

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

Case No. 2025/AT/05

Appellant

vs.

European Bank for Reconstruction and Development

DECISION

by a Panel of the Administrative Tribunal comprised of

Joan Powers (Chair)

Marielle Cohen-Branche

Chris de Cooker

9 April 2026

I. INTRODUCTION

1. This case concerns a challenge by the Appellant (“Appellant”) to two related administrative decisions taken by the European Bank for Reconstruction and Development (“Bank” or “EBRD”), namely: (i) the decision to terminate the Appellant’s employment with the Bank on the grounds of sub-standard performance, and (ii) the decision to close the Appellant’s complaint of improper behaviour by the Line Manager. The case was heard by the Administrative Review Committee (“ARC”) which, as set out more fully below, unanimously recommended that the President uphold both administrative decisions at issue, which she accepted in an Administrative Review Decision dated 24 September 2025 (the “President’s Decision”).
2. The President’s Decision agreed with the ARC’s general findings and recommendations as set out in its report (“ARC Report”), and upheld both of the contested decisions.
3. The primary issue before the Tribunal is the validity of the President’s Decision to uphold both contested decisions, and to award no monetary compensation or other remedy to the Appellant. Accordingly, the Tribunal must examine whether the President’s acceptance of the findings and recommendations as to these two decisions in the ARC Report was a reasonable exercise of her discretionary authority.

II. PROCEDURAL HISTORY

4. The Appellant joined the Bank on 1 September 2022 on a Fixed-term (“FT”) appointment as an Analyst in the Vice Presidency, Policy and Partnerships (“VP3”). The Appellant was offered a 24-month FT appointment, due to expire on 31 August 2024.
5. The Appellant’s Offer of Appointment, which the Appellant accepted, contained several “Important Notes”, the first Note concerning the probation period (which was set at 12 months), and the second Note stating that the Appellant’s “[...] appointment of limited duration does not carry any expectancy of extension or conversion to any other type of appointment with the Bank. It will expire without prior notice on the expiry date indicated above”.
6. The Appellant’s first performance review was carried out for the period 1 September to 31 December 2022. In that review, the Appellant’s performance was rated “Performing as Required”. The feedback provided by the Appellant’s Line Manager further notes that, during the performance discussion, the Line Manager and the Appellant discussed “areas which [the Appellant] can improve to become more effective includ[ing] being more

concise in his communication, quicker in responding and being genuinely proactive rather than just indicating he would like to take on new tasks.”

7. Two colleagues also provided feedback on the Appellant’s performance during 2022 (i.e., 1 September to 31 December 2022). With regard to the areas requiring further improvement, the feedback provided by one of the staff members was aligned with the Line Manager’s observations, noting three areas that the Appellant needed to work on to become more effective.
8. The Line Manager continued to raise concerns about inadequacies in the Appellant’s performance in subsequent performance reviews, namely in respect of the 2023 Mid-Year Performance Review, 2023 Year Performance Review, and the 2024 Mid-Year Performance Review.
9. In the 2023 Mid-Year Performance Review, the Line Manager noted that the Appellant was not meeting minimum performance requirements in terms of both work attitude and contribution to the work of the team.
10. At the end of the 2023 performance review cycle, the Appellant’s performance was rated as “Performing below requirements”. The review, while noting that there had been some improvement in the Appellant’s work attitude, serious performance issues remained, as the Appellant still struggled to fully grasp how the EBRD operates and the Appellant’s specific role in providing analytical support on “[...] funding” to the bankers. The Line Manager also observed that the Appellant still struggled in such areas like attention to detail, being prepared for meetings and focusing on the assigned tasks, including taking full ownership of tasks and making sure they are completed on time and with the required quality.
11. In the 2024 Mid-Year Performance Review, although the Line Manager noted some improvements in relation to the stated objectives, his view was that there was still much more needed to demonstrate that the Appellant had the ability to consistently and independently perform at the required level, and provided some specific examples as to where such improvement was needed.
12. In view of the Line Manager’s assessment of the Appellant’s continued sub-standard performance, the Line Manager initiated the sub-standard performance management process (the “SPMP”) as provided in Section IV, paragraph 4(b) of the Directive on Organisation and Personnel Management and Section IV, paragraph 3 of the Procedure on Performance Management and Development. In order to allow sufficient time for the

conduct of the SPMP, the Appellant's FT appointment — which was initially due to end on 31 August 2024— was extended until 15 November 2024 so that, depending on the outcome of the SPMP, a decision could be taken on whether to extend the Appellant's appointment beyond its end date.

13. On 30 May 2024, the Line Manager orally informed the Appellant that he had decided to initiate Step 1 of the SPMP. In an email the following day, the Line Manager set out the assessment areas where the Appellant's performance had fallen below the required standards, the improvements that were needed by the end of Step 1 of the SPMP, and how he would support the Appellant in achieving the improvement required, including by scheduling bi-weekly meetings to monitor and support the Appellant's performance.
14. Specifically, the Line Manager noted that performance improvement was required in respect of the following four areas: "Ensures accountability", "Communicates effectively", "Collaborates" and "Engage effectively with your line manager". The Line Manager advised the Appellant that he would formally meet again on 1 July 2024 (that is, at the end of Step 1) to review the Appellant's performance and that if the Appellant's performance had not improved in the identified areas, the Line Manager would "proceed to Step 2 of the sub-standard performance process". The Line Manager further advised the Appellant that absence of further improvements during Step 2, would "result in [...] having to consider whether to request your demotion or, critically, a termination of your employment with the Bank on the grounds of sub-standard performance".
15. On 3 July 2024, at the end of Step 1 of the SPMP, the Line Manager had a follow-up performance discussion with the Appellant. The Line Manager summarised the discussions in an email to the Appellant dated 4 July 2024, which set out specific examples as to why, in the Line Manager's view, the Appellant's performance had not improved during Step 1 of the SPMP. It concluded that, despite small improvements in the Appellant's responsiveness, there were still specific aspects of performance that still did not meet the required standards.
16. In the Line Manager's view, performance improvement was required in relation to all four performance areas identified as problematic at the start of the SPMP, namely "Ensures accountability", "Communicates effectively", "Collaborates" and "Engage effectively with your line manager". Accordingly, the Line Manager informed the Appellant that he would proceed with Step 2 of the SPMP, and highlighted the improvements that were still required by the end of Step 2 of the SPMP, which was due to end on 12 September 2024.

17. On 13 September 2024, at the end of Step 2 of the SPMP, the Line Manager had a discussion with the Appellant during which the Line Manager communicated to the Appellant that he had not yet shown the ability to consistently and independently perform at the required level and that no improvement at the required level was noted in respect of the four performance areas identified as problematic. The Line Manager summarized the discussions in an email which was sent to the Appellant on 16 September 2024. The email in question further invited the Appellant to provide his comments in respect of the Line Manager's observations on the Complainant's performance.
18. On 8 October 2024, the Appellant provided his comments in writing, disagreeing with the Line Manager's assessment of his performance as sub-standard and raising the issue of harassment for the first time. In his view, the Line Manager's assessment "represent[ed] a subjective and biased perspective aimed at undermining [his] personality and professional career" and "there was[n't] ever an intention in this process to constructively help improve performance, but rather that it was designed as a means to an end." The Appellant's comments also set out examples of inappropriate behaviours by the Line Manager that the Appellant considered to have constituted bullying and psychological pressure.
19. On 15 October 2024, the Line Manager, in consultation with his Director, submitted a recommendation to the Managing Director for Human Resources & Organisational Development ("MDHR") to terminate the Appellant's employment with the Bank for sub-standard performance, together with the Appellant's comments in respect of such recommendation. The Appellant's comments included allegations of what was characterised as improper behaviour and actions by the Line Manager towards the Appellant and provided the dates and description of incidents as well as correspondence as evidence.
20. On 4 November 2024, the MDHR thereupon took two related decisions. The first decision was to terminate the Appellant's employment with the Bank on grounds of sub-standard performance ("Termination Decision"). The second decision was a related decision to close the matter regarding the Appellant's complaints of improper behaviour by the Line Manager ("Harassment Decision").
21. In the Termination Decision, the MDHR informed the Appellant that she had concluded that the SPMP was correctly followed and that, on this basis, she had decided to accept the Line Manager's recommendation to terminate the Appellant's employment. The Termination Decision noted that the Appellant had been "suitably informed of the duties and requirements of [his] position", that "[his] line manager observed [his] performance, and where shortfalls and weaknesses in performance were observed, these were brought

to [the Appellant's] attention" as well as that, "where appropriate, [the Line Manager] provided a reasonable level of guidance and advice."

22. In accordance with the Termination Decision, the Appellant's employment was terminated on 15 November 2024, which also corresponded with the end-date of the Appellant's FT appointment as extended. In the Termination Decision, the MDHR also informed the Appellant that he was eligible for a 12-week notice period and that he would receive a one-time payment of GBP13,911.99 representing the amount equivalent to the remaining balance of his notice period. The 12-week notice period was calculated with effect from 5 November 2024 and went beyond the end-date of the Appellant's FT appointment, which expired on 15 November 2024.
23. The Harassment Decision, which was sent to the Appellant by HR Employee Relations on behalf of the MDHR, cited the harassment-free and respectful workplace procedure in force prior to 14 October 2024: "1.3.(a) 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. The assessment is provided to the Managing Director, Human Resources & Organisational Development for further action".
24. The Appellant was informed that the concerns had been assessed under these procedures, and that the MDHR had decided that the allegations did not warrant any further action and that the matter should be closed, pursuant to Section IV, paragraph 1.3.(c)(i)C of the RWP as referred above. The Harassment Decision further noted that "the assessment had carefully analysed the information [provided by the Appellant] and it is concluded that if the facts alleged were proven, it is not considered that misconduct may have occurred. The assessment took into consideration Code of Conduct Rules 1 and 2 and the Guidance to Rule 2."
25. On 6 January 2025, the Appellant submitted a request for review of an administrative decision (the "RRAD"). In particular, the request challenged the validity of the Termination Decision and the Harassment Decision.
26. On 27 January 2025, the President informed the Appellant that the RRAD was admissible and had been forwarded to the ARC for its consideration in accordance with the Directive – Administrative Review Process "ARP Directive".

27. On 28 August 2025, the ARC issued the ARC Report to the President, which recommended that she uphold both the Termination Decision and the Harassment Decision.
28. On 24 September 2025, the President accepted the ARC's recommendations and upheld both contested decisions in the President's Decision, and so informed the Appellant in writing.
29. The Appellant filed a Statement of Appeal with the Tribunal on 17 December 2025. The admissibility of the appeal has not been challenged by the Bank.
30. The Appellant has requested anonymity, as permitted under Section IV, paragraph 9.03(c) of the EBRD Directive on the Appeals Process ("Appeals Directive"), to which the Bank does not object.
31. Neither party has requested oral hearings or the production of documents.

III. APPLICABLE LAW

1) Staff Regulations

Section 6 – Organisation and Personnel Management

Section 6(a)(iii) states that the Bank shall "establish procedures for the period review of staff members work performance in order to provide the most effective use of his expertise, to determine the quality of his service, to recognise his achievements and to identify training and development needs of staff in the interests of the Bank".

2) Directive on Organisation and Personnel Management

Section IV, paragraph 4 - Performance management and development

(a) In addition to the ongoing and informal process in which a manager provides feedback to a Staff Member about his work performance and development throughout the year, the work performance of each Staff Member shall be reviewed at least once every year against the Bank's performance standards.

(b) If a line manager observes that a Staff Member's performance does not meet required standards of performance in one or more aspects, the line manager shall inform the Staff Member at the earliest opportunity. The Procedure on Performance Management and Development shall apply where a Staff Member's work performance is not meeting the Bank's required standard of performance.

(c) The Bank may, at its discretion, assist qualified Staff Members with meeting the costs of part-time academic or professional studies.

3) Procedure on Performance Management and Development

Section IV, paragraph 1 - Performance review cycle

(a) The performance review cycle shall be a 12-month period which shall conclude with a written assessment of the Staff Member's individual performance and an overall performance rating. The Managing Director, Human Resources & Organisational Development shall establish a Performance Review Framework which shall describe the intermediary steps in the performance and development review process aimed at assisting line managers in the assessment of each Staff Member. Such intermediary steps may include, without limitation, the setting of specific objectives by each Staff Member, the assessment of each Staff Member against technical and/or a behavioural requirements of the position, the completion of a mid-year performance and development review, a Staff Member's written self-assessment of his own performance and development, the collection of structured feedback from the Staff Member's colleagues and the identification of developmental needs for each Staff Member.

(b) The Managing Director, Human Resources & Organisational Development shall establish a Performance Review Schedule which shall prescribe the timelines for the completion of the relevant intermediary steps described in the Performance Review Framework.

Section IV, paragraph 3 - Sub-standard performance

3.1. Management of sub-standard performance

If a line manager determines that a Staff Member's performance does not meet required standards of performance in one or more aspects over a reasonable period of time, the line manager may initiate the process described in paragraphs 3.2 to 3.5 below to manage the sub-standard performance.

3.2. Step 1 of sub-standard performance management

- (a) The line manager shall inform the Staff Member of:
- i. the specific aspects of the Staff Member's performance which do not meet required standards of performance; and
 - ii. what improvement(s) are required and, where appropriate, ways in which the line manager may assist the Staff Member in making such improvements.

(b) The line manager shall then set a date (the “Review Date”) to review performance with the Staff Member in a review meeting. Such Review Date shall be set after a minimum of 4 weeks but no later than 12 weeks following the line manager informing the Staff Member as set out in paragraph 3.2(a) above of the improvement(s) required except where the line manager considers that a longer time period is appropriate taking into account the nature of the improvement(s) required. For purposes of any time period referred to in this paragraph 3.2(b), any continuous absence by the Staff Member of more than 20 working days shall not count towards such time period.

(c) The line manager shall record a summary note of matters discussed with the Staff Member. The line manager shall provide a copy of such note to the Staff Member. The Staff Member may provide his own written comments in response to the note.

3.3. Step 2 of sub-standard performance management

(a) If the Staff Member continues not to meet the required standards of performance by the Review Date, the line manager, after consultation with a representative from the Human Resources Department, shall meet to discuss with the Staff Member and inform the Staff Member in writing of:

- i. the specific aspects of performance which still do not meet required standards of performance;
- ii. what improvement(s) are still required and by when such improvements should be made, and, where appropriate, ways in which the line manager may continue to assist the Staff Member in making such improvements; and
- iii. the fact that failure to improve to the required performance standards may result in demotion or termination of employment on the grounds of sub-standard performance. Such improvements as referred to above shall be required to be made by the Staff Member within 8 weeks of the line manager informing the Staff Member as set out in this paragraph 3.3(a) of the improvement(s) required except where the line manager considers that a longer time period is appropriate taking into account the nature of the improvement(s) required. For purposes of any time period referred to in this paragraph 3.3(a), any continuous absence by the Staff Member of more than 20 working days shall not count towards such time period.

(b) The Staff Member may provide his own written comments in response to the written communication from the line manager.

Section IV, paragraph 4 - Recommended action

In the event that a Staff Member fails to perform at the required standards of performance at the end of the timeline set under step 2 of the sub-standard performance process in paragraph 3.3 above, the line manager may recommend in writing to the Managing Director, Human Resources & Organisational Development, and in consultation with his own manager within the leadership team of the relevant Organisational Unit and where appropriate and applicable, the Managing Director in the relevant Organisational Unit, to demote the Staff Member (with an appropriate reduction in salary) or to terminate the Staff Member's employment on the grounds of sub-standard performance. The line manager shall inform the Staff Member of the fact that they have provided any such recommendation to the Managing Director, Human Resources & Organisational Development and the nature of such recommendation.

4) Directive on Ending Employment

Section IV, paragraph 2(a) - End of a Term Appointment

The employment of a Staff Member appointed on a term appointment of a specified duration shall end upon the expiration of the initial term appointment or any extension thereof.

5) Code of Conduct for EBRD Personnel

General Standards of Conduct -Rule 1

Bank Personnel shall observe the highest standards of integrity and ethical conduct and shall act with honesty and propriety. Their personal and professional conduct should, at all times, command respect and confidence in their status as officials of an international organisation.

Duties of Bank Personnel -Rule 2

(a) In the discharge of their offices, Bank Personnel owe their duty entirely to the Bank and to no other authority. They may not seek or accept any instructions from any person or entity outside of the Bank. In their communications with Board Officials, Bank Personnel shall comply with any guidance notes on the matter.

(b) In their decisions for the Bank, Bank Personnel shall take into account only considerations relevant to the Bank's purpose, functions and operations, as set out in the Agreement Establishing the Bank. Such considerations must be weighed impartially in order to achieve and carry out the purpose and functions of the Bank.

(c) Bank Personnel shall perform their official duties in a manner that preserves and enhances public confidence in their integrity and the integrity of the Bank.

(d) In their dealings with colleagues and Bank staff, Bank Personnel must show respect and tolerance for varied cultures, beliefs and backgrounds. They must avoid behaviour that constitutes harassment, sexual harassment, bullying or abuse of authority, or that could be perceived by others as such.

(e) Bank Personnel shall always bear in mind the reserve and tact incumbent upon them by reason of his functions, and they must exercise the utmost discretion in regard to all matters relating to the Bank, both while they are Bank Personnel as well as after their service with the Bank has ended.

6) Directive - Guidance Note for Bank Personnel – Rule 2 of the Staff Code

Section IV, paragraph 3.2(4) - General Guidance

[M]anagers and supervisors are expected to give frank and constructive feedback to Bank Personnel they supervise and/or manage, and to take appropriate corrective action, including by giving firm managerial direction, whenever warranted. This will involve expressing views concerning the work, performance or conduct of Bank Personnel. The mere expression of a view by a supervisor or by a manager regarding work performance, conduct or related issues within a supervisory relationship, or the giving of firm managerial direction, shall not of itself be considered as Harassment, Sexual Harassment, Bullying or Abuse of Authority. This is the case, notwithstanding that the addressee of those views may disagree with them or that they may constitute or be regarded as admonishment or criticism. Feedback should always be given respectfully and in a reasonable and constructive manner and not done to demean Bank Personnel.

7) ¹ Procedure - Harassment-free and Respectful Workplace

Section IV, paragraph 1.1 - Initial Resolution Attempts

Bank Personnel are expected, to the extent appropriate, to initially attempt to address their concerns with the Bank Personnel whose behaviour is at issue in an open, honest,

¹ As in force when the Appellant's comments were received on 8 October 2024. It is noted that a revised version of the RWP entered into effect on 14 October 2024.

non-contentious and non-threatening manner in order to give the individual whose behaviour is at issue an opportunity to amend it.

Section IV, paragraph 1.2 -Formal Process

(a) When initial resolution attempts are not appropriate or have been unsuccessful, allegations of improper behaviour are reportable in writing to the Managing Director, Human Resources & Organisational Development.

(b) The report should describe the alleged improper behaviour and include: the name of the individual whose behaviour is at issue, the name(s) of the individuals subjected to the alleged improper behaviour, the date(s) and location(s) of incident(s), a description of incident(s), names of any witnesses and all relevant evidence available.

(c) The Managing Director, Human Resources & Organisational Development may initiate an assessment (pursuant to paragraph 1.3 below) in the absence of a written report where there is sufficient cause for concern that improper behaviour has arisen.

Section IV, paragraph 1.3. Assessment of allegations

(a) 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. The assessment is provided to the Managing Director, Human Resources & Organisational Development for further action.

(b) Making knowingly false or misleading allegations of improper behaviour, verbally or in writing, may result in disciplinary action against the Bank Personnel making the allegations.

(c) The Managing Director, Human Resources & Organisational Development, within 15 working days from receipt of the allegations, shall take one of the following courses of action towards the Bank Personnel who is subjected to improper behaviour and has reported it:

(i) if it is assessed that no misconduct may have occurred:

A. recommend a facilitated resolution of the matter as provided for under paragraph 1.4 below within a set timeline; or

B. refer it for managerial action as provided for under paragraph 1.5 below; or

C. decide to close the matter with no further action.

(ii) if it is assessed that misconduct may have occurred: shall refer the matter for initial inquiry under the Conduct and Disciplinary Rules and Procedures.

8) General Principles of Law

(a) Regarding discretionary decisions, this Tribunal has held that “[...] the Tribunal’s scope of review is limited to determining whether the discretionary powers were abused or not, i.e. whether the decisions have or have not been reached by the proper processes, or that the decisions either are or are not arbitrary, discriminatory, or improperly motivated, or that he could or could not reasonably have been taken on the basis of facts accurately gathered and properly weighed. The Tribunal’s role is not to substitute its views for managerial decisions properly taken.”²

(b) As further held by the Tribunal: “[...] performance appraisals fall within the purview of managerial discretion. As such, they are subject to limited review. This Tribunal is not empowered to second-guess the merits of a decision discussing the quality of a staff member’s work. The Tribunal instead reviews such decisions solely to ensure that the relevant managers have not abused their discretion”.³

(c) Regarding compliance with the required procedures, the Tribunal has noted that:

“A performance evaluation is rendered by the management in the exercise of its discretionary power. It is therefore outside of the Tribunal jurisdiction to scrutinize its content, save for what may violate the applicable law.

“In particular, according to AT Rule 3.03(b), the Tribunal may review an administrative decision if it “was carried out in violation of the applicable procedure”. Compliance with procedural rules ensures that discretionary powers are exercised in an objective and legitimate way. Conversely, violation of procedural rules prompts proof that the discretionary power was exercised within its proper frame. Hence, the Tribunal must determine whether the administrative decision was affected by the procedural irregularities that were found by the [Grievance Committee]. The scope of the Tribunal independent evaluation is thus limited to assessing whether the procedural violations had an impact on the Performance Appraisal”⁴.

(d) Whilst the views of other feedback providers are relevant for a line manager to consider when assessing the performance of a staff member, it is the decision of the line

2 EBRDAT 2019/AT/08, para. 70.

3 EBRDAT 2020/AT/04, para. 47.

4 EBRDAT 2017/AT/02, paras. 21-22.

manager to balance the positive and negative factors and to assess a Staff Member's performance. Feedback from others in the context of a 360 review "is a support and not a substitute for the managerial exercise of discretion".⁵

(e) The World Bank Administrative Tribunal (the "WBAT") has confirmed the following in respect of the evaluation of performance:

"The evaluation of staff performance is an essentially discretionary act entailing the exercise of judgment by management, which is presumed to possess the requisite familiarity with the work of all departmental staff members and to have made many comparative qualitative judgments. As noted by the Tribunal in Marshall, Decision No. 226 [2000], para. 21, '[t]hese are prototypically discretionary decisions that are not to be readily overturned by the Tribunal.' The task of the Tribunal is not to "substitute its own judgment for that of the management' (Polak, Decision No. 17 [1984], para. 43) or to ascertain for itself whether the Applicant's performance [...] constituted satisfactory performance. The proper task of the Tribunal is, rather, to determine whether or not management's acts and decisions in connection therewith constituted, or were attended by, an abuse of discretion."⁶

(f) As further noted by the WBAT:

"[I]n the context of the performance evaluation, the tribunal does not interfere or substitute its own judgment for the Bank's, absent an abuse of discretion. The tribunal cannot and should not conduct a microscopic inquiry into each facet of the application's work programme and behaviour during the assessment period. It would be difficult and probably fruitless to assess each individual task and change to the work programme, given the number of internal and external clients, managers and team members involved and also given the units broader work needs and responsibilities with respect to which the tribunal is ill-equipped to evaluate each decision. The only effective approach is to assess whether the evidence ... satisfies the abuse of discretion test."⁷

5 *Id.*, para. 24.

6 WBAT Decision No. 322 [2004], para. 15.

7 WBAT Decision No. 439 [2010], para. 32, *citing* WBAT Decision No. 377 [2007], paras. 73-74.

(g) The WBAT has further held that:

“the evaluation of a staff member’s performance is in principle a matter within the Respondent’s discretion. What constitutes satisfactory performance is to be determined by management ... and management’s appraisal in this respect is final absent an abuse of discretion [...]”⁸

(h) The international administrative tribunals have pronounced that fixed-term appointments carry no expectation whatsoever of renewal or conversion to another type of appointment. In this regard, the United Nations Appeals Tribunal (the “UNAT”) has held:

“... It is a well-established principle that fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of contract. Even the renewal of the appointment of a staff member on successive contracts does not, in and of itself, give grounds for an expectancy of renewal, unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended. The jurisprudence requires this promise at least to be in writing.

“... In order for a staff member’s claim of legitimate expectation of a renewal of appointment to be sustained, it must not be based on mere verbal assertion, but on a firm commitment to renewal revealed by the circumstances of the case.

“Consequently, in accordance with Appeals Tribunal jurisprudence, it is firmly established that ‘the non-expectancy of renewal [may] be challenged if evidence [is] produced leading to the conclusion that an express and concrete decision, promise, or commitment of renewal was communicated to a staff member, consequently raising such an expectation.’”⁹

(i) As further established by the International Labour Organization Administrative Tribunal (the “ILOAT”),

“[i]t is well established in the Tribunal’s case law that the non-renewal of a fixed-term contract is discretionary. Such a decision is subject to only limited review by the Tribunal, which respects the freedom of an international

⁸ *Id.*, para. 22.

⁹ Judgment No. 2024-UNAT-1482, paras. 45-47 [citations omitted].

organization to determine its own staffing requirements and the career prospects of staff members. A person who is employed on a fixed-term contract does not have a right or a legitimate expectation to a contract extension. Accordingly, the Tribunal will not interfere with a decision not to extend such a contract unless the decision was made without authority, or in breach of a rule of procedure, or was based on a mistake of fact or of law, or overlooked some essential fact, or amounted to an abuse of authority”¹⁰

(j) Regarding the discretionary authority whether or not to commence an investigative processes, the Tribunal has highlighted that the designated inquiry officer “has a certain degree of discretion as long as due process is followed and reasons are provided” and that “an investigation and a subsequent disciplinary action can only take place if there is sufficient evidence of misconduct.”¹¹

(k) Concerning the burden of proof, the general principle applied by international administrative tribunals is that the burden of proof lies with the claimant. For instance, the United Nations Dispute Tribunal (the “UNDT”) has ruled that “The burden of providing convincing evidence of harassment, prejudice or any kind of improper motivations rests with the Applicant who alleges so”.¹² The ILOAT has further maintained that “There will be misuse of authority where the administration exercises it for some purpose other than those prescribed by law or, to put it more broadly, those that the general interest requires. A staff member who pleads misuse of authority, and the Tribunal that allows the plea, must be able to identify the improper purposes for which the authority [...] has been exercised.”¹³

(l) In accordance with the general principle of the presumption of regularity, the acts performed by the administration are presumed to be regular if they are shown to be reasonable, lawful and procedurally fair. The claimant then bears the burden of showing,

10 ILOAT Judgment 3448, Consideration 7.

11 EBRDAT 2023/AT/01, paras. 62, 63.

12 UNDT/2009/066, para. 23. The ILOAT has confirmed that "Misuse of authority may not be presumed and the burden of proof is on the party that pleads it." *See also* ILOAT Judgment 2116, Consideration 4.

13 ILOAT Judgment 1392, Consideration 35.

through the production of clear and convincing evidence, that an irregularity was highly probable.”¹⁴

IV. THE FINDINGS OF FACT IN THE ARC REPORT

32. In its report and recommendation, the ARC considered that the evidence did not demonstrate that the Appellant had a legitimate expectation of contract renewal or extension.
33. As a threshold matter, the ARC observed that the Appellant’s appointment did not carry any expectancy of extension or conversion to any other type of appointment with the Bank. This was made clear to the Appellant in an “Important Note” that had been included in the Appellant’s offer of appointment from the Bank (see paragraph 5 above). The ARC also took note of Section IV, paragraph 2(a) of the Directive on Ending Employment, which provides that “[t]he employment of a staff member appointed on a term appointment of a specified duration shall end upon the expiration of the initial term appointment or any extension thereof.”
34. The ARC noted that there were no written promises made to the Appellant, who was aware that the line manager was not happy with the Appellant’s performance and the reasons the Appellant had been placed on a SPMP. The ARC thus concluded that the Bank had no legal obligation to extend or renew the Appellant’s fixed term contract.
35. However, the ARC also observed that, in taking a decision not to renew or extend a fixed term contract, the Bank is under a duty to act fairly, justly and transparently, and is not to be motivated by bias, prejudice or improper motive. In this regard, the complainant bears the onus of alleging and proving that the contested decision is arbitrary, procedurally deficient, was not taken by the competent authority or was tainted by improper motives.
36. The ARC reiterated the duties of both the Bank and employees concerning shortcomings in performance. It cited from EBRDAT 2018/AT/06, which referred to Section 4.18.1(1) of the Staff Handbook at the time, regarding the duties of the Bank as follows:

“where shortfalls or weaknesses in performance are observed, to bring these to the attention of the employee concerned” and to “provide or arrange for the

14 ILOAT Judgment 2915, Consideration 14 (“the presumption of regularity applies in the absence of cogent evidence to the contrary”); UNAT Judgment No. 2023-UNAT-1404, para. 61, *citing* UNAT Judgment No. 2011-UNAT-122, para. 26.

provision of a reasonable level of advice, coaching and, where appropriate, training to less experienced staff, and to other members of the team who may need it.”

37. EBRDAT 2018/AT/06 also cited the corresponding duty of employees under Section 4.18.1(2) of the Staff Handbook at the time:

“Each employee is responsible for carrying out the duties and responsibilities of his/her position to the best of his/her abilities, and in a manner that meets the performance standards required of the position. Employees are expected to respond positively to criticism, to take advantage of advice and available assistance, and to make best efforts to rectify weaknesses that are brought to their attention. They are not entitled to demand an unusual amount of coaching or other assistance to help overcome performance weaknesses, or to rely on the lack of such assistance to justify or excuse such weaknesses.”

38. In this regard, the ARC examined each of the specific areas identified in the SPMP that required improvement on the part of the Appellant, namely:

- i. Ensures Accountability:
 - a. Taking full ownership of assigned tasks.
 - b. Delivering work on time and with the required quality.
 - c. Ensuring timely submission of required documents and actively contributing to tasks.
- ii. Communicates Effectively:
 - a. Communicating in a clear, concise, and constructive manner.
 - b. Improving written and verbal communication to avoid errors and ensure clarity.
 - c. Responding promptly to emails and queries.
- iii. Collaborates:
 - a. Grasping the details of tasks and responsibilities.
 - b. Preparing adequately for meetings and discussions.
 - c. Engaging effectively with colleagues and understanding the role within the team.
- iv. Engage Effectively with Line Manager:
 - a. Responding promptly to feedback and instructions.
 - b. Demonstrating proactiveness and seeking opportunities to take on responsibilities.

39. The ARC noted that these areas had been consistently highlighted in the Appellant's performance reviews and during the SPMP process.
40. The ARC also pointed to the testimony of several witnesses who had worked with the Appellant and the Line Manager. In relation to performance issues, various peers who had provided feedback in connection with the Appellant's year-end performance appraisal also raised concerns about the Appellant's effectiveness as a colleague, noting that although the Appellant had the potential to be a very effective colleague, the Appellant "needs to make some changes to [his] approach to work to be seen as a valuable contributor to the team." Another colleague noted that he found the Appellant more fit for a career in banking than to performing a technical role as an analyst.
41. Given this testimony as well as the documentary evidence, the ARC found that, since early in the Appellant's career at the Bank, the Appellant had demonstrated difficulties understanding and meeting the demands expected for his role.
42. With respect to the Appellant's complaints of harassment against the Line Manager the ARC noted, based on its experience from previous cases, that complaints of bullying and harassment are frequently raised by complainants who argue that they have received insufficient onboarding and lack of proper guidance by line managers, and others state that they have been subject to discriminatory treatment when placed in an SPMP and felt humiliated.
43. The ARC, while acknowledging that these feelings and/or perception were legitimate and understandable, they were not sufficient *per se* to demonstrate harassment or bullying. The ARC therefore expressed the view that, in the present case, "the allegations made by the complainant in relation to his line manager do not reach the level of bullying nor harassment and are to be understood in the context of the work relationship and professional demands that the complainant was not able to meet. In addition, the Applicant [sic] was not able to provide any specific examples of abusive behaviour, language or lack of courtesy but rather complained about lack of guidance and support."
44. Given its conclusion that the contested decisions were not illegal, the ARC dismissed the Appellant's request for monetary relief.

V. THE APPELLANT'S POSITION

45. The Appellant considers that he did not benefit during his employment from a clear and well-defined onboarding plan setting out the training, guidance, and support that would be provided to him as a new member of staff. Furthermore, he points out that his two-

year fixed-term contract with no guarantee of renewal and his right to reside in the UK depended entirely on the continuation of his employment. He therefore felt unable to voice his concerns earlier, having spent a significant period under fear of retaliation and psychological pressure that speaking up would jeopardise his job and his ability to remain in the UK.

46. The Appellant is challenging the ARC's conclusions and the President's decision to uphold the impugned decisions, specifically on the following grounds:
- The ARC applied incorrect legal standards regarding the non-renewal of FT contracts.
 - Material errors of fact were made in evaluating evidence and performance assessments.
 - Significant procedural irregularities in the SPMP and RWP assessments were not addressed. For example, the Appellant states that during Step 1, “[he] did not receive any ongoing or interim feedback — whether written or verbal — identifying specific deficiencies, setting measurable objectives, or providing concrete guidance on how [his] performance could be improved. The first substantive feedback was communicated only at the end of Step 1, during a meeting to inform the negative outcome. Feedback provided only after an assessment phase has concluded cannot serve a corrective or improvement-oriented function.” (Appeal, para. 49)
 - The Appellant adds that “No additional training, coaching, mentoring or structured support measures were provided during Step 2. In these circumstances, the SPMP functioned not as a forward-looking improvement process, but as a retrospective justification for termination.” (Appeal, para. 50)
47. With respect to the closure of his harassment complaint, the Appellant maintains that he was subject to bullying and harassment, and that he was not given any support or proper guidance by his Line Manager and was thereby “set to fail”.
48. By way of relief, the Appellant is seeking the following remedies from the Tribunal:
- i. Reversal of the President's Decision;
 - ii. Compensation for unlawful non-renewal of the fixed-term contract, amounting to two years of total compensation with interest;
 - iii. Moral damages of GBP 10,000 for professional and personal harm suffered; and
 - iv. A correction of personnel records to remove negative references to performance.

VI. THE RESPONDENT'S POSITION

49. The Bank offers several arguments in response to the Appeal, to support its view that the contested decisions were made on a reasonable and observable basis.
- i. The Termination Decision was lawful, based on documented sub-standard performance and conducted in compliance with the SPMP and relevant procedures;
 - ii. The Appellant was given sufficient time and support to improve his performance but failed to meet the required standards; and
 - iii. With respect to the Harassment Decision, the Appellant's allegations of improper behaviour by the Line Manager were unsubstantiated and did not meet the threshold for misconduct under the RWP. In particular, the President's Decision, having examined the various written exchanges between the Line Manager and the Appellant, concluded that the Line Manager's tone was consistently open and in a polite tone, as well as encouraging. It also observed that, contrary to the Appellant's allegations, the Line Manager had not lacked empathy and had, in fact, expressed sympathy for the Appellant's personal situation.
50. Accordingly, the Bank requests the Tribunal to dismiss the Appeal in its entirety, as the Appellant has not provided sufficient evidence to prove that the contested decisions were unlawful arbitrary, or improperly motivated. The Bank also requests that no remedies be granted to the Appellant, as the decisions were made fairly and in accordance with the Bank's rules and procedures.

VII. THE TRIBUNAL'S EVALUATION

51. The Tribunal recalls its established jurisprudence that it is inherent in an appeal process that certain facts and opinions become known, both inside and outside the Bank (cf. EBRDAT Case No. 2019/AT/08, paragraph 41). This being said, it is indeed the Tribunal's established approach to limit to the maximum extent possible, *inter alia*, the exposure of names, facts or descriptions that may identify participants in the process. However, an absolute guarantee cannot be given. Under these circumstances, the Tribunal grants the anonymity requested by the Appellant.
52. Noting that neither party has requested oral hearings, and bearing in mind Section IV, paragraph 7.02(a) of the Appeals Process, the Tribunal does not consider that there are exceptional circumstances present in this case that would warrant holding oral hearings *sua sponte*.

53. The Tribunal notes that much of the Appeal is devoted to challenging the findings and conclusions reached by the ARC.¹⁵ The Tribunal wishes to underscore that its normal practice is to defer to the findings of fact by the ARC. However, Section IV, paragraph 7.01 of the Appeals Directive does not require the Tribunal to accept the ARC's conclusions drawn from those facts. Therefore, the Tribunal has considered the extensive factual record in the case at hand and made its own assessment as to the validity of the President's decisions to uphold the non-extension of the Appellant's fixed-term contract with the Bank on grounds of sub-standard performance, and to close the inquiry into the Appellant's complaints of bullying and harassment against his Line Manager.
54. In this regard, the Tribunal recalls the following general principles:
- Fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of contract. A staff member's claim of legitimate expectation of renewal must be based on a firm commitment to renewal revealed by the circumstances of the case, not mere verbal assertions.¹⁶
 - It is not the role of the Tribunal to conduct an assessment of an employee's merits instead of the competent reporting officer or the various supervisors and appeals bodies which may be called upon to revise that assessment.¹⁷
 - The burden of providing convincing evidence of harassment, prejudice, or improper motivations rests with the applicant who alleges such claims, in order to overcome the presumption of regularity with respect to decision-making by the administration.¹⁸
55. In particular, the Tribunal notes that it does not have the function of a rebuttal panel with respect to the review of performance appraisals and whether the criticism of a staff member's performance is valid, as it is not its role to substitute its views for managerial decisions that were properly taken.¹⁹ Rather, its role is to ensure that the standards and prescribed procedures were properly applied in the case of the Appellant, and that there

15 For example, the Appellant criticises the ARC for having relied on an inaccurate job description submitted by the Bank to the ARC that did not properly reflect his actual duties during his employment at the Bank. However, the Appellant has not shown how this was prejudicial to his performance assessments, which clearly indicated the areas in which performance was considered sub-standard.

16 Judgment No. 2024-UNAT-1482, paras. 45-47.

17 ILOAT Judgment 4986, Consideration 6.

18 See footnote 14 *supra*. See also UNDT/2009/066, para. 23.

19 EBRDAT 2019/AT/08, para. 70.

is no element of the Appellant's assessment that could be considered as clearly wrong, obviously unreasonable or showing a likelihood of bias.

56. The ILOAT has also repeatedly emphasised such limitations on its power of review with respect to staff appraisals²⁰:

“2. [...] It is not for the Tribunal, whose role is not to supplant the administrative authorities of an international organisation, to conduct an assessment of an employee's merits instead of the competent reporting officer or the various supervisors and appeals bodies which may be called upon to revise that assessment. [...]

3. [...] [A]ssessment of an employee's merit during a specified period involves a value judgement; for this reason, the Tribunal must recognise the discretionary authority of the bodies responsible for conducting such an assessment. Of course, it must ascertain whether the ratings given to the employee have been determined in full conformity with the rules, but it cannot substitute its own opinion for the assessment made by these bodies of the qualities, performance and conduct of the person concerned. **The Tribunal will therefore intervene only if the staff report was drawn up without authority or in breach of a rule of form or procedure, if it was based on an error of law or fact, if a material fact was overlooked, if a plainly wrong conclusion was drawn from the facts, or if there was abuse of authority.**” [Emphasis added.]²¹

57. In light of this standard, the Tribunal has examined whether the Termination Decision was well-founded, in terms of both its factual and legal bases.
58. First, with respect to the factual basis for the Termination Decision, the Tribunal noted that the Line Manager had consistently identified performance concerns and communicated them to the Appellant over an extended period. Early reviews in 2022 acknowledged positive integration into the team and adequate competencies but already highlighted a need for clearer communication and greater proactivity. By mid-2023, more serious concerns emerged, including failure to meet minimum performance expectations and only marginal improvement despite feedback.

20 ILOAT Judgment 4564, Considerations 2 and 3, *cited with approval* in Judgment 4786, Consideration 4, and Judgment 4983, Consideration 6.

21 Judgment 4564, Considerations 2 and 3.

59. By the end of 2023, the Appellant continued to struggle with understanding institutional processes, taking ownership of tasks, and delivering work of acceptable quality. Specific issues included errors in routine tasks, inadequate preparation for meetings, and an inability to work independently without extensive guidance. These deficiencies persisted into the 2024 mid-year review, which again identified missed deadlines, poorly prepared work, ineffective communication, and lack of engagement with the Line Manager.
60. Given the continuing concerns, the Bank initiated the Sub-standard Performance Management Process (SPMP). Step 1 (May–July 2024) identified four key areas requiring improvement—accountability, communication, collaboration, and effective engagement with the manager. Although minor improvements in responsiveness were observed, the Appellant’s performance remained insufficient. Step 2 (July–September 2024) likewise showed no meaningful progress, with continued issues such as missed deadlines, lack of task ownership, unclear communication, and weak collaboration.
61. Overall, the documented performance record from 2022 through 2024 reflects a consistent pattern of underperformance across core competencies, despite repeated feedback, support, and structured performance management measures.
62. In short, in terms of the overall assessment of the Appellant’s performance, the Line Manager consistently observed that the performance fell below the required standards. His observations highlighted persistent issues in these four key areas, ultimately leading to the recommendation to terminate the Appellant’s employment.²²
63. Second, with respect to the legal basis for the Termination Decision, the Tribunal has examined the process to be followed before a staff member’s appointment may be terminated on grounds of sub-standard performance, and whether the applicable process, as prescribed in the Directive on Organisation and Personnel Management and the Procedure on Management and Development with respect to addressing sub-standard performance, was duly followed in the case of the Appellant. In this regard:
- The Line Manager conducted a review of the Appellant's performance at both the mid-year point and at the end of each calendar year, and conveyed his observations

²² See ILOAT Judgment 4010, Consideration 8 (dismissing challenge to performance appraisal where “complainant’s analysis does not reveal any factual errors that might have had a material effect on the ultimate conclusions about his performance. While the analysis reflects the complainant’s view, understandably favourable to him, of how he had performed in relation to those seven activities, it does not reveal an error of the type that would warrant intervention . . . The complainant’s supervisor was entitled to form the view he had of the complainant’s performance and it was not flawed by any material factual error.”) See also ILOAT Judgment 4986, Considerations 5-6.

as to those aspects in which the Appellant was not meeting the required standards of performance;

- The Line Manager informed the ARC that, in preparing the Appellant's 2022 and 2023 performance appraisals, he had collected feedback from two different sets of the Appellant's colleagues in order to identify specific areas for improvement. Several colleagues were later interviewed by the ARC, and their views were consistent with the views of the Line Manager;
- As permitted under Section IV, paragraph 3.1 of the Procedure on Performance Management and Development, the Line Manager decided to initiate the SPMP process on 30 May 2024. In keeping with Step 1 of that process, he notified the Appellant in writing of the areas where improvement was required and how he would support the Appellant in achieving the improvement needed²³;
- The Line Manager also set the date of 1 July 2024 for a meeting with the Appellant to review performance²⁴; in order to allow sufficient time for the conduct of the SPMP, the Appellant's appointment, which was due to expire on 31 August 2024, was eventually extended until 15 November 2024. The Review meeting took place on 3 July, and the Line Manager summarised his discussion in an email the following day, giving specific examples as to why, in his view, the Appellant's performance had not improved to the requisite level; and
- As of the end of Step 1, the Line Manager concluded that the Appellant was still unable to perform at the required standard. After consulting with HR's People Solutions & Advisory the Line Manager proceeded to Step 2 of the SPMP process, including notifying the Appellant that failure to improve to the required performance standards by the end of Step 2 (set as 12 September 2024) could result in termination of employment on grounds of sub-standard performance. The prescribed process for Step 2 calls for the needed improvement normally to be made within eight weeks.

23 In his interview before the ARC, the Line Manager stated that "I met with [the Appellant] ad hoc, but also, as I said, on a very regular basis. But . . . from the middle of 2023 I instituted this regular biweekly meetings, where basically I put in place a process whereby [the Appellant] would share an agenda of the topics he wanted to discuss, to . . . help [the Appellant] a bit with workload and workload prioritisation." [Emphasis added.] He also stated that, prior to the Termination Decision, the Appellant never came to him with concerns about the lack of adequate onboarding or that he had been left alone or blamed for matters beyond his control.

24 The procedure with respect to Step 1 calls for the Review Date to be set no less than four weeks but no later than 12 weeks after the initiation of the SPMP, which was the case here, as Step 1 occurred between 31 May and 4 July, with the Review held on 3 July.

64. On 13 September 2024, at the conclusion of Step 2, the Line Manager held a Final Review Meeting with the Appellant and summarised their discussion in an email on 16 September, also inviting the Appellant to provide his own comments on the Line Manager's observations. After consultation with his own line manager, the Line Manager recommended to the MDHR that the Appellant's employment be termination on grounds of sub-standard performance. The Appellant was also informed of the recommendation and provided his written comments thereon on 8 October.
65. Given the above, the Tribunal concludes that, despite being given ample time and support to improve, the Appellant's performance continued to fall short of the required standards for his role as Analyst. The Line Manager and colleagues each noted that the Appellant struggled to meet expectations, lacked proactivity, and was not a good fit for the role. The Tribunal notes the observation and recommendation by the ARC that the Bank ensure that newly hired staff receive robust onboarding, and that managers be trained with respect to effective communication skills in dealing with new recruits.
66. Nevertheless, the Tribunal finds that the Bank complied with the applicable procedures in providing the Appellant with an ample opportunity to meet the required standards of performance.
67. Accordingly, the Tribunal concludes that there was a valid factual and legal basis for the Termination Decision, including whether applicable procedures for addressing sub-standard performance issues were properly followed.
68. With respect to the Harassment Decision, the Appellant has not identified any procedural irregularities with respect to the conclusion reached by the MDHR that the behaviours attributed to the Line Manager, even if proven, would not be tantamount to harassment as defined in the RWP. In this regard, the Tribunal shares the views of the ARC that, with respect to the Appellant's complaints of harassment and bullying, "the allegations made by the [Appellant] in relation to his line manager do not reach the level of bullying nor harassment and are to be understood in the context of the work relationship and professional demands that the [Appellant] was not able to meet."
69. The Tribunal thus finds no error in the MDHR's decision that the matter could be closed without further action.

VIII. COSTS

70. Paragraph 8.06(a) of the Appeals Directive provides:

“If it upholds an Appeal, in whole or in part, the Tribunal may order that the respondent reimburse the appellant for such reasonable expenses, including reasonable legal costs, the appellant has incurred in presenting the Appeal. Exceptionally, the Tribunal may order that the respondent pay all or some part of the appellant’s legal costs where the Appeal has not succeeded.”

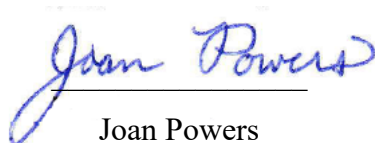
71. As the Appellant was not represented by counsel and has not requested the Tribunal to provide reimbursement, it is not necessary to consider whether the Respondent should bear the Appellant’s legal costs.

IX. DECISION

72. The Tribunal rejects the Appeal in its entirety. No remedy is awarded.

9 April 2026

For the Administrative Tribunal

A handwritten signature in blue ink that reads "Joan Powers". The signature is written in a cursive style and is positioned above a horizontal line.

Joan Powers

Chair of the Panel