

**Decision No. 322****Dariusz Malekpour,  
Applicant**

v.

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

1. The World Bank Administrative Tribunal has been seized of an application, received on March 1, 2004, by Dariusz Malekpour against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Elizabeth Evatt (a Vice President of the Tribunal) as President, Robert A. Gorman, Sarah Christie and Florentino P. Feliciano, Judges. The Bank raised a jurisdictional objection which was sustained by the Tribunal on June 18, 2004. In *Malekpour*, Decision No. 320 [2004], the Tribunal concluded that the application filed on March 1, 2004 by the Applicant was inadmissible, except with respect to the claim relating directly to the Applicant's 2002 Overall Performance Evaluation (OPE). The Tribunal directed the parties to file their pleadings on the merits with respect to that limited claim only. After the usual exchange of pleadings in respect of this limited claim, the case was listed on October 27, 2004 for decision on the merits of the application.

**Background and Procedural History**

2. The Applicant was a Senior Financial Officer, Level GG, in the Corporate Finance Department ("SFRCF," formerly titled "FINCF") of the Bank. At the SFRCF, the Applicant's task was basically to contribute to the development of financial policies of the Bank. After a number of appointments from the Bank as a Consultant, the Applicant became a Regular staff member in 1991 as an Economist, Grade Level 23, in the Bank's Economic Development Institute, National Economic Management Division. In 1993, he joined the SFRCF and worked there since then.

3. The Applicant states that he was unhappy with the working environment of the SFRCF. He claims in his application that in his recent OPEs, including in particular his 2002 OPE (for the period of April 1, 2001 through March 31, 2002), his managers did not evaluate him fairly and properly.

4. The Applicant found his ratings and evaluation unacceptable and filed on November 8, 2002 an appeal (Appeal No. 1242) with the Appeals Committee, challenging the performance evaluation set out in his 2002 OPE.

5. Before the Appeals Committee, the Applicant contended that the evaluation embodied in his 2002 OPE was "the culmination of ... 30 months of retaliation and abusive treatment." The Applicant set out a list of events which, to him, constituted abusive treatment he had suffered at the hands of the SFRCF during the 30 months leading up to his 2002 OPE. As relief, he requested placement in a non-hostile, non-discriminatory work environment in any other part of the Bank; appropriate modification of his Human Resources file to ensure that his OPEs of the preceding three years did not adversely affect his prospects in the Bank; financial compensation for the allegedly unfairly low salary increases given to him by his Director; a fair and impartial review of his eligibility for promotion; and financial compensation for the adverse effect of his allegedly abusive treatment "on the health and welfare of [himself] and his family."

6. The Respondent challenged the jurisdiction of the Appeals Committee over the matters referred to by the

Applicant in his Statement of Appeal, contending that its jurisdiction extended only to issues relating to the fairness or propriety of the Applicant's 2002 OPE. The Applicant's complaints about certain events which had allegedly occurred more than ninety days before he lodged his appeal with the Appeals Committee had not been made, the Respondent asserted, in a timely manner and accordingly should be dismissed.

7. On January 22, 2003, the Appeals Committee resolved the jurisdictional issue and held that it could not consider any alleged management decisions that had been taken more than ninety days prior to November 8, 2002, the date the Applicant came before the Appeals Committee. The Committee concluded that it had jurisdiction to hear the appeal only to the extent it related to the evaluation in the Applicant's 2002 OPE. As noted above, the Tribunal, on June 18, 2004, reached the same conclusion as did the Appeals Committee.

8. The Appeals Committee, after deciding on its jurisdiction, heard the Applicant's contentions about his 2002 OPE. On September 15, 2003, the Committee rendered its Report on the merits of those contentions. The Committee found no abuse of discretion on the part of the Applicant's supervisor in making and completing the Applicant's 2002 OPE. Moreover, the Committee found that the Director had not retaliated against the Applicant in rendering the evaluation of his performance in his 2002 OPE. At the same time, however, the Committee stated that the environment in which the Applicant had worked was "very difficult." That environment included a "lack of communication, trust, and respect between managers and their staff," a situation which was "counterproductive." The Committee also recommended that SFRCF management

provide the [Applicant] with a clearly defined work program commensurate with his skills and abilities, and that management and the [Applicant] agree upon clearly defined expectations of acceptable behavior and communication in the work place in accordance with [the] Bank's practices and policies.

On October 1, 2003, the Acting Vice President, Human Resources, accepted the recommendation of the Appeals Committee and informed the Applicant accordingly. The Acting Vice President stated in her letter to the Applicant:

As you will note, the Committee has unanimously recommended that all requests in relation to your Appeal should be denied. I hereby accept the Committee's recommendation; also, I understand that there are future activities planned to address work programs and environment in your department.

The Applicant has now brought his claims before the Tribunal.

### **Principal Contentions of Applicant and Respondent: Considerations**

9. The principal contentions of the Applicant and the Respondent revolve around the ratings given to the Applicant in the "Results Assessment" and "Behavioral Assessment" portions of his 2002 OPE, as well as the "Overall Comments" made by his immediate supervisor, the Director of SFRCF, in that OPE. The Applicant's performance ratings relate to four distinguishable assignments given to the Applicant and worked on by him during the 2002 OPE review period (i.e., April 1, 2001 through March 31, 2002). With the approval of his supervisor, the Applicant worked on the following four areas: Currency work, Guarantee work, Loan Pricing work and Fixed-Spread Loans (FSL) work. His work in these areas provided the subject matter of the "Results Assessment" in his 2002 OPE.

10. The Applicant was given the following ratings by his supervisor:

#### **OPE 2002**

##### **Results Assessment**

Currency Work Fully Successful  
Guarantee Work Fully Successful

Loan Pricing Work Fully Successful  
 FSL Work Partially Successful  
**Behavioral Assessment**  
 Client Orientation Fully Successful  
 Drive for Results Partially Successful  
 Teamwork Partially Successful  
 Learning and Knowledge Sharing Partially Successful

11. In the “Overall Comments” section of the Applicant’s 2002 OPE, the Director set out the following statements:

While Dariush has a good understanding of the Bank’s financial policies and a good background in economics, it has been difficult to have him contribute effectively to the Department’s work program. Dariush has his own views on which pieces of work he [is] willing or capable of carrying out. He often does not take comments on his work very well and prefers to work to a large extent on his own. At times he indicates the desire to communicate only in written form. The result is that his contribution can form only a part of a finished product or piece of work. I have asked Mr. [G] and Mr. [C] to provide assignments to Dariush that make use of his skills as effectively as possible. However, they have found it difficult to find projects which fit into the Department’s work program and yet meet Dariush’s academic requirements and skills. The role of the Department as it has now evolved requires much more focus on practical issues of financial strategy and the application of financial policies that require close interaction with colleagues in the Department and with Treasury and CTR, an array of practical financial and modeling skills and a knowledge of market instruments and techniques. These are the kinds of skills where Dariush is relatively weak. The result is that increasingly Dariush has little work to perform, even though the Department is fully stretched to meet its work program. I would encourage Dariush to look for opportunities outside the Department where his skills may be effectively used.

12. The Applicant also claims that the Respondent failed to provide him with a “clear work program” during the review period.

13. The Tribunal addresses this last claim of the Applicant first, as it need not detain the Tribunal for long. The Respondent has explained that the SFRCF Director did not set out a formal work program at the beginning of the 2002 OPE review period for a number of reasons. First, he wanted to ensure that the Applicant was assigned to projects which he could deliver and in the course of which he would contribute to the Department’s overall goals. Second, the Director testified before the Appeals Committee that the SFRCF’s work program had unfolded and developed during the review period as policy issues had surfaced and projects which had to be completed on an “urgent[ly] needed basis” had been identified.

14. The Tribunal concludes that the specific work projects that the Applicant was expected to accomplish during the 2002 OPE review period were adequately identified. At the beginning of the 2002 evaluation period, the Applicant was doing Currency work and Guarantee work which he was expected to continue and complete. On June 1, 2001, the Director assigned two additional tasks to the Applicant: the first consisted of Loan Pricing work, in respect of which the Applicant was to report to Mr. C, and the second related to FSL work on which the Applicant was to report to Mr. G. Both of these assignments constituted important “deliverables” that the Director believed were well-suited to the Applicant’s strengths and in which he could be successful. It appears to the Tribunal, therefore, that the Applicant had the substantial equivalent of a “clear work program” he was expected to carry out and on the basis of which his performance would be evaluated.

15. We begin consideration of the Applicant’s claims concerning his 2002 OPE ratings, and the narrative evaluation by his supervisor, by recalling the general principles applicable in this case. In *Desthuis-Francis*, Decision No. 315 [2004], para. 19, the Tribunal referred to the relevant principles in the following manner:

The evaluation of a staff member’s performance is in principle a matter within the Respondent’s discretion.

What constitutes satisfactory performance is to be determined by management (e.g., *Buranavanichkit*, Decision No. 7 [1982], para. 26; and *Buyten*, Decision No. 72 [1988], para. 44) and management's appraisal in this respect is final absent an abuse of discretion. In *Marshall*, Decision No. 226 [2000], para. 21, the Tribunal provided some elaboration of the abuse of discretion standard applicable in reviewing the decisions of a reviewing manager in conducting a performance evaluation and salary review:

Even if the merit rating and SRI were not a product of intentional ill-will, they might still be overturned by the Tribunal if they were arbitrary or capricious. As the Tribunal has often stated, it may review such decisions of the Respondent to determine whether there has been an abuse of discretion, in that the decision was arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

The evaluation of staff performance is an essentially discretionary act entailing the exercise of judgment by management, which is presumed to possess the requisite familiarity with the work of all departmental staff members and to have made many comparative qualitative judgments. As noted by the Tribunal in *Marshall*, Decision No. 226 [2000], para. 21, "[t]hese are prototypically discretionary decisions that are not to be readily overturned by the Tribunal." The task of the Tribunal is not to "substitute its own judgment for that of the management" (*Polak*, Decision No. 17 [1984], para. 43) or to ascertain for itself whether the Applicant's performance during the 2002 OPE review period constituted satisfactory performance. The proper task of the Tribunal is, rather, to determine whether or not management's acts and decisions in connection therewith constituted, or were attended by, an abuse of discretion.

16. We turn to the more specific allegations of the Applicant. As noted earlier, the Applicant's work in the Currency, Guarantee and Loan Pricing areas was rated as "fully successful." 1 The gist of the Applicant's complaint in this respect is that his work in these three areas should have been given a rating higher than "fully successful," that is to say, his work should have been rated as "superior" or perhaps even "outstanding." The Applicant in effect states that his supervisor, the Director, did not fully understand or appreciate the Applicant's work in the three areas.

17. The Applicant complains that the Director, within three hours of having received the Applicant's paper on Currency, identified "weaknesses" in that paper, including its heavy reliance on an incorrect assumption. The Applicant insists that an erroneous assumption in his work was simply not important. He notes that in his 2001 OPE, an earlier version of his Currency work had earned a rating of "superior" from the previous Director. The Applicant requested that his Currency paper be subjected to an independent expert review, a request rejected by the Director.

18. In respect of his Guarantee work, the Applicant asserts that his rating of "fully successful" is unfairly low and arbitrary, considering that prior to 2002 his work on Guarantee was consistently praised and "rarely graded less than superior." In response, the Respondent states that the Director based his rating of the Applicant's Guarantee work on oral inputs or reactions from Mr. G, Mr. C, Mr. P, Mr. W and Mr. B. At the hearing before the Appeals Committee, Mr. P and Mr. B stated that they had not made any input into the Applicant's 2002 OPE that could be construed as "negative." According to the Applicant, Mr. B had nothing but "positive" statements about the Applicant's Guarantee work. The Tribunal considers, however, that characterizations as general as "positive" or "negative" are rarely useful and are not, in and of themselves, inconsistent with the rating standard of "fully successful."

19. The Director stated that he would have rated the Applicant's work on Loan Pricing higher than "fully successful" had the Applicant been prepared to make "drafting changes" that Mr. C had requested in order to meet the requirements of the Board paper, of which the Applicant's work was to form a part. The Applicant did not supply the drafting changes, with the result that Mr. C had to do substantial rewriting of the relevant portion of the Board paper.

20. The Applicant states that his FSL work was rated merely as "partially successful" because his first draft had

been described by the Director as “theoretical rather than practical.” The Director had suggested that the Applicant should include in his FSL paper an analysis of the modeling of the risk margin. This analysis was not provided by the Applicant. The Applicant regards the Director’s assessment as arbitrary because an earlier draft of that paper had been regarded by the Senior Advisor in the Treasury Department as “very good” and as having “practical application.” The Tribunal believes that an appraisal of an earlier version of a staff member’s study or research paper by another staff member or a prior manager cannot in principle foreclose a different evaluation by an incumbent manager, either of the earlier or the current paper. A responsible manager would, of course, give due consideration to a judgment expressed by a predecessor; both are properly presumed to be at once competent and in good faith. But an incumbent manager is entitled to substantial space for exercise of his own judgment in the light of conditions then prevailing. He, not his predecessor, bears responsibility for making discretionary judgments in current situations.

21. Finally, the Applicant contends that his 2002 OPE was unfair and arbitrary because it represented a drastic change from the evaluations of the Applicant in previous years. In his 2000 OPE, the Applicant had received two “outstanding/best practice” ratings, five “superior” ratings and one “fully successful” rating. These ratings resulted in a 5-minus merit rating. His supplemental 2001 OPE included four “superior” and two “fully successful” performance ratings, corresponding to a 3-plus merit rating. The Tribunal has in the past stated that a change in the assessment of a staff member by his supervisors cannot, in and of itself, be regarded as an abuse of discretion (see *Marshall*, Decision No. 226 [2000], para. 24). A staff member is entitled to a fair and proper performance evaluation every year, but there is no rational basis for supposing that a high performance rating in one year gives rise to a presumption that the same rating would carry over to the next or subsequent years.

22. The Respondent went to some length to demonstrate that the performance evaluation set out in his 2002 OPE was consistent with the average performance evaluation of the Applicant over the preceding decade, that is, during the 1990s. The Applicant’s various managers had consistently recognized the Applicant’s strengths in analytical rigor and technical expertise, as well as his weaknesses in oral and written communication and in amenability to teamwork. His overall ratings were neither outstanding nor poor. And even during the year 2000, when the Applicant received unusually high ratings on “Results Assessment” compared to those in his previous OPEs, his manager indicated that the Applicant’s efforts at teamwork could “at best be rated only fully satisfactory” and that “[his] contributions would have [had] even more impact and [impetus] for his career if he were more participatory and [responsive] to feedback.”

23. Turning to the “Behavioral Assessment” portion of his 2002 OPE, the Applicant was rated as “fully successful” in respect of “client orientation.” However, he was rated as only “partially successful” in respect of “drive for results,” “teamwork” and “learning and knowledge sharing.” The Applicant challenges the “Behavioral Assessment” in the 2002 OPE as unfair, arbitrary and inconsistent with the Applicant’s “360 Behavioral Feedback Report.” In respect of all three ratings of “partially successful,” the Respondent states that the Applicant exhibited reluctance to consider any point of view other than his own; that he did not respond well to criticism intended to move him towards improvement in his work; and that he found it difficult to work well with his colleagues, demonstrating instead a desire to work alone with neither supervision nor significant input from others.

24. The Tribunal does not find any arbitrariness in the ratings given to the Applicant in his “Behavioral Assessment.” In *Lewin*, Decision No. 152 [1996], para. 15, the Tribunal stated:

In a previous case the Tribunal has ruled that “the ability to work harmoniously and to good effect with supervisors and other staff members” can properly be taken into account when evaluating the performance of a staff member (*Buranavanichkit*, Decision No. 7 [1987], para. 26). To mention the Applicant’s shortcomings in this respect in her performance evaluation and to regard them, amongst other factors, as a ground for a less than satisfactory rating, certainly cannot be regarded as an arbitrary or improperly motivated assessment, or otherwise as an abuse of power or discretion.

25. In *Buranavanichkit*, Decision No. 7 [1982], para. 26, the Tribunal had occasion to point out that technical proficiency does not exhaust the relevant dimensions of “performance.” The Tribunal in that case discussed the conditions for confirming a probationary appointment, and stated that “[t]hese conditions may refer not only to the technical competence of the probationer but also to his or her character, personality and conduct generally in so far as they bear on ability to work harmoniously and to good effect with supervisors and other staff members. The merits of the Bank’s decision in this regard will not be reviewed by this Tribunal except for the purposes of satisfying itself that there has been no abuse of discretion.” While this statement was made in the context of probationary employment, the Tribunal considers that statement highly pertinent also in the evaluation of performance in a staff member’s OPE.

26. The Applicant further claims in effect that a hostile work environment at the SFRCF prevented him from performing to the best of his ability and contributed to a behavioral assessment lower than was justified. The Applicant claims that the Director as well as Mr. G and Mr. C screamed and yelled at him several times during the 2002 OPE review period. The Respondent basically does not controvert this allegation that the Applicant’s supervisor and some senior staff members at times raised their voices when talking to him. The Appeals Committee upheld the Applicant’s contention on this point:

The Panel finds this type of work environment unacceptable. Although the record shows that the [Applicant] could be difficult at times, and that [the Director] assumed management of a troubled Department, [the Director], as the [Applicant’s] manager, and Mr. [G], as the staff member assigned to oversee the [Applicant’s] FSL Work, had a responsibility to ensure that the [Applicant] was afforded with opportunities to be a productive and valued member of the FINCF team. . . . The descriptions by some of the witnesses of shouting by the managers and nasty comments were abusive and created an inappropriate work environment. Management failed to address what obviously was a festering situation in a forthright manner.

...

[T]he Panel concludes that the environment in which the [Applicant] worked was very difficult. Lack of communication, trust, and respect between managers and their staff was counterproductive.

In response to the Appeals Committee’s recommendation, the Acting Vice President, Human Resources, accepted the need to improve the Applicant’s work environment.

27. Clearly, the Applicant at times was contentious and perhaps exasperating, and the occasional raising of voices by the Director and some of his senior staff was to that extent understandable. It is also true that “[c]riticism or adverse decisions about performance or work assignments does not in and of itself constitute harassment, discrimination or retaliation.” (*Schiesari*, Decision No. 314 [2004], para. 34.) The Tribunal does not believe that the occasional screaming and yelling necessarily had the legal effect of rendering the 2002 OPE ratings and evaluation of the Applicant an abuse of discretion. Nevertheless, the Tribunal considers that screaming and yelling constitute an inappropriate response, particularly in a multicultural community like the Bank, to challenges presented by the character and work habits of a staff member. Such treatment can be expected to generate humiliation and resentment on the part of subordinates.

28. The Applicant finally contends that the performance ratings in his 2002 OPE which he found unacceptable constituted retaliation on the part of his supervisor. According to the Applicant, the retaliation against him commenced when he disagreed with his previous supervisor who, he claims, said that “all finance managers” hated the Applicant and that this hatred was a valid basis for refusal to recommend him for promotion. The Applicant also asserts that the retaliation against him intensified when he sought relief from the Bank’s Conflict Resolution System. In the belief of the Applicant, his 2002 OPE represented the culmination of thirty months of retaliatory and abusive treatment from SFRCF management.

29. The Tribunal is bound to note that an allegation is not a substitute for proof and that the Applicant adduced no evidence either before this Tribunal or before the Appeals Committee that would substantiate his complaints about reprisals on the part of the Respondent. The Tribunal therefore concludes that the Applicant has not

shown that his “Behavioral Assessment” in his 2002 OPE constituted an abuse of discretion.

### **Decision**

For the above reasons, the Tribunal decides to dismiss the application.

---

1 The Human Resources Guidelines for OPEs provided elaborations of the rating of “fully successful” or “fully accomplished”:

- Staff member satisfactorily achieved work goals. Effectiveness of results, quality, quantity, outputs, and/or timeliness consistently met expectations or standards in all aspects.
- Staff member met all behavioral expectations according to standards and demonstrated behaviors were consistently effective.
- Staff member satisfactorily met agreed upon development actions.
- It is expected that most staff members on many items would be rated Fully Successful or Fully Accomplished.

/S/ Elizabeth Evatt  
Elizabeth Evatt  
President

/S/ Nassib G. Ziadé  
Nassib G. Ziadé  
Executive Secretary

At Washington, DC, November 12, 2004