

Summary of FN v. IBRD, Decision No. 632 [2020]

The Applicant challenged the Bank's decision not to confirm her appointment, on the basis that the non-confirmation decision was both substantively and procedurally flawed.

The Tribunal first considered whether the decision not to confirm the Applicant's appointment was an abuse of discretion. Noting that the concept of unsatisfactory performance as applied in the case of probation is broader than that of a confirmed staff member, the Tribunal concluded that there was a reasonable basis for the adverse assessment of the Applicant's performance and that the decision not to confirm the Applicant's appointment was not an abuse of discretion.

The Tribunal next considered whether management failed to afford the Applicant due process. In this respect, the Tribunal examined whether management failed to support the Applicant with adequate supervision and guidance during her probationary period. Considering the Applicant's senior role, the assignment of a mentor, and the assistance provided to the Applicant by colleagues, the Tribunal was not convinced that the Bank failed to provide the Applicant with adequate supervision and guidance during her probationary period.

The Tribunal next considered whether the Bank failed to evaluate the Applicant's performance during her probationary period as required by Staff Rule 4.02, paragraph 2.02(b), concluding that the performance discussions held during the Applicant's probationary period did not satisfy the requirements of the Staff Rule as the Manager did not use these opportunities to address the Applicant's suitability for confirmation.

The Tribunal next examined whether the Applicant was given adequate warning of the deficiencies in her performance in accordance with Staff Rule 4.02, paragraph 3.02. The Tribunal noted that nothing in the communications from the Manager identified any deficiencies in the Applicant's performance, let alone warned the Applicant that a failure to address such deficiencies could result in non-confirmation. The Tribunal therefore concluded that the Applicant was not provided with adequate warning of performance concerns as contemplated by Staff Rule 4.02, paragraph 3.02.

The Tribunal finally considered whether the Applicant was denied any meaningful opportunity to defend herself against the bases for the non-confirmation decision. The Tribunal determined that the Applicant was not afforded the opportunity to respond effectively to the reasons that led to her non-confirmation prior to the decision being made.

Having found serious procedural failures, the Tribunal concluded that the Applicant was entitled to compensation.

Decision: The Bank was ordered to pay the Applicant compensation in the amount of fifteen months' net salary based on the last salary drawn for procedural irregularities and failures in due process and to contribute to the Applicant's legal fees and costs in the amount of \$10,000.00.

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