

## **CL v. IBRD, Decision No. 499 [2014]**

The Applicant challenged the decision of the Vice President and Corporate Secretary (VPCS) to terminate his employment on the ground of unsatisfactory performance and his treatment by the Bank. The Applicant had worked for the Bank since 2000. Until 2010, he had performed well at work and was known as a capable and collaborative team member. In 2010, he underwent spinal surgery and suffered pain and limited movement. His mental health began to deteriorate substantially. He became, in his own words, “profoundly depressed.” He suffered from insomnia and his bodyweight fell by 45 pounds.

The Applicant returned to a full time work schedule in July 2011. He was frequently late for work or took leave without giving notice. In late 2011, the Applicant’s managers formally drew this to his attention. The Applicant’s late arrivals and failures to report to work continued. In June 2012, a new Director of the Applicant’s unit (the “Director”) was appointed. He monitored the Applicant’s performance and attempted to motivate him by making some adjustments to his work program. The Applicant continued to arrive late, to be absent from work, and to behave in a disruptive manner. After several weeks, the Applicant informed the Director that he was taking medication and that his work performance was being affected by health issues.

The Bank’s Health Services Department (HSD) conducted a Fitness for Duty assessment in consultation with Dr. K, a board-certified psychiatrist. The Applicant was assessed to be fit for duty but suffering from a chronic medical condition. The Applicant continued to manifest the same attendance and performance issues as in the past. Since the Applicant had been found fit for duty, the Director decided to implement an Opportunity to Improve (OTI). Some 4.5 months into the OTI, the Director informed the Applicant that he had failed to meet its requirements. In July 2013, the VPCS accepted the Director’s recommendation and notified the Applicant that his employment would be terminated in September 2013 due to his unsatisfactory performance.

The Tribunal concluded that, at the time it was agreed with the Applicant, the OTI was not unfair. It was not biased. It did not include requirements with which the Bank knew the Applicant could not comply. Nor was it unreasonable. It accorded with the medical advice received by the Bank and was reasonably related to the objective of improving the Applicant’s work performance.

The Tribunal noted that its review was limited to ensuring that the Bank exercised its discretion reasonably, not optimally or perfectly. The assessment of reasonableness was to be made in light of what was known by the Bank and what should have been known by the Bank.

The Director’s statement that there was no indication that the Applicant’s health had worsened stood at odds with his April 2013 e-mails to the Applicant noting “a considerable regress rather

than progress” and that since 3 April, the Applicant had “barely been at work at all.” The Tribunal took the view that the record indicated that the Applicant’s behavior in March and April 2013 should have been perceived as an indication that the state of his health had worsened and was affecting his performance. This being the case, the record indicated that an essential fact went unconsidered when the Director decided to end the OTI without requesting a Fitness for Duty assessment. Furthermore, Dr. K’s recommendation that the Director consult again with HSD six-months after the 2012 Fitness for Duty evaluation did not seem to have been shared with the Director. This recommendation was a relevant fact for him to consider in the process of making his decision to end the OTI and recommend the termination of the Applicant’s employment. Not being aware of it, he could not have taken it into account.

The decision to terminate the Applicant’s appointment was rescinded. The Bank was ordered to reinstate the Applicant to the same position or to a position similar to the one he was occupying at the time of the termination of his employment; to place him into the position he would have been in had his employment not been terminated; to remove all references in the Applicant’s personnel file to his failure to meet the OTI requirements and/or to his termination; and to pay the Applicant’s legal costs and expenses.