

## Summary of EV v. IFC (Merits), Decision No. 599 [2019]

The Applicant challenged the non-confirmation of his appointment. During the jurisdictional phase of this case, the Tribunal ruled that, in addition to challenging the non-confirmation decision, the Applicant was entitled to submit any claims directly related to the non-confirmation decision to the Tribunal.

The Tribunal found that the extensions of the Applicant's probationary period were reasonable, to give him time to address identified deficiencies. The record showed that, while the Applicant's strengths were recognized by management, his performance was not consistent and the same deficiencies identified in his first year were observed by some staff in his second year. The Tribunal concluded that there was a reasonable basis for the adverse assessment of the Applicant's performance. The Tribunal was satisfied that the non-confirmation decision was not an abuse of discretion.

The Tribunal determined that the Applicant had been given a fair opportunity to prove his ability. The Tribunal was satisfied that the Applicant had adequate supervision and guidance in his first year. However, the IFC did not promptly appoint a supervisor for the Applicant in his second year. Given the importance of proper supervision and guidance during a probationary period, and in the circumstances of an extended probationary period, the Tribunal found that the IFC's failure to provide the Applicant with a supervisor for two months of his first six-month extended probationary period was not reasonable. The Tribunal was troubled by the fact that the Applicant's individual business objectives were not set until the Applicant's Mid-Year Conversation in February 2017.

The Tribunal noted that management conveyed criticisms about the Applicant's performance on several occasions throughout the two-year probationary period. The Tribunal found that the Applicant had been given adequate warning of his performance issues. As the Applicant's probationary period was extended twice, it was reasonable to expect him to understand that a failure to address the identified deficiencies might result in the non-confirmation of his appointment.

The Tribunal found the following procedural irregularities and failures in due process in the course of the Applicant's probationary period: (i) the delay in appointing a supervisor for the first two months of his extended probationary period, (ii) the delay in setting the Applicant's Fiscal Year (FY17) individual business objectives, (iii) the lack of an FY17 Staff Annual Review, and (iv) the failure to provide the Applicant with the written non-confirmation recommendation, which denied the Applicant an opportunity to comment thereon and precluded the decision maker from having all of the necessary information to make his decision. The latter two were particularly serious since they hindered the Applicant's ability to respond to the criticisms against him and defend himself.

**Decision:** The IFC was ordered to pay the Applicant compensation in the amount of three months' net salary, based on the last salary drawn by the Applicant, for procedural irregularities and failures in due process. The IFC was ordered to contribute to the Applicant's legal fees and costs in the amount of \$7,000.00. All other claims were dismissed.

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)