World Bank Administrative Tribunal

2025

Decision No. 713

HU,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

World Bank Administrative Tribunal
Office of the Executive Secretary

HU,
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 Janice Bellace (President), Seward Cooper (Vice-President), Lynne Charbonneau (Vice-President), Martha Halfeld Furtado de Mendonça Schmidt, Thomas Laker, Raul C. Pangalangan, and Joëlle Adda.

2. The Application was received on 23 July 2024. The Applicant was represented by Ryan E. Griffin and Charlotte H. Schwartz 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 12 May 2025.

3. The Applicant challenges the termination of his employment, the refusal to implement the Performance Management Review (PMR) recommendations as to his Opportunity to Improve Performance (OTI) plan and Fiscal Year 2023 (FY23) performance rating, and his placement on an OTI and the terms thereof.

FACTUAL BACKGROUND

4. The Applicant, a national of Canada and Ukraine, joined the Bank in 2013 and served as a Senior Investment Officer, Grade Level GG, in the Bank's Treasury Vice Presidency (Treasury) in the United States on a G4 visa and under an open-ended contract.

5. According to the Bank, "[i]n July 2019, Treasury underwent a significant reorganization as part of an effort to combat a multi–million dollar budget shortfall." The Bank states that the Applicant's department—Quantitative Solutions, Strategic Asset Allocation and Analytics (QSA)—was dissolved due to the reorganization, and staff were reassigned to other Treasury

departments and also offered a voluntary separation program. The Bank further states that the Applicant did not participate in the voluntary separation program. Instead, Treasury senior management first reassigned the Applicant to the Pension Department, but, in May 2020, when staff were asked by management where they would prefer to be assigned, the Applicant asked to move from the Pension Department and to serve in Treasury Operations: Financial Technology (TREFT), which he did from June 2020.

6. The Applicant's manager (Manager) joined TREFT in April 2021 and became the Applicant's official manager in September 2021.

7. Effective from 22 February 2022 to 31 May 2022, the Applicant was on Short-Term Disability (STD) leave. According to the Applicant, he went on STD "in order to deal with the effects that the Russian invasion of Ukraine had on his family and his own wellbeing." The Applicant states that during the latter half of FY22 he "traveled to Poland to rescue family members by taking them back to the United States to live with him, helped other family members move within Ukraine to safer locations, and became ill himself in the process."

8. On 1 June 2022, the Applicant returned to work full-time. The Applicant states that, "[u]pon his return, [his] supervisors did not schedule regular meetings with him for an eight-month period during FY2023, from June 2022 to March 2023." According to the Bank, "[o]n 7 September 2022, [the] Manager and the Applicant scheduled recurring weekly one-on-one meetings every Thursday from September 2022 until March 2023."

9. In September 2022, the Applicant's FY22 performance review was conducted by the Manager and by the Director of Treasury Operations (Director). As stated by the Manager in the Supervisor's Comments in the "Overall Contributions" section of the Applicant's FY22 Annual Review:

> During the first half of FY22, [the Applicant] has carried forth his prior year's work program as the RPA [Robotic Processing Automation] coordinator for Treasury. He was able to provide meaningful suggestions and create use case pipeline for most TREOP teams. His deep understanding in the quantitative analytics space proved to be useful in formulating possible automation and process enhancement

> ideas to the RPA's Center of Excellence team. During this six-month period, [the Applicant] was able to assist in the transition of the Annual Investment Planning (AIP) exercise from TRERC [the Treasury Risk, Compliance, and Controls team], which involves understanding the current capital project pipeline and conducting outreaches to business team on their project status and future demands.
>
> However, the latter half of FY22 was especially challenging for [the Applicant] due to the Ukraine-Russia war that affected his family situation and personal wellbeing. Delivery of the proposed tasks under his FY22 objective was put on hold as he took time off from February to early June to focus on his family and personal health.
>
> During our year-end discussion after [the Applicant's] return to office in early June, we'd agreed to focus on a work program that will 1) re-engage the delivery of past RPA use cases, 2) refresh FY22/23 capital project inventory and formulate a better communication strategy for the next AIP cycle, 3) lead the cross-unit dialogue on Bloomberg's BQuant cloud project (under FY23 AIP) and the technical engagement/scoping exercise, and 4) identify meaningful transformative fintech solutions that TRE could benefit in the ESG [environmental, social, and governance] investment space.

10. Further, in the Supervisor's Comments in the "Behaviors and Skills to develop" section of the Applicant's FY22 Annual Review, the Manager stated:

> We agreed in order to be successful in the role of AIP coordinator, it will be important for [the Applicant] to stay on top of all system enhancements and expand his relationship across TRE business units, so that he can effectively work with the project lead on raising any concerns to the ITS PM [Information Technology Solutions Project Management] office. For FY23, I look forward to [the Applicant] being re-energized and timely in completing these tasks, and be a strong contributor/mentor in TREFT's expanding role in coordinating future projects in system consolidation and multi-facets of fintech exploration/future implementations.

11. On 30 September 2022, the Applicant and the Manager exchanged emails regarding the Applicant's interest in pursuing other job opportunities in Treasury, and, also on 30 September 2022, the Manager emailed the Director and stated:

> [The Applicant] and I had a good discussion yesterday and his OPE [Overall Performance Evaluation] is now with you for review. He admitted that his skillset is not the best fit here in TREFT and is requesting to have an in-person meeting next week to discuss likely options. I will work with [a colleague] to find a best time when we are all in the office. If you have any preference, please let me know as well.

12. The Applicant's performance rating for FY22 was a 3.

13. Also in September 2022, the Applicant applied for a Senior Investment Officer position in Treasury Products, Knowledge, and Research but was not successful.

14. On 14 November 2022, the Applicant emailed the Manager and asked to schedule a discussion with the Manager and the Director regarding career options for the Applicant.

15. On 16 November 2022, the Applicant and management had a "Check-In Conversation." On 23 November 2022, the Applicant stated in the "Conversation Summary" of the Check-In Conversation:

> Met with [the Director] and [the Manager] to discuss my current placement and career options. This was a continuation of similar discussions that took place informally in Aug 2022 (with [the Manager]) and in early 2021 (with [the Director]).
>
> During my tenure with TREFT I have come to realize that although I can keep doing this job, I enjoy involvement in technology-related topics and have built sizable expertise through prior experiences and on-the-job training and certifications, I feel that I utilize only a small subset of my skillset which significantly affects my overall level of motivation in my current role.
>
> I have always been passionate about RAMP [Reserve Advisory and Management Partnership] and have a strong track record of client engagements through my almost 10yr career in TRE. I think my skillset will be better used in RAMP and that I can fit well within either of the 3 units (TREAP, TREAM, TREPK) which I believe is further supported by the fact that a few of my former QSA colleagues were placed in each of these units either as a result of restructuring or career mobility tools available, namely DAIS [Developmental Assignment].
>
> I would like to ask your assistance in finding another suitable placement for myself using available career mobility tools and I believe this will be beneficial for all parties involved and, as a result, to TRE as a whole.

16. The Manager's comments regarding the 16 November 2022 "Check-In Conversation," entered by the Manager on 29 May 2023, stated:

> Leading to the November 2022 conversation with [the Director], [the Applicant] and [the Manager] met weekly the regular 1-on-1 meetings to discuss the level of engagement to TREFT tasks assigned since [the Applicant's] return on a full-time basis from STD in June 2022. [The Manager] emphasized that one of the GG work programs is the successful delivery of the Annual Investment Planning process for the upcoming November to February cycle, given the possible system consolidation efforts being recommendation by external consultants for the Treasury Asset Management systems. It will be very important to continuously engage with project leads on identifying any delays for the approved AIP projects, actively establishing the TRE system inventories/project summaries and resolving any gaps between ITS and TRE leads, and preparing clear digestible presentations & briefings to [the Director] and eventually the TOC.
>
> While acknowledging [the Applicant's] skillset mismatch, the mandated TREFT work program is expansive with regards to the effective administration of TRE capitalized funding project, plus being enthusiastic about current technologies in RPA, data aggregation for AI/ML, to new emerging technologies in Blockchain, Digital Assets and Web3. It is important for [the Applicant] [to] stay engaged with the core work program whilst mentoring the new Junior Analyst and creating value in the role. [The Manager] pointed out there is a difference in expectation for TREOP GG to lead and deliver the agreed work program (without prompting), [the Applicant] acknowledged and stated he will try to do his best as other advisory type roles come up within TRE.

17. The Applicant and management had another "Check-In Conversation" on 22 February 2023. As stated by the Applicant on 9 May 2023 in the "Conversation Summary" of the 22 February 2023 meeting:

> Follow up meeting with [the Director].
>
> Reiterated that I have always been passionate about RAMP and have a strong track record of client engagements through my now 10yr career in TRE. I think my skillset will be better used in RAMP and that I can fit well within either of the 3 units (TREAP, TREAM, TREPK) which I believe is further supported by the fact that a few of my former QSA colleagues were placed in each of these units either as a result of restructuring or career mobility tools available, namely DAIS.
>
> I asked for assistance in finding another suitable placement for myself using available career mobility tools and I believe this will be beneficial for all parties involved and, as a result, to TRE as a whole.
>
> I have been reaching out directly to Managers in TREAA [the Treasury Asset Management, and Advisory Department] and CMI.

> Advised him that I was talking to [a colleague] about opportunities in RAMP including DAIS.

Management did not enter comments regarding the 22 February 2023 "Check-In Conversation."

18. According to the Bank, the "Applicant's work quality continued to suffer" following the November 2022 check-in conversation. The Bank further states that challenges with the Applicant's performance continued in the following months and that the "Applicant took several days of leave, often with little notice."

19. On 15 June 2023, the Applicant applied for a Senior Financial Officer position in Treasury Advisory and Partnership.

20. On 21 June 2023, the Director verbally informed the Applicant that he would likely receive a performance rating of 2 for FY23, and, in an email of 5 July 2023 from the Director to the Applicant, the Director stated:

> Let me know how things go with your application for the RAMP position, given your interests I hope you do well. As a reminder though, please don't forget to reach out to [the Senior Human Resources Business Partner (Senior HRBP)] to ensure you understand the potential of an Early Out/MAS [Mutually Agreed Separation]. As discussed when we spoke, Treasury position postings are competitive and only the hiring units have control over who is selected—I cannot place you in TREAA or another unit. Also as we discussed, your performance rating for last fiscal year is likely to be a 2, which would require you to be placed on an OTI process with a potential outcome of your exit from the Bank. Please let me or [the Senior HRBP] know if any of this is not clear to you.

21. On 7 July 2023, the Applicant responded to the Director's 5 July 2023 email and stated:

> Thank you for your message. As I already indicated during our informal meeting on June 21st, I am not interested in any early out options you are suggesting. Also, I strongly disagree with your evaluation of my performance and I will be perusing all available options at the Bank for appeal and remediation. Finally, I don't appreciate the tone of your messages which is intimidating and considered workplace harassment. I have successfully served at the Bank for over ten years in different units. I have been open and honest with you about my career aspirations and now I am being intentionally excluded from meetings and projects and pushed to take an early out or else. Such behavior from someone at the top management

> level creates a hostile environment and adversely impacts my chances of getting any opportunities at TRE or elsewhere at the Bank, and ultimately affects my wellbeing.
>
> We had this discussion about the mismatch of my qualifications to the current position long enough, so at this point I suggest you either increase the effort to find a suitable placement for me or we pursue official avenues to resolve any issues you might have with my performance in the last fiscal year.

22. According to the Applicant, two months later, on 6 September 2023, the Manager scheduled his year-end performance evaluation discussion with the Applicant. According to the Bank, "[f]ollowing the formal notification that [the] Applicant might receive a performance rating of '2', the Manager requested several more meetings with [the] Applicant," and "[t]here were verbal discussions regarding [the] Applicant's low motivation to work in TREFT and his continuing insufficient efforts to engage and bring project initiatives to closure." The Bank states that, "[t]hroughout August and September 2023, both the Director and the Manager approached [the] Applicant to reiterate he would not be receiving a 'satisfactory' ('3') performance rating given his lack of improvement."

23. On 18 September 2023, the Manager emailed the Applicant, copying the Director and the Senior HRBP, and noting "significant overall gaps in performance" with respect to the Applicant including "insufficient engagement," "lack of thoroughness," "low motivation and lack of initiative as compared to expectations of a senior GG-level staff." The Manager's email further informed the Applicant, "As your performance evaluation is unsuccessful this year, the next step will be the initiation of an 'Opportunity to Improve,' known as an OTI. It will detail the performance expectations required of you as a senior GG-level staff in this role." The Manager also stated in his email, "Lastly, please also note that it's important for you to let me know before the day if you are working from home or taking leave, rather than on the day or during the day. As noted above you have used a lot of leaves and almost exhausted some types."

24. On 18 and 22 September 2023, the Manager sent end-of-year performance feedback requests to seven feedback providers and, on 22 September 2023, received feedback from two of the feedback providers. One feedback provider stated:

> With regard to my team's efforts in developing a tool for TREBK News Sourcing & Analysis, [the Applicant] had offered to set up a session with us to explore DRSK/SRSK on Bloomberg. After a couple of email [exchanges] with my team, unfortunately the conversation dwindled. Admittedly, it seems that my team did not actively follow back up, nor did [the Applicant], and we did not result in any demo or other resolve. We have had little interaction with [the Applicant] apart from this initiative.

The other feedback provider, a Senior Financial Officer, stated:

> My team has interactions with [the Applicant] mainly regarding Bloomberg. Bloomberg made data format change in a WB [World Bank] customized feed without proper notification to Treasury business users, and such change caused production issues which required multiple units to put in manual corrections. We involved [the Applicant] so we could escalate the issue to Bloomberg to prevent similar incidences. For some reason, [the Applicant] believed it's mainly business users' oversight instead (and mentioned so to Bloomberg), despite multiple internal rounds of explanations and reasoning from the business users. Although we were able to persuade him finally, it took a lot of efforts and energy. Not jumping onto conclusions and effective listening are among the basic expectations on staff, and I was disappointed [the Applicant], at GG level, fell short on that, in his handling of the incident. That also makes people feel it's difficult to work with him. I personally would be very reluctant to let him represent our business area in front of vendors.

25. Additionally, over the course of FY23, the Applicant requested feedback from eleven feedback providers and received responses from five of them. These peer feedback responses regarding the Applicant were as follows:

> Working alongside [the Applicant] is an absolute pleasure. As colleagues, we have developed a close collaboration, particularly when it comes to addressing Bloomberg-related matters. Time and time again, I have relied on [the Applicant's] exceptional expertise, unwavering professionalism, and unwavering dedication. His extensive knowledge and understanding of the platform are truly remarkable, and, as a portfolio manager, I am consistently impressed by his ability to navigate complex issues with ease. [The Applicant's] proactive approach to sharing information, including the latest news and program enhancements, has proven invaluable to my work. His willingness to go above and beyond in assisting me has greatly contributed to my success in tackling challenges and achieving our shared objectives. Beyond his outstanding professional qualities, [the Applicant] possesses a wonderful personality that brings positivity to our working environment. Despite facing difficult circumstances in his homeland, he manages to maintain an upbeat and optimistic demeanor. This resilience is truly admirable, and it is a testament to [the Applicant's] strength of character. His positive attitude not only uplifts the atmosphere but also serves as a source of inspiration for everyone around him.

> […]
>
> I have always enjoyed working with [the Applicant]. He is technically strong, hardworking, efficient, and easy to work with. He is extremely experienced in BB Port and is a valuable staff member of the RAMP program and TRE.
>
> […]
>
> Outstanding technical expertise: [the Applicant] possesses extremely good technical and professional skills. He also has a great capacity and power of reason.
> Out-the-box thinker: [the Applicant] can come up with creative and innovative solutions.
> Results driven: Focuses on results and desired outcomes and how best to achieve them. Gets the job done!
>
> […]
>
> The FY24 AIP process was a challenging one that required the team to go the extra mile to close the gap.
> You did a wonderful job at facilitating multiple rounds of discussion, ensuring the key investments needed by Treasury would be included in the plan. I appreciate your great level of focus on the details and flexibility to defer/cancel multiple projects, finding room to fit emerging priorities. I am looking forward to strengthening our partnership in other ways to achieve the strategic goal of the Treasury department. Thank you so much! […]
>
> […]
>
> [The Applicant] is very dedicated and motivated, and it is a real pleasure working with him. In his engagement with RAMP clients including the [X Country] Reserve Bank […], he was instrumental in making effective presentations and interventions and providing guidance on risk and data management operations. He has also responded to the client's following-up inquiries in the most effective way. He is a strong team player, and his communication skills are excellent.

26. The Applicant states that he "was nominated for two performance awards in FY23: one for his work on a project involving enhancing risk analytics for the Bank, and another for his work on the inaugural Virtual RAMP Workshop on financial modeling in python." The Bank states that "[b]oth nominations were received by teams, not individuals, and [the] Applicant was one of the team members," and further that "[t]here is no indication of the Applicant's actual role or contributions on either team, and there is no evidence that he led the teams."

27. The Applicant's performance rating for FY23 was a 2.

28. The Applicant's FY23 Annual Review included the following five "Individual Business Objectives": "Enable operational effectiveness – projects and initiatives;" "Collaborate with external partners on new technologies;" "Support change agenda and other corporate initiatives;" "Develop and support a high performing team;" and "Promote sustainability in daily activities."

29. As stated by the Applicant in the Staff's Comments in the "Overall Contributions" section of the Applicant's FY23 Annual Review:

> Proactively reached out to colleagues in various units, directly and via other means—mail, dashboard, in person—on product updates that may be relevant to their work, particularly Bloomberg and Microsoft.
>
> AIP: successfully engaged and coordinated the challenging AIP process for FY24 with multiple rounds of prioritization; keeping track of prior and new business needs to fit the limited resource pool; senior management briefed periodically; finalized new demand and "re-purposed" projects endorsed by TOC on March 15, 2023. Specific concerns and observations about the process have been shared with the team lead and I hope they will be addressed in order to make the engagement more fulfilling and aligned with long-term goals of TRE and institution as a whole, not just a record-keeping and tracking exercise.
>
> Provided own comments and suggestion on the path forward regarding systems consolidation efforts, advised team lead on own views about the merits and feasibility of implementation of certain functional aspects and their necessity (or lack thereof) of being in scope for the exercise.
>
> Bloomberg study initiated and completed after the completion of Accenture study in the fall of 2022. It was conducted in a very focused manner, respecting teams' time and efforts. Findings were presented internally, reached out to other team leads, however, I feel the engagement from other units is significantly affected by the ongoing "Summit exit" scoping exercise with Murex and Accenture (project Tango). Nevertheless, the main suggestions from Bloomberg study—PORT Enterprise discussions, PORT/Swaps gaps—have been worked on with TREQA/PEN colleagues and CMIIL colleagues respectively so there's already some tangible progress.
>
> Coordinated multiple engagements with Bloomberg to resolve issues related to data fields, data license feeds, BVAL pricing issues. Facilitated training on new PM function that is set to replace MAV, [m]ost MAV users already converted to PM.

> RAMP engagements: technical assistance to Moldova through multiple virtual engagements and off-line communications; assisted TREQA colleagues in developing a technical session for Indexation workshop; contributed to the shaping and implementation of the inaugural Python workshop.
>
> RPA Program: several use case evaluations conducted that resulted in reaching the consensus that the upcoming "Data Platform" is a better solution from business perspective; furthermore, RPA RFP and thus uncertainty and effect on current offering was a cause for concern that contributed to general reluctance of business users to engage and pursue new use cases. In addition to data platform, other avenues were being considered including Python based solutions and Microsoft's Power Platform. Power Automate and embedded AI builder have been explored and showcased to relevant colleagues in PEN and TREBK as an alternative solution for the "Bank Statement Analysis" use case that was rejected for RPA Bot development.
>
> Data Governance working group: leading efforts to setup a Community of Practice, presented an overview of best practices for CoP, solicited feedback from the group, preparing to have its first event.
>
> Successfully negotiated and followed through the procurement of 6 no-cost trial Bloomberg licenses for summer interns.

30. The Manager stated in the Supervisor's Comments in the "Overall Contributions" section of the Applicant's FY23 Annual Review:

> The Financial Technology Unit of TREOP is a relatively new unit created in the 2020 reorganization of TRE. It is the focal point for the planning, development and maintenance of Treasury's financial systems, ensuring existing infrastructure is properly maintained, updated or replaced, and emerging risks and new opportunities are understood and effectively addressed. [The Applicant's] high level FY23 objectives were to (1) support operational effectiveness through system projects and initiatives, (2) collaborate with external partners, (3) contribute to corporate initiatives, and (4) maintain and support an effective and respectful workplace environment.
>
> One of [the Applicant's] tasks was to independently lead TRE's Annual Investment Planning process through the appropriate Treasury and institutional approval committees. As a senior GG level staff, he is expected to be able [to] comfortably engage with peers across ITS and TRE in effective and detailed consultations to support operation, maintenance, and enhancement of Treasury's infrastructure. However, his engagements with TRE units on system planning needs were insufficient in quantity and quality, typically involving only simple emails instead of thorough discussion with business and system specialists to fully understand and develop the merits, necessity, or reasoning behind proposed system changes, and

the timing, options, sequencing, and priorities involved. [The Applicant] acknowledged having difficulties engaging with business and IT leads throughout the process to develop and document support for project prioritization. As his supervisor, I had to step in frequently to guide, motivate, clarify and to provide oversight, quality review, negotiation support and advisory to TRE units to complete the task.

Prioritizing capital budget demands for technology projects requires summarizing clear business rationales, technical options, and cost estimates in close partnership with TRE application owners and the ITS Project Management Office. Findings then need to be summarized and aggregated for discussion at the Treasury Operations and Information Technology Committees, chaired by TREVP [the Vice President and Treasurer] and ITSVP respectively—the first to finalize Treasury's investment priorities and the second to prioritize projects across the institution. [The Applicant] took more time than expected to formulate the messaging for senior level decision making and he needed much more supervisory guidance than expected to prepare the communication strategy, required documentation, and discussion records on the next steps or decisions.

[The Applicant's] role as a senior GG level staff in TREFT requires him to understand the current TRE system environment and ensure its continued effectiveness. This requires tracking system renewal needs and reasons (obsolesce, mandatory upgrades, regulatory requirements, business changes), and establishing strong relationships with key system, data and service providers, and TRE and ITS teams. Despite substantial time in the role, [the Applicant] did not demonstrate the necessary comprehensive awareness of the technology environment or develop effective relationships with ITS and business users. He seldom interacted with the majority of TRE's application owners to understand their needs for regulatory-driven system upgrade and maintenance. He does have familiarity with the Bloomberg service and RiskMetrics but made insufficient effort to connect with the rest of TRE system vendors (i.e., Finastra, Murex and FIS Quantum) or their business users/functions. As for the market research on a spectrum of topics impacting TRE's technology for funding, investment and banking operations, [the Applicant] was expected to work closely with TRE business units to conceptualize, design, assess and track new innovative projects. He did not organize sustained explorations or produce meaningful roadmaps particularly for the Artificial Intelligence and RPA initiatives he was assigned to. Though [the Applicant] disseminated product developments from Bloomberg and Microsoft, he has not engaged appropriately in deep consultation with internal business units and the Innovation Lab to scope out potential project ideas for process improvements and their implementation. For example, several TREOP team leads had indicated they saw limited interactions and little outreaches from [the Applicant], as compared to the junior analyst in the unit.

[The Applicant] conducted several technical training sessions to the Quantitative Analytics team and helped them assess the possibility of replacing RiskMetrics

> with Bloomberg's PORT Enterprise product and to explore the best use of the current PORT+ functionalities in 6 to 8 sessions over a three-month period. [The Applicant] provided ad hoc Bloomberg support to staff to [resolve] issues with the data/pricing feeds and provided occasional support to RAMP clients and the Investment and Quantitative teams. However, these brief positives did not offset the significant performance gaps mentioned above, including concerns shared bilaterally by business unit leads on his effectiveness in representing TRE interests regarding operational issue discussions with the vendor.

31. Further, in the Supervisor's Comments in the "Behaviors and skills that supported contributions" section of the Applicant's FY23 Annual Review, the Manager stated:

> In my regular 1-on-1s with [the Applicant], we discussed the importance of him being more motivated than he has shown, to have more detailed and frequent stakeholders engagements across TRE, Finance Partners and ITS Innovation Lab, so that he can better understand the system challenges each unit faces and propose or support appropriate prioritization of limited resources and make the best case for TRE's AIP demands. As a senior member of the TREFT team, [the Applicant] is required to build well-connected relationships with external fintech partners and TRE business leads, mentor junior staff on sourcing new proof-of-concepts for potential implementations, and volunteer to contribute to forums and knowledge sharing events.
>
> He has demonstrated a narrow focus, for example being engaged and knowledgeable with Bloomberg and Risk Metrics applications but not developing practical understanding of other key business system. He has tended not to engage frequently or deeply enough with business users, ITS or the vendors themselves.

32. And, in the Supervisor's Comments in the "Behaviors and Skills to develop" section of the Applicant's FY23 Annual Review, the Manager stated:

> [The Applicant] must focus and work harder on developing the necessary familiarity with the remainder of TRE's system landscape. He must engage with greater frequency and purpose with business and ITS teams and leads and improve the quality and timeliness of system assessments, proposals and plans. [The Applicant] must build high-quality internal and external relationships and connect subject matter experts as needed across HQ [Headquarters], Chennai and Sofia.
>
> [The Applicant] had raised concerns at the midyear check-ins that his quantitative skills would be better deployed in RAMP-facing or client asset management units, and he requested management assistance to find suitable placements within TRE given his acknowledged skillset mismatch.

> At the year-end discussion, [the Applicant] and I went through his self-assessment and the gaps observed around his performance, and the need for significant improvements to focus on the whole team's work program, this includes the improved timeliness and higher quality support for the Annual Investment Planning process, and more comprehensive outreaches across TRE and Finance Partners on technology initiatives. [The Applicant] has been given feedback on his poor performance and guidance on work program expectations, however he continues to perform below the Bank's core competency standards for a GG level staff.

33. On 27 October 2023, the Manager emailed the Applicant, with the Director and the Senior HRBP in copy, sharing a draft OTI memorandum, asking the Applicant to share his comments, and noting that management would "be glad to discuss the draft together with you before we finalize in the system." On 30 October 2023, the Applicant responded via email asking that the OTI draft memorandum be shared with a Staff Association representative and that she participate in the OTI draft discussion meeting. The Applicant further noted in his email response that he was "still processing the draft" and that his "initial quick reactions" were that "it is too generic and does not contain objective/quantifiable criteria," and that his title is "Senior Investment Officer." Additionally, on 3 November 2023, the Applicant emailed the Manager, with the Director and the Senior HRBP in copy, stating:

> One item that is missing is the duration of OTI which as I recall [the Director] set at 4–6 month during our meeting on Oct 17th. I already expressed to you that I do not agree with your decision to assign me the rating of 2 and place me on OTI so my suggested revision would be to remove it altogether.

34. On 14 November 2023, through the Administrative Review (AR) process, the Applicant challenged his FY23 performance evaluation and performance rating of 2, and his placement on and terms of the OTI.

35. On 17 November 2023, the Applicant was formally placed on an OTI. As stated in the OTI memorandum from the Manager to the Applicant, the following aspects of the Applicant's performance were unsatisfactory:

> (i) Inadequate engagements with peers across ITS and TRE in conducting effective and detailed consultations, including insufficient documentation to support operation, maintenance, and enhancement of Treasury's infrastructure for the Annual Investment Planning (AIP) process.

(ii) Failure to become familiar with the rest of TRE systems other than Bloomberg and Risk Metrics (for example, Finastra, Murex, FIS Quantum, et cetera) and engagement with the majority of TRE's application owners in order to understand their needs for regulatory-driven system upgrade and maintenance.

(iii) Unable to demonstrate the necessary comprehensive awareness of the technology environment or to develop effective relationships with system vendors, ITS support and business users.

(iv) Insufficiently sustained engagements with colleagues/peers as to conceptualize, design, assess and track new innovative projects, or to organize explorations and produce meaningful development and maintenance roadmaps.

(v) Insufficient engagement and networking with external fintech partners and other Bank VPUs outside of TRE, or close collaboration with SMEs on sourcing of new proof-of-concepts for potential implementations.

36. Further, the OTI memorandum stated that the Applicant was being given an opportunity to address the deficiencies specifically by:

(i) Improving timely engagement with all business and IT units to ensure higher quality support for the Annual Investment Planning (AIP) process, including regular progress updates (written and verbal) and clear presentations to senior management. Leading dialogues with all TRE application owners and providing clear timelines, discussion summaries, quality reviews, and negotiation support to TRE business units for the yearly capital budget request and all ongoing capital project status.

(ii) Developing the necessary familiarity with the remainder of TRE's system landscape, other than Bloomberg and Risk Metrics, and work harder to engage in constructive consultation with internal business and IT units to support appropriate prioritization and to make the best case for TRE's AIP demands.

(iii) Tracking system renewal needs and reasons (i.e., obsolesce, mandatory upgrades, regulatory requirements, business changes), and establishing strong relationships with key system, data and service providers, and TRE and ITS teams.

(iv) Engaging with greater frequency and purpose with business and IT team leads to improve the quality and timeliness of system/process assessments and project proposals. Facilitating more sustainable and comprehensive outreaches across TRE and Finance Partners on current and emerging technology initiatives to deliver the right business-driven outcomes.

(v) Building high-quality internal/external relationships and connect subject matter experts across HQ, Chennai and Sofia teams to engage staff with emerging technology topics. Volunteering to lead, contribute and organize fintech forums and knowledge sharing events for VPU-wide audiences.

37. The OTI memorandum further stated:

> I expect to see improvement immediately and I expect that you will improve the output and outcome of your deliverables as described above, and most importantly to meet the Bank's core competency standards for a GG level staff. I and/or [the Director] will discuss your progress with you every two weeks.

38. Additionally, the OTI memorandum stated:

> Please note that failure to improve at a reasonable pace or to sustain satisfactory performance is a serious matter and could result in the termination of your employment from the World Bank Group under the provisions of Staff Rule 7.01: Ending Employment.

39. On 11 December 2023, the Applicant, the Manager, and the Director had the first OTI check-in meeting. The Applicant states that the OTI progress meetings were attended by both the Manager and the Director, the Manager's supervisor.

40. While the OTI and the AR processes were ongoing, the Applicant obtained an offer of a three-month DAIS with another unit—Core Risk Unit—and, on 18 December 2023, the Applicant emailed the Manager and the Director and stated that he had been offered and had accepted the DAIS with a start date of January 2024. The Director responded via email to the Applicant on 18 December 2023 and stated:

> Thanks for letting us know, [Applicant]. It will be important for you to let CRO know that you may not be able to fulfill the full term of the DAIS if the OTI doesn't last that long. I believe the administrative review process you requested will end on January 5th and it is possible, depending upon the result, that you could be let go shortly after that process concludes. [The Manager] will continue to share more information on your performance but it continues to be our view that you are not performing your job at your level, and that you appear unlikely to be able to do so in the foreseeable future.

41. Bi-weekly OTI check-in meetings with the Applicant and management occurred in December 2023, January 2024, and February 2024.

42. On 2 February 2024, AR was completed, and the report was sent from the AR Reviewer to the Director. The AR Reviewer stated in her report:

> I did not find adequate written, recorded documentation highlighting the exact deficiencies and expected corrective actions, and potential consequences of not improving the performance during the course of the Performance year. Therefore, I found that due process was not fully afforded to the staff member and as such, I found there is insufficient justification for a rating of "2".

43. The AR conclusions further included:

> While much of the feedback and guidance was shared verbally, according to the supervisor(s), the numerous work program delivery related, operational email exchanges between the counterparts, jump out to me, as an observer, as clear indication that the staff member was not delivering to the expectations, and continuous guidance was needed, and was provided to him. Management's preference to provide feedback to the staff verbally, rather than in writing, to benefit the staff, was not best practice and something to re-consider going forward.
>
> […] For FY23 performance evaluation, […] I would recommend the write-up be revised to make it more balanced. It needs to also include key areas of strength based on feedback collected by [the Applicant], or otherwise received and observed.
>
> […] Given that management confirmed multiple face-to-face conversations with the staff to flag performance and behavioral concerns, and ongoing operational and guidance was needed and provided to staff to conduct his work program, I believe there is a strong indication that an unsatisfactory rating was warranted in this case. Management, however, did not provide during the performance year sufficient explicit written documentation, with the level of performance deficiency detail and explicit description of potential consequences, to afford due process to staff and hence the rating should be revised from a "2" to a "3". (Emphasis in original.) Importantly, however, this rating of "3" would not be assigned to reflect satisfactory performance, but to address insufficient due process.
>
> […] Given the demonstrated gaps in the staff's performance, the OTI Plan was warranted, and continues to be warranted independent of the (potentially revised) performance rating.

> […] The terms of the OTI Plan would have benefitted from more concrete, observable and clearly measurable deliverables or workplace behaviors, to allow strong, mutual understanding on how [the Applicant's] delivery would need to evolve vis-à-vis the set expectations. This gap is being mitigated in the bi-weekly OTI-follow-up discussions.

44. According to the Bank, the Director, as the Applicant's reviewing manager, was provided with the AR report, and the Bank states:

> The Director decided that the proposed remedy of providing [the] Applicant with a rating of a "3" when this was inconsistent with his performance was not reasonable or practicable, especially since the "2" rating was the procedural foundation of the ongoing OTI process.

45. Also on 2 February 2024, the Applicant requested PMR of his FY23 performance rating and placement on and terms of the OTI, prior to receiving the AR decision. According to the Applicant, because AR "was not completed within the prescribed timeline, […] [he] sought Performance Management Review (PMR) out of an abundance of caution before receiving an AR decision."

46. On 7 March 2024, the Manager emailed the Applicant and the Director, with HR representatives in copy, and stated:

> Hi [Applicant],
>
> After reviewing your 2/29 updates versus what you sent for 2/20, I did not see any significant progress, or the implementation/strategy plans I suggested per our last exchange. In particular to the Allvue item where you asked me to escalate with ITS and TREQA, I met separately with [a colleague] and [another colleague] […] this week to understand how your consultation has been so far—what I heard was that the business team is not comfortable with the higher than expected price tag for the Allvue Cloud Implementation and they would need clarity of how CRO and TREQA should approach the vendor to comprehend the price difference between the on-prem and cloud options. I was told there will be a follow up scheduled between TRE, CRO and ITS next week, which I've asked TREFT to be included in the discussion. My view, shared by others, is for you to not simply stand back and observe but to be more proactive in summarizing what is being discussed and collaborate with business to formulate either the cost comparison or fit-gap analysis of Allvue versus Murex. I am surprised this conversation is still running in circles as this is what is expected for you to contribute at your level and is necessary for

> TREFT's value-added role to facilitate/guide our business leads in finding a conclusive outcome for these types of business/technology discussions, and to elevate for my, the BU managers' and [the Director's] awareness.
>
> Additionally, I spoke with several other operational team leads and the common feedback I received was that your engagements with them have surfaced a sense of insufficient knowledges of their operating environments and system renewal cycles. A few of them found that your outreaches were somewhat out of the blue, as there were no prior engagements, apart from one or two isolated conversations, from you until recently. Again, [the Director] and I have continued to point out the improvements we would like you to focus on in particular to a more meaningful engagements with our operations teams since they are the ones most impacted by system renewals and refreshes. Unfortunately, I am still observing a lack of commitment from you to build the necessary relationship with them to understand their day-to-day processes and pain points, this was apparent when one team lead expressed concern to me that your presumption of a smooth project outcome was a surprise and showing a lack of awareness of the implementation delay and bottleneck that they are currently facing.
>
> With the observation and feedback I collected thus far, we are now ready to conclude the OTI process. Per the HR process, you will be receiving a system notification on the recommended action from me to [the Director], following which you will have 14 calendar days to provide any comments you may have to [the Director].

47. The Applicant responded to the Manager's 7 March 2024 email on the same day and stated:

> [Manager],
>
> Despite my best efforts to resolve this situation amicably, you and [the Director] have persisted in fabricating this bogus case against me by damaging my professional reputation, spreading disinformation and lies about my performance and engagements within Treasury and beyond. I am sick of this revolting toxic culture that you have created by harassing me for the past eight months. I will be taking further steps to defend myself and my professional honor. Rest assured that this case of appalling abuse of position power, managerial incompetence and broken trust on your part will not be swept under the rug. I am looking forward to the tribunal proceedings as I will be filing a case against you and [the Director] for personal discrimination, harassment, and retaliation in violation of all procedures set by the Bank.

48. Also on 7 March 2024, the Manager sent the Director a memorandum regarding "Recommended Action following Opportunity to Improve Performance" and recommended that the Applicant's employment be terminated for unsatisfactory performance.

49. On 20 March 2024, the Director emailed the Senior HRBP and the Manager, Corporate Operations and Policy, and stated:

> I have a few more procedural questions connected to our recent OTI conversations regarding [the Applicant's] case given the 14-day post-OTI notice period is coming to an end tomorrow evening.
>
> We had received a brief note from [the Applicant] at the beginning of the 14-day notice period but we might receive something more before the deadline (Thursday around 6pm). We'll wait and see so I can take any additional comments properly into account.
>
> I'll send a note Thursday evening to seek the concurrence of TREVP […] and the HRD Director for the Bank […] for my decision. Is it as simple as that—seeking concurrence? Who should I copy? What kind of turnaround from [TREVP] and [the HRD Director] should I expect? I believe moving quickly will [*sic*] best for all concerned. Is [the HRD Director] aware and expecting my recommendation?
>
> Separately, how do I communicate and process my decision to pay [the Applicant] the 60 days' notice period? Are there any complications which I ought to be aware of? We expect to trigger the closure of [the Applicant's] TRE System Accounts and to request the return of equipment on Friday.
>
> What about the potential for heightened emotion during this process? What about building access? Can we close his access to the C building while leaving his ability to visit MC and Credit Union etc?
>
> Appreciate your thoughts on how to handle this rare event.

50. On 25 March 2024, the Applicant was informed that his employment would be terminated effective 15 April 2024. Per the "Notice of Termination" email from the Director to the Applicant:

> In the past several months, your supervisor, [the Manager], has discussed with you and has notified you in writing issues concerning your performance and ways in which your performance was expected to improve. [The Manager] also advised you that if your performance did not improve this may result in termination of your World Bank employment. In coming to my decision, I have carefully considered your performance during the Opportunity to Improve period and perspectives shared with me. I have also consulted with the Director, Human Resources and with the Vice President, TRE, who are in concurrence with my decision. Because your performance has not shown significant and sufficient improvement, please be informed that your employment with the World Bank will be terminated effective close of business April 15, 2024, in accordance with Staff Rule 7.01, Section 12

> (Unsatisfactory Performance), and you will be paid your salary for 60 days in lieu of a notice period.

51. On 26 March 2024, the PMR report was sent via memorandum from the PMR Reviewer to the Vice President and Treasurer (VP). The PMR Reviewer noted in the "Analysis and Conclusions" section that

> [the Applicant] first learned of his likely performance rating of 2 on June 21, 2023, during an informal meeting with his director. This was formally conveyed to him in writing by his manager on July 5, 2023. This came as a surprise to [the Applicant]. Based on the interviews I conducted and the material I reviewed, there is reasonable and observable evidence that during FY23, performance shortfalls were identified and communicated to [the Applicant] together with guidance on how to improve them as well as what was expected. However, in none of the materials I reviewed did I find evidence of explicit communication to [the Applicant] that failure to meet the deliverables would lead to an unsatisfactory rating. The first time this was conveyed to him was in June 2023. While the two parties convey different versions on what transpired during the Check-in and 1-on-1 meetings, the evidence provided substantiates that performance issues were discussed within the context on delivery of the work program. It is important to note that the FY23 OPE discussion took place on September 6, 2023, three months after [the Applicant] had been notified of his likely performance rating.

52. The PMR Reviewer further stated:

> It is my conclusion that no explicit advance warning was given to [the Applicant] on his performance being considered unsatisfactory or on the potential impact of this on his performance rating. While [the Manager] did communicate the deficiencies and gaps in his performance to [the Applicant], which should have been interpreted as warning signs by [the Applicant], they were never explicitly linked to a potential impact on his performance rating. [The Applicant] could have taken them as areas for improvement but not of concern with respect to the performance rating.
>
> Furthermore, the rating was communicated to [the Applicant] three months prior to the OPE discussion. <u>My recommendation is to rescind the rating of 2 and change it to a 3 with the corresponding salary increase based on the following facts: (1) there was a failure to provide adequate notice, which is an essential due process right; and, (2) […] the staff member was not given adequate opportunity to defend himself as his rating was decided and communicated to him before his FY23 OPE discussion took place</u>. (Emphasis in original.)

53. The PMR Reviewer further stated:

[The Applicant's] FY23 Annual Review included five Individual Business Objectives. His supervisor's assessment is that his performance on his priority objectives was unsatisfactory and while recognizing some achievements, they were not significant enough to objectively offset the underperformance. [The Applicant's] view is that he met the first three objectives, he however did not discuss nor present additional evidence on the last two objectives. Based on my interviews and review of email exchanges, I conclude that the support [the Manager] was providing to [the Applicant] went beyond what was required for a GG level staff, and the intention was clearly on providing him with guidance to meet his deliverables. In addition, there is a reasonable and observable basis to conclude that [the Applicant] failed to fully demonstrate having the relevant competencies to meet his objectives. […] [The Applicant] requested feedback from eleven staff members and received feedback from five. All of them were positive but none of [the] comments were reflected in the evaluation performance text written by [the Manager].

[…] Based on the fact that [the Applicant] failed to fully meet the objectives and demonstrate relevant competencies as well as the fact that he needed greater than usual support from others to achieve results objectives, I conclude that there is a reasonable and observable basis to support a view of performance falling short of meeting expectations. However, given the conclusion expressed in paragraph 26, the rating of 2 should be rescinded. In addition, the text should be modified to properly reflect the positive feedback provided on [the Applicant]. (Emphasis in original.)

[…]

Based on the evidence analyzed and interviews conducted, and elements expressed in paragraph 29, there is a basis to conclude that an OTI may be warranted in this case. Despite the higher-than-normal support provided to the staff, a gap on demonstrating the relevant competencies persist as well and [*sic*] subpar delivery of his work-program. I conclude that placing [the Applicant] under an OTI is justified and done under observable and reasonable basis, and that it should be done with the expectation to attain performance improvement in the areas identified as showing deficiencies. (Emphasis in original.)

[…] **Terms of OTI** – Based on analysis conducted of the case and discussions with interviewees, the scope and depth of the OTI seem adequate. It clearly identifies the areas of underperformance where [the Applicant] is expected to improve. These were also clearly communicated to [the Applicant] by [the Manager] in an email dated September 18, 2023. However, the expected deliverables lack specificity and, as they stand, could be subjective. I conclude that the terms of the OTI should be modified to include better defined deliverables in terms of specificity, timeline and actual outcome/output. (Emphasis in original.)

54. The PMR Reviewer recommended:

> Based on the finding […] that there was failure to provide [the Applicant] with adequate notice of his performance leading to a potential unsatisfactory rating, and that his rating was communicated to him prior to having the FY23 OPE Discussion, I recommend rescinding the performance rating of 2 and for it to be changed to a performance rating of 3 with the corresponding salary increase. I recommend that the evaluation text be modified to incorporate, as warranted, the positive feedback provided on [the Applicant's] performance. Finally, I also recommend keeping [the Applicant] under an OTI as per terms stated on November 17, 2023, but modifying the expected deliverables so they are specific, measurable and doable within the OTI timeframe. (Emphasis in original.)

55. On 28 March 2024, the VP rejected the PMR recommendations, stating via email communication to the Applicant:

> Based on my thorough review and consultation, I do not accept the PMR recommendation. I base my decision on the existence of TRE's many communications with you regarding your performance that have been clear and consistent throughout the evaluation period. In addition, you were provided with ample written notice of your likely unsatisfactory performance rating on July 5, 2023, which was subsequently confirmed in the year-end performance evaluation process. Further, I understand that your FY23 performance evaluation currently is being revised to include the feedback on your strengths. Regarding the OTI, that process is now concluded, and the PMR recommendation in this regard is moot.

56. According to the Bank, "[r]ather than accept the recommendation to change [the] Applicant's rating from a '2' to a '3' as a remedy, even though his performance warranted a '2,' [the VP] decided that the ongoing performance management process should be brought to its conclusion, and not set back by a year."

57. On 23 July 2024, the Applicant filed his Application with the Tribunal.

58. The Applicant challenges the 25 March 2024 termination of his employment, the 28 March 2024 "refusal of [the VP] to implement PMR recommendations as to OTI and FY2023 performance rating," and his 17 November 2023 placement on an OTI and the terms thereof.

59. The Applicant seeks the following:

i. Reappointment to a mutually agreeable position or appropriate compensation in lieu thereof.

ii. [Rescission] of the disputed OTI plan.

iii. Rescission of the performance rating of 2 for FY2023 and replacement with a performance rating of 3 or higher.

60. The Applicant further seeks

> compensation in an amount deemed just and reasonable by the Tribunal to remedy the damage to [the Applicant's] career and professional reputation, as well as the financial and emotional distress caused by [the Applicant's] improper performance rating of 2 and improper termination. This includes the severe immigration consequences [the Applicant] and his entire family now face. [The Applicant] had to hire an immigration attorney to ensure that he and his family could stay in the United States long enough for his children to finish the school year, but will likely soon have to leave the United States, the only home his children have ever known. In addition, [the Applicant's] eldest child has special needs, and the financial distress caused by his termination means he can no longer provide his son with the necessary therapies, schooling, and social supports.

61. The Applicant requests legal fees and costs in the amount of $26,477.50.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

Management abused its discretion in giving the Applicant a poor performance evaluation and a performance rating of 2

<u>The performance rating was substantively flawed because it was based on an unfair and unbalanced performance evaluation</u>

62. The Applicant contends that his performance evaluation was unfair and unbalanced, and he asserts that the Manager "failed to request feedback from a diverse array of feedback providers throughout the performance year." To the Applicant, this indicates that the Manager "was not interested in hearing what anyone else had to say about [the Applicant's] performance." The

Applicant further contends that the Manager "ignored" positive evaluations of the Applicant's performance and contributions, and, to the Applicant, the Manager "simply stacked the deck with his own negative comments." The Applicant avers that the Bank "does not even attempt to defend the glaring omissions from [the Applicant's] performance evaluation or [the Manager's] failings with respect to soliciting feedback," and, in the Applicant's view, the Bank "thus tacitly concedes the unfair and unbalanced nature of the evaluation." The Applicant contends that the performance rating of 2 is an abuse of discretion and must be rescinded.

The performance rating constituted an abuse of discretion because it was tainted by severe due process violations

63. The Applicant cites the Tribunal's jurisprudence and submits that "staff members must be given both the opportunity to take corrective action to avoid an adverse decision and the opportunity to defend themselves." He asserts that in the instant case management deprived him of these opportunities by not warning him about his alleged performance issues and by deciding his performance rating before he had the opportunity to defend himself in his year-end performance discussion. He submits that throughout FY23 he was never warned that any performance issues might lead to a performance rating of 2, and he contends that AR and PMR confirm management's failure in this regard in that "management admitted that it never provided any written warning to [the Applicant]."

64. To the Applicant, management's claim that it provided oral feedback is neither credible nor an adequate substitute for written warnings. He asserts that, while management had opportunities to provide documentation with respect to his November 2022 and his February 2023 conversations, "there is no indication […] of any warning about a potentially poor performance rating." The Applicant also submits that management did not schedule meetings with him from June 2022 to March 2023 and deems it "simply not credible" that management was providing critical oral feedback and warnings at the same time it was declining to meet with him. He underscores that "management failed to document [the Applicant's] November 2022 meeting until six months later in May 2023."

65. The Applicant further avers that "management must provide the staff member with 'clear and specific' written feedback enabling them to 'anticipate the nature of the year-end discussion and resultant ratings'" but that this did not occur, as AR and PMR concluded. To the Applicant, "simply raising performance-related issues is not enough—management must also specifically warn a staff member that any alleged performance issues will lead to a substandard performance rating if left unaddressed."

66. Moreover, the Applicant points to the 5 July 2023 email in which the Applicant was told he was "likely" to receive a 2 performance rating and contends that it "cannot constitute sufficient warning for at least two reasons." Specifically, the Applicant notes that the FY23 review period ended on 30 June 2023, which is five days before the 5 July 2023 email. To the Applicant, "[i]t was thus useless as a warning because, by the time [the Applicant] received it, it was literally impossible to alter his FY23 performance." Further, the Applicant asserts that the 5 July 2023 email "failed to explain either why [the Applicant's] rating was 'likely' to be a 2 or what he could do about it," and accordingly even if it was timely it would not have provided a meaningful opportunity for the Applicant to avoid an adverse performance rating. He stresses that the 5 July 2023 email was the first time he received written notice that his performance rating would be below satisfactory. In the Applicant's view, the 2 performance rating should be rescinded as an abuse of discretion due to a lack of adequate warning and meaningful opportunity to avoid the rating.

67. The Applicant further contends that he was not given an adequate opportunity to defend himself, and he stresses that the performance rating was communicated to him before his performance discussion occurred; as such, he received "no genuine opportunity to defend himself" before the performance rating was set. The Applicant asserts that,

> in the same email where management informs [the Applicant] that a performance rating of 2 was "likely," management also urged [the Applicant] to voluntarily resign from the organization. […] Rather than explain the basis for this poor performance rating, or what evidence [the Applicant] would need to muster to avoid such a rating, management all but confirmed that not only would [the Applicant] receive a poor rating, he would be fired for it.

68. The Applicant further contends that the Manager submitted his FY23 performance evaluation comments on 28 September 2023 and claims that this "was the first time that [the Applicant] was made aware that management was just blatantly ignoring all of the positive feedback he had received." The Applicant avers that, had he been given "a real opportunity to defend himself," management would have considered this feedback and included it in his FY23 performance evaluation as it is required to do. The Applicant disputes the Bank's claim that he "admitted to his manager that TREFT was a poor fit for him" and considers it "simply false." He asserts that, rather, he suggested that "his skills might better be deployed elsewhere." To the Applicant, the performance rating of 2 should be rescinded as it was procedurally flawed.

The Bank's Response

The Applicant received real-time feedback about his performance problems and had ample opportunity to defend his performance or improve it, and the Applicant's performance rating had an observable and reasonable basis

69. The Bank contends that the central issue in the instant case is whether the Applicant's performance rating of 2 "was a reasonable exercise of [the] Applicant's Manager's discretion to evaluate the performance of his staff," and the Bank asserts that "the Tribunal is not [the] Applicant's manager, and did not work with [the] Applicant," and therefore is "not best placed to evaluate staff and to assign ratings, especially not based on a staff member's after-the-fact subjective self-assessment in his Application."

<u>The Applicant received real-time feedback about his performance problems and had ample opportunity to defend his performance or improve it</u>

70. The Bank avers that the "Applicant admitted to his manager that TREFT was a poor fit for him," and the Bank submits that management "made active efforts to find other positions." The Bank contends that, "[b]ecause his skills and experience were not particularly helpful in TREFT, [the] Applicant had trouble performing in a manner expected of level GG staff members." The Bank asserts that the Manager "held weekly meetings or check-ins with [the] Applicant, and tried to assist him in every way the manager could think of," and the Bank claims that "[t]he Manager

specifically told [the] Applicant where his performance was disappointing, and suggested mentors and other staff members who might serve as resources."

71. The Bank underscores that "[a] major and consistent theme in the feedback provided by the Manager was that as an experienced GG staff member, [the] Applicant was expected to be proactive in managing his workload and should be able to manage his projects largely without constant supervision." The Bank avers that the Applicant "was seen as largely passive," however, and further "did not display autonomy and proactive drive in his work" and "did not anticipate and avoid problems."

72. The Bank contends that the Applicant's admission that he was not a good fit for his role indicates that he was on notice and aware of his performance deficiencies. The Bank further cites a 29 January 2025 written statement from the Manager filed with the Bank's submissions and asserts that the Manager met with the Applicant in weekly one-on-one meetings where feedback was provided about the Applicant's performance. The Manager states in his written statement that he "recall[s] that I told [the] Applicant orally in May 2023 that if his performance difficulties continued, he was unlikely to receive a rating of '3,' or 'meets expectations.'" Additionally, the Bank contends that the Manager highlighted and formalized areas for the Applicant's improvement in the 16 November 2022 check-in conversation.

<u>The Applicant's performance rating had an observable and reasonable basis</u>

73. The Bank contends that the "Applicant's OPE was conducted in a fair and reasonable manner," and the Bank submits that, "[p]rocedurally, [the] Applicant also cannot reasonably claim to have been surprised by his rating," because the Applicant "admitted on several occasions that he was not a good 'fit' with the job requirements of his current position."

74. The Bank avers that the "Applicant received consistent real-time feedback from his manager during the performance year," and the Bank highlights the PMR Reviewer's conclusions. The Bank further asserts that the Applicant "had a number of formal OPE discussions with his

manager," and it submits that, on 21 June 2023, the Applicant "was expressly reminded that his performance level would equate to a rating of '2' for the year."

75. The Bank submits that, with respect to a performance rating, "[t]he difference between a 2 and a 3 is material and significant," and the Bank asserts that awarding a performance rating of 3 that was not justified by the quality of the Applicant's work seemed unreasonable to the VP. The Bank submits that "[a]warding a rating that does not accurately reflect performance problems also seemed counterproductive to the ongoing efforts to motivate [the] Applicant to improve his performance in the ongoing OTI process."

76. The Bank contends that the Applicant's allegation that his performance review was unduly negative and failed to take into account all relevant feedback of his work is untrue. The Bank references the 29 January 2025 written statement from the Manager and contends that "the Manager sought out appropriate additional feedback from various colleagues of [the] Applicant […] all of whom provided critical feedback of [the] Applicant's work." To the Bank, while "feedback forms part of any evaluation of staff at the Bank, it is ultimately the manager who works most closely with a staff member, who has the best insight into their work and who is responsible for evaluating all of a staff member's work for the year." The Bank further avers that the AR Reviewer came to "the same conclusion as [the] Manager about [the] Applicant's substantive performance: [the] Applicant was underperforming in his role."

The Applicant's Contention No. 2

The termination decision was an abuse of discretion

<u>The Applicant's placement on an OTI was an abuse of discretion</u>

77. The Applicant submits that, as management abused its discretion with respect to his performance evaluation and rating, its placement of the Applicant on an OTI as the result of the flawed rating was also an abuse of discretion. The Applicant asserts that the Bank "expressly concedes, as it must, that 'the '2' rating was the procedural foundation of the ongoing OTI

process,'" and he contends that the Bank does not explain how the OTI can be sustained if the performance evaluation and rating cannot.

78. The Applicant claims that the "fundamental unfairness" in his placement on an OTI is confirmed by management's tasking him with making improvements on "the very same issues as to which management failed to acknowledge significant positive feedback," and he references the AIP process. The Applicant maintains that he was placed on an OTI because management did not properly evaluate his performance. He asserts that management's failure in this respect was an abuse of discretion, and that both the OTI and the termination of his employment according to the OTI were abuses of discretion.

The OTI process was arbitrary and lacking in a fair and reasonable procedure

79. The Applicant avers that, pursuant to Tribunal precedent, "an OTI plan must give a staff member a real 'opportunity to improve, and to achieve required performance standards.'" The Applicant submits that, "when an OTI does not set out a reasonable amount of time for an employee to improve, the OTI does not afford the staff member a 'genuine chance to succeed'" and does not meet the requirements of an OTI. He contends that his OTI "was impermissibly vague; lacked concrete, measurable deliverables; unfairly relied on subjective criteria; and failed to set a reasonable timeline for improvement." The Applicant emphasizes that, with respect to the expectations set out in the OTI, "no timeline for completion (reasonable or otherwise) was provided;" rather, the OTI provided that the Applicant's employment would be terminated if he did not improve "immediately."

80. The Applicant submits that he "neither agreed to be placed on the OTI nor ever agreed with its terms." He further avers that the Director and the Manager improperly refused to allow him to transfer to the Core Risk Unit and to permit a new manager to oversee his OTI. He asserts that, had the OTI been a genuine opportunity to succeed, a new manager overseeing the OTI process should have been permitted. To the Applicant, the OTI "does not meet the requirements for a permissible OTI plan" and was an abuse of discretion, and it, and the termination decision resulting from it, must be invalidated.

The implementation of the OTI violated the Applicant's due process rights

81. The Applicant cites Tribunal precedent and contends that, with respect to performance evaluations, "it is a breach of a staff member's rights for their Reviewing Manager (their supervisor's supervisor) to participate in the evaluation process by attending any performance discussion," because such Reviewing Manager cannot effectively review a decision that they participated in. To the Applicant, this logic applies to an OTI plan and he asserts that the Director was the Reviewing Manager of his OTI "[y]et […] participated significantly in the OTI process by not only attending but effectively running each of [the Applicant's] OTI progress meetings." The Applicant stresses that the Director "could not fairly review that process." Further, the Applicant submits that during the OTI process the Director indicated that the Applicant would fail the OTI and be fired before the OTI process was even complete. To the Applicant, the Director's participation in the OTI process was a breach of his rights.

Management abused its discretion in terminating the Applicant's employment based on an OTI that AR concluded was impermissibly vague and while a PMR decision was imminent

82. The Applicant submits that, when management decided to terminate his employment on 25 March 2024, the AR Reviewer had already found deficiencies with the OTI and management also knew that he had initiated a PMR with a decision imminent. The Applicant contends that management's action "was manifestly unreasonable and thus an abuse of discretion." He submits that, "[w]hile an ongoing PMR review may not automatically stay further performance-related decisions pending the outcome of the review," under the specific circumstances of his case "the reasonable course of action would have been to wait for the PMR decision in order to have all pertinent facts at hand before making the decision to end a longtime staff member's Bank career."

83. The Applicant notes that the PMR Reviewer reached a similar conclusion to the AR Reviewer and did so on 26 March 2024, "only one day after" the termination decision. The Applicant asserts that, "[i]nstead of meaningfully engaging with PMR's findings and recommendations, however, Management abused its discretion in a second way by rejecting the PMR recommendations as 'moot' on the grounds that [the Applicant's employment] had already

been terminated." The Applicant submits that "this is a categorically unreasonable basis for rejecting PMR's recommendations" and asserts:

> If management has no obligation to meaningfully consider a post-termination PMR recommendation, and no obligation to wait for PMR before making a termination decision, then the process is largely meaningless, at least with respect to review of OTIs. Management would always be free to do exactly what it did here: impose an impermissibly vague OTI plan that fails to meet any of the standards set out by this Tribunal and then simply terminate a staff member before AR and/or PMR can complete their review.

To the Applicant, "the Staff Rules and the Principles of Staff Employment enshrine the fundamental principle of fair treatment, and nothing management did here was fair."

84. The Applicant asserts that management abused its discretion by unfairly rushing to terminate his employment ahead of a PMR decision and subsequently refusing to consider the PMR determination that the OTI through which his employment was terminated was impermissibly vague. The Applicant asks the Tribunal to grant him full relief to remedy the unfair treatment he contends he suffered.

85. The Applicant also asserts that the Bank's contentions "rely on a factual narrative that is at best misleading, completely unsupported by the record, and, on some key points, demonstrably false." He avers that the Manager's written statement of 29 January 2025 "is entitled to little if any evidentiary weight," and submits that it "consists of little more than a summary of the arguments made by [the Bank's] legal counsel." With reference to the Manager's position in his written statement of 29 January 2025 that he told the Applicant "orally in May 2023" that, if his performance did not improve, he was "unlikely to receive a rating of '3,'" the Applicant asserts that "[t]his purported recollection of an oral statement made nearly two years ago, unsupported by any documentation, should not be given any weight," and further that "[t]his new revelation contradicts the evidentiary record, which indicates that [the Applicant] was given such a warning at the earliest during the last week of June 2023."

The Bank's Response

The termination decision followed the Staff Rules and was reasonably based on the Applicant's failure to improve his performance

The Applicant's OTI provided a fair opportunity for him to improve his performance

86. With respect to the OTI, the Bank contends that the Applicant understood the terms and expectations of the OTI "and repeatedly indicated his agreement." The Bank submits that "[t]here are no indications in the contemporaneous records created during the OTI that would support [the Applicant's] present position that he lacked notice, or did not understand what he needed to do to improve." To the Bank, while the Applicant "was not able or willing to do what was necessary, he did understand what was expected."

87. The Bank also avers that, as the performance rating of 2 was a valid exercise of managerial discretion, the OTI was also valid. The Bank asserts that "the OTI was detailed, discussed with [the] Applicant when it was being drafted, and contained explicit reference to technical elements of the Applicant's job that had to be improved." To the Bank, "[t]he OTI was based upon the core competencies expected of a Senior Financial Officer hired at the GG level." The Bank submits that "[t]he Applicant did not meet these core competencies, consistently needed close supervision by [the] Manager, and did not perform in a manner equal to his GG level colleagues." The Bank asserts that "[t]he detailed OTI incorporated areas of improvement with due regard to these core competencies."

88. The Bank contends that the OTI was not vague but rather "lists specific tasks and technical areas of job requirements for [the] Applicant to focus on," and, with reference to the Tribunal's jurisprudence, asserts that the OTI meets the necessary criteria for an OTI "completely and unequivocally." With respect to the OTI's reference to "I expect to see improvement immediately," the Bank submits that "[t]his did not mean that results were expected immediately, but that [the] Applicant should immediately start making an effort." The Bank further highlights that, "beyond the involvement of TRE management, both Human Resources and the Staff Association were

present at the OTI check-ins and provided support during the OTI process." The Bank submits that "[t]he OTI process was intended to be a constructive collaboration."

The Bank fully provided the Applicant with due process throughout the performance management process

89. The Bank submits that it accorded the Applicant more than reasonable due process throughout and complied with all requirements of the Staff Rules. The Bank asserts that the Applicant was "constantly informed" of the performance management process, "participated actively, and was given every opportunity to provide his views during the process." The Bank claims that the Applicant "had constant weekly meetings with his manager, even before the OTI process," and further that the Applicant "was constantly told where his performance was lacking." The Bank further contends that the Applicant was permitted "to switch units because, as he admitted, he was not a good fit in the current ones."

90. The Bank avers that the Applicant participated at all times during the OTI process and notes that the Applicant was consulted in the drafting of the OTI memorandum and that the final draft was provided to him. The Bank also asserts that, at all times, the Manager was "responsible for the preparation, oversight and management of the OTI," and the Bank disputes the Applicant's contention that the Director's involvement in the OTI violated due process. The Bank submits:

> At the OTI stage, the involvement of senior management may present staff with the greatest opportunity for department-wide feedback and improvement. […] TREFT is a small unit that reports and engages directly with the Director's office. As a result, [the] Director was well acquainted with [the] Applicant's work and there was strong reasoning for [the] Director's involvement in the OTI process.

91. The Bank submits that the OTI process lasted over four months, giving the Applicant "ample opportunity to show demonstrated improvement," and the Bank asserts that "[t]he OTI process was not rushed and in no way was it a foregone conclusion that [the] Applicant would be terminated." The Bank contends that, on 7 March 2024, the Manager discussed with the Applicant that he "had not shown adequate improvement to justify continuing the OTI, and that termination of employment was the likely next step."

92. The Bank avers that the Applicant's manager went beyond reasonable efforts to allow the Applicant to improve but that the Applicant "consistently did not show sufficient improvement." The Bank notes that there are options other than termination under the Staff Rules but contends that "several of them had already been tried, unsuccessfully, with [the] Applicant." The Bank highlights that the Applicant had already transferred into different units and positions at his current grade without improved performance, and the Bank avers that transferring the Applicant to a position at a lower grade level "would only have been perceived as punitive, not as a constructive step to help him improve his performance." The Bank submits that, as a result, the final option of termination of employment after an unsuccessful OTI was used.

93. The Bank contends that, "[a]s the underlying performance rating and OTI were valid and reasonable, the resulting termination decision was also a reasonable decision." To the Bank, "[t]he termination decision was the culmination of extensive efforts by TRE management to accommodate [the] Applicant's preferences, provide detailed feedback, and create every opportunity for success." The Bank avers that all appropriate stakeholders cleared the termination decision before it became final, and the Applicant received the opportunity to comment on the termination recommendation before it became final, but did not persuade management that he would be able to improve and "did not attempt to justify his performance."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

WHETHER THE TERMINATION DECISION WAS AN ABUSE OF DISCRETION

94. Principle 2.1 of the Principles of Staff Employment provides that the Bank "shall at all times act with fairness and impartiality and shall follow a proper process in [its] relations with staff members." Principle 9.1 further provides that "[s]taff members have the right to fair treatment in matters relating to their employment."

95. The decision to terminate a staff member's employment for poor performance is a discretionary decision of the Bank. *BI (Nos. 6 and 7) (Merits)*, Decision No. 587 [2018], para. 35.

With respect to review of such a decision, the Tribunal stated in *Lopez*, Decision No. 147 [1996], para. 36:

> The question for decision by the Tribunal is whether the [a]pplicant's service was properly terminated by the Respondent for unsatisfactory performance in accordance with both the substantive requirements and the procedural guarantees required by the internal law of the Bank. The Tribunal has repeatedly stated that it will not substitute its judgment for the discretionary decisions of the Bank's management, particularly in terms of the evaluation of staff performance, and that the "Administration's appraisal in this respect is final, unless the decision constitutes an abuse of discretion […]."

96. As the Tribunal stated in *AK*, Decision No. 408 [2009], para. 41,

> [d]ecisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a staff member's contract of employment or terms of appointment.

See also ET, Decision No. 592 [2018], para. 91; *DO*, Decision No. 546 [2016], para. 33.

97. The Tribunal also recalls that, in *GI*, Decision No. 660 [2021], para. 78, it stated:

> The Tribunal has recognized in *DD*, Decision No. 526 [2015], para. 40, that it may be "'exceedingly difficult' for staff to substantiate an allegation of arbitrariness or lack of fairness amounting to an abuse of discretion." It is, therefore, incumbent on the Tribunal to require the strictest observance of fair and transparent procedures in implementing the Staff Rules, otherwise,
>
> > ill-motivated managers would too often be able to pay lip service to the required standards of fairness, while disregarding the principle that their prerogatives of discretion must be exercised exclusively for legitimate and genuine managerial considerations in "the interests of efficient administration."
>
> *Yoon (No. 2)*, Decision No. 248 [2001], para. 28. *See also HT*, Decision No. 710 [2024], para. 115; *EY*, Decision No. 600 [2019], para. 81; *Fidel*, Decision No. 302 [2003], para. 24.

98. The Tribunal recalls that, on 25 March 2024, the Applicant received an email regarding Notice of Termination from the Director, which stated:

> In the past several months, your supervisor, [the Manager], has discussed with you and has notified you in writing issues concerning your performance and ways in which your performance was expected to improve. [The Manager] also advised you that if your performance did not improve this may result in termination of your World Bank employment. In coming to my decision, I have carefully considered your performance during the Opportunity to Improve period and perspectives shared with me. I have also consulted with the Director, Human Resources and with the Vice President, TRE, who are in concurrence with my decision. Because your performance has not shown significant and sufficient improvement, please be informed that your employment with the World Bank will be terminated effective close of business April 15, 2024, in accordance with Staff Rule 7.01, Section 12 (Unsatisfactory Performance), and you will be paid your salary for 60 days in lieu of a notice period.

99. The Tribunal observes that the Staff Rules provide the mechanisms for addressing performance issues with a staff member. Pursuant to Staff Rule 5.03, paragraph 5.01:

> If a Manager or Designated Supervisor determines that a Staff Member's performance (which includes professional and work-place behavior) is not satisfactory, the Manager or Designated Supervisor may do the following:
>
> a. Consider reassignment to another position under Rule 5.01 or assignment to a lower level position under Rule 5.06.
>
> b. Discuss and Document Opportunity to Improve Unsatisfactory Performance. Discuss and share with the Staff Member in writing:
>
> i. the aspects of performance that are not satisfactory,
> ii. guidance on what improvement is expected and by when, and
> iii. the possible consequences of failure to improve.
>
> c. Health Assessment: Request a health assessment under Rule 6.07, paragraph 3.03 if performance problems are believed to be health-related.

100. Further, pursuant to Staff Rule 5.03, paragraph 5.02:

> In the case of failure to achieve or sustain satisfactory performance following a documented opportunity to improve under sub-paragraph 5.01(b), a Manager or Designated Supervisor may recommend, with the concurrence of the HR Manager, further actions consistent with that documented discussion. The recommendation is in writing, to the next in line manager at Level GI or above and may include; (i) reassignment to another position under Rule 5.01; (ii) assignment to a lower level position under Rule 5.06, or (iii) termination in accordance with Rule 7.01, Section 12, Unsatisfactory Performance. The Staff Member is given a copy of the

> recommendation and at least 14 calendar days to comment prior to a decision on the recommendation.

101. And pursuant to Staff Rule 7.01, paragraph 12.02:

> A decision to separate a Staff Member for unsatisfactory performance may be made by the Manager of the Staff Member's Manager or Designated Supervisor, at grade GI, or above, on the basis of a recommendation from the Staff Member's Manager or Designated Supervisor, taking into account the comments of the Staff Member, if any, as specified in Staff Rule 5.03, "Performance Management Process," paragraph 3.03, with the concurrence of the Director, Human Resources, for Bank or MIGA Staff, or IFC Director, Human Resources, for IFC Staff and, where the decision maker is not a Vice President, the concurrence of the Vice President of the Manager making the decision.

102. Thus, as the Tribunal recently expressed in *HT* [2024], para. 121, the substantive requirements for terminating a staff member's employment due to unsatisfactory performance are as laid out in Staff Rule 5.03 and Staff Rule 7.01 above.

103. The Tribunal considers that the main issue in this case is whether the decision to terminate the Applicant's employment for unsatisfactory performance was an abuse of discretion. The Tribunal recalls that the Applicant's employment was terminated following his unsuccessful completion of an OTI. The Tribunal observes that the Bank contends that the termination decision was a legitimate use of managerial discretion pursuant to the Staff Rules on performance management to address a staff member whose performance did not meet the standard expected of Grade Level GG. The Bank asserts that the Applicant's FY23 performance rating of 2 was a reasonable exercise of the Manager's discretion to evaluate the Applicant's performance and that, accordingly, the Applicant's placement on an OTI was a justified next step pursuant to the Staff Rules. To the Bank, the decision to terminate the Applicant's employment after an unsuccessful OTI was reasonably based on the Applicant's failure to improve his performance. To the Applicant, however, the termination decision was improper in that it flowed from a series of abuses of discretion by management in evaluating his FY23 performance, and he asserts that the termination decision cannot stand.

104. Given that the ultimate decision to terminate the Applicant's employment stemmed from the Applicant's FY23 performance evaluation and rating and his placement on an OTI, the Tribunal considers that resolution of the main issue of whether the termination decision was an abuse of discretion requires an assessment of the Applicant's FY23 written performance evaluation and performance rating of 2, and the OTI.

Whether the Applicant's FY23 Annual Review was unfair and unbalanced, and whether the FY23 performance rating of 2 lacked a reasonable and observable basis

105. The Tribunal's assessment of performance evaluations is limited to determining whether the decision in question was arbitrary, discriminatory, improperly motivated, or carried out in violation of a fair and reasonable procedure. *See FL (Merits)*, Decision No. 642 [2020], para. 93; *BY*, Decision No. 471 [2013], para. 33; *Prudencio*, Decision No. 377 [2007], para. 73.

106. In *Desthuis-Francis*, Decision No. 315 [2004], para. 23, the Tribunal held that the Organization must be able to

> adduce […] a reasonable and objective basis for [an] adverse judgment on a staff member's performance. […] The Tribunal considers that failure on the part of the Respondent to submit a reasonable basis for adverse evaluation and performance ratings is evidence of arbitrariness in the making of such an evaluation and rating. Lack of a demonstrable basis commonly means that the discretionary act was done capriciously and arbitrarily. Thus, the basic issue so far as concerns the […] adverse comments in the [applicant's Annual Review] is whether or not there was adequate or reasonable basis for those comments.

107. In *Lysy*, Decision No. 211 [1999], para. 68, the Tribunal emphasized:

> A performance evaluation should deal with all relevant and significant facts, and should balance positive and negative factors in a manner which is fair to the person concerned. Positive aspects need to be given weight, and the weight given to factors must not be arbitrary or manifestly unreasonable.

108. In *EN*, Decision No. 579 [2018], para. 63, the Tribunal reiterated that "the assessment of performance has 'to take into account all relevant and significant facts that existed for that period

of review' (*Romain (No. 2)*, Decision No. 164 [1997], para. 19), so as to ensure a reasonable basis for the OPE ratings and comments." *See also Prasad*, Decision No. 338 [2005], para. 28.

109. In the instant case, the Tribunal observes that the Applicant contends that his "FY23 performance rating of '2' was not based on a fair and balanced performance evaluation because [the Manager] both failed to request feedback from a diverse array of providers and entirely omitted the substantial positive feedback [the Applicant] received from his peers." The Applicant stresses that the Manager's appraisal of the Applicant's performance "was directly contradicted by the positive feedback [the Manager] ignored."

110. The Tribunal also observes that the Bank contends that the performance rating of 2 reflected a fair and balanced evaluation and the Bank disputes the Applicant's claim that the performance review was unduly negative and failed to take all relevant feedback and evaluations of the Applicant's work into account. The Bank submits that, while feedback from colleagues "forms part of any evaluation of staff at the Bank, it is ultimately the manager who works most closely with a staff member, who has the best insight into their work and who is responsible for evaluating all of a staff member's work for the year." The Bank avers that the "Applicant's OPE was conducted in a fair and reasonable manner," and the Bank stresses that the "Applicant was underperforming in his role."

111. The Tribunal will now review the Applicant's written performance evaluation as documented in his FY23 Annual Review to determine whether it was unfair and unbalanced.

112. The Tribunal first observes that the Applicant's FY23 Annual Review included five Individual Business Objectives and that, in the Supervisor's Comments in the "Overall Contributions" section, the Manager identified four "high level FY23 objectives": " (1) support operational effectiveness through system projects and initiatives, (2) collaborate with external partners, (3) contribute to corporate initiatives, and (4) maintain and support an effective and respectful workplace environment." With respect to these objectives, the Manager stated:

> One of [the Applicant's] tasks was to independently lead TRE's Annual Investment Planning process through the appropriate Treasury and institutional approval

> committees. As a senior GG level staff, he is expected to be able [to] comfortably engage with peers across ITS and TRE in effective and detailed consultations to support operation, maintenance, and enhancement of Treasury's infrastructure. However, his engagements with TRE units on system planning needs were insufficient in quantity and quality, typically involving only simple emails instead of thorough discussion with business and system specialists to fully understand and develop the merits, necessity, or reasoning behind proposed system changes, and the timing, options, sequencing, and priorities involved. [The Applicant] acknowledged having difficulties engaging with business and IT leads throughout the process to develop and document support for project prioritization. As his supervisor, I had to step in frequently to guide, motivate, clarify and to provide oversight, quality review, negotiation support and advisory to TRE units to complete the task.

113. The Tribunal further observes that, in the Supervisor's Comments in the "Overall Contributions" section of the Applicant's FY23 Annual Review, the Manager stated with respect to "[p]rioritizing capital budget demands for technology projects":

> [The Applicant] took more time than expected to formulate the messaging for senior level decision making and he needed much more supervisory guidance than expected to prepare the communication strategy, required documentation, and discussion records on the next steps or decisions.

114. Additionally, the Tribunal observes that the Manager stated:

> [The Applicant's] role as a senior GG level staff in TREFT requires him to understand the current TRE system environment and ensure its continued effectiveness. This requires tracking system renewal needs and reasons (obsolesce, mandatory upgrades, regulatory requirements, business changes), and establishing strong relationships with key system, data and service providers, and TRE and ITS teams. Despite substantial time in the role, [the Applicant] did not demonstrate the necessary comprehensive awareness of the technology environment or develop effective relationships with ITS and business users. He seldom interacted with the majority of TRE's application owners to understand their needs for regulatory-driven system upgrade and maintenance. He does have familiarity with the Bloomberg service and RiskMetrics but made insufficient effort to connect with the rest of TRE system vendors (i.e., Finastra, Murex and FIS Quantum) or their business users/functions. As for the market research on a spectrum of topics impacting TRE's technology for funding, investment and banking operations, [the Applicant] was expected to work closely with TRE business units to conceptualize, design, assess and track new innovative projects. He did not organize sustained explorations or produce meaningful roadmaps particularly for the Artificial Intelligence and RPA initiatives he was assigned to. Though [the Applicant]

> disseminated product developments from Bloomberg and Microsoft, he has not engaged appropriately in deep consultation with internal business units and the Innovation Lab to scope out potential project ideas for process improvements and their implementation. For example, several TREOP team leads had indicated they saw limited interactions and little outreaches from [the Applicant], as compared to the junior analyst in the unit.

115. The Tribunal considers that all the above comments from the Manager indicate that, in his view, the Applicant's FY23 performance was unsatisfactory and that the Applicant was performing below expectations with respect to meeting his high-level objectives. In particular, the Tribunal observes that the Manager assessed the Applicant as having insufficient engagements in quantity and quality; needing frequent managerial guidance, motivation, and oversight; failing to demonstrate the necessary comprehensive awareness of the technology environment; making insufficient efforts to connect with vendors; and failing to engage in appropriate outreach with internal business units.

116. The Tribunal observes that, with respect to positive aspects of the Applicant's FY23 performance, the Manager stated in the Supervisor's Comments of the "Overall Contributions" section of the Applicant's FY23 Annual Review:

> [The Applicant] conducted several technical training sessions to the Quantitative Analytics team and helped them assess the possibility of replacing RiskMetrics with Bloomberg's PORT Enterprise product and to explore the best use of the current PORT+ functionalities in 6 to 8 sessions over a three-month period. [The Applicant] provided ad hoc Bloomberg support to staff to [resolve] issues with the data/pricing feeds and provided occasional support to RAMP clients and the Investment and Quantitative teams. However, these brief positives did not offset the significant performance gaps mentioned above, including concerns shared bilaterally by business unit leads on his effectiveness in representing TRE interests regarding operational issue discussions with the vendor.

Accordingly, while identifying some positive aspects of the Applicant's performance, the Manager considered these positives "brief" and found that they "did not offset the significant performance gaps."

117. Further, in the "Behaviors and skills that supported contributions" section of the Applicant's FY23 Annual Review, the Manager stated:

> In my regular 1-on-1s with [the Applicant], we discussed the importance of him being more motivated than he has shown, to have more detailed and frequent stakeholders engagements across TRE, Finance Partners and ITS Innovation Lab, so that he can better understand the system challenges each unit faces and propose or support appropriate prioritization of limited resources and make the best case for TRE's AIP demands. As a senior member of the TREFT team, [the Applicant] is required to build well-connected relationships with external fintech partners and TRE business leads, mentor junior staff on sourcing new proof-of-concepts for potential implementations, and volunteer to contribute to forums and knowledge sharing events.
>
> He has demonstrated a narrow focus, for example being engaged and knowledgeable with Bloomberg and Risk Metrics applications but not developing practical understanding of other key business system. He has tended not to engage frequently or deeply enough with business users, ITS or the vendors themselves.

118. Thus, the Tribunal observes that, even when called upon to provide aspects of the Applicant's behaviors and skills that supported contributions, the Manager's feedback leans critical, referencing discussions on the need for the Applicant to be more motivated and engaged, and to have a better understanding of system challenges. The Tribunal sees little reference here to any behaviors or skills of the Applicant that supported contributions.

119. The Tribunal next observes the Supervisor's Comments in the "Behaviors and Skills to develop section," in which the Manager stated:

> [The Applicant] must focus and work harder on developing the necessary familiarity with the remainder of TRE's system landscape. He must engage with greater frequency and purpose with business and ITS teams and leads and improve the quality and timeliness of system assessments, proposals and plans. [The Applicant] must build high-quality internal and external relationships and connect subject matter experts as needed across HQ, Chennai and Sofia.
>
> [The Applicant] had raised concerns at the midyear check-ins that his quantitative skills would be better deployed in RAMP-facing or client asset management units, and he requested management assistance to find suitable placements within TRE given his acknowledged skillset mismatch.
>
> At the year-end discussion, [the Applicant] and I went through his self-assessment and the gaps observed around his performance, and the need for significant improvements to focus on the whole team's work program, this includes the improved timeliness and higher quality support for the Annual Investment Planning process, and more comprehensive outreaches across TRE and Finance Partners on

> technology initiatives. [The Applicant] has been given feedback on his poor performance and guidance on work program expectations, however he continues to perform below the Bank's core competency standards for a GG level staff.

120. In the Tribunal's reading, the Applicant's FY23 Annual Review is almost entirely negative with respect to the Applicant's performance. Yet the Tribunal recalls that the Applicant received FY23 feedback from five peers, and the Tribunal observes that all of this feedback is indisputably positive. For instance, in response to a feedback request question from the Applicant seeking "feedback on my performance during the year in my engagements with you and the clients and partners," one feedback provider stated:

> Working alongside [the Applicant] is an absolute pleasure. As colleagues, we have developed a close collaboration, particularly when it comes to addressing Bloomberg-related matters. Time and time again, I have relied on [the Applicant's] exceptional expertise, unwavering professionalism, and unwavering dedication. His extensive knowledge and understanding of the platform are truly remarkable, and, as a portfolio manager, I am consistently impressed by his ability to navigate complex issues with ease. [The Applicant's] proactive approach to sharing information, including the latest news and program enhancements, has proven invaluable to my work. His willingness to go above and beyond in assisting me has greatly contributed to my success in tackling challenges and achieving our shared objectives.

121. Another feedback provider stated that the Applicant "is technically strong, hardworking, efficient, and easy to work with. He is extremely experienced in BB Port and is a valuable staff member of the RAMP program and TRE," while yet another feedback provider stated that the Applicant has "[o]utstanding technical expertise" and "can come up with creative and innovative solutions," and that he "[g]ets the job done!" A fourth feedback provider stated:

> [The Applicant] is very dedicated and motivated, and it is a real pleasure working with him. In his engagement with RAMP clients including the [X Country] Reserve Bank […], he was instrumental in making effective presentations and interventions and providing guidance on risk and data management operations. He has also responded to the client's following-up inquiries in the most effective way. He is a strong team player, and his communication skills are excellent.

122. Notably, the Tribunal observes the feedback from a Senior IT Officer regarding the Annual Investment Planning (AIP) process for FY24, which was submitted by the Senior IT Officer on 9

March 2023 and thus contemporaneously to the November to February cycle of the AIP process and which stated:

> The FY24 AIP process was a challenging one that required the team to go the extra mile to close the gap.
>
> You did a wonderful job at facilitating multiple rounds of discussion, ensuring the key investments needed by Treasury would be included in the plan. I appreciate your great level of focus on the details and flexibility to defer/cancel multiple projects, finding room to fit emerging priorities. I am looking forward to strengthening our partnership in other ways to achieve the strategic goal of the Treasury department.

The Tribunal recalls that the Manager was critical of the Applicant's work on the AIP process, noting in his assessment in the Applicant's FY23 Annual Review that he "had to step in frequently to guide, motivate, clarify and to provide oversight" and that the Applicant's "engagements with TRE units on system planning needs were insufficient in quantity and quality."

123. The Tribunal observes that none of the positive feedback from the feedback providers regarding the Applicant's FY23 performance is captured in the Manager's comments in the Applicant's FY23 Annual Review.

124. In addition to the feedback requests sent by the Applicant in FY23, the Tribunal observes that, in September 2023, the Manager sent feedback requests to seven TRE managers and Senior Financial Officers. Of these requests, two feedback providers responded. The Tribunal observes that a Senior Financial Officer stated:

> My team has interactions with [the Applicant] mainly regarding Bloomberg. Bloomberg made data format change in a WB customized feed without proper notification to Treasury business users, and such change caused production issues which required multiple units to put in manual corrections. We involved [the Applicant] so we could escalate the issue to Bloomberg to prevent similar incidences. For some reason, [the Applicant] believed it's mainly business users' oversight instead (and mentioned so to Bloomberg), despite multiple internal rounds of explanations and reasoning from the business users. Although we were able to persuade him finally, it took a lot of efforts and energy. Not jumping onto conclusions and effective listening are among the basic expectations on staff, and I was disappointed [the Applicant], at GG level, fell short on that, in his handling of

> the incident. That also makes people feel it's difficult to work with him. I personally would be very reluctant to let him represent our business area in front of vendors.

In the Tribunal's view, this feedback from the Senior Financial Officer is negative regarding the Applicant, with the feedback provider noting that the Applicant, "at GG level," fell short of basic expectations regarding "effective listening" and "[n]ot jumping onto conclusions" in handling an incident, and that the Applicant is perceived as "difficult to work with." The Tribunal observes, however, that this feedback appears to draw conclusions about the Applicant's competency based on an isolated incident.

125. The Tribunal further observes that the other feedback provider who responded to the Manager's feedback request stated:

> With regard to my team's efforts in developing a tool for TREBK News Sourcing & Analysis, [the Applicant] had offered to set up a session with us to explore DRSK/SRSK on Bloomberg. After a couple of email [exchanges] with my team, unfortunately the conversation dwindled. Admittedly, it seems that my team did not actively follow back up, nor did [the Applicant], and we did not result in any demo or other resolve. We have had little interaction with [the Applicant] apart from this initiative.

The Tribunal views this feedback as offering neither a clearly positive nor a negative perspective on the Applicant's performance. It indicates that the Applicant took initiative with respect to setting up a session with a team but that both parties involved failed to "actively follow back up" and that "the conversation dwindled." The Tribunal notes however that the reference to "little interaction" suggests lack of engagement from the Applicant in respect of this particular TRE team.

126. The Tribunal also notes that, in the Manager's written statement dated 29 January 2025 and filed with the Bank's submissions before the Tribunal, he states:

> In advance of [the] Applicant's FY2023 performance evaluation, I sought additional independent feedback from several colleagues with whom [the] Applicant had worked. While [the] Applicant had nominated some feedback providers as part of the formal evaluation process, through the HR system, I knew that he had also worked with others who observed his work and reached out to some of them. The staff I reached out [to] included a lead from ITS Treasury Application Support, who manages the entire TRE system ecosystem, another lead from WFA System Transformation, who manages a similar work program and was the liaison

> for RPA implementation, and finally a staff member from ITS Innovation Office, who oversees all of Treasury emerging tech use cases. They had first-hand experience with [the] Applicant's work during the year. All of them provided similar verbal feedback—[the] Applicant needed a level of close supervision, follow up, and hand holding in his work that was unreasonable for a grade GG staff. They cited examples of lack of follow-up and having to push [the] Applicant for the agreed-upon deliverables and initiatives.

127. The Tribunal recognizes that "[t]he evaluation of staff performance is an essentially discretionary act entailing the exercise of judgment by management" (*Malekpour*, Decision No. 322 [2004], para. 15); however, such judgment must be fair and balanced. Indeed, the Tribunal recalls that "[a] performance evaluation should deal with all relevant and significant facts, and should balance positive and negative factors in a manner which is fair to the person concerned. Positive aspects need to be given weight, and the weight given to factors must not be arbitrary or manifestly unreasonable." *Lysy* [1999], para. 68.

128. In this respect, the Tribunal takes note that the AR Reviewer, an HR manager, explained that, with respect to a performance evaluation, "[t]he Supervisor's Comments need to be balanced, including a mix of positive and constructive feedback, capturing elements from feedback providers." The AR Reviewer recognized that "it is ultimately the decision of the supervisor to balance positive and negative factors and to assess a staff member's performance based on all inputs and observations," and recommended that the Applicant's performance evaluation "write-up be revised to make it more balanced," further stating that "[i]t needs to also include key areas of strength based on feedback collected by [the Applicant], or otherwise received and observed." The AR Reviewer further stated, "My suggestion for [the Manager] as a supervisor is to collect more feedback during the course of the performance year from a larger variety of stakeholders through the ePerformance system, to ensure a better balance of relevant feedback provider groups, and suggest giving all feedback providers a chance to provide feedback anonymously to ensure feedback providers have a sense of safety in sharing their full views." Moreover, the Tribunal takes note that the PMR Reviewer, a neutral reviewer, "recommend[ed] that the evaluation text be modified to incorporate, as warranted, the positive feedback provided on [the Applicant's] performance."

129. The Tribunal also takes note that the Bank's HR department published a document, dated 14 January 2022, providing answers to frequently asked questions about the Bank's performance management processes (Renewed Performance Approach FAQ) and explaining that "[t]he performance process includes three key building blocks," which are "Near-term Objectives," "Ongoing, Real-time Feedback," and "Regular Check-ins." With respect to "Ongoing, Real-time Feedback," this HR document notes that "Staff may request real-time feedback from any WBG colleague they have worked with closely at any-time during the year. Supervisors may also request feedback on their direct reports throughout the year as an input into check-in conversations and to support coaching for performance and development." The Tribunal further takes note of the Bank's HR Toolkit on "Managing Poor Performance" which provides guidance to managers and states, "Document feedback received orally on staff by creating a contemporaneous record."

130. The Tribunal considers that it was appropriate for the Manager to evaluate the Applicant's performance having regard to the negative feedback he may have received, both written and verbal. However, given the complete absence of any reference to the documented positive feedback regarding the Applicant's FY23 performance in the written performance evaluation of the Applicant's FY23 Annual Review, the Tribunal is unable to determine the degree to which the Manager fulfilled his obligation to balance the positive and negative aspects of the Applicant's performance in a manner fair to the Applicant, or to deduce that he did so at all. In the Tribunal's observation, the Manager's adverse comments about the Applicant's performance dominate the written performance evaluation to an extent such that the Tribunal cannot see any basis upon which to find that the positive aspects of the Applicant's performance were considered by the Manager in his appraisal of the Applicant's overall performance for FY23. While it is "ultimately the decision of the manager to balance positive and negative factors and to assess a staff member's performance" (*EO*, Decision No. 580 [2018], para. 109), the Tribunal cannot find fairness and balance with respect to the written performance evaluation under review in the instant case because the written performance evaluation does not reflect that any weight has been given to the positive feedback regarding the Applicant. For these reasons, the Tribunal concludes that the Applicant's FY23 written performance evaluation lacked a reasonable and observable basis.

131. The Tribunal next recalls that the Applicant received a performance rating of 2 for FY23. The Applicant contests this rating as an abuse of discretion, claiming that it was based on an unfair and unbalanced performance evaluation and was imposed in violation of procedural protections.

132. The Tribunal has observed on multiple occasions that there is a link between the performance evaluation and the performance rating (*see BY* [2013], para. 31; *BG*, Decision No. 434 [2010], para. 57), and that the performance rating itself must have a reasonable and observable basis (*see FL (Merits)* [2020], para. 96). Moreover, the Tribunal has explained that "managers and supervisors have the responsibility to conduct staff performance evaluations objectively and assign performance ratings based on the performance as a whole, balancing the positive and negative factors." *FH*, Decision No. 624 [2020], para. 55. The Tribunal has stated:

> The fact that a staff member needs some improvements in some areas should not automatically lead to a performance rating of 2. A staff member's performance as a whole should be looked into in order to determine if the staff member's shortcomings fall into the same categories as those mentioned in the Bank's definition of what constitutes a performance rating of 2. A rating of 2 has adverse consequences for a staff member's career in the Bank. Such a negative rating must have a demonstrable basis in the official performance evaluation document. *Id*.

133. The Tribunal recalls that, in *DC (No. 2)*, Decision No. 558 [2017], para. 73, the Tribunal stated that "[performance] ratings which are based on arbitrary OPE processes will be set aside." In that case, the Tribunal found that the applicant's "2013 OPE was unfair and unbalanced" and that the "[a]pplicant's 2.2 SRI [Salary Review Increase] was not detached from the flawed OPE." Further, in *EN* [2018], para. 90, the Tribunal similarly found that "the [a]pplicant's performance rating of 2 […] cannot be sustained, as her Annual Review did not have a reasonable and observable basis."

134. Likewise, in the instant case, the Tribunal also finds that the Applicant's FY23 performance rating of 2 cannot be sustained to the extent that it flowed from a written performance evaluation which lacked a reasonable and observable basis.

135. The Tribunal finds that the Bank has failed to provide a reasonable and observable basis for its written performance evaluation and performance rating of the Applicant. Accordingly, the

Tribunal cannot sustain the Bank's adverse written performance evaluation and performance rating of the Applicant as 2.

Whether the Applicant's FY23 Annual Review and performance rating violated fair and proper procedures

136. Staff Rule 5.03, paragraph 3.01, provides in part:

> a. At least once in a twelve-month period, the Manager or Designated Supervisor and the Staff meet and discuss the Staff's performance, achievements, strengths, areas for improvement, and future development needs. […]
>
> b. The Manager or Designated Supervisor provides the Staff with a written assessment of the Staff's performance during the review period. If the assessment is provided by a Designated Supervisor, the Manager reviews and approves the evaluation.

137. The Tribunal has consistently stressed the importance of respecting the requirements of due process in relation to performance evaluations. In *K. Singh*, Decision No. 188 [1998], para. 21, the Tribunal held:

> Two basic guarantees are essential to the observance of due process in this connection. 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.

Adequate notice

138. The first guarantee was reiterated in *Garcia-Mujica*, Decision No. 192 [1998], para. 19, where the Tribunal stated that the staff member affected should "be adequately informed with all possible anticipation of any problems concerning his career prospects, skills or other relevant aspects of his work." *See also GC*, Decision No. 650 [2021], para. 92; *EN* [2018], para. 93; *DC (No. 2)* [2017], para. 68.

139. Moreover, the Tribunal has expressed that "[l]apses in performance should be identified when they occur and should be addressed expressly and promptly. They should not be held in reserve only to be disclosed at the end of a review period." *DH*, Decision No. 531 [2016], para. 113, quoting *O*, Decision No. 337 [2005], para. 54.

140. Furthermore, in *EO* [2018], para. 113, the Tribunal recalled that it held in *Prasad* [2005], paras. 25 and 30, that

> discussion of performance does not replace the need for ongoing feedback throughout the year in question, which should be provided so that the staff member "should be able to anticipate the nature of this year-end discussion and resultant ratings on the OPE […]."
>
> [T]he obligation [is on] the Respondent to fully respect due process rights and conduct a fair and reasonable process of performance evaluation and accordingly to provide an opportunity to correct the mistakes that any staff member has made […].

141. As the Tribunal has previously explained, "[o]ngoing feedback is necessary so as to avoid any surprises at the end of the review period. Ongoing feedback should be clear and specific so that the staff member can 'anticipate the nature of this year-end discussion and resultant ratings on the OPE.'" *BG* [2010], para. 45. *See also EN* [2018], para. 96.

142. The Tribunal recalls the Bank's position that the Manager "tried to assist [the Applicant] in every way the [M]anager could think of" and that "[t]he Manager specifically told [the] Applicant where his performance was disappointing, and suggested mentors and other staff members who might serve as resources." The Tribunal considers that there is no contemporaneous documentation of these conversations in order for the Tribunal to determine that this occurred. The Tribunal also considers the Bank's contentions that feedback sufficient to constitute adequate warning was provided to the Applicant during weekly check-in meetings to be unsupported by the record as there is no contemporaneous documentation related to these meetings and as the parties dispute the extent to which they even occurred. The Tribunal recalls its jurisprudence on the importance of contemporaneous documentation and reiterates that, "without any relevant

contemporaneous documentation, however minimal, it is difficult to ascertain whether managerial discretion was exercised fairly and transparently." *GI* [2021], para. 111.

143. Moreover, the Tribunal considers the Bank's position that the Applicant was on notice of his performance deficiencies because he "admitted he was not a good fit for his role" to be without merit. In the Tribunal's view, a staff member's perspective on the extent to which they fit with their current role or may be better suited to a different role is not necessarily an acknowledgment by that staff member of a deficiency with respect to their performance in their current role.

144. The Tribunal notes that the check-in meetings between management and the Applicant in November 2022 and February 2023 afforded management an opportunity to provide notice to the Applicant of any deficiencies in his performance. The Tribunal observes that the Manager did not enter any comments in the performance portal with respect to the February 2023 check-in conversation and entered comments in the performance portal in respect of the November 2022 conversation only on 29 May 2023. The Tribunal considers that these comments from the Manager are not contemporaneous and do not meet the due process notice requirement as stipulated in the Tribunal's jurisprudence.

145. The Tribunal recalls that on 21 June 2023 the Director notified the Applicant verbally that he would likely receive a performance rating of 2 for FY23 and that this was also conveyed via email of 5 July 2023 from the Director. On review of the record, the Tribunal considers that these communications of June and July 2023 are the first time that the Applicant received warning about criticism of his FY23 performance that might result in an adverse decision. In the Tribunal's view, the record does not reflect the level of clear and specific ongoing feedback in FY23 that would have enabled the Applicant to anticipate the nature of his year-end discussion and performance rating. *See BG* [2010], para. 45. The Tribunal notes that FY23 ran from 1 July 2022 to 30 June 2023. Accordingly, by the time the Applicant received the Manager's email of 5 July 2023 concerning his likely performance rating of 2, the FY in question had already ended.

146. In these respects, the Tribunal also takes note that the AR Reviewer stated that "Management had intentionally decided on a more considerate approach to convey feedback

verbally, rather than putting it in writing and making record of it" and that "[t]he intent was to make it better received by [the Applicant]." The Tribunal notes that the AR Reviewer concluded:

> Management, however, did not provide during the performance year sufficient explicit written documentation, with the level of performance deficiency detail and explicit description of potential consequences, to afford due process to staff and hence the rating should be revised from a "2" to a "3". (Emphasis in original.)

The Tribunal further takes note that the PMR Reviewer concluded "that no explicit advance warning was given to [the Applicant] on his performance being considered unsatisfactory or on the potential impact of this on his performance rating," and recommended that the Applicant's performance rating of 2 should be rescinded and changed to a 3 based in part on "a failure to provide adequate notice, which is an essential due process right." The Tribunal agrees that the Applicant's due process rights were violated in these respects, and the Tribunal reiterates that "the absence of a contemporaneous record, however minimal, impedes the Tribunal's ability to conduct its independent and impartial judicial review of the decision at issue." *HE*, Decision No. 698 [2023], para. 123.

Adequate opportunity to defend

147. Additionally, the Tribunal observes that, while the Applicant was informed by the Director of his "likely" performance rating of 2 on 5 July 2023, his performance discussion occurred months later on 6 September 2023.

148. The Tribunal has established that a staff member's performance rating must not be set before the staff member has participated in a performance discussion. *See BY* [2013], para. 29. In *Mpoy-Kamulayi (No. 4)*, Decision No. 462 [2012], para. 49, the applicant's performance rating was set on 6 July 2009 and was communicated to him on 26 July 2009, and his performance discussion meeting was three days later, on 29 July 2009. Taking the evidence into account, the Tribunal stated that the meeting appeared "perfunctory," and that it was not clear to the Tribunal what the applicant could have done to change the decision. *Id*., para. 49. Moreover, in *BY* [2013], para. 28, the Tribunal noted that the applicant's performance rating had been set as early as 20 May 2009, but that his performance discussion did not take place until more than a month later.

Further, in *FH* [2020], para. 70, the Tribunal "observe[d] that staff members are entitled to fair treatment, and this requirement applies to the performance evaluation process," and the Tribunal stated that "[d]etermining a performance rating before a performance discussion indicates to the staff member that the performance discussion is a formality, rather than a serious matter."

149. The Tribunal takes note that the PMR Reviewer stressed that "[i]t is important to note that the FY23 OPE discussion took place on September 6, 2023, three months after [the Applicant] had been notified of his likely performance rating," and recommended that the Applicant's performance rating of 2 be changed to a 3 given that "the staff member was not given adequate opportunity to defend himself as his rating was decided and communicated to him before his FY23 OPE discussion took place."

150. The Tribunal notes that, on 5 July 2023, the Applicant was formally notified in writing by the Director that he would "likely" receive a performance rating of 2. The Tribunal observes that the Bank states that, in the weeks and months that followed, management continued to assert to the Applicant that his performance was not improving and "reiterate[d] he would not be receiving a 'satisfactory' ('3') performance rating given his lack of improvement." The Tribunal recalls that the FY23 performance discussion with the Applicant took place on 6 September 2023, and the Manager's written comments were finalized in the Applicant's FY23 Annual Review on 28 September 2023. The Tribunal observes that the Applicant made feedback requests on 9 March 2023 and 20 June 2023 before the end of FY23 and received positive feedback from responding reviewers prior to the FY23 performance discussion on 6 September 2023. Additionally, the Tribunal observes that, in the Manager's written comments finalized in the Applicant's FY23 Annual Review on 28 September 2023, there is no acknowledgement of the feedback requested and received by the Applicant, or any indication that it was even considered by the Manager as previously discussed. In the circumstances of the instant case, the Tribunal is not persuaded that the Applicant was afforded an adequate opportunity to defend himself and finds a violation of due process by the Bank.

151. Based on the foregoing, the Tribunal finds that the Bank failed to provide the Applicant in a timely manner with adequate notice of his purported performance deficiencies and that they

might result ultimately in an adverse decision. The Tribunal further finds that the Bank failed to afford the Applicant an opportunity to defend himself as discussed above.

Whether the Applicant's placement on an OTI and the resultant termination constituted an abuse of discretion

152. The Tribunal recalls that on 17 November 2023 the Applicant was formally placed on an OTI. The Applicant contends that his placement on the OTI should be void *ab initio* because it was based on a performance evaluation and rating which constituted abuses of discretion.

153. The Tribunal agrees. The Tribunal recalls *DC (No. 2)* [2017], para. 80, wherein it stated:

> The Tribunal further observes that the institution of an OTI is based on the performance ratings and assessments completed during the OPE cycle. Having found that the 2013 OPE lacked a reasonable and observable basis, and that the [a]pplicant was not provided with advance notice of the adverse performance review, the Tribunal finds that the decision to institute an OTI was equally flawed.

154. The Tribunal also recalls *EN* [2018], para. 110, wherein it stated:

> Where the Tribunal has found that a performance evaluation was arbitrary, it has also concluded that the decision to place an applicant on a performance improvement plan (PIP), based on the outcome of such performance evaluation, is also arbitrary. *BG*, para. 52, and *DC* (No. 2), para. 80. Therefore, having found that the [a]pplicant's Annual Review and performance rating were arbitrary, the Tribunal also finds that her placement on an OTI was arbitrary.

Thus, having found that the Applicant's FY23 written performance evaluation and performance rating both lacked a reasonable and observable basis and constituted abuses of discretion, and bearing in mind the Bank's recognition that "the '2' rating was the procedural foundation of the ongoing OTI process," the Tribunal finds that the Applicant's placement on an OTI pursuant to his FY23 written performance evaluation and performance rating likewise lacked a reasonable and observable basis.

155. The Tribunal recalls that the Applicant's employment was terminated following his unsuccessful completion of the OTI as determined by management. As the Tribunal has found that

the written performance evaluation and performance rating which triggered the OTI constitute abuses of discretion, and that the OTI also by extension cannot stand, the Tribunal finds that the termination decision pursuant to this course of performance management must be rescinded.

REMEDIES

156. Having found that (i) the Applicant's FY23 written performance evaluation and performance rating lacked a reasonable and observable basis, (ii) the Applicant's placement on an OTI lacked a reasonable and observable basis, (iii) the termination decision was an abuse of discretion, and (iv) the Bank failed in its due process obligations to the Applicant, the Tribunal will assess the appropriate remedies to be awarded to the Applicant.

157. Article XII(1) of the Tribunal's Statute provides:

> If the Tribunal finds that the application is well-founded, it shall order the rescission of the decision contested or the specific performance of the obligation invoked unless the Tribunal finds that the Respondent institution has reasonably determined that such rescission or specific performance would not be practicable or in the institution's interest. In that event, the Tribunal shall, instead, order such institution to pay restitution in the amount that is reasonably necessary to compensate the applicant for the actual damages suffered.

158. The Tribunal notes that the Applicant seeks the following:

i. Reappointment to a mutually agreeable position or appropriate compensation in lieu thereof.

ii. [Rescission] of the disputed OTI plan.

iii. Rescission of the performance rating of 2 for FY2023 and replacement with a performance rating of 3 or higher.

159. Further, the Applicant seeks

> compensation in an amount deemed just and reasonable by the Tribunal to remedy the damage to [the Applicant's] career and professional reputation, as well as the financial and emotional distress caused by [the Applicant's] improper performance rating of 2 and improper termination. This includes the severe immigration

> consequences [the Applicant] and his entire family now face. [The Applicant] had to hire an immigration attorney to ensure that he and his family could stay in the United States long enough for his children to finish the school year, but will likely soon have to leave the United States, the only home his children have ever known. In addition, [the Applicant's] eldest child has special needs, and the financial distress caused by his termination means he can no longer provide his son with the necessary therapies, schooling, and social supports.

160. In *DC (No.2)* [2017], the Tribunal ordered the Bank to pay the applicant compensation in the amount of three years' net salary and explained at paragraph 83:

> The award in the present case is solely designated to compensate the [a]pplicant for: 1) the varied procedural irregularities in setting his OPE and SRI, including the failure to provide him with an opportunity to defend himself prior to the implementation of the adverse decisions; 2) the lack of a reasonable basis for the [a]pplicant's "Partially Successful" OPE; 3) the flawed decision to place him on an OTI which has had irreversible consequences; and 4) the failure to give the [a]pplicant a genuine opportunity to succeed on the OTI. The record is devoid of any evidence that the [a]pplicant's supervisors made reasonable efforts to assist him during this program. On the contrary, the [a]pplicant was given additional work which increased his workload. As with *AI (No. 2)*, Decision No. 437 [2010], the record indicates "undue haste in the steps taken" to place the [a]pplicant on an OTI. The Tribunal reiterates that, in light of the consequences an OTI may have on a staff member's employment, the decision to institute one must have a reasonable and observable foundation. Lastly, the Tribunal is cognizant of the fact that these managerial decisions have equally amounted to a failure to treat the [a]pplicant fairly pursuant to the Principles 2.1 and 9.1 of the Principles of Staff Employment, and have had an impact on the [a]pplicant's wellbeing. The [a]pplicant should be duly compensated.

161. The Tribunal has the discretion to determine the appropriate remedy in a given case. Considering the circumstances of the instant case in which the Applicant held an open-ended contract, the Bank shall reinstate the Applicant to his position prior to the termination decision or to a similar position. In the alternative, the Bank shall pay the Applicant the sum of three years' salary net of taxes based on the last regular salary drawn by the Applicant in lieu of reinstatement. The Bank shall pay the Applicant one year's salary net of taxes based on the last regular salary drawn by the Applicant for violations of due process.

DECISION

(1) The decision terminating the Applicant's employment is rescinded;
(2) The Bank shall reinstate the Applicant to his position prior to the termination decision or to a similar position, within sixty days of receipt of this judgment, or, in the alternative, the Bank shall pay the Applicant compensation in the amount of three years' salary net of taxes based on the last regular salary drawn by the Applicant for the improper termination decision;
(3) The Bank shall rescind the Applicant's FY23 performance rating and remove any references to it from his personnel file. In the event that the Bank reinstates the Applicant, the Bank shall assign the Applicant a new performance rating for FY23 which cannot be 2 or below, and provide the Applicant with the associated salary increase;
(4) The Bank shall rescind and remove all records of the OTI from the Applicant's personnel file;
(5) The Bank shall remove from the Applicant's personnel file all records relating to the termination decision and shall substitute them with a copy of this judgment;
(6) The Bank shall pay the Applicant one year's salary net of taxes based on the last regular salary drawn by the Applicant for violations of due process;
(7) The Bank shall pay the Applicant's legal fees and costs in the amount of $26,477.50; and
(8) All other claims are dismissed.

/S/Janice Bellace
Janice Bellace
President

/S/ Zakir Hafez
Zakir Hafez
Executive Secretary

At Vienna, Austria, 23 May 2025