

**ADMINISTRATIVE TRIBUNAL OF THE
INTERNATIONAL MONETARY FUND**

JUDGMENT No. 2014-1
Ms. “JJ”, Applicant v. International Monetary Fund, Respondent

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Introduction

1. On March 7, 2013 and February 25, 2014, the Administrative Tribunal of the International Monetary Fund, composed for this case, pursuant to Article VII, Section 4 of the Tribunal’s Statute, of Judge Catherine M. O’Regan, President, and Judges Andrés Rigo Sureda and Jan Paulsson, met to adjudge the Application brought against the International Monetary Fund by Ms. “JJ”, a staff member of the Fund. Applicant represented herself in the proceedings. Respondent was represented by Ms. Diana Benoit, Senior Counsel, and Ms. Juliet Johnson, Counsel, IMF Legal Department.
2. Applicant challenges her performance rating of “5” for the FY2009 Annual Performance Review (APR), her Merit Allocation Ratio (MAR) of zero for the same review period, and the decision that, as a result of her rating on the FY2009 APR, she would be placed on a Performance Improvement Plan (PIP) following her return from a two-year external assignment between 2009 and 2011. Applicant contends that the contested decisions were arbitrary, based on erroneous facts while ignoring relevant facts, improperly motivated, and taken in violation of applicable procedures. She further asserts that she did not receive adequate warning of alleged performance shortcomings or reasonable opportunity to remedy them through constructive feedback, guidance or training. Applicant also contends that her Department improperly threatened to place her on a PIP not as a genuine effort to improve her performance but to induce her to seek reassignment outside of the Department. As to the merit increase decision, Applicant alleges that the Fund improperly failed to perform a comparative assessment against colleagues. Applicant additionally contends that the challenged decisions evidence “career mismanagement.” Finally, Applicant raises allegations relating to events subsequent to the contested decisions of September 2009.
3. Applicant seeks as relief the rescission of her FY2009 APR and its amendment to reflect fairly her performance during the review period, along with adjustment of her merit increase to at least the Department mean, retroactive to May 1, 2009. Applicant also seeks to have set aside the decision that she would be placed on a PIP following her return from external assignment. Applicant additionally seeks legal fees and costs.
4. Respondent, for its part, maintains that Applicant’s FY2009 APR was a reasonable exercise of managerial discretion, representing the collective judgment of three direct supervisors, and that there is no ground for disturbing that decision. Respondent additionally maintains that the decision that Applicant would be placed on a PIP following her return from external assignment was mandatory in the light of her FY2009 performance rating of “5”. The

merit increase of zero percent, asserts Respondent, followed as a direct consequence of the performance rating and was not a discretionary decision. Respondent also contends that Applicant's claim of "career mismanagement" is without basis. As to Applicant's allegations relating to events following the contested decisions of September 2009, Respondent asserts that those claims are not admissible before the Tribunal because Applicant has not exhausted channels of administrative review in respect of them.

Procedure

5. On April 24, 2012, Applicant filed an Application with the Administrative Tribunal, which was supplemented on April 25, 2012 in accordance with Rule VII, paras. 3 and 6. The Application was transmitted to Respondent on April 27, 2012. On May 7, 2012, pursuant to Rule IV, para. (f), the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

6. On June 8, 2012, Respondent filed its Answer to the Application. On July 13, 2012, Applicant submitted her Reply, which was corrected on July 16, 2012. The Fund's Rejoinder was filed on August 16, 2012.

7. On August 24, 2012, Applicant submitted a letter and attachments concerning career developments in summer 2012. That submission was accepted for filing by the President of the Tribunal as an Additional Statement, pursuant to Rule XI. The Additional Statement was transmitted to Respondent for its Comments. The Fund's Comments were filed on September 19, 2012, and transmitted to Applicant for her information.

Applicant's request for anonymity

8. On October 25, 2013, the Tribunal sent an inquiry to Applicant, drawing her attention to its recent Judgment in *Mr. "HH", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2013-4 (October 9, 2013), paras. 16-43, in which it had interpreted Rule XXII (Anonymity) in the context of a challenge to the non-conversion of a fixed-term appointment. Although a request for anonymity ordinarily is to be made in the Application, in the light of the development of the Tribunal's jurisprudence in *Mr. "HH"*, the Tribunal afforded Applicant the opportunity to seek anonymity in this case at a later stage of the proceedings.

9. On November 15, 2013, Applicant submitted a request for anonymity, stating: "In the light of the recent Tribunal's Judgment on the applicant's request for anonymity in the case *Mr. "HH"*, Applicant requests the benefits of Rule XXII on anonymity of the Tribunal's Rules of Procedure."

10. On November 26, 2013, Respondent filed a Response to Applicant's request. Although the Fund stated that it did not oppose the request, it nonetheless maintained that Applicant had failed to carry her burden to show "good cause" for anonymity because she "provided no reasons for her request" beyond referring to the Tribunal's decision on anonymity in *Mr. "HH"*. Rule XXII, para. 4, provides that the Tribunal "shall grant a request for anonymity where good cause has been shown for protecting the privacy of an individual." In *Mr. "HH"*, paras. 16, 39, the Tribunal reaffirmed that Rule XXII contemplates that anonymity operates as an exception to the

ordinary practice of making public the names of parties to a judicial proceeding and that the burden rests with the party seeking anonymity to show “good cause,” citing *Ms. “AA”, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2006-5 (November 25, 2006), para. 13. In Respondent’s view, “. . . faithfulness to the Tribunal’s rule and its precedents would seem to support denial of the request for failure to meet the threshold requirement of the rule.”

11. The Tribunal disagrees. Although it would have been useful for Applicant in the instant case to have drawn expressly the connection between the circumstances of her case and those considered in *Mr. “HH”*, the fact that she has not done so does not defeat her request for anonymity. As considered below, the cause for granting Applicant’s request for anonymity is self-evident in the light of the reasons for the Tribunal’s decision on anonymity in *Mr. “HH”* and the fact that Applicant brings a challenge to the assessment of her performance.

12. In *Mr. “HH”*, para. 17, the Tribunal referred to its earlier jurisprudence holding that “anonymity generally is to be granted only in such cases as those involving alleged misconduct or matters of personal privacy such as health or family relations” and considered whether Mr. “HH”, who challenged the performance-based decision not to convert his fixed-term appointment to open-ended status, had shown “good cause” for protecting his identity. The Tribunal observed that Mr. “HH”’s request for anonymity presented the question whether protection of an applicant’s professional reputation, in the context of a challenge to a performance-based decision, may constitute “good cause” for granting anonymity pursuant to Rule XXII. *Id.*, para. 32.

13. In deciding to grant Mr. “HH”’s request for anonymity, the Tribunal emphasized that the “core of the evidence reviewed in this Judgment . . . relates to Applicant’s job performance, which, in the view of his managers, fell short of that required for conversion to a career appointment with the Fund.” *Id.*, para. 42. The Tribunal further observed:

Performance reviews are a special category of human resources intervention designed, in the first place, to enhance and improve performance. Useful performance reviews are built on candor on the part of the reviewer. Confidentiality is thus important to the process for two reasons: it encourages candor by reviewers who might otherwise seek to protect a staff member from public criticism; and it protects the employee who can feel able to seek to improve his or her performance secure in the confidentiality of the process.

Id., para. 43. The Tribunal concluded: “Given that key evidence in this case relates to the assessment of performance, it is not possible to protect the confidentiality of the performance review process without concealing Applicant’s identity.” In the view of the Tribunal, were it not to grant Mr. “HH”’s anonymity request, the “process of performance reviews going forward would inevitably be affected by the perceived risk of disclosure in future cases.” *Id.*

14. In the instant case, Applicant challenges the assessment of her job performance through the Fund's APR process. For the reasons set out in *Mr. "HH"*, the Tribunal grants Applicant's request for anonymity pursuant to Rule XXII.

Oral proceedings

15. Article XII of the Tribunal's Statute provides that the Tribunal shall ". . . decide in each case whether oral proceedings are warranted." Rule XIII, para. 1, of the Rules of Procedure provides that such proceedings shall be held ". . . if . . . the Tribunal deems such proceedings useful." Applicant has not requested oral proceedings.

16. The Tribunal had the benefit of the transcript of oral hearings held by the Fund's Grievance Committee, at which the following persons testified: Applicant; two of Applicant's three supervisors during the review period, one of whom was also her Department's Senior Personnel Manager (SPM); the Assistant to the Senior Personnel Manager (ASPM) of Applicant's Department; a representative of the Human Resources Department (HRD); and two of Applicant's colleagues during the relevant period. The Tribunal is ". . . authorized to weigh the record generated by the Grievance Committee as an element of the evidence before it." *Mr. M. D'Aoust, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1996-1 (April 2, 1996), para. 17.

17. In view of the extensive written record before it and in the absence of any request, the Tribunal decided that oral proceedings would not be useful to its disposition of the case.

Factual Background

18. The key facts, some of which are disputed between the parties, may be summarized as follows.

Overview

19. Applicant joined the Fund in 2000 as a mid-career economist in one of the Fund's functional and special services departments, where she performed successfully. In 2006, Applicant transferred to an area Department, where she was assigned as "desk economist" for "Country A".

20. In her new Department, Applicant's performance ratings declined. For FY2007 and FY2008, Applicant received performance ratings of "4". For FY2009, Applicant was rated "5", the lowest possible rating. Applicant's challenge to her FY2009 APR—and to the related decisions that she would receive a merit increase of zero percent for the review period and be placed on a PIP upon her return from a two-year external assignment—is the principal focus of her Application before the Tribunal. The events leading up to that FY2009 assessment are elaborated below.

Assessment of Applicant's performance in FY2008 (May 1, 2007 - April 30, 2008)

21. On her FY2008 APR, Applicant was rated “FM” (Fully Meets) in eight of twelve key job competencies. She was rated “CE” (Consistently Exceeds) in “building relationships.” In “analytical skills,” “technological/data management skills,” and “written communication skills,” however, she was rated “PM” (Partially Meets). The narrative portion of the assessment reported that Applicant “successfully performed most of her duties as a desk officer.” At the same time, the assessment concluded that Applicant’s “analytical skills need further development, in particular as regards [her] constructing a comprehensive macroeconomic picture out of the mosaic of individual issues. . . . [A]dvancement in this area is still needed for her to be a more effective desk [economist].” The assessment additionally noted: “[Applicant] writes generally well and contributes substantially to documents, but there is scope for improvement as regards both the structure and clarity of the presentation.”

22. At the time of Applicant’s FY2008 APR discussion in July 2008, she was informed by her Division Chief that her performance was unsatisfactory and that she should seek out other opportunities to ensure that she would leave the Department by the end of the next APR cycle, that is the summer of 2009. According to Applicant, this advice was confirmed by the SPM of her Department on August 4, 2008, who also encouraged Applicant to seek a return to her previous Department. (Tr. 440- 446.) Applicant testified that she understood this assessment to have been based in part on her work on a mission assignment during the course of the FY2008 review period, in which, in her words, her then supervisor “felt [she] was not up to speed.” (Tr. 437.) According to Applicant, in late October 2008, the SPM repeated his advice that she leave the Department by the end of the FY2009 performance review cycle.

Developments in FY2009 (May 1, 2008 - April 30, 2009)

23. During the period encompassed by the FY2009 APR (May 1, 2008 - April 30, 2009), Applicant’s performance on the program mission to “Country A” proved particularly problematic in the eyes of her supervisors. The SPM testified that he held a performance discussion with Applicant on December 12, 2008. This discussion followed the mission and, according to the SPM, also drew upon views expressed by Applicant’s mission chief. It is not disputed that at that meeting, the SPM informed Applicant that her performance to date for FY2009 was regarded as unsatisfactory and that if such assessment were confirmed at the end of the rating period, then, in accordance with Fund policy, she would receive a zero percent salary increase and would be placed on a PIP. The SPM testified that, at the same time, he “. . . also indicated to her that she might want to look for opportunities in other departments because . . . I was aware, from her performance record, that she had done satisfactory work in [her former department], and . . . I thought she would have potential to be effective elsewhere in the Fund.” (Tr. 83-84.) Thereafter, according to the SPM, he and Applicant “. . . had meetings every now and then, and sometimes it was on what opportunities might be there in other departments, and to get an update from her on how the search was going.” The SPM thought these meetings “reinforced the message” he had given her in the December 12 meeting. (Tr. 84.)

24. The SPM’s approach was summarized in an email communication to Applicant of December 15, 2008, in which he stated:

(i) your performance this fiscal year has been unsatisfactory, especially in program work; (ii) if this assessment is confirmed at the time of the next APR, you will be put on a performance plan; (iii) you will be phased out from the ["Country A"] team as new desks join the team; and (iv) to avoid being put on a performance plan, you have a window of opportunity before the next APR round to apply for positions in other departments, which [Applicant's Department] would support.

(Email from SPM to Applicant, December 15, 2008.)

25. When asked in the Grievance Committee proceedings why Applicant was not placed on a PIP at the time of the December 2008 discussions, the SPM described the Department's approach as follows: "[T]he PIP is required when performance is unsatisfactory and her performance had been weak but not unsatisfactory in the 2008 APR round, so that was not something that we considered at that point. It became a real consideration after the program missions, but at that point, we wanted to give her a chance to look for opportunities in other departments. . . ." The SPM explained that ". . . there would have been zero interest from other departments if she would have been on a Performance Improvement Plan in early 2009. And so, we wanted her to have options and were prepared to observe her in the meantime." (Tr. 120.)

26. On February 3, 2009, the ASPM informed the SPM that the HRD representative had "advised us to put [Applicant] on a performance plan right away (an informal plan, to be made formal at APR time) and to give her a new assignment." (Email from ASPM to SPM, February 3, 2009.) In the same month, a new mission chief assumed responsibility for "Country A" and became Applicant's supervisor for the remainder of the FY2009 review period and into the fall of 2009 when Applicant left on external assignment. Applicant was already acquainted with the new mission chief, as he had served earlier as her mentor under an HRD-sponsored program for new staff. The SPM testified that he believed that not implementing a PIP at this stage was a sound approach given that Applicant's new mission chief was expected to provide a "fresh pair of eyes to observe her performance." (Tr. 121-122.) The ASPM likewise testified that perhaps Applicant was not placed on an informal PIP because, with the appointment of a new supervisor, she would be "getting a whole new assessment from someone new." (Tr. 311.)

27. According to Applicant, on April 6 and 13, 2009, she met again with the SPM who, she contends, informed her that "she had only a month left to find a position outside [her Department] to avoid being placed on a PIP." Applicant asserts that the SPM told her that she would receive a "5" rating on her upcoming APR if she did not find a position outside the department before the end of May.

Applicant's FY2009 APR

28. In a meeting of July 2, 2009, Applicant's mission chief, SPM and ASPM discussed with Applicant her FY2009 APR. According to Applicant, the SPM informed her that ". . . the "5" rating was final and would necessitate placing her on a PIP if her swap arrangement to the [other organization] did not go through."

29. On August 5, 2009, the ASPM explained to Applicant that Section 5 of the APR, which had been provided to Applicant on July 24, was a draft “reflecting our summary of your APR discussion. If you would like to suggest changes to [SPM] please feel free to do so. However, please provide your comments by cob tomorrow (Thursday), as [the SPM’s] last day in the office is this Friday.” The same day Applicant wrote to the SPM: “There are several critical aspects that require careful formulation and the seriousness of this case require that I devote much more time and effort to thoroughly review the present version of Section 5. However, since you expect a feedback, I suggest I meet you tomorrow before you leave to lay down my concerns.” On August 6, the SPM replied: “I understand that you need more time to review the draft of Section 5. Given that I will be away the next three weeks, I would suggest that you take your time to review the draft and we finalize it in early September.” (Email exchange of July 24, August 4-6, 2009.)

30. On the SPM’s return from leave on September 1, Applicant met with him to discuss her comments but, according to Applicant, the SPM informed her that the APR had been final for weeks. Applicant pointed out that it had not been signed yet, and, she asserts, the SPM “irritably and quickly took the APR and signed it on the spot.” In the same meeting, the SPM informed Applicant of the decision that she would be placed on a PIP following her return from her external assignment.

31. On her FY2009 APR, Applicant was rated “FM” (Fully Meets) in nine of twelve key job competencies; however, she was rated “PM” (Partially Meets) in “analytical skills” and “DNM” (Does Not Meet) in both “specialty knowledge” and “written communication skills.” The narrative portion of the assessment reported that during the period May - September 2008, Applicant’s performance was “in line with the assessment in her 2008 APR” but that thereafter, during the intensive mission work, she was “not able to produce a consistent and well-reasoned macroeconomic framework and monetary projections, and other members of the team often had to take over these tasks.” It was concluded that Applicant “did not meet the performance standards to be the main desk economist” for the country and was relieved of that responsibility.¹ For the period February - April 2009, under the supervision of the new mission chief, Applicant was reported to have “demonstrated some of the same problems.” In particular, Applicant was seen to have “conducted routine work competently, but she has had difficulty in managing more complex tasks involving analysis of the monetary numbers and drafting.” In addition, it was noted that “[w]ritten communication is a particular problem.” With regard to writing, the FY2009 APR referred to Applicant’s 2008 APR, which had indicated “problems in structure and clarity.” “These remain,” stated the FY2009 APR, “and it is not clear whether the underlying problem is one of analysis or writing skills. It will be important that this issue, as well as the issues concerning work on macroeconomic frameworks, be addressed if [Applicant] is to be an effective desk economist.” At the same time, the FY2009 review identified as positive elements of Applicant’s performance that she was “well organized” and her “work ethic is good,” including cooperating well with her successor desk economists and contributing to team discussions.

¹ This portion of the assessment tracked closely a Memorandum for Files signed by Applicant’s initial mission chief on April 3, 2009.

32. The summary of the performance discussion as reported on the FY2009 APR form concluded by referring to Applicant's "5" rating and the plans for a PIP:

We also discussed the consequences of being rated a "5" which was the placement of a staff member on a performance improvement plan. In view of the fact that [Applicant] intends to pursue a swap arrangement with [another international organization], which we support, it would not be feasible at this time to outline the details of such a plan if she were away from the Fund for the next two years. We agreed to await the outcome of the swap, and, if it did not materialize as envisaged, we would find her a new assignment in the department and put in place an appropriate performance improvement plan at that time.

Applicant's FY2009 APR was signed by the SPM on September 2, 2009. The merit increase was noted as zero percent. In her written comments, Applicant registered her disagreement with the assessment and its process and indicated that she would seek administrative review.

33. In the September 1, 2009 meeting, Applicant, the SPM and ASPM discussed how the performance issues identified in Applicant's FY2009 APR would be addressed upon the conclusion of her external assignment. (*See below.*) That meeting was memorialized by the ASPM in a Memorandum for Files, which was provided to Applicant. The Memorandum referred to the "Fund's mandatory requirement for a staff member to be placed on a performance improvement plan (PIP) when they are rated a '5'" and stated that, following the external assignment, the Department would "identify a new assignment for [Applicant] and, in consultation with her mission chief, develop a PIP within three months of her return." The PIP would address the "two main areas for improvement that were identified in the 2009 APR, namely: (i) written communications—both the structure and the content and (ii) ability to put together a coherent macroframework, including the monetary framework." To monitor progress, the PIP would have "specific milestones, measures, and/or deliverables." The Memorandum concluded: "[I]f [Applicant]'s performance did not improve up to the required standards or the improvements were not sustained, she could be terminated within one year of her return to the department." As to the issue of the effect of Applicant's performance during her external assignment, the SPM indicated in the meeting that "we can only observe her progress when she is working in the department"; the external assignment was "not a substitute for a PIP." (Memorandum for Files from ASPM, September 2, 2009.)

34. According to Respondent, following the evaluation of Applicant's individual performance, the assignment of a particular numerical rating was the result of a "roundtable discussion" in which Applicant's performance was compared with that of peers in her Department. (Tr. 346.) According to the SPM, when it came to the decision to rate Applicant a "5" for the FY2009 APR, ". . . there was a unanimous view among supervisor[s] that her performance merited an unsatisfactory rating, and so, that decision stood. . . . [I]t was the department's decision, including the department heads and obviously, mine, . . . there were no dissenting views." (Tr. 85.) The HRD representative also testified that the Department had consulted with HRD "in terms of [was] there enough evidence of performance deficiencies and

that it really called for a 5.” (Tr. 347.) According to the HRD representative, such consultation by a Department was typical before assigning a performance rating of “5”. (*Id.*)

Applicant’s two-year external assignment

35. Applicant was successful in securing an offer in June 2009 from another international organization for a two-year external assignment to begin later that year. The question of how Applicant’s external assignment would affect the plan to place her on a PIP on the basis of her “5” rating became the subject of consideration within HRD, which proposed: “[The Department] discusses the specific development areas identified in the APR and communicates that on her return from the SWAP assignment if these development areas are still relevant in the context of the new assignment in [the Department], a PIP will be established within 3 months.” (Email from HRD representative to ASPM, August 31, 2009.)

36. Applicant’s two-year external assignment spanned the period from late 2009 to late 2011. Events following Applicant’s return to the Fund are the subject of additional allegations raised by Applicant. For the reasons set out below at paras. 124-130, the Tribunal has concluded that those challenges, which concern events arising subsequent to the contested decisions of September 2009—i.e., the decisions to rate Applicant “5” on the FY2009 APR, to allocate her a zero percent merit increase for the same period, and that she would be placed on a PIP following her return from external assignment—are not admissible before the Tribunal in these proceedings. Accordingly, facts that Applicant alleges² relating to that period have not been included in this summary of the factual background of the case.

Channels of Administrative Review

37. On September 23, 2009, pursuant to GAO No. 31, Section 6.02, Applicant requested administrative review by her Department Director of the “. . . arbitrary decisions to give me a 5 rating and 0 percent merit increase, include negative comments on my APR for FY2009 including the perceived need for a performance improvement plan (PIP), and to require me to participate on a PIP upon my return from a 2-year swap to the [other international organization], regardless of my performance there.” In her request, Applicant elaborated her challenges to the FY2009 APR. Applicant sought amendment of the APR, adjustment of her merit increase and rescission of the decision to place her on a PIP on return from the two-year external assignment. (Memorandum from Applicant to Department Director, “Request for Administrative Review—APR outcome and classification,” September 23, 2009.)

38. On October 19, 2009, Applicant’s Department Director denied her request, concluding that Applicant’s “assessment and rating were fair and well balanced.” The denial memorandum referred to the Department Director’s consultations “with all of the parties involved in the assessment of [Applicant’s] performance for the 2009 APR” and sought to substantiate the basis for that assessment in response to Applicant’s specific challenges to it. On the basis of this review, the Department Director declined Applicant’s requests that her performance assessment

² Respondent has declined to provide its version of these facts.

be amended, that her merit increase be adjusted, and that the decision to place her on a PIP following return from external assignment be reversed. (Memorandum from Department Director to Applicant, October 19, 2009.)

39. In accordance with GAO No. 31, Section 6.04, Applicant next pursued administrative review at the level of the HRD Director. (Memorandum from Applicant to HRD Director, “Request for Administrative Review—APR outcome and classification,” November 13, 2009.) The HRD Director also denied Applicant’s claims, concluding that the contested performance assessment “reflected a thorough and fair process of gathering input and information, the areas highlighted as needing improvement were areas that had been raised with [Applicant] previously, and the particular problems that arose this year have been verified.” With regard to the “5” rating, the HRD Director stated: “[T]he final rankings assigned to staff following the departmental roundtable are based on a relative ranking among peers. The decision to assign you a “5” rating for 2009, given the level of the overall performance as assessed by your supervisors, was appropriate.” (Memorandum from HRD Director to Applicant, December 22, 2009.)

40. The HRD Director additionally sustained the decision that Applicant would be placed on a PIP upon her return from her external assignment in the light of her FY2009 APR:

[Y]our secondment to the [other international organization] was initiated and requested by you. In light of your performance rating for 2009, your department could have withheld support for the secondment and insisted that you remain in the department to successfully complete your PIP, before any external assignment would be considered. However, HRD supported the decision to allow you to take the assignment . . . , in the belief that it will help to develop your skills and enhance your marketability, either within or outside the Fund. The secondment does not, however, obviate the need for a PIP, should you return to the Fund. The development needs that have already been identified must be addressed in a manner that can be measured by Fund standards, and reviews of your performance by another employer will not substitute for this process. If indeed the assignment in the [other international organization] leads to a sharpening of your critical skills, then that development will help you to succeed in the PIP.

(Id.)

41. On March 24, 2010, Applicant filed a Grievance with the Fund’s Grievance Committee. The Committee considered the Grievance in the usual manner, on the basis of oral hearings and the briefs of the parties. On January 4, 2012, the Committee recommended that the Grievance be denied. (Grievance Committee Recommendation and Report, January 4, 2012.) On January 24, 2012, Applicant was notified that Fund Management had accepted the Grievance Committee’s recommendation. (Letter from Deputy Managing Director to Applicant, January 23, 2012, and cover email of January 24, 2012.)

42. On April 24, 2012, Applicant filed her Application with the Administrative Tribunal.

Summary of Parties' Principal Contentions

Applicant's principal contentions

43. The principal arguments presented by Applicant in her Application, Reply, and Additional Statement may be summarized as follows.

1. Applicant's FY2009 APR was arbitrary because it was based on erroneous facts, ignored relevant facts, was biased and improperly motivated, and was taken in violation of applicable procedures.
2. Applicant was not given adequate or timely warning of her alleged performance shortcomings or opportunity to correct them.
3. Applicant's FY2009 APR was improperly motivated because the Department's main objective was to "force Applicant to leave the department."
4. Applicant's FY2009 MAR was arbitrary because it was based on an arbitrary APR, and Respondent failed to conduct a meaningful peer-to-peer review.
5. The decision that Applicant would be placed on a PIP upon her return from a two-year external assignment was arbitrary and improperly motivated. There is no written rule of the Fund that requires that a staff member with a "5" performance rating be placed on a PIP.
6. Rather than being threatened with a PIP, Applicant should have been provided genuine support by her Department to find a more suitable position. The Department failed to halt the downgrading of Applicant's performance and take remedial actions to prevent ratings that have irreparably harmed her career prospects, thereby evidencing "career mismanagement" by the Fund.
7. The failure to implement the PIP more than three months following Applicant's return from the external assignment created additional uncertainty for her career development within the Fund.
8. The Fund retaliated against Applicant for filing her Application with the Tribunal by suddenly implementing the PIP in August 2012 and refusing to support an internal swap arrangement. The decision to rate Applicant as "Not Rated" for the 2012 APR, based on her absence from the Fund during the preceding review period and her "5" rating for FY2009, was arbitrary.
9. Applicant seeks as relief:
 - a. rescission of her FY2009 APR, including the challenged ratings and comments, and amendment thereof to fairly reflect her performance;

- b. adjustment of Applicant's merit increase to at least the Department mean, retroactive to May 1, 2009;
- c. setting aside of the decision to place Applicant on a PIP following her return from external assignment; and
- d. legal fees and costs incurred in pursuing the Grievance Committee proceedings, as well as a result of seeking legal assistance during the Administrative Tribunal proceedings.

Respondent's principal contentions

44. The principal arguments presented by Respondent in its Answer, Rejoinder, and Comments on Applicant's Additional Statement may be summarized as follows:

1. Applicant has not met her burden of establishing that her managers' assessment of her FY2009 performance was arbitrary. Their assessment was based on facts and carried out in accordance with applicable procedures.
2. Applicant's FY2009 APR reflects the assessments of three different managers over the entire review period on Applicant's key performance areas. The "5" rating is supported by evidence.
3. Applicant received regular performance feedback from multiple sources, and the FY2009 APR was taken in accordance with applicable procedures.
4. There is no support for Applicant's allegation that her performance assessment for FY2009 was improperly motivated.
5. Applicant's FY2009 MAR, i.e., her zero percent merit increase, was a necessary consequence of Applicant's FY2009 APR and the rules that governed the FY2009 MAR.
6. The decision to place Applicant on a PIP was mandatory, given her FY2009 performance rating of "5" and the Fund's practice of requiring a PIP when a staff member receives the lowest of the possible performance ratings. Applicant's external assignment did not eliminate the need for a PIP upon her return to the Fund.
7. There is no evidence of "mismanagement" of Applicant's career by the Fund. It is the responsibility of individual staff members to manage their careers. The Fund made good faith efforts to identify suitable positions for Applicant.
8. Allegations raised by Applicant relating to events that occurred after September 2, 2009—the date of the decisions subject of Applicant's challenge—are not properly before the Tribunal because she has not exhausted administrative review in respect of them.

Relevant Provisions of the Fund's Internal Law

45. For ease of reference, the principal provisions of the Fund's internal law relevant to the consideration of the issues of the case are set out below.

APR: Guidance Notes for Managers (May 18, 2009)

46. It is not disputed that the assessment of Applicant's performance was governed by "APR: Guidance Notes for Managers." The version of those Guidance Notes that form part of the record of the case was posted on the Fund's intranet on May 18, 2009 and provided in pertinent part:

Managing the Performance Review Process

- Give regular feedback on performance throughout the year and monitor progress toward objectives. Keep notes on achievements or critical incidents that demonstrate positive and/or negative job performance. **The annual review should serve as the culmination of regular feedback during the year with staff.** This avoids unpleasant surprises at the time of the annual review, provides early signals to staff on how they are doing, and allows them to make performance corrections during the year. Regular feedback and discussions with staff are important measures of your own performance as a supervisor.

....

Merit Information

Departments will place each staff member in one of five relative levels, based on the distribution set out below. The relative level should reflect the staff member's overall performance and contribution during the assessment period. There should be a clear relationship between the level in which staff are placed and their competency ratings in terms of broad direction. However, this link cannot be mechanical as staff's placement in a distribution range is also based on the staff member's relative performance compared to peers and reflects the full range of factors affecting assessment of performance beyond the competency ratings. Such factors would include workload, output, complexity of assignments, impact of work on the department and other circumstances such as handling a higher level position for an extended period.

Beginning FY 2009, Merit Allocation Ratios (MARs) will be standardized across the Fund and calculated centrally by HRD, based on a relative ranking system with five levels. The merit matrix will be distributed across the five levels as follows:

Table 1. Distribution for A01 – B03 Staff

	Level 1 (Outstanding)	Level 2	Level 3	Level 4	Level 5
Distribution Range (percent)	Up to 15	Up to 15	Up to 60	At least 10	

The actual MAR for each level will be determined by HRD with Management approval based on the Fundwide Merit budget. There will be only one MAR for each level with Level 3 being equal to a MAR of 1. Standardized MARs will facilitate comparison of staff performance across the Fund over time. Staff members' individual MARs will depend on their salary segment and their performance.

Managing Performance

....

Performance management is an on-going process which is summarized every year in the APR. Hence the APR needs to reflect the assessment of performance throughout the year.

....

Managing Poor Performance

Staff can perform at a low level for a number of reasons. One of the most interesting but also challenging and time-consuming responsibilities for you is to ascertain why the deficiency exists and to address it appropriately. If the deficiency is skill-related, training would be an appropriate remedy, but if the deficiency is due to other causes (e.g., medical issues, work practices issues, etc.), then an exploration of the issue is in order so that the appropriate interventions could be applied.

As with average and strong performance, the APR is the summary of on-going monitoring and feedback that took place throughout the year. You are expected to give feedback on poor performance at anytime during the year. A delay in addressing performance deficiencies is both unhealthy for the work unit's morale and unfair for the staff member from the development perspective. Staff members who are considered poor performers, should be rated in the lowest of the five relative levels.

Poor performers benefit most from on-going reinforcement, feedback, and direct corrective actions that result from progress monitoring. You are expected to (i) reiterate to the staff member performance areas that still need improvement if the desired progress has not materialized, with a clear indication of where the staff member still fails to meet the requirements and/or expectations of the job, and (ii) develop a plan to help the staff member address the deficiencies. Such a plan should:

- define the performance standards for the job,
- identify the specific actions that should be taken to address the deficiencies,
- describe the desired outcome/results of the actions,
- provide a timeframe for progress to be achieved, and
- identify the consequence/s of not improving the performance.

It is very important that you document the problem and the process, including any discussion that you hold with the staff member. Documentation could consist of a memorandum for files, with a copy to the staff member, that describes the problem/s and includes the five elements of performance plan listed above. A more structured format for documenting performance issues is shown in the Performance Improvement Plan form (PIP), which is available on Microsoft Word at IMF > Forms > APR Forms > Performance Improvement Plan.

Probationary Action

If, in your judgment, the deficiency is significant to the point where suitability for employment in the Fund is in question, then the staff member should be placed on probation (in accordance with GAO No. 16, Rev. 5, Sec. 14). A staff member on probation will be monitored closely on his or her progress on a PIP for a defined period of time (minimum of six months), following which termination is in order if performance continues to be unsatisfactory. While probation may be used at any time during the year, you should consult with your Senior Personnel Manager (SPM) and Assistant to the Senior Personnel Manager (ASPM) prior to placing staff on probation.

You should not feel alone in the process of placing a staff member on probation and/or developing and implementing PIPs. You have and should seek the support of your SPM and ASPM.

In situations where probation is in order, you should complete the PIP, in consultation with your ASPM. As above, the PIP should contain:

- a clear and detailed identification of areas that need improvement, along with the standards of performance that the staff member is expected to reach
- what needs to be done to develop, and expected results which would demonstrate that the desired performance level has been reached
- a time frame for completion of the probation (GAO No. 16, Rev. 5, Sec. 14.02 provides a minimum of six months), along with methods to measure improvement, including performance monitoring and feedback schedules
- consequences, if performance continues to be unsatisfactory

Once the PIP is complete, you are expected to:

- hold a meeting with your ASPM present to inform the staff member that he/she is placed on probation, discuss the PIP to ensure the staff member's understanding, and provide the staff member with a copy of the PIP,
- document in a memorandum for file, the discussion with the staff member and any issue that arose during the discussion, and
- monitor the staff member's development as specified in the PIP, and document assessment of progress.

(Emphasis in original.)

GAO No. 16, Rev. 6 (February 28, 2008), Section 13

47. "APR: Guidance Notes for Managers" refers to probationary action pursuant to GAO No. 16 (Separation of Staff Members). GAO No. 16, Rev. 6, Section 13, provides as follows for separation of staff members on the ground of unsatisfactory performance:

Section 13. **Unsatisfactory Performance**

13.01 General. A staff member may be separated for unsatisfactory service.

13.02 Entitlement to Probationary Period. Except in the cases specified in Section 13.03, a staff member whose

performance is considered unsatisfactory shall be entitled to a period of at least six months probation before a decision to separate him is taken. Action to place the staff member on probation shall be taken by his Department Head, in consultation with the Director of Human Resources. The staff member shall be informed in writing of the specific areas in which he is required to improve. If, at the end of the probationary period, the Department Head determines, in consultation with the Director of Human Resources, that the staff member has continued to perform unsatisfactorily, his employment shall be terminated.

13.03 Exceptions. The provisions of Section 13.02 shall not apply to cases where the staff member whose performance is considered unsatisfactory has been placed on probation for unsatisfactory service in the previous five years.

13.04 Notice. A staff member separated because of unsatisfactory performance shall be entitled to 30 calendar days' notice. However, in the event of an appeal against the decision to terminate his employment, the Director of Human Resources may, at his discretion, extend the period of notice until a final decision has been made.

13.05 Resettlement Benefits. A staff member who is separated for unsatisfactory performance shall be eligible for resettlement benefits. However, the minimum period of service required as specified in General Administrative Order No. 8 (Relocation Benefits) shall not apply in such a case.

2009 Merit Matrix (June 29, 2009)

48. The determination of Applicant's merit pay increase was governed by the "2009 Merit Matrix," posted on the Fund's intranet on June 29, 2009, which provided in pertinent part:

2009 Merit Matrix

For Grades A1-B3

Average Merit Increase: 5 percent

(In Percent¹)

Ranking and MAR Level	Segment		
	S1	S2	S3
Outstanding – 1.30	7.40	5.93	4.45
Level 2 – 1.15	6.54	5.24	3.93
Level 3 – 1.00	5.69	4.56	3.42
Level 4 – 0.70	3.98	3.19	2.39
Level 5 – 0.00	0.00	0.00	0.00
Merit Allocation Coefficient	5.69	4.56	3.42

¹Rounded to 2 decimals

Consideration of the Issues

49. The Application of Ms. “JJ” presents the following issues for the consideration of the Administrative Tribunal:

- (i) What is the standard of review that governs in challenges to performance assessments?
- (ii) Did the Fund abuse its discretion in assessing Applicant’s performance in the FY2009 APR?
- (iii) Did the Fund abuse its discretion in assigning Applicant a zero percent merit increase for FY2009?
- (iv) Did the Fund abuse its discretion in deciding, based on the results of Applicant’s FY2009 APR, that she would be placed on a PIP following her return from a two-year external assignment?
- (v) Did the Fund “mismanage” Applicant’s career?
- (vi) Are the challenges raised by Applicant concerning events subsequent to the contested decisions of September 2009 admissible before the Tribunal? If so, how shall those challenges be decided?

(i) What is the standard of review that governs in challenges to performance assessments?

50. The Tribunal’s standard of review applicable to discretionary decisions makes plain that such decisions are subject to rescission if shown to be “arbitrary, capricious,

discriminatory, improperly motivated, based on an error of law or fact, or carried out in violation of fair and reasonable procedures.” Commentary on the Statute,³ p. 19. In reviewing decisions involving assessment of professional qualifications, including challenges to performance ratings and to performance-based decisions not to convert fixed-term appointees to open-ended status, the Tribunal has cited the following portion of the Statutory Commentary:

This principle [of deference to managerial discretion] is particularly significant with respect to decisions which involve an assessment of an employee’s qualifications and abilities, such as promotion decisions and dismissals for unsatisfactory performance. In this regard, administrative tribunals have emphasized that the determination of the adequacy of professional qualifications is a managerial, and not a judicial, responsibility.

Commentary on the Statute, p. 19. *See Ms. “BB”, Applicant v International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-4 (May 23, 2007), para. 95 (challenge to performance rating and merit increase); *Mr. “HH”, paras. 95-96* (challenge to non-conversion of fixed-term appointment); *Ms. “U”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-3 (June 7, 2006), para. 36 (same); *Ms. “T”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-2 (June 7, 2006), para. 36 (same).⁴

51. In reviewing a challenge to a performance rating and merit increase decision, the Tribunal has stated that “[i]n the absence of clear error or improper motive in the evaluation of performance, the Tribunal will not substitute its judgment for that of supervisors charged with that task.” *Ms. “BB”, para. 108*. In *Ms. “BB”, the Tribunal held that the applicant had not “. . . established that the evaluation of her performance was tainted by clear error or improper motive, including ill disposition on the part of her supervisors.” “On the contrary,” concluded the Tribunal, “the evidence reasonably supports the evaluation.” (*Id.*)*

52. The assessment of the performance of staff members is of great importance both to staff members and to the Fund. It is also clear that the process of performance assessment of those staff members on open-ended appointments imposes affirmative obligations on supervisors. These obligations are set out in the Fund’s written internal law in “APR: Guidance Notes for

³ The consolidated Commentary on the Statute comprises the Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund (1992) and the Report of the Executive Board to the Board of Governors on Amendments to the Statute of the Administrative Tribunal for the International Monetary Fund (2009).

⁴ *See also Ms. N. Sachdev, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2012-1 (March 6, 2012), paras. 98-99 (challenge to non-selection for promotion); *Mr. M. D’Aoust (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-3 (May 22, 2007), para. 72 (same); *Mr. “F”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-1 (March 18, 2005), para. 70 (finding “persuasive” Fund’s position that Mr. “F” was not qualified for a redesigned position following the abolition of his post).

Managers” (May 18, 2009), which governed during the relevant period. Those Guidance Notes explain that managers are to “[g]ive regular feedback on performance throughout the year and monitor progress toward objectives.” Additionally, “[p]erformance management is an on-going process which is summarized every year in the APR. Hence the APR needs to reflect the assessment of performance throughout the year.” With regard to “Managing Poor Performance,” the Guidance Notes provide that managers are “. . . expected to give feedback on poor performance at anytime during the year. A delay in addressing performance deficiencies is both unhealthy for the work unit’s morale and unfair for the staff member from the development perspective.”

53. The Guidance Notes emphasize that “[p]oor performers benefit most from on-going reinforcement, feedback, and direct corrective actions that result from progress monitoring.” Accordingly, in cases of poor performance, managers are expected to “(i) reiterate to the staff member performance areas that still need improvement if the desired progress has not materialized, with a clear indication of where the staff member still fails to meet the requirements and/or expectations of the job, and (ii) develop a plan to help the staff member address the deficiencies.” According to the Guidance Notes that governed the FY2009 APR, “[s]taff members who are considered poor performers should be rated in the lowest of the five relative levels.”

54. In addition to scrutinizing the substance of a performance decision, this Tribunal has also recognized, in the context of reviewing a challenge to the non-conversion of a fixed-term appointment, that “adequate warning and notice are requirements of due process.” *Ms. “C”, Applicant v International Monetary Fund, Respondent*, IMFAT Judgment No. 1997-1 (August 22, 1997), para. 37. This approach is consistent with that set out in the Commentary on the Statute, p. 19, which states that a decision involving the exercise of managerial discretion may be overturned if it is carried out “in violation of fair and reasonable procedures.” In elaborating this requirement, the Tribunal has held that the Fund must not only explain perceived performance problems to staff, but must suggest what steps should be taken to correct the perceived problems, and give staff a meaningful opportunity to rebut any allegations of performance problems. *Ms. “C”*, paras. 41–42. Because the outcomes of performance assessment processes may have adverse consequences for a staff member’s career, procedural safeguards are required to ensure that these processes are undertaken fairly. Furthermore, fair process in performance assessment supports the underlying purpose of such assessment, namely, to enable staff members to enhance and improve performance.

55. The World Bank Administrative Tribunal (WBAT) has also elaborated a number of general principles applicable to the fair assessment of performance. These include that the performance evaluation “. . . should deal with all relevant and significant facts, and should balance positive and negative factors in a manner which is fair to the person concerned.” *Lysy*, WBAT Decision No. 211 (1999), para. 68. “[P]erformance assessment of a staff member must take into account all relevant and significant facts that existed for that period of review (*Romain (No. 2)*, Decision No. 164 [1997], para. 19) in order to ensure a reasonable basis for the . . . ratings and comments.” *CD v. International Bank for Reconstruction and Development*, WBAT Decision No. 483 (2013), para. 19. “Lapses in performance should be identified when they occur and should be addressed expressly and promptly.” *O*, WBAT Decision No. 337 (2005), para. 54.

“Discussion of performance does not replace the need for ongoing feedback throughout the year in question, which should be provided so that the staff member ‘should be able to anticipate the nature of this year-end discussion and resultant ratings. . . .’ *Prasad*, Decision No. 338 [2005], para. 25, quoted in *BG*, WBAT Decision No. 434 (2010), para. 40. The WBAT has also held that a “basic guarantee of due process is ‘that the staff member affected be adequately informed with all possible anticipation of any problems concerning his career prospects, skills or other relevant aspects of his work’. *Garcia-Mujica*, Decision No. 192 [1998], para. 19. *See also Prasad*, para. 30.” *CD*, para. 32.

56. In its recent Judgment in *CD*, para. 20, the WBAT considered whether the performance assessment included “specific and adequate descriptive statements” to explain the negative assessment of the Applicant’s performance; took into account all relevant and significant facts existing during the period of review to ensure an “observable and reasonable basis” for the challenged rating; and “included feedback which supported” that rating.

57. From what has been set out above, it is clear that staff members must be given adequate and timely feedback of alleged performance shortcomings, as well as an opportunity to remedy those shortcomings; that performance evaluation decisions must be based on a balanced assessment of a staff member’s performance; that evaluation decisions must not be vitiated by improper motives; and that evaluation decisions must be taken in accordance with fair and reasonable procedures.

(ii) Did the Fund abuse its discretion in assessing Applicant’s performance in the FY2009 APR?

58. In the light of the above principles and the Fund’s internal law, the Tribunal will consider the following questions in respect of Applicant’s challenge to her FY2009 APR: (a) Did Applicant’s supervisors provide her with adequate, timely, and constructive feedback of performance shortcomings? (b) Was Applicant given the necessary guidance and training to help her remedy the shortcomings in her performance? (c) Did the FY2009 APR provide a balanced assessment of Applicant’s performance over the rating period, taking account of relevant evidence? Was there a reasonable and observable basis for the assessment? (d) Was Applicant’s FY2009 APR improperly motivated? (e) Was the decision on Applicant’s FY2009 APR taken in accordance with fair and reasonable procedures?

(a) Did Applicant’s supervisors provide her with adequate, timely, and constructive feedback of performance shortcomings?

59. Applicant alleges that she received “no feedback on her performance during the first five months of the FY2009 review period.” She asserts the same lack of feedback in relation to the program mission, from either the initial mission chief or the SPM, and in relation to the finalization mission.

60. Respondent, for its part, maintains that “Applicant received regular and consistent feedback from multiple supervisors regarding her performance deficiencies.”

61. Although Applicant contends that her supervisors failed to give her performance feedback, she nonetheless asserts that in a series of meetings beginning in summer 2008 she was advised by senior managers of her Department that her performance was unsatisfactory and warned that she would be rated “5” and placed on a PIP if she was not able to find a placement outside of her Department before the FY2009 rating period closed. Applicant conceded in her testimony before the Grievance Committee that she received oral feedback from her supervisors. (Tr. 479, 499-501.)

62. In cases of poor performance, the “APR: Guidance Notes for Managers” states that managers are expected to “(i) reiterate to the staff member performance areas that still need improvement if the desired progress has not materialized, with a clear indication of where the staff member still fails to meet the requirements and/or expectations of the job, and (ii) develop a plan to help the staff member address the deficiencies.”

63. There is evidence on the record that Applicant was, on a number of occasions, given feedback on her professional shortcomings. In December 2008, as set out above at paras. 23-24, Applicant met with the SPM for a performance discussion in which she was told that her performance was unsatisfactory. The content of that meeting was confirmed in an email sent by the SPM to Applicant on December 15, 2008.

64. Thereafter, the mission chief asked Applicant for an analytical piece on the monetary data and found “serious problems” with its quality. (Tr. 191.) On February 11, 2009, he provided Applicant with detailed feedback on that particular piece of analytical writing. This feedback, he suggested, was of “general application” to Applicant’s work. It included such suggestions as: “It’s important to think about the context of questions in answering them.” “It’s important to think through the logic.” “Your language is unclear in several places.” Under each of these headings, the mission chief provided detailed comments in relation to the particular assignment. His guidance following this assignment concluded that “[t]here is no need to do further work on this note, but these are all things I’d like you to bear in mind in future assignments.” (Email from mission chief to Applicant, February 11, 2009.)

65. Sometime after, the mission chief tested Applicant with another major assignment “as an opportunity to see how she did with an important writing assignment.” In his view, the product was “quite poor, both in terms of the logic of the argument, where she seemed to be misunderstanding major points of the Fund’s position on [“Country A”]. And also the quality of the writing; I had serious problems with that. And I sent her detailed comments on that.” (Tr. 193.) The mission chief responded with red-lined comments and an email with details of what was expected on the next draft. (See Email from mission chief to Applicant, March 30, 2009.) According to the mission chief, by following this detailed guidance, Applicant produced a second draft that was “much better.” (Tr. 195.)

66. The mission chief also regarded aspects of Applicant’s writing as “ungrammatical” and found that other aspects “just weren’t clear.” He commented: “And that had been a problem with the other major piece of work that I had given [Applicant] at the beginning of the year. And to some extent, it was a problem in work more generally. I found that [Applicant] was generally pretty good about carrying out routine jobs, but she did need more correction, more redrafting of

comments than other—than I would have expected from the desk economist.” He summarized his conclusions as follows: “But the fundamental problems, which fed into the performance review, that I saw were faults of analysis, including, of the monetary statistics and also of the general economic picture, and, also, faults of writing.” (Tr. 196-197.)

67. Applicant, for her part, challenges the view that the mission chief gave her constructive feedback on these occasions. In her Grievance Committee testimony, Applicant characterized these interactions with her supervisor as feedback with a “hidden agenda.” In Applicant’s words, “I got these two very peculiar feedbacks from him, and then I realized that he was scoring points against me. The feedback was not meant to correct me but was meant to score points and show me that I had irreversible shortcomings.” (Tr. 499.) Similarly, as to the various meetings throughout the review year in which her Departmental managers discussed perceived performance difficulties with her, Applicant testified: “[T]his [was] feedback with a precluded conclusion. The feedback was not to seek to improve my performance, but to tell me this is still confirming our reading that we gave you in the summer. . . . It was not seeking to improve me . . . It was, ‘You fail, and you are failing because you failed in the past and you were not expected to succeed.’” (Tr. 501.)

68. Applicant complains that she did not receive feedback from her initial mission chief for the first part of FY2009. While this may be so, Applicant had received feedback on her performance at the end of FY2008 when she was informed that her performance was unsatisfactory, as well as regular feedback from December 2008 onwards. In assessing whether the feedback given to Applicant was adequate, it should be borne in mind that Applicant was a mid-career staff member whose supervisors could not be expected to give feedback on as frequent a basis as in the case of more junior staff.

69. The record shows that over a substantial period of time Applicant was advised that her performance was falling short of key requirements. These shortcomings became acute when work demands increased. In the crisis work environment in which Applicant’s team was engaged during a significant segment of the FY2009 review year, her performance was seen as so weak that other staff members were pressed into service to “get the job done.” (Tr. 107-108.)

70. The Tribunal accepts that APRs are themselves an important form of feedback. In Applicant’s case, certain standards had been only partially met in the two previous APRs, and the low relative rankings for those years would have given Applicant a signal of her performance shortcomings.

71. Accordingly, the Tribunal is satisfied that feedback was given to Applicant and that the feedback was consistent in identifying the weaknesses of Applicant’s performance over the course of three APR cycles. The Tribunal also considers that when feedback is given is a matter of managerial judgment, provided that it is not withheld and is given in timely manner.

(b) Was Applicant given the necessary guidance and training to help her remedy the shortcomings in her performance?

72. It is recalled that “APR: Guidance Notes for Managers” explains that managers are to “[g]ive regular feedback on performance throughout the year and monitor progress toward

objectives.” This Tribunal has recognized that performance feedback should not only indicate to the staff member that she is not measuring up but also provide specific guidance as to how to improve. *See Ms. “C”*, para. 41. At times, the requirement of guidance will require training of the staff member, as “APR: Guidance Notes for Managers” indicates, with regard to “managing poor performance,” that “[i]f the deficiency is skill-related, training would be an appropriate remedy”

73. Applicant complains that rather than providing her with guidance as to how she might improve her performance, she was told that she should seek work outside of her Department. In the view of the Tribunal, in the light of the record of the case, there was nothing improper in her managers suggesting to Applicant that she seek out opportunities in other Fund departments in which it was perceived, based on her career history and assessment of her skills, that she had a greater likelihood of maintaining successful performance. The evidence supports the view that these suggestions were not improperly motivated but rather were genuinely intended to protect Applicant’s career with the Fund. *See generally Mr. “HH”*. At the same time, such suggestion should not have been a substitute for continued guidance from supervisors in Applicant’s own Department as to how she might raise her performance to the level required for successful performance within the context of the tasks required of economists in that Department.

74. Applicant contends that she “received no informal guidance and none of the training and support to help her reach the developmental objectives which had been discussed with her supervisors during her 2008 APR meeting and expressly identified in the 2008 APR” and that “coaching, mentoring and training” was never offered to her. Nonetheless, there is evidence in the record that Applicant rejected the view that her command of written English would benefit from training. The mission chief recalled an “intense” conversation with Applicant on this issue, in which he asked “[w]hether this was a language problem, and [Applicant] was very definite that she did not have a language problem and didn’t need any language training.” (Tr. 208.) At the same time, Applicant additionally testified that she did participate in training at the Fund, including a writing course in 2007. (Tr. 497-498.)

75. When asked during the Grievance Committee proceedings, “What kind of training or coaching could she have availed herself of to improve on her analytical skills?” the mission chief responded: “That’s a really difficult one, because it is one that you learn by doing and [Applicant] had been doing it for quite a while but didn’t seem to have picked up what she needed to do to handle the macroeconomic framework or the monetary spreadsheets and the monetary analysis.” (Tr. 208-209.) Applicant’s colleague on the program mission similarly testified that, given Applicant’s level of experience, “. . . it [was] not clear what training was required. You would expect a person who has been a desk for two years to know their stuff.” (Tr. 263.) “[T]o know what the data means . . . , I don’t think you need training for that if you’ve worked on a desk for two years.” (Tr. 266.)

76. The SPM had the same reaction to Applicant’s performance deficiencies, namely, that given Applicant’s level of experience, “a reasonable expectation would be that she would be up to speed and learn by doing and learn from others, and seek guidance herself, because there was consistent feedback that analytical skills and written communication needed improvement.” (Tr. 181.)

77. Accordingly, the record suggests that her supervisors considered that Applicant's performance shortcomings would not have been resolved by further guidance or training, although the second mission chief did attempt to address them. The Tribunal concludes that it is for this reason that Applicant was encouraged to seek out opportunities in other Fund departments that might be a better match for her talents. Such an approach to the management of performance is not, of itself, an abuse of discretion. Applicant has failed to show that these suggestions were improperly motivated or otherwise tainted.

78. It is clear that the circumstances of the mission made the Applicant's supervisors less able to provide guidance to her as to her performance shortcomings than would have been possible in less exigent circumstances. The new mission chief who assumed responsibility for Applicant's team in February 2009 articulated this tension in the circumstances of the case as follows:

I would like to have had more time to work with [Applicant], both, to try to improve what she was doing and to give her more opportunities to show what she could do, for example. But the exigencies of the program work meant that doing that, I would have had to choose to do less on the management of the program or the management of other people on the team and so I wasn't able to do that.

(Tr. 243.)⁵

79. The facts of the instant case highlight the difficulties encountered when weak staff performance coincides with unusual work pressures for the team. In the view of the Tribunal, it was neither unreasonable nor unfair to Applicant that guidance on performance weaknesses necessarily took somewhat of a back seat to the exigencies of the team's completing its tasks on mission. Nor was it unreasonable for Applicant's supervisors to relieve her of those responsibilities in which they perceived her work to be inadequate or unreliable in the interest of successfully completing the pressing work at hand.

80. Applicant's second mission chief did try to provide Applicant with guidance as to her shortcomings but that guidance did not succeed. Moreover, the testimony of Applicant's supervisors suggests, in the light of her status as a mid-career economist and given the identified shortcomings in her performance, that no training program would have fully addressed the

⁵ The mission chief in his testimony also highlighted the significance of staff performance in carrying out the Fund's mandate: "[I]t's not something you do lightly, to say that a staff member isn't meeting performance standards and I did that with some reluctance. But I weigh against that the fact that on this program country we have an obligation to the people in that country. We have an obligation to the Fund, which is—and to its members, which is lending the country money and we have an obligation to people in that country to give the best policy advice we can. And that has to be based on good analysis and it's a real problem if team members aren't supplying good analysis." (Tr. 218-219.)

weaknesses in her performance. In these circumstances, the Tribunal concludes that Applicant has not demonstrated that the Fund failed to provide her with appropriate guidance or training.

(c) Did the FY2009 APR provide a balanced assessment of Applicant's performance over the rating period, taking account of relevant evidence? Was there a reasonable and observable basis for the assessment?

81. Applicant contends that the FY 2009 APR "... fail[ed] to mention and fairly weigh any of Applicant's other assignments during the 2009 APR review cycle which she performed without criticism and therefore presumably with success." Applicant cites examples.

82. Applicant has argued that the APR was not fair and balanced because it did not reflect the entirety of her performance during the year, and that it was unfair because it did not reflect all her assignments during the period. Applicant alleges that Section 4 of the APR is based on erroneous facts and disregards business practices of the Fund, such as recruiting one-off additional economists during an Article IV mission. Applicant has also complained that her work on the fiscal file was not discussed in her APR. Similarly, she asserts that the APR did not acknowledge the difficult environment in which the program mission took place. (*See above.*)

83. Applicant contests the statement in the APR that tasks had to be taken over by others. According to Applicant, "[t]he addition of two economists to the team sent to ["Country A"] to complete consultations with the authorities in the Article IV was normal process for a fully-fledged Article IV mission and not related to Applicant's alleged performance weaknesses." (Emphasis deleted.) Relying on witness testimony at the hearing, Applicant explains that "responsibilities had already been assigned to team members before the mission left, and these assignments were in large part based on considerations of prior experience with program work by the mission participants, which Applicant did not have." Applicant asserts that she was "left without any specific assignment or practical guidance during the mission. Nevertheless, she worked to assist the team to the best of her abilities despite it being a chaotic mission in which she was left to fend for herself, with no direction or instructions coming from the Mission Chief . . . at all."

84. Respondent counters: "The sections of the APR that are completed by managers . . . are not intended to be a recitation of every task assigned to a staff member. Rather, those sections of the APR look at 'overall assessment,' critical competencies, and development objectives."

85. As to lack of reference to her work on the fiscal file, Respondent asserts that the work was not sufficiently important to warrant discussion in the APR. Respondent comments that Applicant relies on her work on the fiscal file to show that she was working on it rather than on the macroeconomic framework and monetary programming but that at the Grievance Committee hearing (Tr. 452) she testified that she was in charge of the macroeconomic framework and monetary projections. Furthermore, Applicant included this work in her self-assessment in the FY2009 APR. Respondent concludes that these were her primary responsibilities.

86. Respondent maintains that Applicant's attempt to rely on her work on the fiscal file as defense against the initial mission chief's belief that she could not be trusted with numbers also fails because the assignment was temporary and related to the availability of another staff

member. According to Respondent, “it cannot be credibly argued that [the initial mission chief’s] decision to temporarily give responsibility for the fiscal file to Applicant reflected confidence on his part in Applicant’s ability to work with numbers.” In the Fund’s view, “Applicant’s belated emphasis on her purported work on the fiscal file thus does not undermine her managers’ assessment of her overall performance for FY09, and it certainly does not overshadow her deficiencies in the core competencies identified by her managers.”

87. The Overall Assessment is not meant to cover all tasks performed during the year. Applicant’s Overall Assessment covers key areas of performance in a program country—macroeconomic frameworks and monetary projections—which Applicant herself had described in her Key Achievements and Objectives and which were considered by management key requirements to be an effective desk economist. In her assessment, Applicant has written about few matters other than the program mission. It was obviously the most important event of the year in her assignment and Department management agreed. The precise weighting to be given to the assessment of each area of work is an issue upon which the Tribunal will respect the decision of the relevant managers, as it is primarily “a managerial, and not a judicial, responsibility,” Commentary on the Statute, p. 19, so long as overall the assessment is fair and balanced. It is not clear on the record precisely what proportion of Applicant’s workload involved work on the fiscal file, but the Tribunal is of the view that Applicant has not established by reference to her work on the fiscal file that her managers’ assessment of her overall performance for FY2009 was to be faulted.

88. The Tribunal notes that the Overall Assessment of Applicant in the FY2009 APR also recognized that Applicant was well organized and had a good work ethic. The assessment concluded by saying: “It is impressive that despite being replaced as the main desk economist [Applicant] has cooperated well with her successors and has continued to contribute to team discussions and to work hard on assignments. This positive attitude should stand her in good stead in her future work.”

89. Applicant further contends that in assessing her performance for FY2009, the APR failed to take account of both the work pressures that arose during the year and Applicant’s relative level of experience:

The APR fails to acknowledge that Applicant had no prior program work or mission experience and was thrown into a new, extremely demanding environment, with difficult if not unrealistic time constraints at a time when the entire Team had been subjected to seriously stressful conditions. Applicant should have been given credit for her significant and sustained efforts to the best of her abilities and her contributions to the mission, considering especially that she was the only Team member who had never done program work before. Respondent unfairly and wrongly excluded these essential facts and circumstances from the APR.

In Applicant’s view, she “rapidly had to learn the new skills while working under extremely demanding conditions, although without receiving guidance.”

90. In this regard, the “APR: Guidance Notes for Managers” provides:

Departments will place each staff member in one of five relative levels, based on the distribution set out below. The relative level should reflect the staff member’s overall performance and contribution during the assessment period. There should be a clear relationship between the level in which staff are placed and their competency ratings in terms of broad direction. However, this link cannot be mechanical as staff’s placement in a distribution range is also based on the staff member’s relative performance compared to peers and reflects the full range of factors affecting assessment of performance beyond the competency ratings. *Such factors would include workload, output, complexity of assignments, impact of work on the department and other circumstances such as handling a higher level position for an extended period.*

(Emphasis added.)

91. In the view of the Tribunal, these circumstances were adequately taken into account. In assessing the relevance of the circumstances, it must also be considered that Applicant was a seasoned economist. She arrived at the Fund at “mid-career.” Although consideration in performance assessment may be given to unusual demands of the work environment, the evidence shows that Applicant did not respond to those demands in the manner that would be expected of a staff member with her level of experience. This conclusion is supported by the fact that the assessment of Applicant’s performance even before the crisis demands arose was consistent with the weaknesses that ultimately proved, in the view of the supervisors in the field, dispositive of the conclusion that her performance was not at the level required to perform the key competencies of an economist in an area department, most particularly macroeconomic analysis and written communication.

92. The Tribunal concludes that the FY2009 APR was neither unfair nor unbalanced. It identifies the key areas of importance in Applicant’s assignment and identifies the areas in which her performance needed improvement, which are consistent with those identified in previous APRs and were the key performance areas in a program country.

93. Was there a reasonable and observable basis for Applicant’s performance rating of “5”, the lowest of the possible rating categories and one with significant career implications? “APR: Guidance Notes for Managers” states that “[s]taff members who are considered poor performers, should be rated in the lowest of the five relative levels.” According to Respondent, following the evaluation of Applicant’s individual performance, the assignment of a particular numerical rating was the result of a “roundtable discussion” in which Applicant’s performance was compared with that of peers in her Department. (Tr. 346.) The SPM testified that when it came to the decision to rate Applicant a “5” for the FY2009 APR, “. . . there was a unanimous view among supervisor[s] that her performance merited an unsatisfactory rating, and so, that decision stood. . . [I]t was the department’s decision, including the department heads and obviously, mine, . . .

there were no dissenting views.” (Tr. 85.) The HRD representative also testified that the Department consulted with HRD “in terms of [was] there enough evidence of performance deficiencies and that it really called for a 5.” (Tr. 347.) According to the HRD representative, such consultation by a Department was typical of the approach before assigning a performance rating of “5”. (*Id.*)

94. In the view of the Tribunal, based on the extensive record before it, Applicant’s performance assessment for FY2009 was “reasonably supported by the evidence,” *Ms. “BB”*, para. 98. There was a reasonable and observable basis for the assessment.

(d) Was Applicant’s FY2009 APR improperly motivated?

95. Applicant contends that her FY 2009 APR was improperly motivated because her Department’s main objective was “to force Applicant to leave the department.” Applicant explains that the SPM had indicated to her, as early as December 12, 2008 and then in April 6 and April 13, 2009, that the only way for her to avoid a “5” rating in the upcoming FY2009 APR was to leave the Department before the end of the APR cycle.

96. In the view of Respondent, the SPM’s motivation was “to provide Applicant with a better option for her own career rather than staying in [her Department] and facing possible termination from the Fund based on unsatisfactory performance.” The initial mission chief and the SPM recognized that “Applicant had previously performed well in the [first Fund Department in which she worked].” They gave her the “benefit of the doubt based on her past performance and advised her to consider other opportunities before it was too late.” Respondent cites the testimony of the SPM that one of Applicant’s options was to stay in the Department and be effective. Furthermore, Applicant herself and the SPM viewed positively the appointment of the final mission chief in February 2009 as a fresh opportunity. According to the Fund, it is to the credit of the Department and HRD that they made every effort to support the swap with the other international organization even when Applicant was a poor performer. They assisted because she had performed well in another department and the work at the other international organization was unrelated to the work in her Department.

97. Applicant was given warning that she needed to improve her performance in order to stay in her Department after having been rated “4” for two consecutive years. It is clear from the record that her performance was not at the level expected of a country desk economist in the Department. The Department tried to avoid giving Applicant a “5” rating in order not to damage her future career in the Fund. It is also clear from the record that, based on her successful performance in another department during the six years before she joined the Department, the Department was prepared to support the swap with the other international organization. The swap was sought by Applicant and the offer came from the other organization without involvement of the Fund. Only when she had that offer did Applicant seek the support of her Department and HRD. Respondent had alerted Applicant to the possible “5” rating long before Respondent had knowledge of the possibility of a swap. Applicant’s accusation of improper motive in the FY2009 performance review process is further rebutted by the fact that the conclusion that her performance was significantly lacking was reached not by one but by three

supervisors. For these reasons, the Tribunal concludes that the APR was not improperly motivated.

(e) Was the decision on Applicant's FY2009 APR taken in accordance with fair and reasonable procedures?

98. Applicant contends that the APR process was flawed because (a) she did not receive her APR until September, (b) the internal memorandum of the initial mission chief was kept from her until later in the process, and (c) the APR was finalized before she had an opportunity to respond to it.

99. Respondent states that it is common for appraisals to be written in the months following the end of the review period and there is no evidence that Applicant's appraisal was prepared later than that of her peers. Respondent asserts that it is not credible that she was in the dark about her performance shortcomings when Applicant had testified that she was informed months in advance that she would likely receive a "5" rating. As to the initial mission chief's memorandum, Respondent asserts that it is the practice of the Fund not to disclose individual managers' assessments that are inputs in the Overall Assessment; the memorandum was disclosed later as a good will gesture of the Fund. Respondent also explains that Applicant had no right to amend the APR but did have the opportunity to contest it, and the final mission chief had recorded Applicant's disagreement. Furthermore, Section 5 of the APR in draft was shared with Applicant as a courtesy according to Departmental practice. Section 5 is not a negotiable section; the purpose of sharing it with staff is to ensure that the manager had captured the sense of the meeting. Applicant was given three weeks to comment and she did not do so within this period.

100. As concluded above, *see* paras. 59-71, Applicant had been given performance feedback during the course of the review year. The Overall Assessment of Applicant was in part based on the initial mission chief's assessment; accordingly, it cannot be said that his assessment was withheld from her until "later in the process." Applicant states that "[the final mission chief] merely copied [the initial mission chief's] comments into the APR." Applicant's own testimony shows that she had been given feedback during the year and that she was not kept in the dark as to the shortcomings perceived in her performance. The discussion of the FY2009 APR took place in July 2009, which was not later in the year than the discussion of the FY2008 APR.

101. As to the opportunity to comment on the draft Section 5, the draft was given to Applicant as a courtesy by the Department to ensure that it reflected accurately her discussion with the manager. The SPM had told Applicant that she could wait to give her comment until his return from leave on September 1. In an email dated August 6, 2009, the SPM stated: "I understand that you need more time to review the draft of Section 5. Given that I will be away the next three weeks, I would suggest that you take your time to review the draft and we finalize it in early September." (Email from SPM to Applicant, August 6, 2009.) When Applicant tried to convey her comments on September 1, she was told that the APR was final. While this is unfortunate, since Applicant had been given to understand that she would have an opportunity to comment in early September, this opportunity was a matter of courtesy rather than right. In any case, under Section 7 of the APR there is a specific cell for the staff member's comments. Applicant

commented on September 4, 2009: “This APR contains significant erroneous facts. It does not take into account essential elements. Moreover, the APR process proved prejudiced and hindered a fair and candid assessment. For these reasons, I request an administrative review.”

102. The Tribunal concludes that Applicant’s FY2009 APR process was not flawed because it was not unreasonably delayed, no substantive information was withheld from Applicant, Applicant met with her supervisor, manager and SPM to discuss her APR, and she had the opportunity to add her remarks under Section 7 of the APR. Accordingly, Applicant has not shown that the decision on her FY2009 APR was not taken in accordance with fair and reasonable procedures.

(iii) Did the Fund abuse its discretion in assigning Applicant a zero percent merit increase for FY2009?

103. Applicant contends that her MAR for FY2009 was based on an arbitrary, procedurally defective and improperly motivated APR and, as such, should be set aside as arbitrary itself. The Tribunal has concluded above that the Fund did not abuse its discretion in assessing Applicant’s performance for FY2009, including assigning her a rating of “5”. Applicant additionally asserts that the “merit increase decision must be based on peer-to-peer review” and that the Fund failed to make a meaningful comparison of peer performance.

104. Respondent counters that the zero percent merit increase was a necessary consequence of her “5” rating. It was not a discretionary decision. In support of this argument, it points to the 2009 Merit Matrix.⁶ That table clearly shows that staff members with a performance rating of “5” were to be allocated a MAR of zero. Applicant has not challenged that rule.

105. It is notable that, in her Application, Applicant appears to acknowledge the relationship between her APR rating and the MAR. She identifies the decision being challenged as the “[d]ecision to assign Applicant a performance rating of “5” for the 2009 Annual Performance Review (APR) period, with a *corresponding* Merit Allocation Ratio (MAR) of zero.” (Emphasis added.)

106. The institution-wide directive is conclusive evidence that departments had no discretion to grant other than a zero percent increase to staff members such as Applicant who were rated “5” in the FY2009 APR. The consequence of this directive was that the MAR was automatically determined once the APR had been established. The process to establish the APR included assessment relative to peers. (See above at para. 93.) Having concluded that the Fund did not abuse its discretion in assigning Applicant a performance rating of “5”, the Tribunal finds no merit to Applicant’s challenge to the decision to grant her a zero percent merit increase as a result of the FY2009 APR exercise.

⁶ The relevant table is reproduced above at para. 48.

(iv) Did the Fund abuse its discretion in deciding, based on the results of Applicant's FY2009 APR, that she would be placed on a PIP following her return from a two-year external assignment?

107. Applicant challenges the decision of September 2009 that, as a result of the outcome of her FY2009 APR, she would be placed on a PIP upon her return from her two-year external assignment. First, Applicant contends that the decision to place her on a PIP was based on an arbitrary, procedurally defective and improperly motivated APR and, as such, must be set aside as arbitrary itself. Second, she asserts that there is no written rule of the Fund mandating a PIP in all cases in which a staff member is rated "5". Third, she contends that her intervening external assignment should have obviated the operation of any such rule.

108. Having concluded above that the Fund did not abuse its discretion in assessing Applicant's performance in the FY2009 APR, the Tribunal finds Applicant's first contention is without merit.

109. As to Applicant's additional contentions, Respondent maintains that it is an established practice of the Fund, supported by witness testimony in this case, that staff members who receive the lowest of the possible performance ratings in a review year ("5" in FY2009) must be placed on a PIP. Furthermore, asserts the Fund, the fact that Applicant was scheduled to depart on a two-year assignment to another international organization did not negate the requirement that she be placed on a PIP once she returned to the Fund.

110. The challenged decision was set out in a Memorandum for Files of September 2, 2009, which was copied to Applicant and memorialized a meeting in which she participated. The Memorandum referred to the "Fund's mandatory requirement for a staff member to be placed on a performance improvement plan (PIP) when they are rated a '5'." According to the Memorandum, following the external assignment, the Department would "identify a new assignment for [Applicant] and, in consultation with her mission chief, develop a PIP within three months of her return." The PIP would "address the two main areas for improvement that were identified in the 2009 APR, namely: (i) written communications—both the structure and the content and (ii) ability to put together a coherent macroframework, including the monetary framework." To monitor progress, the PIP would have "specific milestones, measures, and/or deliverables." The Memorandum additionally advised that "if [Applicant]'s performance did not improve up to the required standards or the improvements were not sustained, she could be terminated within one year of her return to the department." As to the issue of the effect of Applicant's performance during her external assignment, the SPM indicated that "we can only observe her progress when she is working in the department"; the external assignment was "not a substitute for a PIP." (Memorandum to Files from ASPM, September 2, 2009.)

111. In Applicant's view, the Department should have provided at least a full review period upon her return in order to demonstrate improved performance. Applicant asserts that if the Department's decision is left to stand she faces irreversible career damage: "At this stage she is already precluded from finding another position outside [her Department], and given her past hostile treatment by her supervisors who clearly do not want her in [her Department], she has given up any hope that she will ever be judged objectively again within [her Department]."

112. The Fund has produced no documentation of the asserted policy that a PIP is mandatory for a staff member who receives the lowest of the possible performance ratings in a review year. In the Grievance Committee hearing, the Fund's testimony suggested it was an established practice that staff members rated "5" would be placed on a PIP. Even assuming, however, that there were no rule mandating a PIP, the question remains whether it was an abuse of discretion to place Applicant on a PIP in the circumstances of this case.

113. In the instant case, the record shows that Applicant repeatedly was warned that she was at risk of receiving a "5" rating and being placed on a PIP. What may have remained unclear to her was the effect that undertaking an external assignment might have on the PIP decision.

114. Applicant correctly points out that the contemporaneous communications of the decision makers evidence their uncertainty as to how the requirement of a PIP would apply in the unusual context in which a staff member was to embark on an external assignment just after the performance rating of "5" became final, in particular, as to whether such implementation would depend on what her assignment would be on return to the Fund. (HRD Email exchanges of September 2, 2009.) The question of how Applicant's external assignment would affect the plan to place her on a PIP on the basis of her "5" rating became the subject of consideration within HRD, which proposed: "[The Department] discusses the specific development areas identified in the APR and communicates that on her return from the SWAP assignment if these development areas are still relevant in the context of the new assignment in [the Department], a PIP will be established within 3 months." (Email from HRD representative to ASPM, August 31, 2009.)

115. Respondent maintains that the decision to place Applicant on a PIP "if and when she returned to [her Department] following her swap assignment was reasonable given the undisputed differences between Applicant's proposed assignment at the [other international organization] and the work of [her Department]." This view was confirmed by the testimony of Applicant's mission chief that, based on the description of the external assignment, he did not have the impression that it "would really prepare [Applicant] for resuming a job as a desk economist." (Tr. 202.) In his view, the expectation was that the external assignment might instead "... give her more scope for finding something else within the Fund in another department" (*Id.*) According to the HRD representative, "... if [Applicant] was to come back and go to, let's say, another department, it's a new slate. So, yes, she could get a job in a different department and not have a PIP." (Tr. 365.)

116. It is clear from the record that Applicant was interested in the external assignment. There is no contradiction in the support of the Fund for Applicant's external assignment and the decision that she would be placed on a PIP on return to her Department. The decision to place Applicant on a PIP is related to the deficiencies in Applicant's competencies required for a desk economist in the Department to which she was expected to return. For these reasons, the Tribunal finds no merit to the claim that the decision to place Applicant on a PIP on her return from external assignment was arbitrary or unreasonable.

117. Applicant also contends that her Department improperly threatened to place her on a PIP not as a genuine effort to improve her performance but to induce her to seek reassignment outside of the Department. Applicant contends that her managers used the possibility of placing

her on a PIP as a “threat” to induce her to leave the Department. The Tribunal has found no basis in the record, however, to support a claim of improper motive. (*See* above at paras. 95-97.) Instead, the evidence indicates that Applicant’s managers genuinely perceived her performance and skills to be such that her contribution might be better made in another Fund department, especially in the light of her earlier successful performance in one of the Fund’s functional and special services departments.

118. In the view of the Tribunal, the Fund did not abuse its discretion in deciding in September 2009 that Applicant would be placed on a PIP following her anticipated return from an external assignment two years later. Although the policy of placing staff members on formal PIPs as a consequence of receiving the lowest performance rating is, apparently, not codified in the written law of the Fund, the record indicates that this was the practice and Applicant had been put on notice of it. Furthermore, Applicant has not shown that the Fund abused its discretion in concluding that the intervening external assignment would not obviate the need for a PIP.

(v) Did the Fund “mismanage” Applicant’s career?

119. Applicant additionally contends that “[b]ased on the totality of circumstances, it is fair to say that *the contested administrative decisions* evidence career mismanagement.” (Emphasis added.) In alleging that the Fund mismanaged her career, Applicant repeats earlier assertions. She concludes that the “failures of [her Department] to halt the downgrading of Applicant’s performance and to take prompt remedial actions to prevent ratings that have irreparably harmed her career prospects was negligent and evidences unfair career mismanagement.”

120. Respondent counters that it is the staff member’s own responsibility to manage her or his career and that there is no evidence of any “career mismanagement” in Applicant’s case. Rather, asserts the Fund, Applicant’s managers attempted to facilitate her career by seeking alternative placements for her within the Fund and then supporting the approval of the external assignment that Applicant found at her own initiative.

121. This Tribunal has heretofore denied claims of “career mismanagement.” *See, e.g., Ms. V. Shinberg, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-2 (March 5, 2007), paras. 83-84 (“While . . . it may be that the Fund could have been more enterprising in seeking or constructing a position for Ms. Shinberg outside the SSG, . . . the Tribunal does not find that the Fund actionably mismanaged Applicant’s career”; complaint of lack of advancement over twenty years in context of workplace injury); *Ms. “U”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-3 (June 7, 2006), para. 49 (no “career mismanagement” in connection with non-conversion of fixed-term appointment); *Ms. “T”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-2 (June 7, 2006), para. 45 (same).

122. It is not clear to the Tribunal, given its Statute and the rules of the Fund, that there is an autonomous cause of action for “career mismanagement.” That is not an issue that need be decided today. What is clear is that a claim of “career mismanagement,” if it exists, could not succeed if the Applicant has not shown that an “administrative act” is unlawful, in breach of the Statute.

123. In the instant case, having concluded that it is not able to sustain any of Applicant's challenges to the career decisions that she contests, the Tribunal holds that her putative "career mismanagement" claim also fails. *See Ms. C. O'Connor (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2011-1 (March 16, 2011), para. 212.

(vi) Are the challenges raised by Applicant concerning events subsequent to the contested decisions of September 2009 admissible before the Tribunal? If so, how shall those challenges be decided?

124. Applicant raises challenges concerning events subsequent to her return from external assignment. These events post-date by more than two years the September 2009 decisions that form the basis for the Tribunal's jurisdiction in this case.

125. In her Application and Reply, Applicant contends that the Fund's failure to implement the PIP more than three months following her return from external assignment created additional uncertainty for her career development at the Fund. In her Additional Statement, Applicant additionally alleges that: (i) the Fund retaliated against her for filing an Application with the Tribunal by suddenly implementing the PIP in August 2012 and refusing to support an internal swap arrangement; and (ii) she was arbitrarily rated "Not Rated" for the FY2012 APR, based on her absence from the Fund during the preceding review period and her "5" rating for FY2009.

126. Respondent maintains that allegations raised by Applicant relating to events that occurred after September 2, 2009—the date of the decisions that are the subject of Applicant's challenge in her Application—are not admissible before the Tribunal because she has not exhausted administrative review in respect of them.

127. Article V, Section 1, of the Tribunal's Statute, provides: "When the Fund has established channels of administrative review for the settlement of disputes, an application may be filed with the Tribunal only after the applicant has exhausted all available channels of administrative review." The Tribunal has recognized that the "requirement for exhaustion of remedies serves the twin goals of providing opportunities for resolution of the dispute and for building a detailed record in the event of subsequent adjudication." *Estate of Mr. "D", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2001-1 (March 30, 2001), para. 66. The Tribunal's jurisprudence strongly favors recourse to the Grievance Committee because of the detailed legal and factual record produced by that Committee. *See Ms. "GG", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2013-3 (October 8, 2013), para. 28; *Ms. C. O'Connor, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2010-1 (February 8, 2010), para. 34; *Ms. "Y", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1998-1 (December 18, 1998), paras. 42-43.

128. This Tribunal has held, however, that when a later-arising claim is "(a) closely linked with the principal decision contested in the Tribunal and (b) has been given some measure of review prior to the Application in the Tribunal, it may in some circumstances be justiciable." *O'Connor (No. 2)*, para. 181, quoting *Ms. V. Shinberg (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-5 (November 16, 2007), para. 87. *See,*

e.g., Mr. "DD", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2007-8 (November 16, 2007), paras. 171-180 (applicant's retaliation claim admissible where it had been the subject of testimony by the applicant and other witnesses in the Grievance Committee proceedings and was sufficiently linked with his underlying challenge of workplace harassment). *See also Ms. "EE", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2010-4 (December 3, 2010), paras. 235- 240; *Ms. "W", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-2 (November 17, 2005), para. 118.

129. In the instant case, none of the challenges raised by Applicant concerning events allegedly arising following her return from external assignment has been considered at all through the channels of administrative review prior to the filing of the Application with the Administrative Tribunal on April 24, 2012. This is because the Grievance Committee hearings took place in March 2011. Applicant returned to the Fund following her two-year external assignment in December 2011.

130. Applicant's contentions relating to the timing of the implementation of the PIP, alleged non-support for an internal swap arrangement, and her performance rating for FY2012 have not been subject to any "measure of review," *O'Connor (No. 2)*, para. 181. Accordingly, the Tribunal does not reach the merits of those claims.

Conclusions of the Tribunal

131. The Tribunal concludes that Applicant has not met her burden of showing that the Fund abused its discretion in taking the decisions to assign her a performance rating of "5" for the FY2009 APR, a zero percent merit increase for the same period, and that she would be placed on a PIP following her return from a two-year external assignment between 2009 and 2011. The record shows that the assessment of Applicant's FY2009 performance was not unfair or unbalanced but rather there was reasonable and observable basis for it. Applicant's MAR followed as a necessary consequence of the APR rating, pursuant to the Fund's rules. Contrary to Applicant's assertions, the record shows that her supervisors did not fail to provide her with adequate, timely, and constructive feedback of performance shortcomings or appropriate guidance and training to remedy them, particularly in the light of the exigencies of Applicant's work assignment and her level of experience within the Fund. Nor has Applicant demonstrated any improper motive on the part of the Fund in assessing her performance for FY2009. Having found that it is not able to sustain any of Applicant's challenges to the career decisions she contests, the Tribunal also finds no merit to Applicant's allegation of "career mismanagement." As to challenges raised by Applicant in respect of events subsequent to the contested decisions of September 2009, Applicant has not exhausted the requisite channels of administrative review and, accordingly, the Tribunal does not reach the merits of those claims.

Decision

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides that:

The Application of Ms. “JJ” is denied.

Catherine M. O’Regan, President

Andrés Rigo Sureda, Judge

Jan Paulsson, Judge

/s/
Catherine M. O’Regan, President

/s/
Celia Goldman, Registrar

Washington, D.C.
February 25, 2014