

## Summary of GW v. IFC, Decision No. 686 [2023]

The Applicant challenged the non-confirmation of his appointment and his performance rating of 2.

In July 2020, the Applicant was placed on a one-year probationary period which could be extended by up to one year. In February 2021, the Applicant used inappropriate language during a meeting. He thereafter apologized for his behavior to his colleagues and used the services of an executive coach to better integrate into the workplace culture. The Applicant's Supervisor noted that his colleagues accepted the apology.

In May 2021, a Director met the Applicant for the first time and thereafter informed the Supervisor that he found the Applicant to be condescending and arrogant. The Applicant also received feedback indicating that his tone was "sometimes a bit sharp." On 26 May 2021, the Supervisor extended the Applicant's probation by 6 months, indicating that the Applicant should improve "a bit" on his professional behavior.

Noting that "unsatisfactory performance as applied in the case of probation is broader than that of a confirmed staff member," and considering that the Applicant had some, albeit resolved, professional behavior issues arise during the first several months of the probationary period the Tribunal decided it would not set aside the probation extension decision. The Tribunal considered that the probation extension was more of a precaution than a warning to the Applicant that his position was at risk for non-confirmation as indicated by the Supervisor's comment that the Applicant "should not interpret [the probation extension] as a negative as his work performance has been very good."

Following the probation extension, no further incidents of unprofessional behavior were cited in the record. The Tribunal examined the behavioral issues occurring prior to the probation extension as the bases for the non-confirmation decision and determined that for the Supervisor to solely invoke behaviors occurring prior to the probation extension as the basis for the non-confirmation, in these circumstances, was unreasonable. The Tribunal viewed as unfair the IFC's failure to allow the Applicant any genuine opportunity during the probation extension to demonstrate his suitability for continued employment with the IFC.

A new IFC procedure denoted that IFC staff members whose probationary periods were extended during the performance cycle would automatically receive a rating of 2 unless the probationary period was extended due to extenuating circumstances and performance could not be assessed. Because the Applicant's probationary period was extended, he received a performance rating of 2. The Tribunal determined the IFC's procedure was not in conflict with the Staff Rules or WBG procedures and that the formation of the procedure and application of the procedure to the Applicant were not arbitrary, discriminatory, improperly motivated, or reached without fair procedure. Having upheld the probation extension decision, the Tribunal found the performance rating of 2 to be appropriately assigned to the Applicant.

The Tribunal also determined there were due process violations and procedural irregularities based on its findings that the IFC failed to give adequate warning to the Applicant of the issues purportedly leading to his non-confirmation and failed to give the Applicant a meaningful opportunity to defend himself against the alleged bases for non-confirmation.

**Decision:** The non-confirmation decision was rescinded. The IFC was ordered to remove all records of the non-confirmation decision from the Applicant's personnel file. The IFC was ordered to reinstate the Applicant or compensate him in an amount equivalent to 1.5 years' net salary based on the last regular salary drawn by the Applicant. The IFC was ordered to pay the Applicant 9 months' net salary for the procedural irregularities and failures in due process and pay the Applicant's legal fees and costs.

This summary is provided to assist in understanding the Tribunal's decision. It does not form part of the reasons for the decision. The full judgment of the Tribunal is the only authoritative document. Judgments are available at [www.worldbank.org/tribunal](http://www.worldbank.org/tribunal).