Non-Progression Decision, as explained by [the Manager], [the Director], and [the Senior HR Business Partner] at the Hearing and as laid out by [the Vice President and WBG Chief Information Officer] in his email of November 11, 2019 [...] was followed.

98. Based on the foregoing, the Tribunal finds that ITS management followed a fair and proper process in making its Non-Progression Decision.

WHETHER THE NON-PROGRESSION DECISION WAS BASED ON RETALIATION

99. The Tribunal will now consider whether management's Non-Progression Decision was based on retaliation.

100. The Tribunal observes that retaliation is prohibited under the Staff Rules. In *Bauman*, Decision No. 532 [2016], para. 95, the Tribunal held:

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. *Id.*

101. Staff Rule 8.02, paragraph 3.01(a), provides as follows:

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.

102. The Tribunal has confirmed that, if an applicant makes out 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." *de Raet*, Decision No. 85 [1989], para. 57; *BI*, Decision No. 439 [2010], para. 47.

103. The Tribunal has made clear, however, 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." *See AH*, Decision No. 401 [2009], para. 36. The Tribunal has also 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.

104. The Applicant asserts that he was not nominated for progression in FY 2019 in retaliation for raising concerns at a town hall in January 2018. He asserts that, in September 2018, his Director informed him that he was not progressed in FY 2018 because of the comments he made at the town hall and that he should continue working and wait until 2019 for another opportunity to be progressed. The Applicant asserts that there is “no doubt” that he was not proposed for progression in FY 2019 because he spoke on behalf of staff at the town hall. In support of this contention, the Applicant asserts that there is “no record of any change in performance or roles from September of 2018 and July of 2019.”

105. The Bank asserts that there is no evidentiary support in the record for the Applicant’s retaliation claim. The Bank asserts that the Applicant’s “erroneous belief” cannot be a substitute for fact and cannot be construed as meeting the Tribunal’s threshold for establishing a *prima facie* case of retaliation. Further, the Bank asserts that the Applicant’s retaliation claims are disproved by the facts.

106. The Tribunal will first look into the PRS Panel’s review of the Applicant’s retaliation allegation. The Tribunal observes that the PRS Panel noted:

In support of his claim of retaliation as a basis for the Non-Progression Decision, [the Applicant] claimed that [his Director] told him [...] that he was not progressed in FY 2018 because of certain questions he had asked during a [...] 2018 Town Hall in Chennai at which [the Vice President and WBG Chief Information Officer] was present. At the Hearing, [the Director] denied making that statement to [the Applicant].

107. The PRS Panel further stated:

After reviewing the whole record thoroughly, the Panel found that it includes no evidence that the Non-Progression Decision was made directly or indirectly because of [the Applicant’s] actions and/or statements at the 2018 Townhall. In this

regard, the Panel noted the Tribunal's precedent that "[it] is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person. There must be a direct link between the alleged motive and the adverse action to amount to retaliation." Consequently, the Panel found that [the Applicant's] allegation of retaliation is not supported by the record.

108. Next, the Tribunal notes that the Applicant brought the same retaliation allegations to EBC in February 2020. The Tribunal observes that in May 2020 EBC wrote to the Applicant informing him that it was closing the case at the preliminary inquiry stage, stating, "[W]e have determined that there is insufficient evidence to substantiate [your] allegation that you were not progressed in retaliation for asking questions at a 2018 Town Hall."

109. Further, the Tribunal notes that the Applicant brought the retaliation claims back to EBC in November 2020 stating that he had "additional information regarding the recent case that you concluded." The Tribunal observes that in December 2020 EBC emailed the Applicant to inform him that it was closing the matter at intake, stating:

Please also note that pursuant to Staff Rule 3.00 Annex A, "EBC investigators may not conduct preliminary inquiries on allegations unless sufficient detail or supporting evidence has been provided such that the matter can be pursued responsibly."

Accordingly, EBC is not assigning this matter to investigators to undertake a preliminary inquiry. We are closing this matter at intake.

110. In the present case, the Tribunal does not find evidentiary support that the Applicant was not progressed in FY 2019 because of retaliation. The Tribunal finds that the Applicant has failed to make a *prima facie* case of retaliation in respect of his comments at the town hall and the decision not to nominate him for progression in FY 2019.

111. Based on the record, including the conclusions reached by the PRS Panel and EBC, the Tribunal finds that there is insufficient evidence to support a finding that the Non-Progression Decision was based on 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.,* 3 June 2022

* 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.