

**APPEAL BEFORE
THE ADMINISTRATIVE TRIBUNAL OF THE
EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

Staff Member “A”,*

Appellant

v.

Case No. 2017/AT/05

**European Bank for Reconstruction
And Development,**

Respondent.

Decision by the Administrative Tribunal

4 August 2017**

*** Appellant has requested anonymity, and the Tribunal is granting that request.**

**** Pursuant to requests from the parties, the Tribunal issued a redacted version of this decision on 20 September 2017.**

I. Procedural Background

1. Appellant is a [title redacted] at the European Bank for Reconstruction and Development (“Bank” or “Respondent”), having commenced her employment on 3 May 2011.
2. On 29 September 2016, Appellant filed a Request for Administrative Review Decision (“RARD”), which challenged three administrative decisions: (a) 8 April 2016 decision by the Managing Director, Human Resources (“MDHR”); (b) 14 April 2016 decision by Vice President, Human Resources (“VPHR”); and (c) 17 August 2016 decision by the VPHR.
3. Appellant’s grievances were the subject of an evidentiary hearing before the Grievance Committee (“GC”) on 12 January 2017. Testimony was taken from multiple witnesses, and both parties introduced documentary exhibits. A transcript was made of the oral testimony. In addition, written witness statements were taken into evidence by the GC.
4. On 18 April 2017, the GC issued a unanimous recommendation that sustained the grievance in part and denied it in part. To the extent that the grievance was sustained, the GC recommended monetary and non-monetary relief.
5. On 5 May 2017, the President of the Bank issued an Administrative Review Decision (“PARD”) rejecting most, but not all, of the GC recommendations.
6. Appellant filed a statement of appeal to this Tribunal on 26 May 2017. Appellant stated that she does not contest those parts of the GC recommendations that were adverse to her. She asks this Tribunal to reinstate all of the relief that the Grievance Committee had recommended.

II. Factual Background

7. In 2015, Appellant was working in the Office of the Chief Economist (“OCE”). Her Line Manager was the [title redacted]; she also reported to the [title redacted], for work Appellant performed on a part-time basis for the [project redacted].
8. Appellant testified that, during the course of 2015, her Line Manager made several comments to her that she felt were demeaning and bullying. For example, she reported that the Line Manager made such comments as: “No one cares what you do” and “Why do you yawn at seminars?” She took no formal action at the time. The Line Manager testified that there had been difficult discussions with Appellant in 2015, but that they often involved deficiencies in her dealings with co-workers. He also had criticized her for failing to obtain prior authorization for comments she had made in a public blog post relating to work she had performed for the Bank. He denied making demeaning or bullying statements.

9. The Line Manager testified that, when he and Appellant met to discuss her 2015 mid-year performance review, the meeting was “difficult” because, rather than discussing Appellant’s performance, she complained about his conduct and expressed a desire to have a different manager. She nevertheless remained under that Line Manager’s supervision for the remainder of the year.
10. In December 2015, the Line Manager, the Acting Chief Economist and the HR Business Partner for Corporate Functions met to discuss the issuance of the upcoming performance ratings for 2015. In that meeting, Appellant’s Line Manager proposed that she receive a rating of either “meets expectations” or “meets and exceeds expectations.” He also advised that he intended to nominate Appellant for promotion from [title redacted] to [title redacted].
11. The Acting Chief Economist testified that, although he disagreed with the Line Manager’s proposals regarding Appellant, he and the HR Business Partner acceded to the Line Manager’s proposals. The Line Manager testified that he continued to have serious concerns about Appellant’s lack of interpersonal skills, but that she had good research and writing skills; he stated that he hoped a good rating and a promotion would be an incentive to Appellant to improve her attitude towards him and other staff.
12. The Line Manager later informed Appellant that he would be proposing her promotion and that she would be given a “meets expectations” rating.
13. On 3 December 2015, Appellant informed her supervisors that she was pregnant and that, barring unforeseen circumstances, she would take leave from early May 2016 until early 2017.
14. On 17 December 2015, Appellant’s Line Manager issued her a £250 “recognition award” for her “exceptionally hard work” and for “professionalism and ... excellent track record of academic publications in 2015.”
15. On 15 January 2016, the Line Manager submitted the paperwork to nominate Appellant for a promotion, praising her strong skills in research and writing.
16. On 18 January 2016, the Line Manager gave Appellant her 2015 year-end performance review. The rating of “meets expectations” included praise of her “very strong research.” However, the Line Manager also noted deficiencies in her behavioural capabilities, including negative feedback from colleagues who worked with her.
17. After meeting with Appellant, the Line Manager also met with a junior economist who informed him that Appellant had asked her to perform research on a paper on which Appellant was working with a co-author at the [University redacted]. The Line Manager testified that he knew nothing about the paper and that the research was of questionable value to the Bank’s mission.

18. In emails dated 20 and 21 January 2016, the Line Manager questioned Appellant about the research project mentioned by the junior economist. After instructing Appellant not to start any research projects or use research time prior to consulting with him, the Line Manager suggested that he and Appellant meet to discuss the issue. Appellant declined to meet, and stated that the work on the paper was “purely exploratory.” When the Line Manager responded that Appellant was being “cagey and evasive ... about [her] research plans,” she replied that she would not meet with him before speaking to the Ombudsman and/or HR and objected to his characterization of her emails as “cagey or evasive.”
19. On 21 January 2016, the Line Manager found in Appellant’s office a draft of an article entitled “[redacted].” Appellant and a person at the [University identified in paragraph 17 redacted] were listed as co-authors. The 34-page draft, including attached tables, was dated 19 January 2016. The Line Manager testified that he had never authorized Appellant to perform such work.
20. The Line Manager testified that the email exchange on 20 and 21 January 2016 had persuaded him that his prior efforts to change Appellant’s behavioural deficiencies had failed. He accused Appellant of having misrepresented the status of the research paper as being “exploratory” when in fact it was quite advanced. The Line Manager thereafter met with the Acting Chief Economist to discuss Appellant’s conduct.
21. On 23 January 2016, the Acting Chief Economist notified the Line Manager and the Chief Economist-designate that he was implementing the following actions vis a vis Appellant: (a) downgrading her 2015 performance appraisal; (b) issuing an oral warning as part of the performance evaluation process; (c) commencing a Performance Improvement Plan (“PIP”); and (d) withholding promotion. He further commented that he had doubts about Appellant’s ability to continue working in the OCE given recent events, but that he did not want to initiate misconduct procedures against her.
22. On 27 January 2016, the Line Manager met with Appellant and issued her a memorandum incorporating the “oral warning” and initiating the PIP.
23. Along with the oral warning, the Line Manager advised Appellant that her performance rating for 2015 would be lowered (to “meets some expectations) and that she would not be receiving a promotion.
24. On 29 January 2016, Appellant consulted a psychiatrist at the recommendation of her obstetrician. Presenting with the symptoms of anxiety and depression during her pregnancy, Appellant followed the psychiatrist’s advice that she absent herself from work. She commenced sick leave on 1 February 2016, which lasted until the beginning of her maternity leave in May 2016.
25. Pursuant to the “Normal Administrative Process” for grievances (the “NAP”), Appellant requested a review of four actions taken by the Line Manager on 27 January 2016: (a) issuance of the oral warning/PIP; (b) the withholding of promotion; (c) the revision of her performance rating; and (d) the decrease in performance based compensation (“PBC”)

resulting from the downgrading of Appellant's performance rating. Pursuant to the NAP, Appellant submitted her request for review to her Department Head, the Acting Chief Economist. She was apparently unaware that the Acting Chief Economist had either initiated or had been a participant in the decisions she was contesting.

26. In parallel with the NAP, Appellant submitted a complaint to the HR Principal responsible for reviewing complaints of harassment and misconduct. Appellant's complaint charged the Line Manager with harassment, bullying, discrimination and abuse of authority. She contended that this misconduct commenced in 2015 and continued with the personnel actions in January 2016.
27. On 8 March 2016, the Acting Chief Economist responded to Appellant's request for review. He rejected most, but not all, of her complaints. He concluded: (a) an oral warning is not an administrative decision subject to the Bank's grievance procedures; (b) the PIP would not be instituted; (c) the withholding of a promotion was appropriate; (d) Appellant's performance rating should revert to "meets expectations;" and (e) Appellant's performance based compensation and her salary had been set at levels consistent with the "meets expectations" rating. Upon receipt of this decision, Appellant requested that it be reviewed by the MDHR.
28. On 14 March 2016, Appellant was notified that the MDHR, after receiving an assessment from the HR Principal, had decided to refer several issues raised by Appellant to the Office of the Chief Compliance Officer ("OCCO") for further investigation under the Bank's Conduct and Disciplinary Rules and Procedures (Staff Handbook, Annex 13.2). All other aspects of Appellant's complaint of harassment and bullying were found not to involve misconduct and were not referred to OCCO. Appellant appealed this decision to the VPHR.
29. On 8 April 2016, the MDHR issued a decision affirming the Acting Chief Economist's decision of 8 March 2016.
30. On 14 April 2016, the VPHR issued a decision in response to Appellant's request for review of the MDHR's 14 March 2016 disposition of her charges of misconduct against the Line Manager. The VPHR affirmed the MDHR decision in all respects.
31. Upon completion of the OCCO investigation, the MDHR informed Appellant of the outcome on 21 July 2016: "OCCO has concluded that while [the Line Manager] did cause and/or influence the decisions concerning your 2015 Year-End performance review, possible promotion, and oral warning issued on 27 January 2016, these actions could not be regarded as an improper use of his authority as your line manager and are not tantamount to misconduct." Although the MDHR referred the Line Manager to the incoming Chief Economist and the Acting Chief Economist for implementation of an "action plan," formal disciplinary action was not taken against the Line Manager.
32. Appellant appealed the MDHR's 21 July 2016 decision to the VPHR, who issued a decision on 17 August 2016 affirming the MDHR's decision.

33. Appellant next appealed to the Grievance Committee.

III. Grievance Committee Proceedings

34. The GC reviewed the following Administrative Decisions challenged by Appellant:

- a. The 8 April 2016 decision by the MDHR to the extent it: (1) affirmed the Oral Warning; (2) did not authorize an increase in pay and performance based compensation; and (3) affirmed the decision not to promote Appellant.
- b. The 14 April 2016 decision by the VPHR to refer only some of Appellant's allegations of harassment and bullying to the OCCO for investigation (the "investigative decision").
- c. The 17 August 2016 decision by the VPHR, after receipt of findings from the OCCO, that the Line Manager should be referred only for "managerial action," rather than disciplinary action (the "disciplinary decision").

35. The GC observed that all three of these contested decisions involved exercises of managerial discretion and would be reviewed as such pursuant to Article 7.03 of the GC Procedures.

36. The GC issued a preliminary report with recommendations on 27 February 2017; the recommendations addressed all issues except Appellant's request for the recovery of compensation and costs. On the issue of compensation and costs, the GC asked for additional submissions from the parties. Counsel for the Bank objected to this procedure, but the GC accepted additional documentary evidence relating to Appellant's remedial requests.

37. The GC issued a final Report and Recommendation, including Grievant's requests for monetary relief, on 18 April 2017.

IV. Grievance Committee Findings and Recommendations

38. Oral Warning - The GC concluded that Appellant's oral warning was "an Initial Decision which gave rise to an Administrative Decision" that was receivable by the GC. It rejected the Bank's argument that an oral warning is merely an interim step in the performance appraisal process that is not subject to the NAP.

39. On the merits, the GC found that Appellant's comments in emails on 20 and 21 January 2016 were "seriously inappropriate" but that the Line Manager was also at fault in his handling of the email exchanges. The GC recommended that the oral warning "be set

aside *ab initio*” because it was a punitive sanction undertaken without proper investigation

40. Performance Based Compensation - The GC found that Appellant had received an 8% award in performance based compensation, which was at the bottom of the range of performance bonuses (between 8% and 17%) for staff with Appellant’s appraisal rating. It concluded that the 8% bonus was inappropriate because “she must have been near the top of that range.” GC Rep. at ¶119. The GC recommended that the performance based compensation be raised to 15%, equivalent to £3,862.60.
41. Salary Increase - The GC found that salary increases for 2015 were within the range of .7% and .8% and that Appellant received an increase of .7%. The GC concluded that her increase was inappropriate and should be raised to .8%, equivalent to £54.74.
42. Promotion - The GC found that the Acting Chief Economist was the person responsible for rescinding Appellant’s promotion and concluded that doing so was an “abuse of his position and a kneejerk reaction to events that had occurred just days before in respect of which there had been no proper investigation.” GC Rep. at ¶120. As a remedy, the GC did not recommend an automatic promotion, but it recommended that Appellant’s promotion “be reviewed as a matter of urgency....” GC Rep. at 121. The GC nevertheless found that Appellant “is entitled to compensation to take account of the withholding of promotion, the loss she suffered and the disappointment and upset suffered by her.” *Id.*
43. Investigative Decision – The GC found that the HR Principal assigned to review Appellant’s harassment and bullying complaint failed to carry out his responsibilities in a manner consistent with the Bank’s Harassment-Free and Respectful Workplace Procedures. Because of this flaw, the GC found that the discretionary decisions by the MDHR and VPHR were tainted.
44. The GC concluded that, even if the HR Principal had correctly carried out his duties, the Committee could not state that it “would have been irrational of the MDHR to not refer the matter to OCCO” and that it could not forecast that OCCO would necessarily have imposed discipline on the Line Manager. The GC therefore recommended that the investigative decision not be set aside, but it also recommended that Appellant be compensated for the Bank’s failure to comply with its own procedures.
45. Disciplinary Decision – The GC concluded that the MDHR decision to refer the Line Manager for managerial action, rather than discipline, was a legitimate exercise of discretion.
46. Compensation – The GC determined that Appellant should be paid £4,218.51 to compensate her for the failure to be promoted and £43,790.40 in “moral damages.”
47. Costs – The GC recommended that Appellant’s counsel be paid £16,000 plus VAT for his work on the case, representing a total reduction of £2,700 from the amount requested.

48. Additional Relief – Appellant had requested that the GC recommend reinstatement and a period of two years’ unpaid leave. The GC declined to recommend reinstatement and deemed it inappropriate to recommend unpaid leave.

IV. President’s Decision

49. Upon review of the GC’s recommendations, the President of the Bank issued a PARD on 5 May 2017.
50. Oral Warning – The President rejected the GC’s jurisdictional determination that an Oral Warning is receivable by the Committee as an Administrative Decision: “The Oral Warning constitutes only a step in the decision-making process and does not produce any adverse legal consequences for a staff member. Accordingly, it is not an administrative decision subject to review under the GPs.”
51. With respect to the merits of the Oral Warning, the President concluded that it was “issued on a reasonable and observable basis and is a legitimate exercise of discretionary powers.” The President rejected the GC finding that the Acting Chief Economist “misused the unsatisfactory performance management process for an ulterior purpose,” noting that the finding “is not supported in any way in the GC’s Report and Recommendation.”
52. The President concluded that he would delete the Oral Warning from Appellant’s HR file in light of the fact that she had been granted unpaid leave until May 2019.
53. Performance Based Compensation and Salary Increase – The President rejected the GC recommendations regarding these monetary benefits. The President observed that both the PBC and salary increase awarded to Appellant were discretionary decisions and fell within the ranges for remuneration given to employees with her performance rating in 2015.
54. Promotion – The President rejected the GC finding that the decision to halt Appellant’s promotion was an abuse of position. The President found that Appellant’s supervisors reasonably exercised their discretion when they decided not to proceed with her promotion based on her conduct in January 2016.
55. Investigative Decision – The President rejected the conclusion that the HR Principal violated internal Bank law or procedures during his assessment of Appellant’s complaint and noted that all of Appellant’s allegations of misconduct had been submitted to and considered by the OCCO.
56. Disciplinary Decision – The President accepted the GC conclusion that the MDHR properly exercised his discretion with regard to OCCO’s disciplinary recommendation.

57. Compensation – The President rejected all forms of compensation recommended by the GC except for £3,000, which was awarded because Appellant’s Line Manager and the HR representative failed to meet with her prior to issuance of the Oral Warning.

58. Legal Costs – The President awarded legal costs in the amount of £1,000 plus VAT.

V. Statement of Appeal – Appellant’s Position

59. Appellant filed a Statement of Appeal on 26 May 2017. The Appeal states that Appellant accepts all of the GC’s findings and conclusions, including those that were adverse to her. As a consequence, Appellant is no longer contesting the third Administrative decision (17 August 2016 by the VPHR). With respect to the remaining two Administrative Decisions, Appellant makes the following arguments.

60. The Tribunal is required under Article 7.01(b) of the Appeal Procedures to “take full account of the Findings of Fact made by the Grievance Committee in the Grievance Committee’s Report....”

61. The President’s wholesale rejection of the GC recommendations was an abuse of discretion that “undermines entirely the work, and the very purpose of the GC.” App. at ¶4.1.

62. An Oral Warning has the legal effect of being a “performance appraisal *per se*, and has the effect of reflecting negatively on a staff member’s performance, thus initiating a demotion or termination process....” App. at ¶4.8. As a result, a challenge to an Oral Warning is receivable because it has an adverse legal effect on a staff member.

63. If this Tribunal were to disagree with the GC’s interpretation of an Oral Warning, it should still rule against the Bank under the principle of *contra proferentem*. Because the rules governing the receivability of Oral and Written Warnings are not clear and because the Bank was responsible for drafting those rules, they should be interpreted in a manner adverse to the Bank’s interests.

64. The non-receivability of Oral Warnings would be against sound policy: “it would be most surprising, indeed it would defy common sense and the principles of international administrative law, that an individual had no remedy against a formal warning, whether oral or written, unless and until they were either dismissed or demoted.” App. at ¶4.11.

65. The fact that a staff member receiving an Oral Warning may pursue actions under the Conduct and Disciplinary Rules and Procedures or the Harassment-free and Respectful Workplace Rules is not a reason to deny the staff member access to the grievance procedures.

66. The President abused his discretion when he rejected the GC findings that it was improper for the Bank to lower Appellant's 2015 performance rating, which caused a reduction in her PBC/salary increase. He also abused his discretion in rejecting the GC findings that it was improper for the Acting Chief Economist to halt Appellant's promotion.
67. The President improperly rejected the GC's conclusion that the HR Principal violated Bank law and that his deviation from internal procedures justified an award of compensation to Appellant.
68. The President's rejection of the GC's proposed amount of moral damages and his award of only £3,000 "does not come close to appropriate, fair and lawful compensation for having been treated in the manner which the Bank subjected the Staff Member to, and without giving any thought to her pregnancy or how such a treatment could have affected her unborn child." App. at ¶4.23.
69. The President should have deferred to the GC's findings as to the amount of legal costs reasonably expended in the case. Precedent in past GC cases and the facts in this case support the GC findings in this respect.
70. Appellant seeks as remedies from the Tribunal: (a) reinstatement of all financial remedies recommended by the GC; (b) recovery of all legal costs incurred for her attorney's work on this appeal; and (c) urgent review of her promotion.

VI. Bank's Response to Appeal – Respondent's Position

71. Because the Oral Warning has been deleted from Appellant's personal file, she no longer has a cause of action with respect to the warning.
72. An Oral Warning is not an Administrative Decision under the grievance procedures because it is only a preliminary step in the performance evaluation process that does not result in material adverse consequences.
73. The Oral Warning was based on reasonable and observable facts and therefore was a legitimate exercise of discretionary authority.
74. The Bank does not accept the GC's finding that Appellant's supervisors abused their discretion when deciding to address Appellant's behavioural issues through the performance management system, rather than as a matter of misconduct.
75. Appellant's PBC and salary increase were within the ranges for her performance rating of "meets expectation" and therefore do not constitute abuses of discretion.

76. In light of managerial concerns with “Appellant’s behavioural competencies,” the decision to withhold support for her promotion was not an abuse of discretion.
77. The Bank conducted a prompt and thorough RWP investigation of Appellant’s Line Manager. The GC’s finding that the HR Principal misapplied Bank law in carrying out his inquiry are erroneous. In any event, all relevant information and documents were transmitted to the OCCO so that the integrity of the Investigative Decision was not impaired by any alleged defects in HR’s procedures.
78. The President properly limited Appellant’s award of compensation to £3,000. Appellant’s requested amount of moral damages is “objectively unjustified and unreasonable.” Resp. at ¶5.2(1).
79. Appellant’s request for reimbursement of legal costs is disproportionate to the success she actually achieved in this case. An award of £1,000 plus VAT was appropriate. Prior GC recommendations are not precedent for either the GC or the Tribunal.

VII. The Tribunal’s Evaluation

80. Apart from her challenges to individual aspects of the PARD, Appellant reminds the Tribunal that it must take full account of the GC’s findings of fact pursuant to Article 7.01(b) of the AT Appeal Procedures. The Tribunal accepts that it should defer to the GC’s findings of fact, except in limited prescribed circumstances. Article 7.01 does not, however, require the Tribunal to accept the GC’s conclusions drawn from those facts. In this case, the Tribunal believes that the GC’s conclusions failed to give due weight to evidence of Appellant’s performance deficiencies and the significant contribution they made to the events giving rise to this appeal. For example, the GC largely ignored evidence of co-worker dissatisfaction with Appellant and downplayed Appellant’s prior admonishment for failing to obtain supervisory approval for public communications. Article 7.01 does not prevent the Tribunal from addressing relevant evidence that the GC ignores.
81. Appellant also contests the President’s wholesale rejection of the GC’s recommendations that were favorable to her. She contends such action undermines the very purpose of the GC under Bank law. The Tribunal does not find in the Bank’s law any indication that the President is barred from rejecting GC recommendations in whole or in part. To be sure, the President’s decision must comply with Bank law and must not be discriminatory, arbitrary or otherwise an abuse of discretion. One of the functions of the Administrative Tribunal is to review Presidential decisions to ensure compliance with Bank law and with the legal norms governing the international civil service. The Tribunal therefore addresses below the particulars of the President’s decision.
82. Oral Warning. The President’s decision rescinded the Oral Warning issued to Appellant and removed it from her personal file. In light of this action, Appellant’s claim protesting her Oral Warning is now moot. The Tribunal expresses no opinion as to whether an Oral

Warning constitutes an Initial Decision or Administrative Decision. It reserves its opinion regarding that issue until an appropriate future case is presented.

83. Because the Oral Warning claim is not receivable, the Tribunal also expresses no opinion as to the merits of her argument that the Oral Warning was procedurally defective or an abuse of discretion.
84. Performance Based Compensation and Salary Increase. Appellant's performance rating was originally set at "meets expectation" but was then changed retroactively to "meets some expectations." Upon review by the Acting Chief Economist, it was changed back to "meets expectations." The performance appraisal itself is therefore moot. However, Appellant protests that her performance based compensation and salary increase were not consistent with the original rating and the comments in the appraisal that praised her work.
85. The GC found that the applicable range for PBC in 2015 was 8%-17%. It recommended a PBC raise for Appellant to 15% because "she must have been near the top of that range." GC Rep. at ¶119. Similarly, the GC increased Appellant's salary increase without citation to any evidence supporting that number. The Tribunal will take full account of the GC's findings of fact, as required by Article 7.01(b) of the Appeals Procedures, but it will not defer to conjecture by the GC.
86. The Tribunal acknowledges Appellant's point that these two forms of compensation appear to reflect something less than she would have received had her original performance rating remained intact, without the retroactive downgrade and subsequent upgrade. However, the record currently before the Tribunal does not adequately show the actual percentages accorded to other staff in 2015 in the various ranges of ratings, especially the staff in OCE. The Tribunal must therefore withhold for the time being its assessment of the performance based compensation and salary increase for 2015.
87. The Tribunal will not interfere in purely discretionary pay decisions by Bank Management except where evidence points to discrimination, retaliation or some other abuse of discretion; the Tribunal may also reverse a discretionary decision if it deviates from mandatory procedures under Bank law. In this case, the Tribunal cannot decide the abuse of discretion question presented by Appellant based on the record currently before it. The Tribunal therefore requests that the Bank make a thorough analysis of the PBC and salary increase data for staff in 2015 (especially in OCE) and determine, based on a comparison with other staff, whether Appellant should have been given higher percentages than she received. The fact that Appellant's PBC and salary increase fell within the prescribed range does not alone answer the question whether the percentages given to her were punitive or otherwise an abuse of discretion. The Tribunal urges the Bank to consider whether the award of lower percentages to Appellant was punishment for her conduct in January 2016 and therefore inconsistent with the decision to restore her original performance rating. For this reason, the Tribunal also urges that this review be carried out by personnel who had not supervised Appellant in 2015. If Appellant does

not agree with the Bank's decision upon remand, she may return the issue to this Tribunal.

88. Promotion. Appellant's Line Manager submitted a recommendation that she be promoted on 15 January 2016. Appellant was thereafter informed of his decision to propose a promotion. However, promotions in OCE had to be approved by the Chief Economist. The Acting Chief Economist ultimately decided on 23 January 2016 to withdraw the recommendation that Appellant be promoted.
89. The GC concluded that the Acting Chief Economist's decision "to halt her promotion was an abuse of his position and a kneejerk reaction to events that had occurred just days before in respect of which there had been no proper investigation." The Tribunal accepts the GC's factual findings, but not its conclusion.
90. Regardless of any expectation that Appellant may have had regarding promotion after her discussion with the Line Manager, a final decision could only be made by the Acting Chief Economist, and he had discretionary authority to make that decision.
91. The Tribunal concludes that the Acting Chief Economist's decision was not a "kneejerk reaction" to the events of 20 and 21 January 2016. Rather, it was a considered assessment of those events, as reflected in the email sent by the Acting Chief Economist to the Line Manager and the incoming Chief Economist on 23 January 2016. The decision was based on the following facts: (a) Appellant had put extensive work into writing and researching a paper for publication with a non-Bank co-author without notice to or authorization from her Line Manager; (b) the Line Manager learned of the work only when a junior economist advised the Line Manager that Appellant had asked the junior economist to work on the project; (c) when the Line Manager reminded Appellant that all of her work needed to be authorized by him beforehand, she characterized her work as only being "exploratory" and declined to talk to him until "I have something to talk about;" (d) when the Line Manager requested that Appellant meet with him to discuss the issue, she refused until after she consulted the Ombudsman or HR; (e) Appellant had previously published comments in a blog without her Line Manager's knowledge or authorization and had been cautioned against repeating such conduct; and (f) when the Line Manager discovered a copy of the paper, he learned it was not exploratory and was, instead, a 34-page draft, including detailed tables of data.
92. The foregoing facts were an appropriate basis upon which to decide that Appellant should not be given a promotion. Given the circumstances leading up to the Acting Chief Economist's decision, further investigation was not necessary. The failure to promote Appellant was not a disciplinary act; it was a discretionary act by an official who had authority to exercise such discretion. The Tribunal concludes he did not abuse his discretionary authority.
93. Investigative Decision. The Bank's law governing harassment complaints is found at Annex 13.3 to the Staff Handbook, entitled "Harassment-Free and Respectful Workplace Procedures." It provides for an initial assessment of allegations: "Allegations of

improper behaviour are assessed by the Human Resources Department with a view to determine whether, if the facts alleged were proven, misconduct may have occurred.”

94. The HR Principal tasked with undertaking this initial assessment exceeded the above charge. Rather than assuming that the facts alleged were true, he made investigative and credibility judgments that were beyond his authority. Investigations and credibility determinations are committed to the OCCO, not HR.
95. Notwithstanding this procedural misstep, it appears that all allegations made by Appellant were transmitted to OCCO and that OCCO was free to investigate and make recommendations thereon. The GC recommended that the 14 April 2016 decision by the VPHR to close the bullying and harassment complaint not be set aside. As a result, the Tribunal deems the procedural irregularities by the HR Principal not to have been material because they did not alter and were not likely to alter the outcome of the investigative decision. Cf. “A” v. *EBRD*, EBRDAT Case No. 2017/AT/02 at ¶16. The Tribunal recommends, however, that staff assigned to handle initial assessments under the RWP be properly trained in the scope of their authority.
96. Disciplinary Decision. The GC recommended that the VPHR decision of 17 August 2016 with regard to discipline of the Line Manager not be set aside. The President concurred. Appellant has not appealed those parts of the GC recommendations that were adverse to her. Accordingly, this issue is moot.
97. Monetary Relief. The GC recommended monetary compensation for the following: (a) Appellant’s failure to be promoted, even though the GC did not direct that Appellant be promoted; (b) Appellant’s failure to receive performance based compensation of 15% and a salary increase of .8%; and (c) moral damages “equal to one year’s salary (£54,738) less a 20% reduction reflecting [Appellant’s] poor behaviours.” The Bank President limited all monetary compensation to £3,000 based solely on the Line Manager’s and Acting Chief Economist’s failure to meet with Appellant prior to issuance of the Oral Warning. Appellant requests all of the monetary relief recommended by the GC.
98. The Tribunal has already determined that Appellant’s performance based compensation and salary increase for 2015 should be reconsidered by Bank Management. It is therefore premature to address that particular monetary issue now.
99. Because the Tribunal has decided that Appellant was properly denied a promotion, it rejects her request for compensation for the loss of the promotion.
100. With regard to moral damages, Appellant submitted documentation showing that she sought psychiatric help in January 2016 and that she was first diagnosed with work-related stress on 29 January 2016. Her doctor advised her to stay away from work prior to giving birth because medication for her stress was not advisable during pregnancy. She received the same diagnosis and medical advice in February and March 2016. The Tribunal concludes that Appellant has suffered emotional distress as a result of the events involved in this case.

101. Appellant was given an oral warning, had her performance appraisal downgraded and was placed in a PIP. All three of these actions were later rescinded by either the Acting Chief Economist or the Bank President as a result of Appellant's resort to the grievance and administrative review processes. In addition, Appellant requested an investigation under the RWP and was incorrectly told that some of her allegations would not even be referred to investigation because the HR Principal (rather than the OCCO) deemed them not credible; later, the OCCO seemed to investigate the entirety of Appellant's allegations. The Tribunal has no doubt that the seesaw effect of these managerial actions contributed to the medical conditions observed by Appellant's psychiatrist in the first quarter of 2016. Even when personnel actions are reversed as a result of the grievance process, the very need to initiate the grievance process as a means of redress can take a toll, as it did in this case.
102. Moral damages are appropriate only as a means of compensating a party for injuries suffered as a result of faulty decision-making. Those injuries may not be easily quantifiable (e.g., emotional distress), but they must nevertheless be identifiable. In the absence of an observable injury, moral damages would become purely punitive, rather than remedial, and therefore inconsistent with the authority granted to this Tribunal. See Rule 8.04, AT Rules of Procedure (titled "Award of Remedial Measures").
103. Appellant has submitted medical documentation verifying that she suffered from work-related stress and depression. The Bank President, the GC and this Tribunal have all concluded that Appellant has met the burden of establishing the propriety of moral damages. The only point of disagreement is the appropriate amount of such damages.
104. The Tribunal concludes that the GC's assessment of 80% of one year's salary is excessive, so much so that it verges on the punitive. It is an amount that fails to take account of all the evidence in the record, including evidence that Appellant was a repeat offender of the instructions to ensure that her work, especially publications, were authorized in advance by her Line Manager. The GC failed to take account of the fact that Appellant's own actions were significant contributions to her predicament. Although the Bank's procedural missteps in this case were more numerous than identified by the PARD, the Tribunal still adjudges that £3,000 is an appropriate amount of moral damages that balances the Bank's procedural derelictions with her own contributions to the rift with her supervisors.
105. Costs. A party whose appeal is upheld may be reimbursed his/her reasonable legal costs. Art. 8.06, AT Appeals Procedures. It is not necessary that the party prevail on every argument or claim in order to receive such reimbursement. A substantial victory is sufficient to justify a complete reimbursement, assuming that the legal costs are reasonable as to time and rate.
106. An Appellant who achieves less than substantial success on the claims asserted may still receive reimbursement of legal costs, but those costs should roughly reflect the level of success achieved.

107. The Tribunal does not consider Appellant to have achieved substantial success in this case. However, it will withhold a final decision with respect to the extent of reimbursement of Appellant's legal costs until after completion of the remand to the Bank on the issues of performance based compensation and salary increase. The Tribunal notes, however, that Appellant's legal representation began in February 2016, prior to the time of the initial or administrative decision. To the extent Appellant succeeded in having various adverse actions reversed prior to or through the PARD (re-graded performance appraisal, removal of the PIP and rescission of the oral warning) as a result of her resort to the dispute resolution process, that success should be reflected in an award of costs. The Tribunal urges the Bank to reconsider its position with respect to legal costs, along with its reconsideration of performance based compensation and salary increase, and to make an appropriate, updated offer to Appellant. If Appellant is dissatisfied, she may return the issue to this Tribunal.

108. Lastly, the Tribunal reminds the GC Chair that the GC's role in the dispute resolution process requires both impartiality and the appearance of impartiality. With this objective in mind, witnesses should not be subjected to hostile and accusatory questioning by the Chair. Determinations of credibility should only be made after all evidence has been considered. The GC hearing in this case does not show the level of balance (or the appearance of balance) that the Tribunal expects to see in grievance proceedings.

VIII. Decision

On the basis of the foregoing, the Tribunal, acting by a panel composed of Judges Giuditta Cordero-Moss, Michael Wolf (Chair) and Stanisław Sołtysiński, hereby decides as follows:

1. The issue of Appellant's Oral Warning is moot and therefore not receivable.
2. The denial of a promotion to Appellant in 2016 was not an abuse of discretion or otherwise inconsistent with Bank law.
3. Procedural irregularities in the "investigative decision" were not material to the outcome and therefore do not justify relief.
4. Appellant's original challenge to the "disciplinary decision" is now moot and therefore not receivable.
5. All of Appellant's requests for monetary relief are denied except to the following extent.
6. The issue of Appellant's entitlement to a higher performance based compensation and salary increase for 2015 is remanded to the Bank for further consideration pursuant to the criteria in Paragraph 87, *supra*.

7. The issue of Appellant's recovery of legal costs is remanded to the Bank for further consideration pursuant to the criteria in Paragraph 107, *supra*.
8. Appellant is awarded moral damages of £3,000.

For the Administrative Tribunal

/s/

Michael Wolf