World Bank Administrative Tribunal

2025

Decision No. 714

HV,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

World Bank Administrative Tribunal
Office of the Executive Secretary

HV,
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 6 August 2024. The Applicant was represented by Ryan E. Griffin of James & Hoffman, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 8 May 2025.

3. The Applicant contends that (i) her Fiscal Year 2023 (FY23) performance evaluation, her performance rating, and her placement on an Opportunity to Improve Unsatisfactory Performance plan (OTI) constitute abuses of discretion; and (ii) management "retaliated against and harassed [her] for making use of the internal justice system."

FACTUAL BACKGROUND

4. The Applicant joined the Bank in May 2017 as a Senior Information Technology (IT) Assistant, Grade Level GD, based in Washington, D.C. In this role, she is tasked with providing IT support to Bank staff.

The Applicant's performance history

5. Initially, the Applicant was assigned to support clients in the Bank's Main Complex (MC) Building. During her time working in the MC Building, the Applicant performed her IT support

duties well. In FY18, her performance rating was 3.5 out of a possible rating of 5, followed by a 4 in FY19. After a year without ratings due to the COVID-19 pandemic, the Applicant earned another 3.5 for FY21 and a 5 rating for FY22.

6. In addition to the performance ratings, and in accordance with the Bank's performance review process, the Applicant and her supervisors documented their ad hoc performance check-in meetings in the Bank's performance portal. These documented meetings provide additional details regarding the Applicant's performance history.

7. While the Applicant's IT support was well-received and recognized during her time working in the MC Building, criticisms were raised regarding her workplace behaviors during that same period. For example, the Applicant's former supervisor (MC Supervisor) recorded the following comments in the Applicant's performance portal following a check-in meeting held on 17 December 2019:

> Over the past 5–6 months, team members have provided feedback on several occasions on some behaviors that have had a negative impact on teamwork. Specifically, not following instructions on the restructuring of the VIP visits service, which has led to confusion; raising her voice and interrupting colleagues during team meetings; walking out of team meetings before the discussions have concluded.
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> [The Manager] has been fully briefed and held a second meeting with both [the Applicant] and me […] to reiterate the importance of [the Applicant] taking the above feedback to heart and acting on it, as well as to offer continued support to [the Applicant] on her efforts to improve her teamwork. [The Applicant] needs to focus on realizing that at times there is a gap between her intentions and the impact on the team. [The Manager] and I continue to be fully committed to helping her achieving her fullest potential.

8. The MC Supervisor also recorded the following comments in the Applicant's performance portal following a check-in meeting with the Applicant held on 21 April 2020:

> Jan & Feb, Unresponsive to direction & guidance given & need to change that. During […] discussions, [the MC Supervisor] & [the MC Team Lead] again raised feedback from colleagues concerning these incidents. This was brought to [the Applicant's] attention on a number of occasions but was not met with, per coworkers' statements, any behavioral changes or positive impacts. When [the MC

> Team Lead] & [the MC Supervisor] reiterated these concerns, [the Applicant] responded that she felt she was being called "an angry black woman" ([the Applicant's] words). Improve ability to hear & accept feedback and address the issues raised by adjusting behaviors appropriately. [The MC Supervisor] emphasized that there were no concerns with [the Applicant's] technical work performance and that she needs to adjust her attitude. As [the Applicant] left, she stated her intention to provide negative feedback to [the MC Supervisor] in [the performance portal]. This behavior was perceived as an attempt to intimidate.
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> Mar 3, [the Manager] & [the MC Supervisor] met with [the Applicant] and encouraged her to be mindful of the impact her behavior may have on her colleagues, irrespective of her intentions, and to be receptive to their feedback. […] [The Manager] & [the MC Supervisor] emphasized that disagreement is invited and even expected, so that all team members can bring their own expertise and input. However, once the debate is finalized, the expectations are that the team will implement the decision. [The Manager] & [the MC Supervisor] again stressed that technical skills are important […], but so are her interpersonal skills.
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> Apr 3, [the Applicant] sent an email to clients & colleagues that was perceived as disrespectful & hurtful. While the email was sent in error, the tone and actions around it have deeply offended [a colleague], [the MC Team Lead] & [the MC Supervisor]. […] [The Applicant, the MC Team Lead, the Manager, and the MC Supervisor], held a conference call on the email sent. [The Applicant] apologized & [the colleague] accepted her apology.

9. The MC Supervisor recorded the following comments in the Applicant's performance portal following a check-in meeting held on 23 September 2020:

> [The Applicant] had one [harassment complaint] brought against her from two colleagues during the year noting disrespectful behavior. Several incidents have occurred related to her teamwork behaviors that are not in line with WBG [World Bank Group] core values and fell short of performance expectations, as noted in her [performance portal] check-ins and emails. Team members perceived her actions as disrespectful and offensive. [The Applicant] has apologized to staff and has taken accountability to improve her own behavior and not deflecting blame onto others by taking training. [The Applicant] is working on a plan to address the reported behaviors and improve her interpersonal skills and teamwork as she noted above.

Chronology of events within the FY23 performance cycle

10. At the start of FY23, the Applicant was rotated from the MC Building to instead provide IT support to clients in the J Building, another Bank building. While her Manager remained the same, the rotation necessitated a new supervisor (Supervisor).

11. On 19 January 2023, the Applicant, her Supervisor, and her Team Lead held a check-in meeting. The Team Lead summarized the meeting, stating that they discussed (i) the goal to "improve communication" between the Applicant and the Team Lead, (ii) the suggestion for the Applicant to "put a bit more effort in joining the weekly team meetings," and (iii) the team's communication processes that are put in place to ensure IT support coverage.

12. On 14 February 2023, the Applicant submitted comments in the performance portal "to clarify […] the issue of [t]eam meetings" discussed during the 19 January 2023 check-in meeting. In these comments, the Applicant provided explanations for her absence during certain team meetings. She also sought to address "the issue of communication" raised during the 19 January meeting by reminding the Supervisor that on certain occasions she had communicated with him through Microsoft Teams chat or by "popping into [his] office," and explained that she would "continue to do that," referring to those communication processes. The Applicant also stated, "I [would] like to point out that I am and will continue to be a high performing IT," and attached a report quantifying her IT support ticket closures during FY22.

13. On 16 February 2023, the Applicant emailed the Supervisor notifying him that she would be taking a half day of sick leave, and thereafter submitted a leave request in the leave portal. On that same day, the Supervisor responded, stating, "This is approved. Please go ahead and submit your leave request." The Applicant thereafter informed the Supervisor that she had already placed the request. The Supervisor replied, attaching the leave policy he put in place for his staff and stating, "Please read it again so you can follow the processes. I will approve the leave request in [the leave portal]." The Applicant responded that same day saying, "I sent the email to you before placing the request. My understanding is that I am entitled to take leave please clarify if what your email means is that I have to get approval from you before I take the leave."

14. According to the Applicant, the Supervisor responded, stating, "That is the problem with the way you think." The Applicant states that she thereafter "indicated [to the Supervisor] that she intended to submit a complaint" regarding this comment to the Investigations Unit (INV) within the Bank's Ethics and Internal Justice Vice Presidency.

15. On 5 April 2023, the Applicant's Team Lead emailed the Manager, copying the Supervisor, to "report an incident." In this email, the Team Lead explained that the Applicant confronted him saying she "felt betrayed" because her name was not provided as a focal point for the Bank's Spring Meetings, even though, from his understanding, there were no focal points for the Spring Meetings' events. He described the interaction as follows:

> She was clearly upset and I did my best to diffuse the situation and I listened attentively. Unfortunately, there was a point that she said I removed her on purpose from the team and I said not to put words in my mouth. […]
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> Needless to say, I felt ambushed and attac[k]ed in my own space. This event disturbed my evening and [I] had trouble sleeping, even with a sleeping pill. I even considered not coming in on Tuesday but I managed to go [to] the office and go about my day as best as possible. I am not sure how we can move forward but this type of behavior is not only affecting me but other team members.

16. On 11 April 2023, ahead of a scheduled check-in meeting between the Applicant, Supervisor, and Manager, the Supervisor submitted comments in the performance portal wherein the Applicant was tasked with identifying "what [she'd] like to see happen to make [her] feel a valued member of the team, with clear examples of what those behaviors [from the Supervisor would] look like."

17. On 17 April 2023, the Applicant submitted the following comments responding to the 11 April comments from the Supervisor:

> I would like to state that my goal for this conversation is to get a change in the attitude and treatment I have been subjected to in the J building. I am here to solve a problem because it has become extremely difficult for me to function as a staff member because of this treatment.
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> In as much as I agree that he oversees the cluster and he can make policies that he deems fit for the cluster, I do not agree with the way he talks down at me and insults

> me. He is extremely condescending towards me. This discrimination whether racial or gender is not appropriate behavior, and I would like to request for a change. I realize this is a different environment, but I think we as ITs, irrespective of Team should be treated with respect. I am here to appeal to be treated with dignity and respect and to be treated fairly with regards to project assignments.
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> To this end, [r]emember I spoke with you after the informal discussions with IT Staff, you asked me how things were going in the J building and I responded, "Not good", you asked if I wanted to talk about it and I said no because I didn't think there was anything you could do about it. I had preferred to continue under the toxic environment to maintain peace. Maybe you can assist in navigating the proper treatment to me. I am hoping to leave this meeting with a positive outcome that brings about changes.

18. On 18 April 2023, the Applicant, Manager, and Supervisor met for a check-in. During this meeting, the Manager informed the Applicant that some colleagues had complained about her behaviors and attitude. In response, the Applicant asked for evidence of the complaints against her.

19. On 9 May 2023, the Manager added her comments to the record of the 18 April 2023 check-in meeting, stating:

> My observations were based on the feedback received from other team members on your interactions with them. I urge you to take this feedback in the right spirit and work on improving your interactions with others on the team. This is impacting the team morale and service to clients, and I expect to see immediate improvements. I stand by to support you in any way that I can.

20. On 16 May 2023, the Applicant, Manager, and Supervisor had a check-in meeting. At the Applicant's request, the meeting was recorded. During this meeting, the Manager suggested that the Applicant reach out to a certain colleague, as he was one of the colleagues who had complained about the Applicant's behaviors. The Manager also recommended that the Applicant reach out to the Team Lead, and the Applicant indicated that she preferred to take the matter with the Team Lead to the Office of Mediation.

21. Following the meeting, the Manager emailed the Applicant, stating:

> I expect to see an immediate improvement in the behaviors your team members have reported. If there is no demonstrated improvement, we will put in place formal performance management measures to help you turn around your performance by the end of FY23. Going forward, we will schedule a check-in meeting if new reports come in.

22. On 5 June 2023, the Applicant emailed a colleague, stating, "[The Manager] informed me that you provided feedback to her based on the tone and certain words I used when I asked to lead the […] project. Please let me know when you have availability so we can talk about this." The colleague responded, copying the Manager, stating that he would like to focus on his work and that he had nothing more to add. He further advised the Applicant to check with the Manager if she needed more details on the situation he raised to the Manager. The Applicant thereafter emailed the Manager informing her that the Supervisor "had said [she] should respect [the colleague's] decision not to have a conversation with [her] so [she was] not sure how else [she could] approach this."

23. On 6 June 2023, the Applicant emailed the Supervisor to inform him that the Location Lead removed her from leading a certain project "by accusing me of something that I did not do." She attached thereto an exchange of emails which took place on 5 June 2023 between her and the Location Lead. The exchange begins with the Applicant explaining to the Location Lead that a colleague had done IT migrations by conducting office visits, an approach previously suggested by the Applicant. She sought the Location Lead's views on the matter. The Location Lead responded:

> I'm not in favor of us visiting non-VIP staff, [a]s I shared with you yesterday. I was surprised to hear [that colleagues under the Applicant's leadership] made office visits. That's not what we agreed on and going forward, please ensure we are following agreed upon processes. This looks bad, especially after announcing that we will be available by the elevators. This sets the wrong precedence, and we want to come across as a unified voice. I'd appreciate if we can avoid this situation again. We are already providing a service to non-VIPs by making ourselves available on the floor. Our priority will remain with VIPs and office visits will be allocated for them. Grateful if we can focus our efforts on reaching 100% with VIPs.

24. The Applicant and Location Lead thereafter had a conversation, which the Location Lead continued via email, stating:

Just to wrap up our conversation, [y]ou indicated that [my] email came across as accusatory. I informed you that it was not meant to come across as accusatory. As a project lead […], I did hold you responsible for ensuring the team followed agreed procedures when conducting project work. As such I expected you to inform [the colleague who was making office visits] as soon as you were made aware that office visits were only for VIP staff.

While you questioned me about how you could have done it while she was on the floor, I pointed out that you could have used any of the options like Email, Teams or [text] to convey what they were doing is not according to our project plan. And you decided not to employ any means and convey my intention. You also asked me why I didn't copy [the colleague] on my response if I didn't want [her] to do office visits, for which, I informed you that it was you who emailed me to inform about the office visits and [a]s the project lead, I expected you to take responsibility on such emails.

You also claimed that you were unaware of [the colleague's] plans for the list of staff, when I asked how she received the list. Contradicting your earlier email asking about shifting the approach to visit offices, as you mentioned, per [the colleague's] intention. Attaching the email here for reference.

It is your lack of understanding the situation, unable to take responsibility as a project lead is what prompted to question your commitment. To which, you responded that you were happy to step away as you didn't want to be accused. I appreciated your ideas for teams and dividing by floors. Also your efforts in setting up the mobile clinic. I'm sure they will be handy in this project and I hope the team will continue the success they had.

Thank you again for the work and have a good evening.

25. That same day, the Applicant responded:

I did not think it was necessary for me to leave my duties and run after [the colleague] to tell her not to reach out to users especially as I didn't know where she was. […] [The colleague] came to ask me for the list, I didn't know what her plans were for the list until I had provided it to her. […]

I would like an explanation of what you mean by my lack of understanding of the situation. (Emphasis in original.) Please clarify what the situation is and if I caused the said situation. Does this mean that I am not thinking the way a project lead ought to think, or I do not have the thinking capability needed to lead a project. I believe it is within my rights as a human being to speak up when I am being accused of what I did not do. Not running after [the colleague] to stop her from reaching out directly to clients does not mean I am not committed to the project.

26. On 12 June 2023, the Applicant had an overall performance discussion with the Manager, the Supervisor, and a Senior Human Resources (HR) Business Partner during which she was again notified of issues with her behavior.

27. In June 2023, the Applicant initiated mediation with the Team Lead, which resolved informally with the mediator suggesting that the Applicant and Team Lead have coffee and try to get to know each other better.

The Applicant's FY23 performance evaluation

28. As part of the year-end performance evaluation process, individual feedback was requested by both the Applicant and the Supervisor. Out of the thirty-eight individual feedback comments received, seventeen were requested by the Supervisor and twenty-one were requested by the Applicant. All thirty-eight individual feedback comments were positive.

29. On 13 June 2023, the Applicant, the Supervisor, the Manager, and their unit's HR Business Partner held a year-end performance discussion. Following the year-end performance discussion, the Supervisor provided his feedback in the Applicant's FY23 performance evaluation. Within that feedback, he provided her performance metrics as compared to the unit target metrics and summarized these datapoints as demonstrating that the Applicant's technical performance was "as expected for her grade level." He also submitted comments regarding the Applicant's workplace behaviors, namely:

> Team members have expressed serious concerns and have reported [the Applicant] using a condescending tone towards team members and body language. Team members find their workplace atmosphere has deteriorated due to what they feel is her offensive demeanor, constant invalidation of others' opinions and dismissive behavior. Team members report observing abrasive behavior towards clients which resulted in a negative perception of the IT team. These reported behaviors have resulted in team members avoiding interactions with [the Applicant] to prevent aggravation towards them coming from her. A team member felt verbally attacked in the office, resulting in a formal mediation case. This incident happened due to a misunderstanding related to the Spring Meetings weekend support. A review of what transpired [brought] to light the fact that [the Applicant] did not respond to the original invitation she received via email directly from the Conferencing

> Functional Group chair asking if she would like to participate and that she incorrectly assumed that she would be automatically included. The team member approached the […] Manager and expressed this as a personal [attack] and felt ambushed in their own office space. Team member's mental health was affected—they felt disturbed for the rest of the day, had trouble sleeping that night even with medication and considered not coming to work the next day.
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> A team member approached [the Applicant] to offer to work together on an IT project for the clients in [the J] Building. They perceived her response back was harsh. They reported her saying that she did not want to work with that colleague and that she wanted to lead the project on her own. The team member contacted the […] Manager to express how shocked and in disbelief the team member was regarding her reaction. The team member has requested [the Applicant] to not communicate directly with them regarding this incident but to contact the […] Manager to avoid further confrontation.
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> At the end-of-year evaluation meeting held on June 13, 2023, [the Manager and Supervisor] reiterated to [the Applicant] that the behaviours she had been displaying over the preceding several months related to teamwork, communications and respect for team members were not acceptable and were reminiscent of the challenges [the Applicant] faced 3 years ago as part of another team with a different supervisor. She was asked to refrain from using language and tone that team members found dismissive, rude, and intimidating.

30. The Supervisor also acknowledged the feedback received from clients, stating:

> The feedback from clients in the J building points to [the Applicant's] calm demeanor and approach; her ability to help find solutions to issues reported to her; her attitude that complements the work she does; the relationships she builds with her clients; and being pleasant to work with.

31. On 25 September 2023, the Applicant met with the Supervisor, the Manager, HR staff, and a Staff Association Staff Relations Counselor. During this meeting, the Applicant was informed she would receive a performance rating of 2 for FY23 and would be placed on an OTI to help her improve her behaviors toward her team members.

32. On 3 October 2023, the Applicant acknowledged the performance evaluation, completing the FY23 performance evaluation process.

OTI terms

33. On 15 November 2023, and pursuant to the meeting of 25 September 2023 in which management informed the Applicant that her workplace behaviors were not satisfactory, the Applicant was officially placed on an OTI and provided with the finalized OTI terms, which contained the following areas of concern, expectations, and measurements:

I. Team Collaboration and Compliance

Areas of Concern:

- Demonstrating a consistent individualistic approach even when teamwork is essential, leading to potential misalignments and reduced synergies.
- Non-adherence to team instructions and procedures, resulting in inefficiencies and potential errors.
- Regular absence or premature departures from team meetings, causing missed information and reduced team cohesion.
- Habitual challenging of standardized policies and procedures without constructive feedback, causing disruptions.

Expected Behavior:

- Engage proactively with team members, sharing knowledge, and aligning on tasks to foster synergies.
- Strictly adhere to team-established procedures, ensuring quality and consistency of work.
- Prioritize and actively participate in all scheduled team meetings, providing inputs and staying updated.
- While feedback is encouraged, it should be constructive and provided through appropriate channels.

Measurement:

- Demonstrated collaboration through team projects and tasks with positive outcomes.
- Full compliance to team procedures as verified through periodic audits.
- Consistent attendance and contributions in team meetings.
- Constructive feedback recorded and acknowledged without disruptions.

II. Interpersonal Skills and Communication

Areas of Concern:

- Consistently employing language and tones that colleagues find dismissive, rude, or intimidating, leading to a negative work environment.
- Frequently raising your voice, causing discomfort among peers.

- Regularly suppressing others during discussions, resulting in reduced team participation and potential resentment.

Expected Behavior:

- Ensure all communications, whether verbal or written, are respectful, patient, and professional.
- Maintain a calm demeanor, avoiding elevated voice levels, even in disagreements.
- Encourage open dialogue, allowing team members to share their views without interruption or suppression.

Measurement:

- Positive feedback from colleagues and supervisors on improved communication and interaction.
- Observational evaluations during team and one-on-one sessions, noting tone and language appropriateness.
- Increased participation from all team members in discussions, indicating an open and inclusive environment.

III. Responsiveness to Feedback

Areas of Concern:

- Demonstrated tendency to perceive constructive feedback as personal criticism, impeding personal growth.
- Often deflecting responsibility instead of addressing areas needing improvement.
- Displaying defensive behavior during review and feedback sessions, hindering open communication.

Expected Behavior:

- Welcome feedback as an opportunity for growth, understanding the difference between personal and professional critique.
- Reflect on feedback, taking responsibility for areas of concern, and implementing changes proactively.
- Engage in feedback sessions with an open mind, avoiding defensive stances, and seeking clarification when needed.

Measurement:

- Demonstrated ability to implement changes based on provided feedback.
- Active and constructive participation in review sessions, indicating an understanding and acceptance of areas for improvement.
- A decrease in defensive behaviors during feedback sessions, as observed by supervisors and peers.

34. The OTI further notified the Applicant that "failure to improve at a reasonable pace or to sustain satisfactory performance […] could result in the termination of your employment from the World Bank Group."

Review of performance-related decisions

35. Administrative Review (AR) is the first step for requesting review of a performance management decision and must be exhausted before seeking Performance Management Review (PMR). AR is conducted by the Bank's HR Vice President, or an official designated by the Bank's HR Vice President, who considers whether management acted within its discretion, satisfied its obligations to the staff member, and followed proper procedures in connection with the performance management decision under review.

36. PMR is the process by which staff members may request review, by a neutral reviewer, of a performance management decision. PMR is conducted by a reviewer, who considers whether management acted within its discretion, and otherwise satisfied its obligations to the staff member, in connection with the decision under review.

37. Staff members must seek review of a performance management decision through AR and PMR before submitting a performance-related claim to the Tribunal.

Administrative Review

38. On 24 October 2023, the Applicant filed for AR of her FY23 performance evaluation, her FY23 performance rating, her placement on a not-yet-finalized OTI, and the terms of the OTI.

39. On 8 December 2023, the AR Reviewer concluded her review and provided management and the Applicant with her findings and recommendations. The AR Reviewer found that, with respect to the evaluation, management did not summarize the feedback formally submitted in the performance portal with the same level of detail as the summary of feedback given directly to the Supervisor and Manager. She recommended revisions be made to remedy the identified imbalance.

With respect to the performance rating, the AR Reviewer found that, while the present performance evaluation supported a 2 rating, after closer review, the Applicant's performance could "also possibly fall under" a 3 rating. To align with her recommended edits to the performance evaluation, the AR Reviewer recommended the rating be changed to a 3. The AR Reviewer further found that the Applicant's performance could not support a 3.5 rating. With respect to the OTI, the AR Reviewer found that the OTI document was fair and recommended "continuing with the OTI plan, including the terms of the OTI."

40. On 13 December 2023, the Senior IT Manager, who served as the decision-maker for the AR process, notified the Applicant that he agreed with the outcome of the review, accepted the recommendations called for in the report, and supported her desire to work with a mentor by recommending next steps she could take with HR to explore her options. The Applicant's performance rating was thereafter changed to a 3, with a corresponding pay increase effective 1 July 2023.

41. On 8 February 2024, an HR representative notified the Applicant in writing that the recommended revisions to her FY23 performance evaluation had been submitted into the performance portal. In this communication, he also informed the Applicant that management had further decided to cancel her OTI and remove it from the HR system. The HR representative explained the consideration for the decision as follows: "Although this was not part of the AR recommendations, it is agreed that it is important to focus on building the trust to set the cornerstone for better outcome moving forward." The Applicant replied, expressing concern about whether the decision to rescind her OTI would prevent her from contesting the initial OTI placement. The HR representative responded, explaining that the Applicant could still seek review of claims relating to the OTI and stating that he would confirm such with the PMR Reviewer.

Performance Management Review

42. On 22 December 2023, the Applicant requested PMR to review her FY23 performance evaluation, her FY23 performance rating, her placement on an OTI, and the terms of the OTI.

43. On 13 March 2024, the PMR Reviewer emailed the PMR report to the Vice President and Chief Information Officer (CIO) of Information Technology Solutions (ITS).

44. The PMR Reviewer found that the Applicant's performance evaluation, while more balanced, still skewed negatively and did not mention the positive feedback received from peers. The PMR Reviewer recommended that (i) the feedback be "further edited to provide a balanced reflection of the staff member's performance," (ii) "management review the performance rating to ascertain whether the current rating of 3 remains appropriate," and (iii) the parties make use of Mediation Services.

45. On 15 March 2024, the Vice President and CIO of ITS notified the Applicant that she accepted the PMR Reviewer's recommendations.

46. On 22 March 2024, the Manager emailed the Applicant, providing her with management's intended actions for each of the recommendations in the PMR report and including a timeline for revisions to the performance evaluation. In line with the PMR recommendations, the Manager further sought the Applicant's willingness to use Mediation Services. The Manager also recalled a past conversation wherein it was discussed that the Applicant would reach out to a specific individual for mentoring. The Manager noted that she supported the Applicant contacting him for mentoring and further recommended a program the Applicant could use to get a mentor.

47. On 26 March 2024, the Applicant responded to the Manager indicating that she would like a mentor but would not like to use Mediation Services until her claims had been reviewed by the Tribunal. The Applicant further noted that, while the cancellation of her OTI was welcomed, she was unsure why it was canceled and questioned whether management wished to "remove the wind from the sail of [her] bid for redress."

48. On 5 April 2024, the Supervisor revised the Applicant's FY23 performance evaluation. In this revised version, the Supervisor's comments were altogether removed from the section of the evaluation titled "Behaviors and Skills to Improve." In the "Overall Contributions" section, the Supervisor added a description of the positive feedback the Applicant received from IT colleagues

and removed references to the two specific interactions the Applicant had with her colleagues during FY23.

49. On the same date, the Manager also revised her comments in the Applicant's FY23 performance evaluation, replacing her comment that the Applicant "needs to focus her efforts on strengthening her team interactions and communications" with "In FY24, I am committed to providing [the Applicant] with the necessary support and guidance as she works to enhance her relationships with team members and build trust."

50. Also on 5 April 2024, the Manager notified the Applicant in writing that management, including the Vice President and CIO of ITS, concluded its review of her performance rating and determined that a performance rating of 3 was appropriate given the definition as provided on the performance management website, which states, "Fully Meets Expectations: Staff member meets all or substantially all performance expectations, including workplace behaviors, considering the position requirements and compared to staff at the same grade level."

The 30 April 2024 check-in meeting

51. On 30 April 2024, the Applicant video-recorded a check-in meeting with the Supervisor, the Manager, and an HR representative. During this meeting, the Applicant stated that the check-in meeting was against the Staff Rules, as she believed that check-in meetings must be one-on-one, either between her and her Supervisor or between her and her Manager. The Applicant further stated that she felt "very frightened," having "three people against [her]." The Applicant also repeatedly noted during the recording that she felt "very intimidated" and "very, very, very traumatized," and that the meeting was "detrimental to [her] health." The HR representative responded by explaining that HR was present as a neutral party to provide support to both her and management. The Applicant refused to have a check-in with anyone other than her Supervisor or her Manager but not both at once and not with HR present. Ultimately, the Manager and HR representative left and the Applicant thereafter had a check-in meeting with her Supervisor.

52. On 2 May 2024, the Applicant emailed the Supervisor as follows:

> Sorry to bother you but I have not been able to record my check-in through the performance management system. After the traumatic experience on 4/30 during my scheduled Check-in, I have not been able to get [my] thoughts together. I thought working from home yesterday would help but I need to take a break for a few days. Will it be okay to take a sick day tomorrow […]?

53. On the same date, the Supervisor responded to the Applicant approving the leave request and forwarded the Applicant's communication to the Manager.

54. Also on 2 May 2024, the Manager emailed HR staff to seek guidance on the check-in meeting, writing:

> I am sharing an update on the performance check-in with [the Applicant] held on Tuesday, April 30 as well as her email below she sent earlier today. She came in with her laptop and 2 phones. I saw her initiate a Teams meeting even though the meeting invitation did not have a Teams link as the intention was to hold the meeting in person only. I asked her if she was recording the meeting and she confirmed that she was. I have attached that recording here (13 minutes long) and you can hear multiple requests for her to stop the recording, that the other participants are not consenting, but she refused. She talked over everyone and did not listen to what anyone else was trying to say. She began the recording by reading from a printed piece of paper in front of her. She did not share that [with] anyone. So, the first statement you hear is her reading from the paper. She repeated several times the staff rule on performance discussions. [The HR representative present in the meeting] tried to correct her understanding, but as you can hear further in the recording, she insisted on her interpretation of the rule.
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> [The HR representative] and I left, and she and [the Supervisor] had a check-in. He felt they had a fairly good conversation and walked back to the J building together. She asked to initiate the check-in submission in [the performance portal], but that has not yet happened (see her email from earlier today). [The Supervisor] has not yet submitted his comments. Here is a draft of the summary he has prepared:
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> > [The Applicant] has been working satisfactorily and meeting existing objectives. [… The Applicant] continues to show her high level of commitment to her clients. […] [The Applicant] was a member of the team involved in the Spring Meeting with great results and positive feedback from colleagues in the J building. […]
>
> Any input on the check-in comments? With these most recent events, I am even more concerned about her state of mind and ability to perform. She declined mediation and came across as contentious. She also earlier declined mentorship that she had originally insisted on. What are the next steps we should consider?

55. On 20 May 2024, the Manager emailed the Applicant regarding the 30 April 2024 check-in, stating:

> I am very concerned about statements you made during that timeframe where you indicated you felt stressed, intimidated, traumatized, you felt the meeting was a form of harassment against you, and that your health was impacted. You went on to state that you were visibly shaking. Given your description of what you experienced, I strongly encourage you to contact our Health Services colleagues to consult with them about your health and well-being. […] Out of extreme concern, I have confidentially shared your recording with Health Services colleagues.

Ethics complaint

56. On 25 October 2023, the Applicant initiated a complaint with INV alleging harassment, retaliation, and abuse of power by the Manager and Supervisor in connection with her FY23 performance evaluation and performance rating, and the imposition of an OTI.

57. On 21 May 2024, the Applicant reported to INV that her Manager had contacted the Bank's Health Services Department regarding the Applicant's health based on the 30 April 2024 check-in meeting. In this communication to INV, the Applicant indicated that she was willing to escalate this issue to INV.

58. Between 25 October 2023 and 25 September 2024, INV conducted interviews and collected documentary evidence, including email correspondence and performance records, relevant to the Applicant's complaint to determine whether to open a misconduct investigation.

59. On 19 November 2024, INV closed the case at the preliminary inquiry phase due to insufficient evidence to substantiate the Applicant's allegations. In its case closure memorandum, INV concluded:

> INV did not find evidence that [the Manager] or [the Supervisor] retaliated against [the Applicant], abused their authority, or harassed [the Applicant].
>
> The information demonstrates that [the Manager] and [the Supervisor] in fact made several attempts to provide feedback to [the Applicant], provide her an opportunity to improve her behavioral issues, resolve conflict with other colleagues informally

through mediation, and accommodate her requests during their performance-related meetings and discussions.

60. On 3 December 2024, INV informed the Applicant that, following a thorough preliminary inquiry of the allegations of misconduct she reported, INV could not find sufficient evidence to substantiate a violation of the Staff Rules and therefore closed its review.

The present Application

61. On 6 August 2024, the Applicant filed this Application claiming that management (i) failed to implement the PMR recommendations, (ii) abused its discretion by initially assigning the Applicant a 2 rating and by refusing to increase her rating to a 3.5, (iii) abused its discretion "by refusing to acknowledge" that placing the Applicant on an OTI was unwarranted, and (iv) retaliated against and harassed the Applicant for using the internal justice system.

62. The Applicant seeks the following:

i. An increase of [the Applicant's] FY2023 performance rating from '3' to ['3.5'] and retroactive application of any compensation increase associated with the increased rating.

ii. Revision of [the Applicant's] FY2023 Annual Review as follows:

a. Removal of the following unsubstantiated sentences from the supervisor's comments: However, there is room for improvement. Her colleagues have observed a preference for high-profile clients and working in silo and suggest a more inclusive approach to collaboration with all team members. They also recommend that she embrace feedback with an open mind and avoid taking it personally. Addressing these areas will foster more effective teamwork and ultimately lead to better service for our business partners. […]

b. Inclusion in the supervisor's comments of the following findings made by the Administrative Reviewer in [the Applicant's] case:

> Throughout February to May 2023, 38 individual feedback comments were solicited by [the Applicant] and [the Supervisor] (separately) from clients and peers (largely anonymous) through the [performance portal]. Out of the 38,

> 17 individual feedback comments were requested directly by [the Supervisor] and 21 individual feedback comments were directly collected by [the Applicant]. All 38 individual feedback comments were positive and favorable. The comments pertain to [the Applicant's] responsiveness, efficiency, proactive support, dependability, outstanding support, being an excellent team player, being knowledgeable, among others.

63. The Applicant further requests such additional compensation as the Tribunal deems fair and just to remedy the

> unfair treatment, associated stress, and damage to career that [the Applicant] suffered as the result of: (A) receiving a performance evaluation and rating that, even after two rounds of revisions based on recommendations from the [AR] Reviewer and [PMR] Reviewer, still does not fully reflect [the Applicant's] strong FY23 performance; (B) being placed on an [OTI] plan and having her Bank career placed in jeopardy without any legitimate basis; (C) losing out on a meaningful opportunity to compete for a promotion after being placed on the OTI; (D) facing diminished chances of receiving an in-situ promotion to Grade GE since, under ITS policy, a rating of '4' or '5' during the prior three years is a requirement for consideration; and (E) being retaliated against and harassed for turning to the internal justice system, including being subjected to intimidating regular check-ins with the supervisor, manager, and [HR Business Partner] even after prevailing in both the AR and PMR processes.

64. She requests legal fees and costs in the amount of $28,845.00.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Main Contention No. 1

Management failed to fully and fairly implement the PMR recommendations and, in doing so, perpetuated at least three abuses of discretion against the Applicant

65. The Applicant contends that management abused its discretion by (i) failing to accurately revise the Applicant's performance evaluation consistent with the PMR recommendations; (ii) initially assigning the Applicant a 2 rating and refusing to increase her rating to 3.5 despite PMR's findings; and (iii) refusing to acknowledge that placing the Applicant on an OTI was unwarranted.

Performance evaluation

66. According to the Applicant, her performance was, "on an objectively measurable basis," above average. To support this contention, the Applicant points to her 98.5% client satisfaction rate, an above-average Quality Management score, an above-average number of consultations completed, and a below-average backlog rate.

67. In the Applicant's view, while the revised performance evaluation finally provides recognition of the positive feedback she received from clients, it does not fully and fairly acknowledge the uniformly positive feedback she received from her peers. To the Applicant, the Tribunal's jurisprudence requires management either to describe her peer feedback in reasonable detail or to at least expressly incorporate the AR Reviewer's finding that "[a]ll 38 individual feedback comments were positive and favorable."

68. The Applicant contends that the behavioral criticisms in her performance evaluation are not substantiated. In this respect, the Applicant points to the PMR Reviewer's findings that there was no evidence to support the claims that she did not embrace feedback with an open mind. She further points out that the PMR Reviewer noted only two isolated incidents of behavioral issues and was unable to find instances of ongoing behavioral issues.

69. In sum, the Applicant maintains that the twice-revised FY23 performance evaluation still fails to give due weight to the positive aspects of her performance and still includes unfair allegations of negative peer feedback that are not substantiated by the performance review record.

Performance rating

70. The Applicant contends that management's refusal to revise her performance rating to a 3.5 "in line with the PMR Reviewer's recommendations" constitutes an abuse of discretion for at least three reasons.

71. First, the Applicant maintains that her technical performance and the objective measurements thereof clearly support the higher rating, and management has not provided any reasons as to why it decided a 3 rating was appropriate.

72. Second, in the Applicant's view, the performance evaluation on which the rating is based remains biased even after two rounds of revisions because management failed to fully implement the PMR Reviewer's recommendations. Thus, the Applicant maintains, to the extent that the rating is based on the performance evaluation, the rating is improper.

73. Third, the Applicant claims that "management had no legitimate basis for reducing [the Applicant's] technical score of '3.5' down to an overall score of '3' based on behavioral issues." To the Applicant, the PMR Reviewer's conclusion demonstrates that the only specific examples of behavioral issues that management was able to identify were "isolated incidents" resulting from actions that were either "unintended" or "perceived differently" than intended and thus not indications of long-term behavioral issues.

74. In sum, the Applicant maintains that her FY23 performance was at least fully satisfactory with respect to behavioral issues and objectively exceeded expectations as to her technical delivery, and that a 3.5 performance rating is therefore merited. To the Applicant, management's failure to revise her rating is therefore an abuse of discretion.

OTI

75. In the Applicant's view, management's unilateral decision to cancel the OTI without any acknowledgment that it was wrongfully imposed does not fully remedy the initial abuse of discretion for at least two reasons.

76. First, the Applicant contends that the cancellation of the OTI fails to remedy the unfair treatment the Applicant suffered during the period in which she was wrongfully placed on an OTI. The Applicant explains that she was subjected to daily stress due to her Bank career being "on the line." While the Applicant acknowledges that canceling the OTI partially mitigated her stress, she

maintains that simply canceling the OTI did not meaningfully compensate her for that mistreatment.

77. Second, to the Applicant, the cancellation of the OTI failed to acknowledge that the OTI was improper, and therefore did nothing to rebuild trust between the Applicant and management, the alleged rationale for canceling the OTI.

78. For these reasons, the Applicant maintains that she is entitled to additional compensatory and other relief.

The Bank's Response

The PMR recommendations were implemented, and all managerial procedures were followed; the Applicant's performance rating had a reasonable and observable basis; and canceling the OTI did not constitute an abuse of discretion

79. The Bank maintains that (i) the PMR recommendations were implemented, and all managerial procedures were carefully followed; (ii) the Applicant's performance rating had a reasonable and observable basis; and (iii) canceling the OTI did not constitute an abuse of discretion.

PMR recommendations

80. To the Bank, it is unreasonable for the Applicant to maintain that her evaluation is so inappropriate as to constitute an abuse of discretion. The Bank points out that the evaluation was based on peer feedback and metrics collated by management and not merely the feedback chosen by the Applicant, which omits the behavioral issues raised by several of her colleagues throughout the performance cycle and by the Manager and Supervisor.

81. The Bank maintains that the Tribunal has repeatedly recognized that managers are usually best suited to evaluate staff members' performance and are therefore accorded discretion. In this case, the Bank avers, the Tribunal need not rely only on the Manager's judgment, because the

evaluation has been reviewed through the AR and PMR processes, and management has accepted the recommended changes to the performance evaluation.

82. The Bank maintains that management changed the wording of the evaluation to become more balanced and include more references to the positive feedback received about the Applicant's work. The Bank avers that, through these edits, it has appropriately amended the evaluation, and that the Applicant's continued insistence that her evaluation does not accurately reflect her performance is unwarranted and inaccurate.

83. The Bank explains that the Applicant "generally does not accept responsibility" for her actions and continues to label numerous colleagues as "dishonest and vindictive" instead of pausing to consider the effect her approach might have on others. The Bank explains that, even if the Applicant's perspective were accepted as truth, there are more constructive ways to deal with disagreement, as reflected in the World Bank Group's core values, than her undisputed actions, such as slamming a door.

84. The Bank contends that management had a reasonable basis for its decisions and its belief that the amended FY23 performance evaluation is reasonable and appropriate. To the Bank, while the evaluation is not uniformly positive, neither was the Applicant's performance.

Performance rating

85. The Bank contends that management took action to implement the AR recommendation when it updated the Applicant's performance rating from a 2 to a 3.

86. The Bank corrects the Applicant's understanding of the PMR recommendation regarding her performance rating, noting that the PMR Reviewer did not recommend for the rating to be changed to a 3.5; rather, the PMR Reviewer recommended that management "ascertain whether the current rating of 3 remains appropriate." The Bank states that management did just that.

87. The Bank maintains that, following its second round of revisions to the Applicant's performance evaluation, and in view of those revisions, management considered whether the Applicant's performance rating remained appropriate and determined that her revised evaluation remained commensurate with a 3 rating, meaning management determined that the Applicant met all, or substantially all, performance expectations, including workplace behaviors, considering the position requirements and compared to staff at the same grade level.

88. The Bank further explains that even though the PMR Reviewer opined that, from what he could tell, a 3.5 rating might be appropriate, that does not make it wrongful for management to disagree, especially considering that the PMR Reviewer did not supervise the Applicant's work during FY23.

89. In the Bank's view, the Applicant's claim is based solely on her belief that she deserves a higher rating, but a difference of opinion does not equate to an abuse of discretion. To the Bank, no matter how much the Applicant chooses to see only her accomplishments and completely dismiss any negative feedback, this case is not that one-sided. The Bank maintains that it was within management's discretion to evaluate her performance as meeting all or substantially all performance expectations. The Bank points out that management, not the Applicant, is in the best position to make such discretionary decisions, because "it is clear that [the] Applicant struggles to accept differing opinions of her behavior."

OTI

90. The Bank explains that the OTI was canceled and removed from the Applicant's HR record after the performance rating of 2 was changed. The Bank is therefore uncertain why the Applicant still "continues to argue that it is not clear to her why the OTI was rescinded," or why she alleges management has acted wrongfully by rescinding the OTI in the manner in which it did.

91. The Bank maintains that the OTI cancellation was not done out of malice; rather, as was explained to the Applicant at the time of the OTI cancellation, following the AR process, the OTI was canceled with the view of mending the trust between the Applicant and management.

The Applicant's Main Contention No. 2

Management harassed and retaliated against the Applicant for making use of the internal justice system

92. According to the Applicant, the Supervisor's comment, namely, "[t]hat is the problem with the way you think," is offensive and constitutes harassment. The Applicant explains that she responded accordingly by informing the Supervisor that she intended to file an ethics complaint regarding the matter. In the Applicant's view, this was the point when unjustified performance issues were raised and a "pattern of hostility" from the Supervisor and Manager began.

93. To the Applicant, the "180-degree turn," from a 5 rating for FY22 to a 2 rating and an OTI for FY23, despite uniformly positive feedback from peers and clients, clearly demonstrates a textbook *prima facie* case of retaliation.

94. The Applicant contends that management continued to retaliate against her even after she "prevailed in the AR and PMR processes." In this respect, she points to management's "refusal to include more than a single-sentence acknowledgment" of the Applicant's extensive positive feedback in its second round of revisions to her performance evaluation. In the Applicant's view, this demonstrates management's spiteful behavior toward her. She also maintains that the retaliatory treatment continues, as evidenced by her 30 April 2024 check-in meeting, wherein her request to record the meeting was denied and she was made to feel intimidated and outnumbered by management's decision to have three management-side participants attend this routine check-in meeting.

The Bank's Response

The Applicant's claims of harassment and retaliation are unfounded

95. According to the Bank, the Applicant's claims of harassment and retaliation are unfounded and not supported by the record.

Harassment

96. The Bank states that the Applicant claims she was harassed based on three incidents: (i) the Supervisor failed to say hello to her immediately and did not greet her until she repeated her "good morning," (ii) the Supervisor explained the process required to submit a leave request, and (iii) the Supervisor explained how the overtime process works.

97. The Bank states that there are numerous neutral explanations that could have justified a delayed greeting, and that there is no reasonable basis on which to allege harassment simply because the Supervisor greeted her "a bit later than she would have preferred."

98. In the Bank's view, the remaining two allegations amount to instances when her Supervisor explained job processes to her, which is part of managing. The Bank maintains that the Applicant mistakes being managed with being harassed.

99. To the Bank, these identified instances do not meet the threshold for harassment. In this respect, the Bank recites the Tribunal's established jurisprudence that it is not enough for a staff member to speculate or infer retaliation from bad feelings with another person, and the Bank reiterates that managers must have the authority to manage their staff and to take decisions that the affected staff member may find adverse to his or her best wishes.

Retaliation

100. The Bank contends that the Applicant's mere assertions or subjective perceptions of retaliation are insufficient to support her claim of retaliation.

101. The Bank states that the Applicant presents a tenuous and complex theory of retaliation, claiming that the only reason management criticized her FY23 performance was out of retaliation for her complaining about the Supervisor's "lone comment in an email that he did not understand her thinking on an issue." The Bank contends that, although the Applicant did in fact report the

Supervisor's comment, that report had no connection with the evaluation of her performance during the year.

102. In the Bank's view, the Applicant relies on her assertion that, because her previous performance rating was a 5, there was an "abrupt change" in FY23 that must have been caused by retaliation. The Bank rebuts this assertion by pointing to the long record of interpersonal issues about which the Applicant received feedback from her former supervisor, the MC Supervisor. To the Bank, this record demonstrates that the Supervisor did not fabricate performance issues in retaliation for her reporting his comment to INV; rather, the Applicant's behavioral issues have persisted under previous supervisors and there was not an "abrupt change" as the Applicant claims. The Bank contends that the performance feedback was genuine and not retaliatory, and supports this contention by pointing to the documentation in the record of colleagues having conflict with the Applicant during FY23.

103. In the Bank's view, the Applicant relies solely on her own misperceptions, speculations, and subjective beliefs, and provides no evidence of a causal link between any alleged retaliatory act and a protected activity, nor does she offer corroborating documentation or testimony. The Bank explains that mere dissatisfaction with managerial decisions is not proof of retaliatory intent. To the Bank, the Applicant's claim of retaliation lacks the requisite legal basis and must be dismissed.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

WHETHER THE APPLICANT'S TWICE-REVISED FY23 PERFORMANCE EVALUATION, INCREASED PERFORMANCE RATING, AND RESCINDED OTI CONSTITUTE ABUSES OF DISCRETION

104. The Tribunal recalls that the performance evaluation is the year-end annual evaluation of a staff member's individual performance, including workplace behaviors, as compared to their performance objectives established at the beginning of the cycle. Throughout the year, staff and their supervisors are encouraged to record ad hoc or routine performance check-in meetings in the performance portal. Staff and supervisors also solicit performance feedback from colleagues and

clients to be submitted in the performance portal. In the year-end performance evaluation, staff submit a self-evaluation, supervisors and co-supervisors thereafter submit their qualitative feedback of the staff member's performance, the manager then signs off on the evaluation, and the staff member acknowledges and comments on the evaluation. After this process concludes, management conducts a comparative assessment of staff members to determine the staff members' performance ratings. The Tribunal recalls that placement on an OTI can occur at any stage in the performance cycle.

105. In the present case, the Tribunal notes that, following receipt of her FY23 performance evaluation and performance rating, and her placement on an OTI, the Applicant filed for AR, seeking review of these performance-related decisions. At the conclusion of the AR process, management revised the Applicant's performance evaluation, increased her performance rating from a 2 to a 3, and chose, unprompted by the AR Reviewer, to rescind the OTI. Following the AR process, the Applicant sought review by PMR of the same claims. Following the PMR process, management made further revisions to the Applicant's FY23 performance evaluation. Unsatisfied, the Applicant now raises her performance-related claims with the Tribunal.

106. As explained in *BI*, Decision No. 439 [2010], para. 32, "[i]t is not the Tribunal's role to undertake a microscopic review of the [a]pplicant's performance, and to substitute its own judgment about the [a]pplicant's performance for the Bank's." Rather, the Tribunal's scope of review of performance-related decisions 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 BY*, Decision No. 471 [2013], para. 33; *Prudencio*, Decision No. 377 [2007], para. 73.

107. The Tribunal elaborated on its review of performance-related decisions in *Desthuis-Francis*, Decision No. 315 [2004], para. 23, explaining that the Organizations 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 performance review] is whether or not there was adequate or reasonable basis for those comments.

108. As stated in *FH*, Decision No. 624 [2020], para. 55, 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." While it would be desirable for a supervisor and a staff member to agree on a performance evaluation's contents, as the Tribunal has previously stated, "the evaluation is not a process of negotiation or joint determination." *Schiesari*, Decision No. 314 [2004], para. 31.

109. The Tribunal will review the Applicant's claims in light of the above jurisprudence.

Performance evaluation

110. The Applicant contends that her twice-revised FY23 performance evaluation remains unbalanced, as it fails to take a fair and full account of the positive feedback she received from peers.

111. In examining the latest version of the Applicant's FY23 performance evaluation, which management revised following both the AR and PMR processes, the Tribunal looks to the section of the evaluation in which management summarized the feedback received. Following the AR and PMR processes, this section now reads:

> Feedback from clients consistently highlights a strong client focus, underscored by a calm demeanor, solution-oriented approach, proactive engagement, reliability, and a commitment to high service quality and client satisfaction. Client feedback consistently praises a strong focus on their needs, marked by a composed manner, a solutions-driven mindset, proactive involvement, dependability, and a dedication to delivering high-quality service and ensuring client satisfaction. Clients note her meticulousness, productivity, and her exceptional efforts to facilitate seamless operations, especially during pivotal meetings. Her promptness and constructive attitude towards client interactions are also highlighted. They appreciate her proactive anticipation of their needs and her ability to forge robust, respectful relationships, which have been instrumental in achieving successful client engagements. Her team members and other ITS colleagues commend her for her

> proficiency and the positive influence she has on client experiences, particularly in the realm of conferencing support. She is encouraged to persist in enhancing her skills and knowledge. During team meetings, her contributions and perspectives on mobility-related topics are valued, and she is advised to disseminate her expertise more widely within the team. Her involvement in [certain projects] have been acknowledged favorably. However, there is room for improvement. Her colleagues have observed a preference for high-profile clients and working in silo and suggest a more inclusive approach to collaboration with all team members. They also recommend that she embrace feedback with an open mind and avoid taking it personally. Addressing these areas will foster more effective teamwork and ultimately lead to better service for our business partners.

112. In considering whether this twice-revised performance evaluation provides an objective summary of the feedback received, the Tribunal observes that the record is divided between feedback formally submitted through the performance portal and feedback sent directly to the Applicant's Manager and Supervisor during the year.

113. In *Desthuis-Francis* [2004], the Tribunal considered, *inter alia*, certain adverse comments made by a reviewing director in the applicant's performance evaluation. The Tribunal observed that the negative comments did not attempt to identify the basis on which such conclusions rested. However, the Tribunal explained, at paragraph 23:

> This by itself is not necessarily a ground for complaint, so long as the reviewing [d]irector is able to adduce outside the four corners of the [performance evaluation] a reasonable and objective basis for his adverse judgment on a staff member's performance.

114. The Tribunal observes that the feedback formally submitted through the performance portal at the end of FY23 is uniformly positive. The Tribunal also observes feedback sent directly to management summarizing incidents of interpersonal friction or confrontation between the Applicant and her colleagues.

115. The Tribunal considers that, in line with the feedback received through the performance portal, a majority of the summarized feedback in the Applicant's updated FY23 performance evaluation is positive. The summarized feedback captures the Applicant's strengths that were identified not only by clients but also by ITS peers, including acknowledgments of her "proficiency

and the positive influence she has on client experiences," appreciation for her "contributions and perspectives on mobility-related topics," and favorable feedback on her contributions to a number of listed projects.

116. The Tribunal further observes that the twice-revised FY23 performance evaluation includes two sentences describing feedback provided by ITS peers indicating that there was room for the Applicant to improve her teamwork and her receptiveness to feedback. The Tribunal considers that mentioning this constructive feedback in the evaluation is not only balanced and objective but also a benefit to the Applicant so that she may reflect on her interactions and better navigate the J Building team's dynamic.

117. The Tribunal is satisfied that the summary of the feedback received regarding the Applicant's performance is largely positive and provides a balanced summary of the positive and negative feedback received by management during FY23.

118. The Tribunal finds that the Applicant's twice-revised FY23 performance evaluation has a reasonable and observable basis; it is balanced and is not an abuse of discretion.

Performance rating

119. The Tribunal notes that, following the AR process, management changed the Applicant's FY23 performance rating from a 2 to a 3 and provided the Applicant with a retroactive pay increase corresponding to the updated rating. Unsatisfied, the Applicant contends that the increased rating of 3 still constitutes an abuse of discretion.

120. The Tribunal observes that the Bank's HR Definitions of Performance Ratings define the relevant performance ratings as follows:

> **2 = Below Expectations**
> Staff member fails to meet performance expectations, including workplace behaviors, considering the job requirements and compared to staff at the same grade level. Examples of failure to meet expectations include, but are not limited to: (1) failure to achieve a majority of results objectives; (2) failure to achieve one or more

key results objectives; (3) failure to demonstrate relevant competencies, despite opportunity to do so; or (4) requiring greater than usual support from others to achieve results objectives.

3 = Fully Meets Expectations
Staff member meets all or substantially all performance expectations, including workplace behaviors, considering the position requirements and compared to staff at the same grade level. Staff member's performance does not meet the definition of "Below Expectations" or "Exceeds Expectations in Some Areas".

3+ = Exceeds Expectations in Some Areas
Staff member consistently meets expectations in all essential areas of responsibility, and exceeds expectations in some areas, including workplace behaviors, considering the position requirements and compared to staff at the same grade level.

4 = Exceeds Expectations
Staff member exceeds performance expectations, including workplace behaviors, considering the position requirements and compared to staff at the same grade level, by: (1) achieving results that exceed many or most results objectives; (2) achieving results that substantially exceed one or more key results; or (3) frequently demonstrating relevant competencies above the level expected for the job.

5 = Significantly Exceeds Expectations
Staff member significantly exceeds performance expectations, including workplace behaviors, considering the position requirements and compared to staff at the same grade level by: (1) Consistently achieving results that significantly exceed most or all results objectives; (2) Consistently demonstrating most competencies at or above the highest level expected for the job; and (3) contributing significant improvements within or across business areas.

121. The Tribunal has explained on multiple occasions that there is a link between the performance evaluation and the performance rating (*see, e.g., BY* [2013], para. 31; *BG*, Decision No. 434 [2010], para. 57), and that "the performance rating itself must have a reasonable and observable basis" (*FL (Merits)*, Decision No. 642 [2020], para. 96).

122. In considering whether a performance rating decision amounts to an abuse of discretion, the Tribunal is mindful of the Bank's guidance for managers to award performance ratings within their unit following a normal distribution curve, often referred to as a "bell curve." Adhering to a distribution curve puts a limitation on the manager in assigning high ratings, because the

distribution curve is structured to ensure that most staff members' performance ratings fall into the middle range of the curve.

123. In addition to distribution curve considerations, the Tribunal is also mindful that "[t]he process of establishing performance ratings is based on a comparative assessment of staff members within the same unit" (*DP*, Decision No. 547 [2016], para. 94) and that, "[g]iven the various decisional elements that are properly taken into account in making such a comparative assessment, it is difficult to support a claim of abuse of discretion" (*Marshall*, Decision No. 226 [2000], para. 24).

124. In the present case, the Tribunal considers that the revised performance evaluation conveys that the Applicant had the requisite competencies to achieve her technical performance objectives, and that she largely met those objectives. The Tribunal observes that the revised evaluation further provides mostly positive feedback not only on her technical performance but also, in some instances, on the Applicant's workplace behaviors.

125. The Tribunal also observes multiple instances in the record wherein colleagues expressed concerns regarding the Applicant's workplace behaviors. The record further demonstrates that the concerns raised by colleagues led to managerial intervention to support the Applicant in navigating the team's dynamic. While acknowledging the suggestions for the Applicant to improve her teamwork and receptiveness to feedback, the Tribunal is mindful that, in line with its jurisprudence, needing "some improvements in some areas should not automatically lead to a performance rating of 2." *FH* [2020], para. 55.

126. In *EU*, Decision No. 593 [2018], para. 121, the Tribunal found that a performance rating of 3 was "not incommensurate" with the applicant's performance evaluation, which, the Tribunal observed, was generally positive but identified behavioral issues.

127. In the present case, the Tribunal likewise observes that the Applicant's performance evaluation is generally positive but identifies areas for improvement relating to teamwork and receptiveness to feedback. Acknowledging that the Applicant's FY23 performance evaluation is

generally positive, with some areas identified for improvement, and accepting that there is a link between the performance evaluation and performance rating (*see BY* [2013], para. 31), the Tribunal considers that the Applicant's performance rating must reflect the Applicant's overall good performance. In line with the Bank's defined ratings, the Tribunal considers that ratings of 3 and 3+ are both applicable to good performance.

128. In *Mpoy-Kamulayi (No. 8)*, Decision No. 480 [2013], para. 22, the Tribunal noted that "[r]endering judgment on the appropriateness of a Fully Successful versus a Superior rating comes close to a microscopic review," further noting that "to allow petitions to the Tribunal regarding disagreements as to the correctness of 'Fully Successful' versus 'Superior' ratings would involve unwarranted intrusion on managerial discretion." *See also Yoon (No. 5)*, Decision No. 332 [2005], paras. 47–48; *BI* [2010], para. 33.

129. Although the performance evaluation process in the Bank has changed since the Tribunal issued its decision in *Mpoy-Kamulayi (No. 8)* [2013], here, the Tribunal is similarly petitioned to review the appropriateness of a rating of 3 versus a 3+, both of which are applicable to good performance. The Tribunal considers that this, likewise, comes close to a microscopic review.

130. The Tribunal considers that the identified areas of improvement relating to teamwork and receptiveness to feedback could reasonably have been weighed in favor of a 3 rating during management's comparative assessment of staff in the unit. Noting the identified areas of improvement, the Tribunal is not persuaded that a performance rating of 3 is unreasonable.

131. In view of the above, the Tribunal finds that the FY23 performance rating of 3 does not constitute an abuse of discretion.

132. The Tribunal considers that, in the circumstances of this case, while the Bank erred in initially rating the Applicant's performance as a 2, the Applicant has been made whole by the entry of a revised rating of 3 and the salary adjustment which was retroactively applied when the Bank corrected the Applicant's performance rating, changing it from a 2 to a 3.

OTI

133. The Applicant, dissatisfied with the Bank's reasoning for rescinding the OTI, contends that "[m]anagement abused its discretion by refusing to acknowledge that placing [her] on an OTI was unwarranted."

134. Staff Rule 5.03, paragraph 5, sets out the relevant process for managing performance gaps. It states:

> If a Manager or Designated Supervisor determines that a Staff Member's performance (which includes professional and workplace behavior) is not satisfactory, the Manager or Designated Supervisor may do the following: […]
>
> 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.

135. The relevant considerations for deciding to place a staff member on an OTI are provided for in the Bank's Addressing Poor Performance Toolkit, which states:

> An OTI is an appropriate next step when:
>
> - A Manager's informal efforts to address the performance issue/gap have not yielded the desired results, or
>
> - A Manager has rated staff member performance a "2" or Below Expectations at the end of the evaluation year.

136. The Tribunal observes the AR Reviewer's acknowledgment that a staff member may be placed on an OTI with a performance rating of 2 or 3 and the AR Reviewer's "recommend[ation to] continu[e] with the OTI plan, including the terms of the OTI."

137. The Tribunal notes that the Bank has put in place certain internal reviewing mechanisms, namely AR and PMR, to enable it to self-correct any errors or unfairness in performance

management decisions, including placement on an OTI. Here, this is precisely what the Bank has done. Following the AR process, management agreed with the AR Reviewer's findings that the Applicant's FY23 performance evaluation did not fully or fairly reflect her performance; the Bank further remedied the unfairness by rescinding the OTI, recognizing, through its review of the record, a need for repairing trust between the Applicant and management.

138. The Tribunal considers, under the circumstances of this case, including the Bank's decision to proactively rescind the OTI in good faith, that any failure by the Bank to specifically acknowledge that the OTI was unwarranted does not amount to unfair treatment warranting compensation.

139. The Applicant also claims that she should be compensated for the stress she endured due to her placement on an OTI.

140. In *DC (No. 2)*, Decision No. 558 [2017], para. 81, the Tribunal noted that a "decision to place a staff member on an OTI is not one to be taken lightly." The Tribunal recognizes that, even in instances when, like here, an applicant successfully pleads his or her claims before AR and, as remedy, the OTI is rescinded, the initial placement on an OTI may nevertheless be inherently stressful because "[t]he OTI is a serious exercise with significant consequences for the career of a staff member." *EO*, Decision No. 580 [2018], para. 145.

141. While acknowledging that placement on an OTI may have been stressful to the Applicant, considering the documented performance issues and the Bank's good faith decision to rescind the OTI following the AR process, the Tribunal finds the rescission of the OTI to be an effective remedy and that no additional relief from the Tribunal is necessary for this claim.

WHETHER MANAGEMENT'S ACTIONS CONSTITUTE HARASSMENT AND/OR RETALIATION

Harassment

142. The Applicant claims that the Supervisor's comment, namely, that there was "a problem with the way she thinks," made during an exchange regarding the process for submitting leave requests constitutes harassment. She further claims that there was a pattern of hostility from the Supervisor and Manager. To support this contention, the Applicant explains that (i) her Supervisor, at times, did not greet her right away; and (ii) she was subjected to check-in meetings with both her Supervisor and Manager, causing her to feel outnumbered and intimidated.

143. The Tribunal recalls that the Bank's Anti-Harassment Guidance provides that harassment is any unwelcome verbal or physical behavior that unreasonably interferes with work or creates an intimidating, hostile, or offensive work environment. The Guidance further specifies that "impact —not intent—is the key factor" and explains, in other words, that conduct may amount to harassment if the conduct "could reasonably be interpreted" as offensive or intimidating.

144. While the Tribunal accepts that the Applicant may have genuinely and subjectively felt harassed by the Supervisor's comment and his delayed greetings, it is not convinced that the Supervisor's conduct can be reasonably and objectively considered to be offensive or intimidating.

145. The Tribunal next observes that Staff Rule 5.03 sets out the relevant procedure for annual performance review meetings; it specifies that, at least once per year, a meeting be held between the staff member and his or her manager or supervisor. The Tribunal observes no prohibition in the Staff Rules against both managers and supervisors attending performance review meetings, including check-ins. The Tribunal further observes that, on occasion, the Applicant had a Staff Association Staff Relations Counselor present during the check-in meetings, indicating that the Manager and Supervisor made efforts to help the Applicant feel comfortable during the check-in meetings.

146. On balance, the Tribunal is not convinced that attendance by both the Supervisor and Manager at the check-in meetings constitutes harassment.

147. In sum, the Tribunal finds that there is insufficient evidence to support the Applicant's claim of harassment.

Retaliation

148. The Applicant claims that the FY23 performance evaluation and rating were retaliatory managerial actions taken in response to her using INV's services.

149. The Tribunal recalls that the Applicant raised her claim of retaliation to INV, the appropriate body to investigate such claims. INV closed the investigation at the preliminary inquiry phase, explaining in its notice to the Applicant, dated 3 December 2024, that, "following a thorough preliminary enquiry of the allegation of misconduct you reported to INV on October 25, 2023, INV could not find sufficient evidence to substantiate a violation of staff rules and are therefore closing our review."

150. The Tribunal notes that the work of INV is part of disciplinary proceedings against individual staff for ethical misconduct, whereas the Tribunal is the judicial forum tasked, in this case, to determine whether a performance evaluation and rating were improperly motivated by retaliation such that they must be set aside. The Tribunal will follow the Staff Rules and its jurisprudence in evaluating the claim.

151. The Tribunal has previously acknowledged that retaliation is prohibited under the Staff Rules. In *Bauman*, Decision No. 532 [2016], para. 95, the Tribunal stated:

> As the Tribunal has frequently observed, the Staff Rules are clear that retaliation against any person "who provides information regarding suspected misconduct or who cooperates or provides information in connection with an investigation or review of allegations of misconduct, review or fact finding, or who uses the Conflict Resolution System" is prohibited. […] This prohibition extends also to retaliation

> against any person who is believed to be about to report misconduct or believed to have reported misconduct, even if such belief is mistaken.

152. Staff Rule 8.02 defines retaliation as "any direct or indirect detrimental action recommended, threatened, or taken because an individual engaged in a [protected activity]." The Bank's Code of Ethics explains that a staff member is protected from retaliation if he or she "reports an allegation of misconduct to INT [the Integrity Vice Presidency], [INV,] or a manager, cooperates with or provides information in a related investigation, or uses any of the resources of the [Bank's] Internal Justice Services."

153. The Tribunal has recognized that "it is not always easy for an applicant to produce evidence to support a claim of retaliation." *Harou*, Decision No. 273 [2002], para. 68. Still, "[i]t is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person" (*Bauman* [2016], para. 99); an applicant must make a *prima facie* case "with some evidence to show the […] retaliatory motives behind the impugned decision" (*EY*, Decision No. 600 [2019] para. 134). The Tribunal has explained that a *prima facie* case means, simply, that an applicant "has pointed to facts that suggest that the Bank is in some relevant way at fault." *DP* [2016], para. 97, citing *BI* [2010], para. 47. Once an applicant has established a *prima facie* case, "the burden shifts to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner." *DJ (Merits)*, Decision No. 548 [2016], para. 58, citing *de Raet*, Decision No. 85 [1989], para. 57.

154. In the present case, the record is clear, and it is undisputed, that the Applicant engaged in a protected activity when she filed complaints with INV and that the Supervisor and Manager knew that the Applicant made use of INV's services.

155. The Tribunal considers that there are certain aspects of the record that, without further explanation, might support the Applicant's *prima facie* case. For example, the Tribunal observes that the low performance rating in FY23 is markedly lower than the Applicant's FY22 performance rating of 5, which is the Bank's highest performance rating, defined as "Significantly Exceeds Expectations." Moreover, the Tribunal observes that the Manager and/or Supervisor assigned the Applicant a low performance rating, despite the positive feedback received through the

performance portal, after the they came to know that the Applicant had made a misconduct allegation against them.

156. Assuming *arguendo* that there is a *prima facie* case of retaliation, the Tribunal will next review whether there is a non-retaliatory basis for the FY23 performance evaluation and rating.

157. In conducting this review, the Tribunal first notes that, during the proceedings, the Bank provided to the Tribunal evidence of email exchanges and other communications from the Applicant's colleagues to the Manager and/or Supervisor describing occurrences of interpersonal friction between the Applicant and her colleagues.

158. The Tribunal also notes that the Bank provided a history of the Applicant's performance evaluations, which detail the Applicant's history of workplace behavior issues on another team and under a different supervisor, to demonstrate, generally, that behavioral issues relating to the Applicant's confrontations with peers raised in the FY23 performance evaluation were not unprecedented in the Applicant's performance history.

159. Moreover, the Tribunal notes that the Supervisor first raised concerns regarding the Applicant's style of communication with colleagues during the 19 January 2023 check-in meeting, which predates the Applicant's reports to INV.

160. With respect to the contrasting performance ratings between FY22 and FY23, the Tribunal has previously explained that "there is no rational basis for supposing that a high performance rating in one year gives rise to a presumption that the same rating would carry over to the next or subsequent years" (*Malekpour*, Decision No. 322 [2004], para. 21) and that, "[a]lthough staff members are entitled to protection against reprisal and retaliation, managers must nevertheless have the authority to manage their staff and to take decisions that the affected staff member may find unpalatable or adverse to his or her best wishes." *O*, Decision No. 337 [2005], para. 49.

161. Here, the Bank has demonstrated that the Supervisor's and Manager's treatment of the Applicant was a managerial response to address the feedback they received and not, as the

Applicant claims, retaliation in response to the Applicant's use of INV's services. The Tribunal considers that there is no evidence in the record that the FY23 behavioral issues were fabricated by the Supervisor or Manager.

162. The Tribunal is satisfied that the Bank has sufficiently demonstrated a non-retaliatory basis for the negative comments in the Applicant's performance evaluation.

163. Based on the record, the Tribunal is not convinced that the Manager's and Supervisor's treatment of the Applicant was retaliatory.

DECISION

The Application is dismissed.

/S/Janice Bellace
Janice Bellace
President

/S/ Zakir Hafez
Zakir Hafez
Executive Secretary

At Vienna, Austria, 23 May 2025