



World Bank Administrative Tribunal

2020

Decision No. 642

**FL,
Applicant**

v.

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

(Merits)

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

**FL,
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 Andrew Burgess (President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche (Vice-President), Janice Bellace, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received on 10 September 2019. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges (i) her Fiscal Year 2018 (FY18) performance evaluation; (ii) her FY18 performance rating and the decision that she failed the Opportunity to Improve Unsatisfactory Performance (OTI) plan; and (iii) her “indefinite access bar to all WBG [World Bank Group] premises.”

FACTUAL BACKGROUND

4. The Applicant, a Jamaican national, joined the Bank in August 2015 as a Senior Program Coordinator in the Change Partnership and Knowledge department of the Bank on a two-year term appointment which was subsequently extended by one year to 16 August 2018. Her responsibilities included strengthening knowledge management and results monitoring, as well as providing strategic support to her manager (Applicant’s Manager). During the course of her appointment, the Applicant implemented several successful programs, received several awards, and was nominated for various accolades.

5. In 2017, the Applicant received a performance evaluation for FY16 in which her Manager commented that the Applicant has “passion, motivation to tackle climate change, [a] deep knowledge of SIDS and great interpersonal skills are great assets.” The evaluation was favorable on the Applicant’s performance, but noted that the Applicant “needs to take [...] [other] team colleagues and peers[’] preferences into account to prevent her eagerness, drive and energy to be perceived as a territorial perspective to work,” and that she is “[a]t times [...] perceived as dismissive of the MDBs [Multilateral Development Banks’] work and that of [the Bank].”

6. In March 2017, the Applicant met with her Manager for her FY17 Mid-Year Conversation. The Applicant was again recognized for her “passion and motivation to the cause of development and climate change,” but was also put on notice for “problematic feedback concerning certain workplace behaviors of [the] Applicant.” Specifically, the Applicant’s Manager noted that the Applicant “continues to be perceived as not having the required level of judgment, neutrality and diplomacy required of her role to engender trust across various partners and because of that alienat[es] others within the team and MDBs.” The Applicant and her Manager then agreed to monthly meetings and the use of a personal coach to improve her performance.

7. Meanwhile, throughout the spring of 2017, the Applicant alleges that she was experiencing “bullying” from another coworker who was “very close to [the Applicant’s Manager].” The Applicant claims that these personal attacks ranged from excluding the Applicant from critical meetings and making snide comments about her to “taking every opportunity to suggest she was not doing her job.” The Applicant claims that this coworker’s behavior continued until she reported it to her Manager in September 2017. Once she had reported the behavior, the Applicant asserts that her Manager “did not respond, did not provide any advice, and did not even say she would investigate.”

8. In August and September of 2017, the Applicant’s Manager completed the Applicant’s performance evaluation for the FY17 Annual Review. The Applicant’s Manager recognized the Applicant’s “key strengths” in addition to her having “achiev[ed] most of her business objectives.” However, the Applicant’s Manager noted, “During FY17 the number of colleagues that came to me and complained about [the Applicant’s] workplace behaviors either by e-mail or in person

increased significantly. I myself experienced some of these behaviors in meetings.” The Applicant’s Manager further noted, “I have had many, many colleagues coming to me with the same type of observations and complaints.” As a result of these performance issues, the Applicant received a performance rating of “2” for FY17.

9. The Applicant inserted the following comments in her Annual Review:

Without compromising the very healthy dynamics of the PPCR [Pilot Program for Climate Resilience Program] team and with the guidance of my coach I will find ways to engage and manage difficult personalities within the CIF [Climate Investment Funds] team and encourage the PPCR team members to work with them.

Not feel vulnerable/ be more confident in reporting team members and advising manager of issues within the CIF team which affect PPCR and greater team morale (mine included).

Ensure that my passion and enthusiasm - a cultural norm is toned so as not to be viewed as my being emotional or cast as an ethnic stereotype.

10. On 25 September 2017, the Applicant was placed on an OTI plan. Under the OTI plan, the Applicant was expected to demonstrate by 31 January 2018 specific improvements in her workplace behavior. The Applicant’s Manager also committed to monthly meetings to discuss progress with the Applicant. The Applicant was informed that, if she failed to demonstrate the expected behavior, her employment with the Bank might be terminated.

11. After the Applicant’s OTI plan was issued, the Applicant claims that her Manager increasingly made disparaging remarks revealing a cultural bias against women from the Caribbean. The Applicant claims that offensive remarks were made, such as about her being from “a small island” or “from the Caribbean,” stating that Caribbean women are “aggressive – especially Jamaican women.” According to the Applicant, she was requested to participate in discussing her areas of expertise at the Caribbean Regional Energy Forum in October 2017; however, her Manager wanted to send “a white man without the requisite expertise.” The Applicant states that her Manager told her that “this is the World Bank and you need to think and act globally, not as a Jamaican.”

12. The parties disagree on the occurrence of the progress meetings required in the OTI plan. The Applicant avers that no progress meetings were conducted with her Manager during this time. The Bank asserts that the Applicant's Manager provided the Applicant with ongoing feedback, met with the Applicant on 18 October and 6 November, and also provided feedback by email.

13. On 21 January 2018, the Applicant sent her Manager an email with a one-and-a-half-page note attached to serve as an agenda for her Mid-Year Review. The note included a list of her "Key Achievements."

14. On 26 January 2018, the Applicant's Manager sent the following message to some of the Applicant's colleagues requesting feedback on the Applicant's performance:

I am kindly requesting you to provide me with written feedback on [the Applicant's] performance as an input for her mid-year review process. Please reflect on her professional competencies for the role of PPCR coordinator as well as her workplace behaviors more broadly.

15. On 13 February 2018, the Applicant's Manager met with the Applicant for her FY18 Mid-Year Review Conversation and to review the results of the Applicant's OTI plan. In attendance were a representative of the Bank's Human Resources (HR) department and a representative of the Staff Association. At the meeting, the Applicant's Manager informed the Applicant that she had failed the OTI plan because there were continuing complaints about her behavior. The Applicant and her Manager provided differing accounts about the Applicant's performance regarding the OTI plan. The Applicant's Manager then offered the Applicant a Developmental Assignment (DAIS) with the Environmental and Natural Resources Global Practice and its Latin America (ENR-LAC) unit for a six-month period, as an alternative position.

16. The Applicant claims that, when discussing the DAIS offer, the Applicant's Manager said that if the Applicant accepted the DAIS the OTI plan would be "closed – done with." According to the Bank, the Applicant's Manager explained to the Applicant in a subsequent email that, if the Applicant's DAIS unit would agree to extend her appointment using its budget, the Applicant's Manager would close the OTI plan but that, if the DAIS unit did not extend the Applicant's term

appointment, her appointment would expire in accordance with its contractual terms on 16 August 2018.

17. On the same day, the Applicant's Manager sent the Applicant an email memorializing their discussion on the OTI plan and the Applicant's DAIS. The Applicant's Manager stated:

If however at the end of this 6 months DAIS your performance is not satisfactory (as assessed by the GP [Global Practice] ENR team and management with whom you will be working [...]) your contract will be terminated at the end of the current term, namely, 16 August 2018.

18. After the meeting on 13 February 2018, the Applicant requested another meeting to discuss her Mid-Year Review. The Applicant's Manager did not agree to another meeting. The Applicant's Manager subsequently explained to the Performance Management Review (PMR) Reviewer that there would have been no difference between the OTI plan review meeting "which coincided with her MTR [Mid-Term Review] of performance timing."

19. On or around 1 March 2018, the Applicant began her DAIS with ENR-LAC.

20. On 30 March 2018, the Applicant's Manager entered comments in the ePerformance system under "Mid-Year Discussion" about the Applicant. The following day, the Applicant attempted to insert her own comments into the ePerformance system but could not since the system was locked after the Applicant's Manager entered her comments. After consulting with the Ombudsman and the Staff Association, the Applicant sent an email to her Manager with comments that she would have entered in the ePerformance system.

21. The Applicant's term appointment was scheduled to end on 16 August 2018. Prior to the end of her appointment, the Applicant attempted to schedule her Annual Review discussion for FY18 with her Manager. Several emails were exchanged to organize a time when the Applicant, the Applicant's DAIS Supervisor, and a Staff Association representative would be available, but ultimately the Applicant did not have an Annual Review discussion prior to management's discussion on performance ratings. The Applicant sought to discuss her performance with her Manager, but the Applicant's Manager responded by email, "Since we last discussed, at mid-year

jointly with the staff association representative, about your OTI nothing has changed as far as I am concerned given that you went to do your DAIS and didn't perform any additional tasks within the CIF AU team.”

22. On 16 August 2018, the Applicant's term appointment ended in accordance with her contract terms.

23. On 3–4 September 2018, the management of the Climate Change Partnership and Knowledge department (GCCCI) met to consider performance evaluations including the Applicant's Manager's recommended FY18 performance rating for the Applicant. The management team accepted the Applicant's Manager's recommendation of a performance rating of “2,” based on her assessment that the Applicant's performance for the majority of the year had been unsatisfactory.

24. On 19 September 2018, the Applicant, her Manager, and her DAIS Supervisor met to discuss the Applicant's FY18 Annual Review. Prior to the meeting, the Applicant had requested the presence of a Staff Association representative; however, the Applicant's Manager preferred to have a meeting with only the Applicant and the DAIS Supervisor. After providing the Applicant with feedback on her performance during the DAIS, the DAIS Supervisor left the meeting, leaving the Applicant and her Manager alone. The parties have provided different versions of the conversation which took place between the Applicant and her Manager once the Applicant's DAIS Supervisor left.

25. Following the meeting, the Applicant sent the Staff Association representative an email message titled “Just finished.” In the email the Applicant stated, “Was good and then [the DAIS Supervisor] left. Then [...] [the Applicant's Manager] became another person I left in tears.”

26. Also following the meeting, the Applicant's Manager reported to HR that the Applicant had used threatening language toward her and her daughters.

27. On the same day, at 2100 hours, a Security Officer in the World Bank Security Operations Center sent a message to a Headquarters (HQ) Security Specialist recounting a discussion they had over the phone:

As per your request, here are the details of the incident we discussed over the phone. On September 19 at 2004hrs, HR Manager [...] notified the SOC [Security Operations Center] of a threat incident. The incident occurred on September 19 at 1530hrs in room [...] in the [...] Building. Former staff member [the Applicant] threatened [the Applicant's Manager] and her three daughters. [The Applicant] reportedly said, "You will pay for this suffering threefold, and I am coming after you and your three daughters. I will remember this day forever." The threat came during [the Applicant's] final evaluation. [The Applicant] does not have a Do Not Admit record in the Visitors' System and both of her badges are expired. Your point of contact for this would be [...] in HR.

28. On the same day, at 2105 hours, the HQ Security Specialist responded:

Thank you very much for the report.

I would like the SOC to place a temporary access restriction on [the Applicant] for 24 hours while I discuss the matter with [Human Resources Development Corporate Operations] HRDCO.

Please place a block on her in the Visitor System.

29. On the same day, at 2115 hours, a member of the Security Operations Center responded, stating, "Please see the screenshots below indicating that a Do Not Admit record has been created in the Visitors' System for [the Applicant]."

30. On 20 September 2018, the HQ Security Specialist sent the aforementioned email exchanges to members of Human Resources Development Corporate Operations (HRDCO) including the Manager, HRDCO. The HQ Security Specialist stated, "I will be reaching out to [HR] to obtain additional details on what happened and then we can get together to determine further steps."

31. On 21 September 2018, the Applicant's Manager sent an email to the Security Operations Center with a formal report of the alleged threat:

I am hereby reporting a verbal threat directed at me and my 3 daughters from an ex-staff member of the Bank this past Wednesday, 19th September 2018.

The ex-staff member's name is [the Applicant] and her contract terminated on August 18th. She was inside the Bank's premises to have a final performance review meeting with me and another manager. At the end of that meeting which finished at 4:20pm [the Applicant] told me that whatever I did to her, all the suffering I had caused her over [the] last 3 years would come back to me and my 3 daughters ten times heavier and also that I would remember this day forever.

I informed my management and HR shortly after and I understand that HR contacted security to take the necessary measures. I was also informed by HR that I would be contacted by the security department to receive additional guidance and in the meantime I should contact the police department in the area of my residence to report the case. I contacted them this morning and they indicated to me that I should instead report the case to the police department of the area where the event occurred.

Please confirm whom I should contact to report the case.

32. The Applicant's Manager, in the same email, mentioned a separate incident:

I would also like to take this opportunity to report another event that just occurred to me this afternoon which I don't know if it is at all linked to the above. I was all day in a retreat in [...]. At the end of the day (5:40pm) there was a reception in a room next to the meeting room. I left my purse and computer bag in the chair I was sitting in in the meeting room and walked to the reception area along with many colleagues. When I returned to collect my things my computer bag was there but my purse had disappeared. I contacted the security department of the hotel and along with the employees we started searching [for] the purse. It was found by one of the employees wrapped in a table towel in another room around 15 to 20m later. I opened my purse and all my things had been searched and turned upside down. Nothing was stolen though. No documents or credit/debit cards. I had no money in the purse. The security representative of the hotel informed me they would look through the videos of the cameras they had installed outside the meeting room and would contact me back.

Is there anything else I should do regarding this event as well?

33. On 24 September 2018, the Applicant received the following email from an HR Specialist, addressed to the Applicant's personal email account:

I am writing to notify you that, based on incidents as reported by the World Bank Group (WBG) Corporate Security Office involving threatening language used by

you against another WBG staff member, you have an access restriction to all WBG buildings with immediate effect.

Should you have any questions or concerns with regard to this matter, please contact myself or my manager, [HRDCO], copied on this email.

34. On 25 September 2018, the Applicant responded to the HR Specialist stating:

I read this email with great concern and dismay. I have no idea what this is about. What incidents? Reported by whom? I've never threatened anyone! I've never used any language that can be remotely viewed as such. I would appreciate your providing me with an account of these allegations so that I may immediately address.

I'm on my way home to Jamaica but will be returning to meet with Staff Association about a pending Tribunal/[Peer Review Services] case. Kindly advise what this ban means and what due process [is] involved in addressing these accusations. When do I speak to Ethics about this?

35. The Applicant did not receive a response.

36. On 1 October 2018, the Applicant sent an email to the Manager, HRDCO with the HR Specialist in copy. The Applicant reiterated her request for an account of the allegations that were made against her.

37. On 4 October 2018, the HR Specialist responded to the Applicant's email stating:

To elaborate on my email of September 24, 2018, we received a report that you made threatening remarks against a staff member and the staff member's family.

In these circumstances, the Bank has full discretion to take necessary action to ensure the safety of its premises and its staff.

As such, your access restriction remains in place. If you need to enter the WBG for business purposes, please make sure to notify us ahead of time so that necessary arrangements can be made.

If you have further questions or concerns, please let myself or my manager, [HRDCO] (copied here), know.

38. On 18 October 2018, the Applicant sent an email to the Manager, HRDCO and copied certain representatives of the Staff Association. The Applicant stated that she had yet to receive a response from him to her email of 1 October 2018. The Applicant referred to the 4 October 2018 email from the HR Specialist and stated:

As such, I am again, kindly requesting from you (not [the HR Specialist]) any information on this allegation, as I remain at a complete loss and need to ensure that this serious and damaging allegation is fully addressed.

Again, I remain at a complete loss and am taking these allegations and the due process which have and [are] still being denied, very seriously.

39. On the same day, the Manager, HRDCO responded to the Applicant:

In September 2018, it was reported you threatened a staff member and her daughters. This was reported to WBG Security and as a precautionary measure, a bar to your entry onto WBG premises was put in place and you were informed in writing of same. If you would like to comment or explain what happened, you may certainly write to me and/or WBG Security.

40. On 26 October 2018, the Applicant responded to the Manager, HRDCO stating that she remained “at a complete loss regarding these defamatory allegations.” The Applicant requested “an explanation” so that she would know “what exactly is going on and at the very least be able to respond.”

41. On 29 October 2018, the Manager, HRDCO responded to the Applicant informing her that her “reported threat occurred [on] Wednesday, September 19, 2018.” He suggested that the Applicant check her “calendar as to whom [she] spoke with on that day.”

42. On 1 November 2018, the Applicant wrote to her Manager requesting her Annual Review and her performance rating.

43. On 2 November 2018, the Applicant responded to the Manager, HRDCO stating:

Based on the vague and obscure reference in your email, I have to assume that my former manager [...] has fabricated a false charge against me as a result of a

difficult conversation with her on 19th September immediately following my meeting with her and [the DAIS Supervisor] to discuss my End of Year 2018 performance.

44. In the same email, the Applicant provided the Manager, HRDCO with her account of the conversation between herself and her Manager:

I expressed my disappointment at the difficult time I had had under her leadership, including not having her support against what I perceived to be bullying by a male member of staff. I told her that I was confounded that she – as a woman and a mother of girls – not only chose to ignore my complaints but, even more hurtful, she breached my confidence by reporting me to the bully, as evidenced by the fact he accosted me the following day with the information I shared with her. She then got very angry and asked me to leave her daughters out of this – to which I responded that this was merely intended to put my disappointment in context. She continued to say things against me (I was too upset to be able to recall now exactly what she was saying). Because I was so uncomfortable, I gathered my notes and handbag and reiterated my disappointment. I nonetheless thanked her and told her “It’s OK [...], I leave you to Karma as I am a firm believer in what goes around comes around”. I wished her good day, walked out and left her in the room.

45. The Applicant then stated in her email:

I trust that after reviewing my version of events - and perhaps talking to [the DAIS Supervisor] who has been my supervisor for 6 months, who was there for the first part of the meeting, and who would I am certain give you her opinion of my good character - you will immediately withdraw the access restrictions of which I was notified by one of your staff, [the HR Specialist]. I look forward to hearing from you promptly that this has been done.

46. Finally, the Applicant stated, “If you decide not to withdraw the restriction, perhaps you can tell me what other recourse I have? Should I make a report to the Ethics Office? Appeal to the Administrative Tribunal? Please let me know what next steps I can take to clear my name.”

47. The Applicant did not receive a response to her email.

48. On 6 November 2018, the Applicant’s Manager responded to the Applicant’s email of 1 November 2018. The Applicant’s Manager stated in part:

At the time I confirmed that based on feedback from most of our team colleagues, other colleagues with whom we worked and my own observations, my assessment was that you are not able to perform the PPCR Coordinator job at the CIF AU at a fully successful performance level, given the inappropriate workplace behaviors that led to your OTI (and are documented in the OTI documents).

[...]

You received feedback regarding your performance during your DAIS from [the Applicant's DAIS Supervisor] on 19th September 2018 but that is feedback that I myself can't give you or include in the system because you were no longer part of the system at the time the assessments were inputted. I recall however [the Applicant's DAIS Supervisor] saying at the meeting that she would be happy to send you her written assessment by e-mail and that can be included in your HR personal record.

Let me also say how surprised I am with your contact given the threats that you conveyed to me and my 3 daughters during the 19th of September 2018 meeting which are absolutely unacceptable.

49. On 18 November 2018, the Applicant filed a Request for Administrative Review (AR) of her FY18 performance evaluation, her performance rating, her placement, and the terms of her OTI plan.

50. In November 2018, the Applicant filed a complaint with the Office of Ethics and Business Conduct (EBC) alleging that her Manager had retaliated against her, and the Applicant later alleged harassment, bullying, and discrimination by her Manager. EBC ultimately concluded that the evidence did not corroborate the Applicant's allegations and closed the case in March 2019.

51. On 11 December 2018, the Staff Association representative sent the Manager, HRDCO an email inquiring whether he had sent the Applicant a response to her email.

52. On 12 December 2018, the Manager, HRDCO responded to the Staff Association representative stating, "Thank you for bringing this to my attention. I am afraid that I have completely dropped the ball and my apologies to [the Applicant] (copied). Will review and respond."

53. On 21 December 2018, the Applicant's Manager sent an email to the Manager, HRDCO and the HR Specialist in response to a conversation she had with the Manager, HRDCO. She stated that she did not think it was "wise to lift the current restrictive conditions on [the Applicant's] access to the WB premises," and expressed that "doing otherwise could indicate a reward of inappropriate behavior and hinting that what happened (her threats to me and my daughters) in fact didn't happen."

54. On 21 December 2018, the Manager, HRDCO sent an email to the Applicant. Through this message, he conveyed that his office had "consulted further with the Corporate Security team which is of the opinion that your limited access restriction to the Bank's premises should remain in place in the interest of preserving safety in the workplace and erring on the side of caution." The Manager, HRDCO also stated that he had spoken with the Applicant's Manager and "she has continued concern(s) for her safety."

55. The Manager, HRDCO added:

Additionally, I note that in your initial response of September 25th, you flatly denied having been involved in any incident in which you used threatening language. In your latest email, however, your story is different referencing a particular altercation with your former manager that occurred on September 19th.

Please know that when the Bank receives a report involving threats of any kind, such matters are taken seriously and dealt with—firmly and swiftly. When a woman comes forward to report harassment and threatening behavior against herself and her children, such a report is believed until otherwise mitigated or resolved.

Given the above, and in the abundance of caution, your limited access restriction will remain in place. As mentioned previously, if you would like to access the Bank's premises, you can notify our office so that the necessary arrangements can be made.

Further, the Internal Justice Services are at your disposal if you would like to challenge the above and below.

56. On 8 January 2019, the Applicant responded to the Manager, HRDCO's email. The Applicant stated that nothing in her explanation of the 19 September 2018 conversation with her Manager could be construed as a threat or could justify the continued access restriction. The

Applicant also noted that in the Manager, HRDCO's email he had "expanded the allegations to be 'harassment and threatening behavior.'" She stated that she had not received a copy of her Manager's written statement, so she was not able to adequately defend herself. The Applicant stated that she would be challenging the access restriction through the Internal Justice Services and added:

On a final note:

You are attempting to imply that I "changed stories" which reveals to me some bias on the Bank's part. Again, as requested in my previous emails to you (Oct 18, Oct 26, Nov 2 and Nov 11), I would appreciate a copy of whatever report and update was conveyed to Corporate Security so that I can benefit from due process. Note that I only became certain that [the Applicant's Manager] was the person behind this because of an email she sent (Nov 6) accusing me of threatening her. As I DID NOT threaten anyone, at any time, I couldn't have imagined how a difficult OPE [Overall Performance Evaluation] discussion has led to this unless it's retaliation. Nevertheless, I will continue with my challenge of her biased treatment of me starting with [Administrative Review] and [Peer Review Services]. (Emphasis in original.)

57. On 17 January 2019, the Applicant's Manager sent the Applicant the FY18 Annual Review and informed the Applicant that her performance rating was a "2." The Applicant claims that, despite having told the Applicant that there was no new feedback, the Applicant's Manager included numerous new criticisms in the Annual Review of the Applicant's tasks and business objectives. In the supervisor's comment section on the Applicant's individual business objectives, the Applicant's Manager stated:

[The Applicant] worked under my supervision for almost 8 months in FY18. Based on my own assessment and based on the inputs from colleagues that worked with [the Applicant] on the delivery of the day-to-day PPCR work, [the Applicant] delivered on some of her individual business objectives but failed to deliver on most of them.

[The Applicant] liaised with the MDBs on the SPCR and projects preparation and submission to ensure compliance at the procedural level; she was also active in encouraging various stakeholders to apply for funding in the context of our Evaluation and Learning work and provided guidance on those; she actively engaged and participated in the [...] Exchange and she led the organization of a BBL on climate resilience micro-finance. Regarding the objectives of providing me with strategic support or supporting the strategic positioning of the CIF PPCR while

[the Applicant] was very familiar with the strengths of the PPCR and would speak about them with passion she struggled in making sound proposals that would take into account the evolution of the climate resilience work within MDBs and the climate finance architecture. She could easily speak about the past, on how PPCR had succeeded but did not demonstrate the necessary skills to position the PPCR strategically into the future.

[The Applicant] didn't deliver on the following individual business objectives:

1. She did not provide leadership nor guidance to the junior staff in the preparation of the semi-annual and results report.
 2. She did not lead regular PPCR portfolio reviews.
 3. She neither provided guidance to the junior staff regarding monitoring the approval, implementation and cancellation of projects or monitoring resource availability nor supervised that work as expected from the PPCR coordinator.
 4. She provided very limited inputs to the junior staff in terms of the development of a new Pipeline Management and Cancellation Policy.
 5. She didn't host monthly PPCR meetings across cross cutting themes to discuss PPCR activities nor did she convene monthly meetings with other program coordinators to share information and build cross-program synergies.
 6. She didn't adequately supervise, mentor or motivate the junior staff she worked with. The staff informed me that they basically worked on their own based on my own overall guidance provided during performance reviews, mid-year discussions and OPE discussions.
 7. The PPCR Pilot Countries Meeting kept being postponed by [the Applicant] and ended up being organized a few months after [the Applicant] left the unit for DAIS.
58. In the supervisor's overall comments section, the Applicant's Manager stated:

During FY18 [the Applicant] was under my supervision from 1st July 2017 to 22nd January 2018, then she moved under the supervision of [the DAIS Supervisor] on DAIS for the remainder of the FY. The DAIS was agreed and supported by both myself and [...] (Senior Director of CCG) despite her not having succeeded in the Opportunity to Improve (OTI) conditions of performance in my unit (GCCCI). Our intention was to give [the Applicant] another opportunity to learn and perform in a different work environment with a different job description and eventually, based on her performance, see if the receiving unit would be interested in keeping her. I was glad to hear from [the DAIS Supervisor] that [the Applicant's] DAIS went well

and that [the DAIS Supervisor] and her team were satisfied with [the Applicant's] contribution and performance as conveyed to [the Applicant] on a tripartite OPE meeting we had in September 2018 ([the Applicant], myself and [the DAIS Supervisor]). [The Applicant] went on a DAIS after having agreed to the terms of such a DAIS (as included in the e-mails to her from February 13th and 22nd), namely, that should the receiving DAIS unit (of [the DAIS Supervisor]) take her and extend her term appointment on their books/budget and transfer [the Applicant] into the unit at the end of the DAIS, I would close her OTI and her term appointment would continue to the extent granted by the receiving DAIS unit; or that otherwise her term appointment would terminate on August 16th, 2018. The latter is what ended up happening.

59. Regarding the Applicant's areas of improvement and behavior, the Applicant's Manager stated:

[The Applicant] needs to focus her professional development in ensuring that she doesn't display unprofessional workplace behaviors. Key areas to look into for improvement include:

1. Controlling her emotions and preventing those from negatively affecting her relationship with colleagues and ultimately the work; to the point where colleagues avoid engaging her in their work and getting engaged in her work;
2. Changing the tone and language she used in her interactions with colleagues through emails and in person which are considered at times unprofessional and disrespectful;
3. Contributing to an environment of trust and collaboration among team members and not being very defensive and territorial regarding her work program;
4. Taking things personally and having difficulties in putting things into perspective; [and]
5. Aggressive demeanor and having issues trusting her colleagues.

60. The following comments of the Applicant's DAIS Supervisor on the Applicant's performance were included in the Annual Review:

[The Applicant] had a very strong six months with GEN04 during her DAIS (and before that working through cross-support throughout FY18), working on a large portfolio. In all of her work, she represented ENR well as a thoughtful, technically strong and politically astute colleague. Below is a snapshot of [the Applicant's] contributions to ENRIGEN04 in FY17 that illustrates her strengths and results. We

regret that we were unable to open a position for [the Applicant] to continue with GEN04.

Degree of difficulty and volume of workload. [The Applicant] carried a full operational load during her DAIS, covering safeguards, operational investment and climate-related analytical work. While the majority of her work program was in the Caribbean CMU, her work on climate expanded beyond that to the whole region. She provided excellent technical inputs in the many projects to which she was assigned the safeguards role or was a key team member representing the environment agenda on DPOs. She also went beyond the technical scope of her work, and helped teams navigate the sometimes very tricky political economy in several countries, providing invaluable insider knowledge. Her work on Grenada and the functional review of the new climate ministry was much appreciated by the client and her colleagues in the Governance GP.

Quality of delivery and knowledge management. [The Applicant's] work on safeguards was robust; though new to the practice within the Bank, [the Applicant's] previous experience and her academic credentials allowed her to quickly get up to speed and become the go to person for the teams with which she worked. When she wasn't sure of something, she was quick to seek out more experienced advice and make sure that the teams got the answers they needed.

Behavior. [The Applicant] became a point of contact on the Caribbean for colleagues across GEN04, and was generous with her knowledge, know-how and network. She conducted herself impeccably throughout, always providing inputs when asked without trying to step in without an invitation, and always remained open to feedback. [The Applicant] is humble, and always open about what she doesn't know, not afraid to ask for input and for help. She also stands up when needed, as happened more than once on the DPO program in which she was often the lone environment voice having to carry that agenda and ensure it was not lost in favor of more straightforward macro-fiscal imperatives.

61. On 31 January 2019, the Administrative Review (AR) was completed and the AR Reviewer found that the Applicant's performance evaluation and performance rating of "2" had a reasonable and observable basis. The AR Reviewer did not review the Applicant's placement on an OTI plan or the terms of the OTI plan because her request for their review was not timely.

62. Also, on 31 January 2019, the Applicant filed Request for Review No. 458 with Peer Review Services (PRS) challenging the restriction of her access to Bank premises.

63. On 4 March 2019, the Applicant received a letter from the PRS Executive Secretary. The Applicant was informed that PRS did not have the authority to review Request for Review No. 458 because it was filed more than 120 days after the 24 September 2018 notification that her access had been restricted.

64. On 11 March 2019, the Applicant requested a Performance Management Review (PMR) of her FY18 performance evaluation and rating in accordance with Staff Rule 9.07, Performance Management Review.

65. On 28 March 2019, the Applicant's Manager provided additional feedback from the Applicant's colleagues to the PMR Reviewer.

66. On 4 May 2019, the PMR Reviewer found that there was no evidence that the Applicant's OTI plan was reviewed in a timely manner. The PMR Reviewer also found that reviews were not documented as required and that management had decided the Applicant's performance rating before her Annual Review discussion. The PMR Reviewer recommended:

1. [...] the rating be increased from 2 to 3 and that she be paid the additional compensation associated with an FY18 performance rating of 3 rather than 2 for the period August 1-16, 2018.
2. In view of the procedural deficiencies in the evaluation of [the Applicant's] performance during FY18 that I found in my review, I recommend that her FY18 Staff Annual Review be removed from her WBG records.

67. On 13 May 2019, the Vice President for Sustainable Development accepted the PMR Reviewer's recommendation to remove the Applicant's Annual Review from her records but declined to increase her rating. However, the Applicant was awarded one month's salary to compensate her for "some shortcomings in the performance management process."

68. On 10 September 2019, the Applicant filed her Application with the Tribunal challenging (i) her Fiscal Year 2018 (FY18) performance evaluation; (ii) her FY18 performance rating and the decision that she failed the OTI plan; and (iii) her "indefinite access bar to all WBG premises." The Bank filed a preliminary objection with respect to the Applicant's challenge of her limited

access restriction. On 30 May 2020, the Tribunal dismissed the Bank's preliminary objection in *FL (Preliminary Objection)*, Decision No. 630 [2020].

69. The Applicant seeks the following:

- (i) removal of the access bar and all records of it from her personnel files;
- (ii) removal of all record of her FY18 performance evaluation from her personnel files if not already done as a result of the PMR process;
- (iii) removal of all record of the "2" performance rating and the fact that she received a zero percent salary increase;
- (iv) an award of a performance rating of at least "3" and the appropriate salary increase rating;
- (v) an apology from her Manager for the alleged abusive treatment of the Applicant; and
- (vi) an apology from the HRDCO for the alleged denial of due process.

The Applicant seeks compensation in the amount of the difference in her salary if she had received a performance rating of "3" as well as the costs of her therapy for post-traumatic stress disorder (PTSD), which was diagnosed as a result of the "abusive treatment she received at the World Bank."

70. The Applicant further requests such additional compensation as the Tribunal deems fair and just for "the violations of due process; the terrible harm to [the Applicant's] career, professional reputation, and personal life; the intangible damages and distress; the loss of employment opportunities; her inability to apply for employment in many agencies because the World Bank has deemed her a 'threat'; and the pain and suffering, including the development of PTSD, caused to [the Applicant]." She requests the amount of \$7,231.25 in legal fees and costs.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Main Contention No. 1

The Applicant's FY18 Annual Review was unfair, inaccurate, and unbalanced; and the performance rating of "2" lacked a reasonable basis

71. The Applicant contends that the FY18 Annual Review was unbalanced and failed to take a fair and full account of many positive factors. According to the Applicant, her positive reviews from her DAIS in ENR-LAC "deserved greater acknowledgment and should have tempered [her Manager's] assessment." Furthermore, the Applicant asserts that her FY18 Annual Review ignored all of her achievements when she was at CIF. The Applicant claims that, because she received inaccurate criticisms of her work and failed to get recognition for her achievements, the assessment was "arbitrary and lacked a reasonable and observable basis. It therefore cannot stand."

72. The Applicant claims that her FY18 Annual Review and review of her OTI plan were unfair because the criticism focused on vague and overlapping "behavior" issues. To the Applicant, there is no indication that her Manager followed the normal process of seeking feedback from designated feedback providers. The Applicant asserts that the FY18 Annual Review failed to consider all relevant and significant facts and instead unduly focused on an "outdated assessment" of the Applicant's behaviors, which was a small part of her overall performance.

The Bank's Response

The Applicant's FY18 performance rating had a reasonable and observable basis, and management agreed to remove her FY18 Annual Review from her personnel file as recommended by the PMR Reviewer

73. The Bank maintains that the Applicant cannot reasonably be awarded anything but a performance rating of "2" because she failed her OTI plan and performed at an unsatisfactory level for eight out of twelve months in FY18. The Bank maintains that, contrary to the Applicant's assertions, management was aware of the Applicant's positive contributions but that, notwithstanding, the Applicant cannot receive a satisfactory performance rating based on some of

her work. The Bank contends that the Applicant failed her OTI plan after she was unable to meet management's reasonable expectations of workplace behavior. To the Bank, the performance rating met the requirements of Tribunal case law and was neither arbitrary nor improperly motivated.

74. The Bank asserts that the review of the Applicant's performance was not arbitrary, discriminatory, improperly motivated, or carried out in violation of a fair and reasonable procedure because the Applicant ended FY17 with a performance rating of "2" and was clearly informed that she exhibited unacceptable workplace behaviors evidenced by a "significant increase in complaints." As a result, the Applicant was placed on an OTI plan. The Bank states that the OTI plan identified seven areas for the Applicant to improve upon, but the same behaviors continued during FY18, as recorded in the Applicant's Manager's notes of the Applicant's FY18 Mid-Year Conversation and affirmed by the Performance Management Review of the FY18 performance evaluation and performance rating.

75. The Bank contends that the Applicant's DAIS, though performed at a satisfactory level, lasted for only about four months of FY18 and that the tasks assigned during the DAIS were appropriate for staff members at a lower grade level than that of the Applicant. The Bank states that it has already accepted the PMR Reviewer's recommendation to remove the Applicant's FY18 Annual Review from her records.

76. To the Bank, there is therefore no claim to adjudicate and the Tribunal does not need to confirm the PMR's recommendation, which the Bank has already accepted. The Bank asserts that the Applicant's "final performance evaluation will have no conceivable consequences, particularly considering that the Annual Review has been removed from her personnel record." More so, the Bank asserts that the existence of procedural shortcomings or violations of due process in connection with a performance evaluation does not necessarily mean that the relevant performance rating lacks a reasonable and observable basis. The Bank maintains that a performance rating covers an entire year, and the fact that a staff member performs some work in a satisfactory manner does not mean that the overall performance of that staff member is satisfactory.

The Applicant's Main Contention No. 2

The Bank denied the Applicant due process with regard to the FY18 Annual Review and conclusion of the OTI plan

77. The Applicant asserts that, because her Manager did not provide her with adequate warning and advance notice of any performance issues, timely and meaningful feedback throughout the review period, or an adequate opportunity to correct deficiencies and defend her performance, the Bank denied her due process.

78. First, the Applicant asserts that she was given no due process rights with regard to a dominant part of her FY18 Annual Review and her OTI plan. The Applicant asserts that her Manager failed to give frequent feedback or keep written records of meetings. The Applicant states that her Manager failed to schedule meetings and then blamed the Applicant's availability. The Applicant also states that her Manager only asked other unit members for feedback for the Applicant four days before the OTI plan discussion was scheduled to be held.

79. Second, the Applicant asserts that, since new criticism was added in her FY18 Annual Review, her due process rights were violated as she was denied the opportunity to address those criticisms. The Applicant asserts that she attempted to discuss her FY18 Annual Review with her Manager for four months and was consistently told that her Manager had "nothing to add" from the Mid-Year Review. The Applicant notes that, when she received her FY18 Annual Review, it contained seven new complaints of which she was unaware. The Applicant claims she had no prior notice of the complaints, had no ongoing feedback on the issues, had never discussed them with her Manager, and had been given no opportunity to defend herself or opportunity to improve on those new complaints.

80. The Applicant also asserts that the FY18 performance rating of "2" violated due process because it was decided prior to her Annual Review discussion. The Applicant states that her performance discussion with her Manager occurred on 19 September 2018, but the rating of "2" was assigned to her two weeks prior, on 3–4 September 2018 at the GCCCI leadership team meeting. The Applicant contends that, because the decision was taken before she had discussed

her performance evaluation with her Manager, she did not have a chance to review it and defend herself against criticisms. Moreover, the Applicant asserts that the rating was flawed because it was based on “an unfair” performance evaluation. The Applicant claims that the performance evaluation was unfair because the leadership team relied on her Manager’s oral presentation which assessed the Applicant’s work during the first half of the fiscal year, included alleged behavioral shortcomings, and ignored all other achievements during FY18.

81. The Applicant claims that her Manager’s refusal to give her the Annual Review document or her performance rating was a gross violation of Principles 2.1 and 9.1 of the Principles of Staff Employment. According to the Applicant, under Staff Rule 5.03, paragraph 2.01(b), her Manager was required to “provide the staff member with a written summary assessment of the staff member’s performance during the review period.” The Applicant asserts that she requested her written assessment for four months and that her Manager failed to comply with the requirement.

82. Finally, the Applicant asserts that the procedural shortcomings were serious and deserved more compensation than what was provided. To the Applicant, the procedural shortcomings do not overshadow the fact that the review was still imbalanced. The Applicant asserts that one month’s salary is insufficient to remedy the mistreatment she suffered given that she suffered due process violations and the mishandling of the performance review.

The Bank’s Response

The Applicant was compensated for the procedural deficiencies in her FY18 performance evaluation

83. The Bank asserts that the Applicant was already compensated for the procedural deficiencies related to her FY18 Annual Review. The Bank maintains that the Applicant’s review was not “unfair, inaccurate, and unbalanced” because the Bank followed requirements listed under Staff Rule 5.03 and that the Applicant was put on notice of any performance issues which she had ample time to address.

84. The Bank maintains that the Applicant was put on notice of her performance issues in FY17. She was placed on an OTI plan that specified the performance issues that the Applicant was required to address. Furthermore, the Bank claims that the Applicant had ample time and opportunity in FY18 to address and respond to the specific behavioral issues that management considered unacceptable. The Bank states that the Applicant had a Mid-Year Conversation and received feedback from her Manager on her performance, including the results of her OTI plan.

85. The Bank maintains that the Applicant's Manager was willing and able to conduct the OPE discussion with the Applicant but that, because the Applicant wanted both her Manager and her DAIS Supervisor present, scheduling difficulties prevented a meeting prior to the Applicant's performance rating assignment. Last, the Bank asserts that it has already recognized the procedural shortcomings in the Applicant's performance evaluation and agreed to remove the Applicant's FY18 Annual Review from her personnel file and to award compensation for the procedural shortcomings.

86. To the Bank, the compensation of one month's salary was an adequate remedy for any procedural shortcomings. The Bank contends that the Applicant does not actually explain the extent of alleged damages and provides no evidence of damages. The Bank further contends that the Applicant separated from the Bank in accordance with her appointment. Thus, because her career with the Bank then ended, her final performance evaluation will have no conceivable consequences, particularly considering that the Annual Review has been removed from her personnel record. The Bank asserts that, even though there is a lack of clear damages and harm, management still agreed to pay the Applicant one month's salary to compensate her for the procedural shortcomings in her FY18 performance evaluation.

The Applicant's Main Contention No. 3

The access restriction placed on the Applicant was without justification and denied her all due process

87. The Applicant contends that the access restriction was placed without justification and denied her due process. The Applicant further asserts that the Bank was obliged to make expressly

clear the nature, duration, and rationale for each flag placed in the Bank's records. The Applicant claims that the Bank refused to provide her with sufficient information about the complaints against her and accordingly "went to great lengths not to facilitate her right to reply." More so, the Applicant claims that there was never any indication of the duration of her access bar in the communications, which is contrary to the Tribunal's clear instruction that the Bank must inform the individual of the duration or length of any restriction. The Applicant observes that the Manager, HRDCO admitted that his decision for the continuation of the access bar was imposed "in the abundance of caution." To the Applicant, this suggests that the Applicant could not take any action to resolve the issue. The Applicant also notes that her Manager did not express actual concerns for her safety.

88. The Applicant asserts that the measures proposed by HR to bar her from access to the Bank premises "have such a serious impact on the Applicant's whole future." The Applicant claims that she suffers ongoing harm from the access bar because she has remained unemployed as a result of difficulties obtaining employment while being listed as a security risk by the Bank and from the medical impact caused by her treatment by the Bank.

The Bank's Response

The Applicant is a former staff member with no apparent reason to access the Bank's premises, and the limited access restriction constitutes a reasonable exercise of discretion

89. The Bank contends that the limited access restriction was a reasonable exercise of discretion because the Applicant is a former staff member and has no apparent reason to access the Bank's premises. The Bank maintains that it has a duty to ensure the safety and security of its staff and that, in order to do so, it has a right to restrict access to its premises.

90. The Bank states that it received a report that the Applicant had used threatening language against her former Manager. The Bank acknowledges that "[i]t is, of course, impossible to know for certain if [the] Applicant actually used the words ascribed to her or if [her Manager] fabricated the allegations against [the] Applicant, since no one else was present at the meeting at the time." The Bank claims that it had to "determine whether to do nothing or do something." The Bank

states that it decided to mitigate potential threats and impose a limited access restriction requiring the Applicant to notify HR in order to access Bank premises. The Bank maintains that the access restriction constitutes a minimal burden on the Applicant and a reasonable precaution for the Bank since the Applicant is a former staff member with no apparent need to access the premises.

91. The Bank further asserts that the Applicant was informed about the limited access restriction a few days after the Annual Review discussion and that she could have reasonably concluded that the restriction was related to those events. The Bank contends that, after a follow-up from the Applicant, it provided further information, which the Applicant considered “sufficient to respond” and did so. The Bank contends that it should not be held to a standard of perfection and that a staff member who has received a slow response, or an initial response that does not contain enough details to respond, should not therefore be entitled to thousands of dollars in compensation.

92. Thus, to the Bank, the Applicant received written notice of the limited access restriction and its rationale, and she had an opportunity to respond, after which the Bank reviewed its initial decision and concluded that the limited access restriction should remain. To the Bank, the Applicant was afforded reasonable due process.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

WHETHER THE APPLICANT’S FY18 ANNUAL REVIEW WAS UNFAIR, INACCURATE, AND UNBALANCED, AND WHETHER THE PERFORMANCE RATING OF “2” LACKED A REASONABLE BASIS

93. The Tribunal’s assessment of performance evaluations is limited to determining whether the decision in question was arbitrary, discriminatory, improperly motivated, or carried out in violation of a fair and reasonable procedure. *See BY*, Decision No. 471 [2013], para. 33; *Prudencio*, Decision No. 377 [2007], para. 73. In *Desthuis-Francis*, Decision No. 315 [2004], para. 23, the Tribunal held that the Organization must be able to

adduce [...] a reasonable and objective basis for [an] adverse judgment on a staff member’s performance. [...] The Tribunal considers that failure on the part of the

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

94. The Applicant contends that the FY18 Annual Review was unbalanced and failed to take a fair and full account of positive feedback she received in her DAIS as well as her achievements throughout the year. The Applicant claims that, because she received inaccurate criticisms of her work and failed to get recognition for her achievements, the performance assessment and rating of "2" were "arbitrary and lacked a reasonable and observable basis, and therefore cannot stand."

95. The Bank contends that the Applicant's DAIS, though performed at a satisfactory level, lasted for four months of FY18 and that the DAIS assigned tasks appropriate for staff members at a lower grade level than the Applicant's. To the Bank, the Applicant cannot reasonably be awarded anything but a performance rating of "2" because she failed her OTI plan and performed at an unsatisfactory level for eight out of twelve months in FY18. All the same, the Bank avers that there is no dispute to adjudicate as it had already accepted the PMR Reviewer's recommendation to remove the Applicant's FY18 Annual Review from her records.

96. The Tribunal observes that the Vice President for Sustainable Development accepted the PMR Reviewer's recommendation to remove the Applicant's Annual Review from her records but declined to increase the Applicant's performance rating. The Tribunal has observed on multiple occasions that there is a link between the performance evaluation and the performance rating (*see BY* [2013], para. 31; *BG*, Decision No. 434 [2010], para. 57), and that the performance rating itself must have a reasonable and observable basis. Thus, contrary to the Bank's assertions, a dispute exists between the parties as to whether there was a reasonable and observable basis for the performance rating of "2."

97. Managers and supervisors have the "responsibility to conduct staff performance evaluations objectively and assign performance ratings based on the performance as a whole,

balancing the positive and negative factors.” *FH*, Decision No. 624 [2020], para. 55. As the Tribunal further held:

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

98. The record shows that during FY18 the Applicant worked in CIF under her Manager’s supervision from 1 July 2017 to 22 January 2018. During that period, the Applicant also provided cross-support assistance to the ENR-LAC unit under the supervision of the DAIS Supervisor. For the remainder of FY18 (February/March 2018 until 30 June 2018), the Applicant transferred out of CIF and worked under the sole supervision of the DAIS Supervisor.

99. The record contains feedback on the Applicant’s performance in CIF as well as her performance in ENR-LAC. The record is divided between feedback formally submitted through the HR ePerformance system (nine feedback providers) at the end of FY18 and feedback solicited by and sent directly to the Applicant’s Manager (three feedback providers) in preparation for the Applicant’s Mid-Year Review in January 2018. The Applicant’s Manager also sent an email to the PMR Reviewer with one-line summaries from feedback providers, including the aforementioned three, although the date of receipt is unknown. The email contained summaries from four feedback providers whose comments were not included in the Mid-Year Review.

100. Having reviewed the totality of the record, the Tribunal is concerned by the overall portrayal of the Applicant’s performance in the Annual Review and by the Bank in its pleadings.

101. While the evaluation of a staff member’s performance is in principle a matter within the Bank’s discretion, “the merit rating and SRI [Salary Review Increase ...] might still be overturned by the Tribunal if they were arbitrary or capricious.” *See Desthuis-Francis* [2004], para. 19, citing *Marshall*, Decision No. 226 [2000], para. 21. The Tribunal has explained that 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.” *Marshall* [2000], para. 21. Furthermore, “[a] performance evaluation should deal with all relevant and significant facts and should balance positive and negative factors in a manner which is fair to the person concerned. Positive aspects need to be given weight, and the weight given to factors must not be arbitrary or manifestly unreasonable.” *Lysy*, Decision No. 211 [1999], para. 68.

102. The Bank contends that the Tribunal should rely mainly on the Applicant’s Manager’s assessment rather than that of the DAIS Supervisor. However, the Applicant worked with the DAIS Supervisor and in ENR-LAC throughout FY18 first through cross-support work and second through a DAIS. The DAIS Supervisor’s perspectives of the Applicant’s performance and those of her ENR-LAC colleagues cannot be afforded less weight simply because the Applicant spent a month or two less under the DAIS Supervisor’s sole direct supervision. The Annual Review must reflect a complete review of the Applicant’s performance throughout the year, including her performance providing cross support and her performance during her DAIS.

103. The Tribunal observes that the feedback submitted through the formal channel at the end of the fiscal year is overwhelmingly positive. Regarding the Applicant’s professionalism and qualities as a team member, Feedback Provider No. 1 stated that the Applicant worked “in partnership with the TTL [Task Team Leader] and the rest of the team, always with good arguments that help[ed] the full attendance of environmental safeguards issues.” Feedback Provider No. 2 noted, “[The Applicant] is an excellent professional, and an exemplary team player. She is always ready to provide advice, and very responsive to the teams’ needs.” According to Feedback Provider No. 3, “[the Applicant] is very personable and is a solid team member. She is open to the input and opinions of others, is fully respectful of the role of others in a team environment and is effective in engaging with the broader team and arriving at consensual decisions.”

104. Feedback Provider No. 4 worked with the Applicant as one of the co-TTLs for a project and observed that the Applicant was one of the sector colleagues “who were core team members of the operation.” According to this feedback provider, the Applicant was “a very pleasant person

to work with, very collegial, dependable, hard worker, and motivated to do good.” Feedback Provider No. 6 described the Applicant as a “fantastic asset for any Climate Change and Environment Bank initiative as she always thrives [*sic*] to bring innovation to her work program tackling projects with great enthusiasm and thorough strategical thinking.” To this feedback provider, the Applicant was a “great collaborator.”

105. Regarding the Applicant’s leadership skills, Feedback Provider No. 3 observed that the Applicant served as the lead team member on issues of climate resilience, and “contributed in a most substantive manner to the design, preparation and negotiation of the operation and her assistance was invaluable.”

106. The record shows that behavioral challenges were the key theme of the negative written feedback provided by three feedback providers sent to the Applicant’s Manager. According to one feedback provider, the Applicant’s “demeanor of being defensive most of the time discourages the staff to collaborate and work with her.” A second feedback provider stated that, “in general, her approach to most matters appears to be that things are a zero-sum game, and that ‘one is either (under/with) her, or against her.’” The third feedback provider wrote that, “[w]hile [the Applicant] is a cordial person at a personal level, I have found her to be territorial in her professional engagements and not very open to feedback and suggestions. On a few work-related interactions, I have found her to use very sharp language, which was neither desirable nor warranted.”

107. The Applicant’s Manager informed the PMR Reviewer that she had the following “notes [she] made of feedback received from colleagues which [she] used in [her] feedback sessions with [the Applicant].” The comments below are said to be from colleagues who did not submit written feedback to the Applicant’s Manager in January 2018. It is unclear when this feedback was received, the time period to which it pertains, and whether it was shared with the Applicant:

“[The Applicant] can get upset very quickly and she will put that issue ahead of everything else; inappropriate statements; behaviors can only be resolved with a change in attitude and increased psychological self awareness.”

“[T]akes all comments and feedback very personally and not in a constructive way; tends to blame others whenever a wrong decision judgment affecting PPCR is made by her rather than take responsibility for it.”

“[The Applicant’s] absence reduces the level of anxiety and tension in the office.”

“Vocal and unfiltered - often a spark or multiplier of tension within the CIF team and with wider colleagues.”

108. For a balanced review of the Applicant’s behavior, these serious perceptions of the Applicant’s behavior and the above negative feedback must be balanced against feedback such as “[the Applicant] has a great personality” and the Applicant has “very good communication with the [B]ank staff, showing attentive and helpful, very interested and committed [...] very good communication also with the client team, knowing how to listen and understand the problems from the client perspective, but also convincing them in the pursuit of a partnership and commitment to environmental issues.” The Applicant was said to have a “good attitude towards the team,” and to be “an excellent professional, and an exemplary team player.”

109. Specifically, on the Applicant’s openness to receiving suggestions, Feedback Provider No. 9 wrote in the formal evaluation form that the Applicant was “[o]pen to new ideas and suggestions to improve knowledge sharing approaches for the countries.” Feedback Provider 7 stated, “[The Applicant] is certainly one of the best and most passionate environmental specialists I had the pleasure of working with in my 16+ years at the [World Bank]. [...] [H]er passion is only matched by in depth experience and technical knowledge. Moreover, her very friendly and warm demeanor made it a pleasure to work with her and seek [her counsel] on different matters.”

110. The Tribunal observes that only three out of the nine feedback providers in the written evaluation inserted comments on areas of improvement, and only one indicated any area for development. This feedback provider stated that the Applicant “[h]as difficulty receiving constructive feedback; promotes mistrust among colleagues which dampens good team spirit, needs to learn how to recognize the achievements of peers.” This same feedback provider had earlier noted that the Applicant did a great job overall and this feedback provider would “invite her again to join my team if I had the opportunity in the future.” It does not seem that this feedback provider considered the Applicant’s areas of improvement insurmountable. The Tribunal also

notes that this feedback can be contrasted with the comments of Feedback Provider No. 7 who praised the Applicant for creating trust within the team. This feedback provider expressly stated, “By building trust, she created a space where we can discuss freely and solve complex questions, even agree to disagree. I was encouraged to seek her good insights and advice on all questions very soon after our first encounter!”

111. Finally, the negative feedback must be reconciled with the feedback of the Applicant’s co-supervisor who supervised her work in FY18 first through cross support and subsequently on the DAIS. Since the Applicant’s DAIS Supervisor’s comments are noted above, it is sufficient to observe here that her comments comprehensively addressed the degree of difficulty and the volume of the Applicant’s workload, the quality of delivery and knowledge management, and the Applicant’s behavior. The Tribunal finds that the DAIS Supervisor’s comments do not support the Bank’s contention that the Applicant’s work during the DAIS was of lesser difficulty when compared to the work she performed in CIF. According to the DAIS Supervisor, the Applicant carried a “full operational load during her DAIS, covering safeguards, operational investment and climate-related analytical work.” The Applicant’s technical input was described as “excellent,” and the DAIS Supervisor stated that the Applicant was assigned “the safeguards role or was a key team member representing the environmental agenda on DPOs.” The Applicant’s leadership skills were lauded in that she “went beyond the technical scope of her work, and helped teams navigate the sometimes very tricky political economy in several countries, providing invaluable insider knowledge.”

112. The Tribunal notes that the record reveals a stark difference in the assessment of the Applicant’s performance between the Applicant’s Manager and colleagues who provided feedback to the Applicant’s Manager and the Applicant’s DAIS Supervisor and colleagues who entered feedback into the ePerformance system. In balancing the positive and negative feedback, the Tribunal takes further note of the fact that the negative feedback was conveyed by email to the Applicant’s Manager for the mid-term review in January 2018 while the overwhelmingly positive feedback was provided through the formal feedback channel at the end of FY18. In this case, the positive feedback should have been properly reflected in the Annual Review especially as that

feedback was provided through the formal feedback channel at the end of the fiscal year when the overall performance throughout the year is considered.

113. On the whole, the Tribunal finds that the Applicant's performance evaluation and therefore the performance rating of "2" were not balanced and did not have a reasonable and observable basis. The Tribunal recalls that, according to the Bank's Human Resources Definitions of Performance Ratings, a performance rating of "2" corresponds to the label "below expectations" and means the following:

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.

114. The Tribunal notes that, as in *FH* [2020], here, the Applicant's Manager perceived areas for behavioral improvement; however, that alone does not justify a rating of "2." After considering the record as a whole, the Tribunal must be convinced that the behavioral aspects of the staff member's performance were so poor that the overall performance must be considered "below expectations." In *FH* [2020], para. 55, the Tribunal held:

Looking objectively at the overall assessment of the [a]pplicant's performance as documented in the FY 2018 Annual Review, it can be inferred that the [a]pplicant had some performance issues, especially in terms of communication and teamwork. Notwithstanding these performance issues, the record as a whole, considering all the comments made by the Supervisor and the feedback providers, does not support that the [a]pplicant's performance was below expectations. The Tribunal notes that managers and supervisors have the responsibility to conduct staff performance evaluations objectively and assign performance ratings based on the performance as a whole, balancing the positive and negative factors. The fact that a staff member needs some improvements in some areas should not automatically lead to a performance rating of 2. A staff member's performance as a whole should be looked into in order to determine if the staff member's shortcomings fall into the same categories as those mentioned in the Bank's definition of what constitutes a performance rating of 2. A rating of 2 has adverse consequences for a staff member's career in the Bank. Such a negative rating must have a demonstrable basis in the official performance evaluation document.

115. The Tribunal notes that, notwithstanding the perceived areas for behavioral improvement recorded in the performance evaluation, the record also contains positive reviews of the Applicant's professional accomplishments and behavior from feedback providers approved by the Applicant's Manager. Thus, bearing in mind the standards for a rating of "2" in the Bank's Human Resources Definition of Performance Ratings, the Tribunal finds that the totality of the reviews of the Applicant's performance does not support a performance rating of "2."

WHETHER THE APPLICANT WAS DENIED DUE PROCESS REGARDING THE FY18 ANNUAL REVIEW
AND THE CONCLUSION OF THE OTI PLAN

116. With respect to the Applicant's FY18 Annual Review and OTI plan, the PMR Reviewer found that the Applicant's performance during the OTI plan in the first half of FY18 was not reviewed on a regular basis and that reviews, if they did take place at all, were not documented as required. The PMR Reviewer also found that the Applicant's Annual Review discussion was held two weeks following the departmental management team meeting on 3–4 September 2018 where the Applicant's Manager's recommendation of a "2" performance rating was accepted. In addition, the PMR Reviewer found that the Applicant's Manager only sent the Applicant her performance review and performance rating on 17 January 2019 and that the performance review included, for the first time, criticisms of the Applicant's accomplishments, rather than only her behavior as discussed in the Mid-Year Review and referenced in the OTI plan. To the PMR Reviewer, the Applicant was not given an opportunity to respond and defend herself from these new criticisms prior to the conclusion of the performance review and setting of the performance rating.

117. Having reviewed the record, the Tribunal concurs with the findings of the PMR Reviewer. The Tribunal notes that the PMR Reviewer made his recommendations based on a finding that (i) the Applicant's OTI plan was not reviewed in a timely manner and the reviews were not documented as required, and (ii) management decided to give the Applicant a performance rating of "2" before her Annual Review discussion was held. However, the Tribunal finds that there were several other due process violations and procedural irregularities in the conduct of the Applicant's FY18 Annual Review and OTI plan.

118. Due process violations in the conduct of the OTI plan extend beyond non-documentation and sparse reviews. At the core of these failures is a denial of a genuine opportunity to succeed. In *DC (No. 2)*, Decision No. 558 [2017], para. 81, the Tribunal held that a

decision to place a staff member on an OTI is not one to be taken lightly. It is a serious measure with potentially grave consequences for a staff member's employment. *See Mahmoudi (No. 2)*, Decision No. 227 [2000], para. 40. As a result, when instituting an OTI a staff member must be given a genuine chance to succeed, which was lacking in the present case.

119. Moreover, the Tribunal has held that “[t]he OTI is a serious exercise with significant consequences for the career of a staff member. It is designed to provide a last, genuine opportunity for a staff member to demonstrate that he or she is qualified and deserves to remain a productive staff member at the World Bank Group. Both managers and staff members are expected to administer the OTI with the seriousness that it deserves.” *EO*, Decision No. 580 [2018], para. 145.

120. Regarding the Annual Review, there is no indication that the Applicant's Manager sought feedback from designated feedback providers through the normal feedback process. Additionally, the January 2018 meeting was the last feedback discussion the Applicant held with her Manager prior to the conclusion of the Annual Review and setting of the performance rating. That meeting concerned the OTI plan. The Applicant's Manager repeatedly declined further meetings with the Applicant and claimed that she had nothing new to add.

121. The Tribunal shares the PMR Reviewer's concerns about whether the Annual Review included a review of the Applicant's substantive work and about the conclusion that she failed to substantively deliver her work. There is no evidence on the record to support these alleged substantive failures, and furthermore no evidence that these alleged failures were brought to the Applicant's notice. Further, there is nothing on the record to show that the Applicant's Manager took into account the Applicant's summary of her key achievements in CIF prior to her DAIS.

122. While the Bank claims that there is no damage to the Applicant's career since she is no longer employed by the Bank, it is clear that, had the Applicant's performance been rated satisfactory, based on a balanced performance evaluation, she would have received a Salary

Review Increase (SRI) that corresponded to a “3” performance rating. Furthermore, having a failed OTI plan on her record could have a significant impact on future career prospects at the Bank. Given that the Tribunal has found that the Applicant was denied a genuine opportunity to succeed during the OTI plan, the conclusion that the Applicant failed the OTI plan cannot stand.

123. Finally, the Bank has conceded only to some procedural irregularities. As noted above, not only were there procedural irregularities, but the Applicant’s due process rights were also violated. She was denied the opportunity to defend herself against new criticisms of her deliverables and, significantly, was not provided with a genuine chance to succeed on the OTI plan. The Tribunal has emphasized the importance of conducting a formal OPE discussion in accordance with the Staff Rules and in the past has awarded remedies where this rule of procedure was breached. *See BY* [2013], para. 29; *Mpoy-Kamulayi (No. 4)*, Decision No. 462 [2012], para. 46; *Prasad*, Decision No. 338 [2005], paras. 25–27; *Yoon (No. 5)*, Decision No. 332 [2005], para. 65.

124. As a result, the Tribunal finds it necessary to supplement the compensation awarded to the Applicant to reflect the extent of the procedural irregularities and due process violations in this case. In addition, the OTI plan, and any report of her having failed it, must be removed from the Applicant’s record.

WHETHER THE ACCESS RESTRICTION WAS JUSTIFIED AND COMPLIED WITH THE REQUIREMENTS OF
DUE PROCESS

125. The Tribunal will now review the Applicant’s assertion that the access restriction was unjustified and that she was denied due process. As was held in *Q*, Decision No. 370 [2007], para. 50, the Bank is not “precluded from entering and maintaining flags as a preliminary safeguard pending due process, nor must it condition its decisions and actions on the responses of a potentially aggrieved, aggressive or unstable current or former staff member who has been excluded.” The Tribunal has recognized that “[m]aintaining security is a fundamental duty of the Bank to its staff, and to the integrity of the institution, and access to Bank premises is necessarily influenced by security considerations.” *Id.*, para. 37.

126. The Tribunal recalls its finding in *FL (Preliminary Objections)* [2020], that the decision under review is the 21 December 2018 decision of the Manager, HRDCO, to maintain the access restriction. Thus, it is this decision to maintain the access restriction that is under scrutiny to ascertain whether, as with all discretionary decisions, it is sustained by a reasonable and observable basis.

127. The Tribunal observes that there are discrepancies in the descriptions of the threat the Applicant allegedly made. According to the Security Officer, the Applicant allegedly informed her Manager, “You will pay for this suffering threefold and I am coming after you and your three daughters.” This is significantly different from the Applicant’s Manager’s own account of the Applicant’s alleged words. According to the Applicant’s Manager, the Applicant “told me that whatever I did to her, all the suffering I had caused her over the last 3 years would come back to me and my 3 daughters ten times heavier.” There was no mention of the Applicant “coming after” her Manager or her Manager’s daughters.

128. The difference between the accounts of the Applicant’s Manager and of the Security Officer is significant. One account connotes an imminent physical threat while the other does not. Indeed, the Applicant’s Manager’s account suggests a general statement which comports with the Applicant’s acknowledged statement: “I leave you to Karma as I am a firm believer in what goes around comes around.”

129. The Bank has acknowledged that “[i]t is, of course, impossible to know for certain if [the] Applicant actually used the words ascribed to her or if [the Applicant’s Manager] fabricated the allegations against [the] Applicant, since no one else was present at the meeting at the time.” In light of this, an investigation or further examination was warranted in determining whether to maintain the access restriction. Pursuant to the Tribunal’s order for the production of additional documentation, including any records of investigations conducted by Corporate Security and EBC, the Bank stated, “Corporate Security and EBC did not conduct any preliminary examination or investigation into the alleged threat and did not create any reports or draw any conclusions. Corporate Security provided advice to HR, who decided on the limited access restriction.”

130. Having reviewed the record, it is evident that the alleged threat made by the Applicant was not substantiated and that the Manager, HRDCO acted solely on the words of the Applicant's Manager and the advice of Corporate Security which did not investigate the matter. In those circumstances, the Tribunal is not convinced that there is a justifiable basis to maintain the access restriction on the Applicant's record. While the Applicant is a former staff member who may not have a reason to visit the Bank's premises, as the Bank suggests, she is nevertheless entitled to be treated as other former staff members against whom no allegations of threats have been substantiated. The Tribunal notes that, following her 21 December 2018 discussion with the Manager, HRDCO, the Applicant's Manager did not express ongoing concerns for her safety, but rather commented that it would not be "wise" to lift the access restrictions. To the Applicant's Manager, doing so "could indicate a reward of inappropriate behavior and hinting that what happened (her threats to me and my daughters) in fact didn't happen."

131. The Tribunal is of the view that, unlike access restrictions imposed as disciplinary sanctions, an access restriction pursuant to allegations of threats is not a punitive measure and should be maintained only where there is a reasonable basis to do so. There is neither evidence that the threat was substantiated nor evidence that the Applicant's Manager held continued concerns for her safety.

132. In addition to ensuring a reasonable and observable basis for the access restriction, the Tribunal has consistently held that the placement of any flags must follow the basic elements of due process. *See e.g., DK (No. 2)*, Decision No. 591 [2018], para. 90. In *Dambita*, Decision No. 243 [2001], para. 26, the Tribunal emphasized that

the placement of any flags, for whatever purpose, must follow the basic elements of due process, including, specifically, written notification and the right to reply. This applies to present and former staff. The Respondent thus failed to comply with due process in placing the no-access flags without written notification to the [a]pplicant, and without her having been given a right to reply.

133. The evidence overwhelmingly supports a finding that the Applicant was also denied due process in the maintenance of the access restriction. The Tribunal is constrained to reiterate that, to avoid an abuse of discretion in maintaining access restrictions, the Bank must engage in a

good-faith effort to garner the staff member's informed response to the allegations made against him or her, for the purpose of providing an objective decision-maker with sufficient evidence to be able to determine the true nature of the facts and reach a well-founded decision as to whether the flags are to be maintained or removed pursuant to Bank rules and policy. (*Q* [2007], para. 50.)

134. The Bank is "obliged to make expressly clear to the [a]pplicant the nature, duration and rationale of each flag placed in Bank records." *Id.*, para. 42. Staff members including former staff members have a right to reply, and the Applicant must be "provided with sufficient information to exercise her right to defend herself." *See DK (No. 2)* [2018], para. 97.

135. A review of the email exchanges between the Applicant, the HR Specialist, and the HRDCO supports the Applicant's contention that the information she received on 24 September 2018 was incomplete. On 24 September 2018, the Applicant was informed that, "based on incidents as reported by the World Bank Group (WBG) Corporate Security Office involving threatening language used by you against another WBG staff member," the Applicant's access to WBG premises was restricted. The HR Specialist did not convey information on the date(s) of the alleged "incidents," the threats the Applicant was alleged to have made, or any contextual information to facilitate the Applicant's response and defense. Furthermore, there was no information on the duration of the restriction, and it appears, even from the Bank's pleadings, that there is an indefinite restriction on the Applicant's access to the WBG premises.

136. Notably, in the email dated 24 September 2018, there is no mention of the 19 September 2018 conversation the Applicant held with her Manager. The Applicant was left to attempt to decipher from the brief message the charges which were levied against her, including the identity of the person who made the charges, where the incidents occurred, and when the incidents involving threatening language were alleged to have occurred. While a decision to restrict the Applicant's access was communicated to her on 24 September 2018, the Applicant was not provided with sufficient information on that date in accordance with due process for her to defend herself against the decision or to challenge it, especially if, in her view, the words she spoke to her Manager could not reasonably be construed as a threat.

137. The Bank has not proffered any justification for the fact that HR did not provide the Applicant with clear information on the allegations against her in accordance with its due process obligations. The fact that the HR Specialist and the Manager, HRDCO eventually provided some information, albeit only the date of the event, does not remove the Bank's obligation to provide due process to every staff member accused of conduct resulting in the placement of access flags. The failure to provide the Applicant with the relevant information is a violation of the Bank's due process obligations and the obligation to treat staff fairly.

138. The Tribunal finds that there was no reasonable basis for the maintenance of the access restriction and that this was compounded by due process violations which included a failure to provide the Applicant with detailed information that would have enabled her to respond and defend herself.

DECISION

For all the foregoing reasons, it is ordered as follows:

- (1) The Bank shall pay the Applicant compensation in the amount of one year's net salary based on the last salary drawn by the Applicant;
- (2) The Bank shall rescind and remove all records of the OTI plan from the Applicant's personnel records;
- (3) The Bank shall remove the access bar and all records of it from the Applicant's personnel records;
- (4) The Bank shall pay the Applicant's legal fees and costs in the amount of \$7,231.25; and
- (5) All other claims are dismissed.

/S/ Andrew Burgess

Andrew Burgess

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., * 16 November 2020

* In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.