

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

Case No. 2019/AT/08 (compensation)

**Appellant**

**vs**

**European Bank for Reconstruction and Development,**

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**DECISION**

**by a Panel of the Administrative Tribunal comprised of  
Mr Chris de Cooker (Chair)  
Professor Giuditta Cordero-Moss  
Mr Michael Wolf**

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**27 July 2020**

## **I. Introduction**

1. On 18 February 2020, the Administrative Tribunal of the European Bank for Reconstruction and Development (“Tribunal”) rendered its Decision (“Decision”) in Case No. 2019/AT/08. The Tribunal held that Appellant was the subject of abuse of authority, that harm was done and that he must be compensated for this.

2. The Tribunal further held that the record before it had insufficient information to allow the Tribunal to quantify damages. It directed the parties to meet in order to determine whether they could agree on an appropriate amount of compensation. In the event the parties could not agree, they were each to submit to the Tribunal an explanation of an amount they consider appropriate.

3. On 9 July 2020, a Principal Counsel of the European Bank for Reconstruction and Development (“EBRD” or Bank”) wrote to the Tribunal, advising it that following the Tribunal’s Decision, the Bank and the Appellant had exchanges over several months regarding the “*appropriate amount of compensation*” and entered into without prejudice discussions for a global settlement of all pending issues between the Bank and the Appellant (including EBRDAT case 2019/08). However, the parties did not manage to reach an agreement. As a consequence, and in accordance with paragraph 113 of the Decision, and in order to close this matter, the Bank was now seeking a final decision from the Tribunal.

## **II. Respondent’s position**

4. The Bank informed the Tribunal that it had offered to Appellant an amount of GBP 25,000, which the Bank considered to constitute an “*appropriate*” amount of compensation taking into account the Tribunal’s Decision, findings and remedial measures already undertaken by the Bank in this matter.

5. In calculating this amount (which corresponds in practice to more than three months of the Appellant’s salary), the Bank took into account the fact that, in 2017, following the request for review submitted by the Appellant against his 2015 performance rating, the Bank:

- (i) had upgraded the 2015 performance rating of the staff member; and
- (ii) had adjusted the salary and performance based compensation to reflect the upgraded rating.

6. The Bank further explained that it had also recognised the Staff Member's skills and experience in furthering his career at the Bank by promoting him to the position of Associate Director, Senior Banker, when such vacancy became available in the team, including relevant salary increase, with effect from 1 May 2017.

7. Accordingly, the Bank submits to have already (more than 3 years ago) remedied the impact that the direct involvement of the Head of the Team had in influencing the Appellant's rating and/or the appraisal exercise and the MDHR referred the matter for managerial action.

8. It added that, as the Tribunal found and concluded in its Decision, the investigative process followed by the Bank in this case was not affected by procedural flaws and therefore no specific compensation is warranted in this respect.

9. In view of the above the Bank considers that the amount of GBP 25,000 constitutes a generous offer. Whilst the Bank acknowledges that quantifying compensation amounts beyond remedial measures such as those outlined in (i) to (ii) above is a complicated task, when comparing the Bank's proposed offer with compensation amounts in other cases, it would be difficult, in the Bank's submission, to assess that this amount is not "*appropriate*". The Bank refers in this respect to jurisprudence of the UN Tribunals (UNDT/2018/016/Corr.1 and 2018-UNAT-873).

### **III. Appellant's position**

10. On 13 July 2020, the Tribunal asked Appellant whether he wished to submit his comments or not.

11. On 19 July 2020, Appellant submitted his comments.

12. Appellant referred to other related cases currently pending before the Tribunal and he respectfully asked the Tribunal to consider the Bank's request after the Tribunal has had a chance to assess these cases.

13. Appellant submits that the abuse of authority situation occurred at the peak of the Appellant's career progression within the EBRD. He reiterates a number of findings by the Administrative Review Committee ("ARC") and by the Tribunal. He repeats that the Bank only took corrective measures after he had raised his concerns.

14. Appellant acknowledges that the quantum of the compensation for harm caused by the abuse of authority is a matter within the discretion of the Tribunal assessing the evidence of the nature, extent and effects of the harm. For these reasons, Appellant submits that the final decision on the compensation at this stage may distort the considerations of other related cases currently pending before the Tribunal.

15. It is therefore Appellant's strong preference to agree on appropriate remedies (not only concerning the monetary considerations) with the Bank. He informs in this respect that the Bank's Ombudsman, at Appellant's request, is prepared to facilitate such discussions should the Bank have any interest, focusing not purely on the monetary compensation issues due to the irreparable damage caused to the Appellant at this stage. The Appellant is very hopeful that the Bank would agree to engage with such discussions.

16. Appellant would be grateful to the Tribunal, having considered the Appellant's comments above, for further directions by the Tribunal in the case 2019/AT/08 in light of other related cases currently pending before the Tribunal. The Appellant respectfully informs the Tribunal that it is the Appellant's preference to agree on the remedies directly with the Bank and, in any case, asks the Tribunal to consider the compensation issue after the assessment of the related pending cases by the Tribunal is finalized.

#### **IV. Considerations**

17. The Tribunal notes with satisfaction that parties did engage in talks seeking a settlement regarding both the compensation issue in EBRDAT case 2019/08 and other cases pending before the Tribunal. It regrets that these talks were not, or not yet,

successful. It can only encourage parties to resume their exchanges, if necessary with the help of a third party.

18. The Tribunal must, however, now adjudicate on the case presently before it.

19. It notes that two cases have already been adjudicated concerning Appellant and that other cases are pending. These may concern the same, similar or related issues but they have been dealt with and will continue be dealt with in separate proceedings. The Tribunal can thus not grant Appellant's request to wait for the outcome of the other cases before determining the compensation in this and the other cases. On the other hand, the Tribunal can in the other cases take account of the monetary relief in the present case if it deems it appropriate.

20. The Bank has made a compensation offer of GBP 25,000 and has presented arguments in support of the quantification and appropriateness of the offer. Appellant has not presented any explanation of an amount he considers appropriate, as he and Respondent were directed to do by the Decision. He has also not indicated to what extent the offer made by the Bank would not be appropriate.

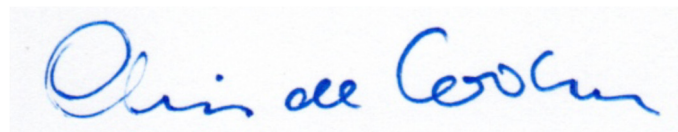
21. In view of the arguments presented, the Tribunal considers that the compensation offer for the harm identified in its Decision EBRDAT case 2019/08 is appropriate.

## **V. Decision**

22. The Tribunal orders the Bank to pay Appellant GBP 25,000 as compensation for the abuse of authority harm done as identified in EBRDAT case 2019/08.

**27 July 2020**

**For the Administrative Tribunal**



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**Chris de Cooker**  
**Chair of the Panel**