

Summary of EO (No. 2) v. IFC, (Merits) Decision No. 629 [2020]

The Applicant challenged (i) his Fiscal Year (FY) 2017 Annual Review; (ii) his FY2017 performance rating of 2; (iii) the decision not to shortlist him for the Financial Officer position, Job # 170929; (iv) the decision not to select him for the Financial Officer position, Job # 170929; and (v) the refusal to provide feedback on the reasons why he was not shortlisted for the Financial Officer position, Job # 170929.

The IFC agreed to rescind the FY2017 Annual Review and to strike the performance rating of 2 from the Applicant's record. The IFC further agreed that the Applicant would be given a performance rating of 3 for FY2017 and that the corresponding adjustments to the Applicant's annual salary, previous Tribunal award, pension contributions, and disability benefits would be made. The Applicant was satisfied with, and the Tribunal accepted, this remedy.

The Tribunal first found that there was no basis to set aside the Shortlisting Committee's evaluation of the Applicant's qualifications. The Tribunal next found that performance feedback to the same level of detail was not sought for all candidates prior to making the shortlisting decision, and that this treatment of the Applicant by the Shortlisting Committee was arbitrary and contrary to fair procedures and, thus, improper. The Tribunal finally found that a commitment had been made to shortlist VPU staff the first time they applied for a position within the VPU, and that, in not shortlisting the Applicant for the Financial Officer position, as it was the first time he had applied for a different position in a VPU department other than his own, the IFC violated the commitment it had made.

The Tribunal confirmed the IFC is free to accept or reject all or part of the PMR and PRS recommendations. The Tribunal found the record demonstrated a reasonable and observable (though erroneous) basis for the IFC's decisions regarding the PMR and PRS recommendations and that no retaliation occurred in these instances. Regarding the refusal to provide feedback on shortlisting, the Tribunal found that multiple statements were made demonstrating a direct link between the refusal to provide feedback and the Applicant's use of IJS and the Tribunal, amounting to a *prima facie* case of retaliation. The Tribunal also observed that the IFC had not met its burden to "disprove the facts or to explain its conduct in some legally acceptable manner." The Tribunal therefore found that HR's direction to Mr. X to not provide feedback to the Applicant could be construed as a measure of retaliation, and that the Applicant was entitled to compensation.

Decision: The IFC was ordered to change the Applicant's FY2017 performance rating to a 3 and make the corresponding salary and other adjustments, as agreed by the IFC. The IFC was ordered to pay the Applicant compensation in the amount of nine months' net salary, based on the last salary drawn as adjusted, for procedural violations and unfair treatment in the shortlisting process. The IFC was ordered to pay the Applicant compensation in the amount of one year's net salary, based on the last salary drawn as adjusted, for retaliation. The IFC was ordered to pay the Applicant's legal fees and costs. 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