



**World Bank Administrative Tribunal**

**2016**

**Decision No. 545**

**BS (No. 2),  
Applicant**

**v.**

**International Bank for Reconstruction and Development,  
Respondent**

**World Bank Administrative Tribunal  
Office of the Executive Secretary**

**BS (No. 2),  
Applicant**

**v.**

**International Bank for Reconstruction and Development,  
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.
2. The Application was received on 24 November 2015. The Applicant was represented by Peter C. Hansen and J. Michael King of the Law Offices of Peter C. Hansen, LLC. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 20 October 2016.
3. The Applicant challenges the 16 June 2015 decision of the Vice President of Human Resources (HRVP) following an investigation by the Office of Ethics and Business Conduct (EBC).

**FACTUAL BACKGROUND**

4. In completing the Application form, regarding the question "Date of Event or Decision Contested," the Applicant wrote "HRVP Decision on EBC Findings (June 16, 2015)." The Tribunal thus will focus primarily on the factual background leading to that decision of the Bank.
5. The Applicant joined the Bank at its headquarters in 2003 as a Senior Private Sector Development Specialist under a Term appointment at grade level GG. In 2006 the Bank converted his Term appointment to an Open-Ended appointment.
6. In 2012, taking into account the Applicant's interest, the Bank and the Applicant signed a memorandum for a field-based assignment for the Applicant in Country X. The memorandum of

24 February 2012 stated that the assignment was expected to last for three years from July 2012 to June 2015. It also stated that upon satisfactory completion of the assignment, the Applicant would be provided with a re-entry guarantee to “a suitable position at [his] current grade (GG).”

7. On 12 April 2012, the Bank issued another memorandum entitled “Memorandum of Extended Assignment.” This memorandum set out in detail the benefits to which the Applicant was entitled while working in the field. Consistent with the memorandum of 24 February, the 12 April memorandum also provided that the duration of the assignment was for three years starting from July 2012.

8. The Applicant relocated to Country X around June 2012 and his assignment became effective on 1 July 2012.

9. The Applicant’s 2012-2013 Overall Performance Evaluation (2013 OPE), covering the period July 2012 to June 2013, shows that he performed well in his new assignment in Country X. For instance, in five Key Work Program Results listed under Results Assessment in his OPE, the Applicant received three “Superior” ratings and two “Fully Successful” ratings. Under Core Bank Competencies, the Applicant received “Superior” ratings for Client Orientation and Drive for Results; and “Fully Successful” ratings for Teamwork, and Learning & Knowledge Sharing.

10. During the 2013 OPE period and until December 2013, Mr. A served as the Applicant’s manager. On 1 January 2014, Mr. B replaced Mr. A and became the Applicant’s new manager.

11. The Applicant’s stint in Country X, however, was not without difficulty. Some such events that are relevant for this Application are detailed below.

#### *Participation in the 2014 Build Africa Forum*

12. One such event involves the Applicant’s participation in the 2014 Build Africa Forum. The Applicant states that in October 2013 he received a letter from the Government of Country Y inviting him to speak at the Forum during 5-7 February 2014. The invitation letter stated that the

Forum “will gather more than 500 business and political leaders, to find innovative solutions to Africa’s numerous infrastructure ambitions and challenges.”

13. The Applicant’s manager, Mr. B, instructed the Applicant not to travel to attend the Build Africa Forum. The manager consulted with the Country Management Unit (CMU) concerning the Build Africa Forum, they had jointly concluded that regional infrastructure integration, the topic on which the Applicant was expected to speak, was not within the Applicant’s department, but could be better managed by the country office. Accordingly on 9 January 2014 by an email the manager notified the Applicant that it did not make sense for the Applicant to attend the Forum.

14. Notwithstanding the instruction from the manager, the Applicant insisted that he would attend the Forum. The next day, on 10 January 2014, the Applicant sent an email to the manager copying a Director in the Africa Region; the Country Director of Country X; and other officials of the Bank including officials at EBC and the Ombuds Office. In the email the Applicant wrote:

I however guess that you were not accurately briefed by the CMU on this matter. Let me bring to you the following clarifications:

1. This [...] event is neither about [Country Y] nor about Bank programs. [It] is an international forum that is taking place in [...]. It could have been organized anywhere in Africa;
2. The organizers were directed to me several months ago (without me asking for anything), because of my credentials, regardless of my position at the Bank. I accepted to be a speaker at this forum;
3. I was then sent an *intuiti personae* invitation by the Secretariat of the Build Africa Forum signed by the host of the forum, Minister of State [...];
4. I accepted the invitation in my capacity of global expert, well recognized by the international community. I never pretended to represent the Bank;
5. I was then sent the program of the Forum with an invitation to choose in which session I could speak, I commented [on] the program and indicated fields where I feel I could have a comparative advantage and requested them to make the decision themselves;
6. They came back and proposed that I speak and animate the session on regional integration. This seems logical to who claim to be an expert, because I am well

known international expert in regional integration as evidenced by my best seller book on the same topic that was recently re-issued and sells USD 73 a copy! I will not apologize for being recognized as an international expert, whatever my grade at the Bank is;

7. Just yesterday again, the organizers sent me a reminder for my BIO and digital picture as they need to urgently print their speakers book;

8. I responded last night to accommodate their request. Should you want to visit the forum internet site, you will realize that I am profiled in the program!

Based on the above, I do deny the CMU the right to request me to give up (to other colleagues) the slot that was proposed to me [by] the organizers themselves. And I have to however confess that nowhere in the organizers' site, the World Bank is profiled as a co-organizer of this event.

15. In that email the Applicant stated that he considered this attempt to “kick him out” of the Forum as an act of retaliation. He insisted that he would proceed to honor the invitation.

16. On the same day, the Director in the Africa Region wrote to the Applicant stating *inter alia* that “I would suggest before making arrangements to represent the Bank, in the future you follow strictly the provisions of the staff rules and associated administrative manual.” In the email the Director provided the links to relevant Bank documents dealing with public statements of staff members.

17. On 28 January 2014, the Applicant's manager sent another email to the Applicant advising him not to attend. The manager explained:

I understand that you are planning to still attend and speak at this conference. This is awfully embarrassing for me after I had written to you that you shouldn't go and [the Director in the Africa Region] had subsequently reminded you of the Bank rules which only allows for personal representation if we agree. Regional Integration as you well know is a highly complex politically charged topic which we need as an institution to be very careful about. As I pointed out to you the topic of regional integration does not belong in our unit unless delegated by the CMU.

18. The Applicant responded to the manager the next day by email stating that he would attend, explaining that he had been invited as an expert, and that regional integration is his area of expertise as he has “a Doctorate Degree in this areas and has published best sellers in this area.” He added

that: “I am copying the ombudsman in this correspondence. Should you feel that I violate Bank Rules, please feel free to take this to Ethics [EBC] because I will not accept to be suffocated.” On 30 January 2014, the manager again instructed the Applicant to follow his instruction regarding the participation in the Forum.

19. On 5 February 2014, the Applicant sent another email to the Director in the Africa Region copying other Bank officials indicating that he would attend the Forum and take annual leave and personally bear the cost of his participation. The Director responded to the Applicant that “there is no distinction between your being on leave or not as regards the coverage of the staff rules on outside engagements – you are a Bank staff at all times” and added that: “Your direct management will need to make the judgment as to whether this event would present any conflict for you [...]”

20. The Bank states that on 6 February 2014 despite the Applicant’s manager’s repeated and explicit instructions, which had been confirmed by the Director, the Applicant spoke at the Build Africa Forum on a politically sensitive topic contrary to the direct instruction of management.

21. This direct refusal of the Applicant to follow the instruction was raised as a performance issue during the mid-year discussion for FY2014 between the manager and the Applicant held in March 2014. In an email of 13 March 2014 to the Applicant, the manager noted that the Applicant had attended a conference on behalf of the Bank contrary to the manager’s explicit direction and this matter would be reflected in the Applicant’s OPE ratings.

22. On 17 June 2014, one of the Directors in the Bank asked the Applicant to begin the OPE process for FY2014 by filling in the relevant form. The Applicant refused to undergo the OPE process because in his view it would be “tantamount of ratifying a process aimed at jeopardizing [his] career.” An HR Manager advised the Applicant to proceed with the OPE process. The Applicant provided preliminary responses to the OPE form on 3 July 2014 and his OPE discussion with the manager was scheduled for 22 September 2014. The Applicant informed the HR Manager that he was unwilling to participate in an OPE discussion with his manager because of ongoing disputes with the manager and also because the manager had threatened to give him a bad OPE.

23. On 26 October 2014, the Applicant received a Salary Review Increase (SRI) rating of 2 for FY2014. Later, outside the normal OPE completion period, the Applicant agreed to an OPE discussion if the Ombudsman and the Staff Association participated. His OPE discussion with the manager was held on 16 December 2014 with representatives from the Ombuds Office and the Staff Association present.

*Interview with the Forbes Afrique*

24. In its April 2014 issue, *Forbes Afrique* published an article in French. An English translation provided by the Bank is in the record. The Applicant was interviewed for the article. The article featured numerous quotes from the Applicant including a portrait of him. The article also discussed the Bank's projects in Country X in which the Applicant was involved.

25. On 5 April 2014, the Applicant circulated a copy of the article to the President of the Bank, the Managing Director, other senior Bank officials as well as his manager.

26. On 7 April 2014, the manager, Mr. B, sent an email to the Applicant raising several matters. The manager noted to the Applicant that "as you well appreciate in the Bank great ambition must be accompanied by great care." The manager also stated that a recent talk in Mombasa by the Applicant had accentuated concerns about the "reputational risk to the World Bank." Regarding the article in *Forbes Afrique*, the manager observed that he did not recall clearing the Applicant's involvement in it and asked if the Applicant's involvement had been cleared in advance with other relevant units. The manager added that: "I am very uncomfortable with your role in the article. [...] If it wasn't cleared then this is in clear contravention of the Staff Rule."

27. On 8 April 2014, the Applicant responded to the manager stating that he did not feel he needed clearance from the CMU; he saw no harm in his involvement in the article and its publication; and that the article "has actually contributed to give more visibility and credibility to both WBG and the client. I will not apologize for that."

28. The article, however, prompted negative reactions outside the Bank. On 9 April 2014, the Bank received a letter in French (an English translation was provided by the Bank) from the *Société des Architectes* of Country X (SAC). The letter was addressed to the Bank's Country Director of Country X (copying various officials in Country X, officials of international organizations, and Bank officials). The letter criticized certain statements of the Applicant in the *Forbes Afrique* article and questioned whether the Bank was following "fundamental principles of good governance in public procurement."

#### *The EBC investigation*

29. On 9 and 10 April 2014, the manager and the Director in the African Region contacted EBC reporting potential misconduct by the Applicant. They alleged, among other things, that the Applicant had given the interview to *Forbes Afrique* without authorization.

30. On 23 April 2014, EBC provided the Applicant with a Notice of Alleged Misconduct. On 8 May 2014, the Applicant was informed that he had been placed on administrative leave with full pay and benefits.

31. In March 2015, EBC completed its investigation. In the Written Summary of Factual Findings and Recommendations of 4 March 2015 (the EBC Final Report), EBC concluded that: "The investigators found sufficient evidence to substantiate the allegation that [the Applicant] did not obtain prior clearance or authorization nor consult before being interviewed by Forbes, in compliance with paragraphs 6 through 8, 12, and 14 of Administrative Manual ("AMS") provision 14.20."

32. These provisions of AMS deal with the staff members' communications with the media. In the EBC Final Report, EBC quoted the provisions as follows:

AMS 14.20, paragraphs 6 through 8, 12 and 14, which establishes the procedures applicable to employees communications with the media to help ensure that their communications have constructive and optimum effect on the WBG's external relations and in particular:



Paragraph 6. “The following procedures have been established to help staff members ensure that their contributions have constructive and optimum effect on the Bank Groups external relations.”

Paragraph 7. “Public statements of staff members that relate to Bank Group policies or activities or may affect its public image and its relationship with member governments – such as texts of speeches, informal addresses, articles, letters to the editor, as well as invitations to participate in broadcasts or public debates – are submitted to the staff member’s department director or in the case of department directors to the vice president. [...]”

Paragraph 8. “If staff members are in doubt as to whether material intended for publication or delivery comes under the purview of this policy they should refer it to their department director or vice president or the manager of Corporate Communications.”

[...]

Paragraph 14. “Staff members traveling on mission and staff members assigned to country offices can be important sources of information, and they are likely to be asked questions about Bank Group activities and policies by many people, in addition to the officials they are contacting. They should therefore be well briefed on the broad activities of the Bank Group. Much will depend on the discretion and judgment of the mission leader or head of the country office. In general, mission personnel and country office staff should not give interviews to the local press or radio without consulting with the mission leader or the country director/manager. They should seek the support of regional communications staff in issues that may arise in contact with the public and the media.”

33. On 16 June 2015, the HRVP issued his decision stating that the Applicant had not engaged in misconduct. In his decision letter, the HRVP stated:

Your undisputed behavior in the reported incident raises serious concerns. However, after a careful and thorough review of the EBC Final Report, I have determined you have not engaged in misconduct. Please be advised that all World Bank Group staff must abide by Staff Rule 3.01 at ¶ 7.02 and Administrative Manual Statement (“AMS”) when making public statements whether in a personal or professional capacity.

*The Applicant’s allegations of misconduct against the Country Director of Country X*

34. Apart from EBC’s investigation of the Applicant’s alleged misconduct, the Applicant made allegations of misconduct against the Country Director. The Applicant claims that he made allegations of misconduct against the Country Director to various Bank officials including the

HRVP in 2013 and 2014. The record is not clear whether in 2013 the Applicant directly approached EBC reporting allegations of misconduct against the Country Director. The record shows that on 3 January 2014 the Director in the Africa Region wrote to EBC that the Applicant had made certain allegations against the Country Director and that EBC should look into these allegations. The record also shows that on 10 January 2014, the Applicant forwarded to EBC his 12 June 2013 email to the Country Director with the following subject line: “Please read [...] I stand ready to be interviewed and bring into light substantive issues imbedded in this communication with the CD of [Country X].”

35. On 6 February 2014, EBC replied to the Applicant, thanking him for his email and offering an intake interview. On 6 March 2014, EBC interviewed the Applicant for further information. The Applicant alleged that the Country Director created a hostile work environment, retaliated against him and abused his authority. EBC also interviewed a number of other Bank officials in relation to the allegations against the Country Director as EBC also received other allegations against the Country Director.

36. EBC then commenced an investigation into the allegations of misconduct by the Country Director. EBC concluded its investigation of the Country Director in March 2015 and concluded that it found sufficient evidence in support of allegations that the Country Director had (a) abused Bank benefits and resources, (b) abused his authority, (c) made willful misrepresentation of facts, and (d) violated Principle 3 of the Principles of Staff Employment.

37. EBC, however, did not find sufficient evidence to corroborate or support the allegations regarding a hostile work environment or retaliation against the Applicant by the Country Director.

38. Based on EBC’s Report of Investigation, on 30 June 2015, the HRVP found that the Country Director had engaged in misconduct by abusing his authority, abusing Bank benefits and resources, willfully misrepresenting facts and violating Principle 3 of the Principles of Staff Employment. The HRVP accordingly terminated the employment of the Country Director and made him ineligible for future employment with the Bank Group.

39. The Bank states that on 10 July 2015, the Applicant was informed of the outcome in the case involving the Country Director and the Applicant received further details regarding the outcome on 7 August 2015.

*The Applicant's return to Washington*

40. Under the Applicant's assignment memorandum of April 2012, the Applicant's assignment in Country X was planned to end on 30 June 2015. Accordingly, Mr. B, the manager, notified the Applicant in October 2014 that the Applicant would return to the headquarters after 30 June 2015, and that the Applicant's assignment in Country X would not be extended.

41. On 14 July 2015, a Director in the Bank wrote to the Applicant to welcome him back to Washington and informed him about the unit and the manager with whom he would be working upon his return. The Applicant replied the next day thanking the Director stating he was looking forward to meeting with the Director and his new manager for guidance about how he could contribute in his new role. The Applicant rejoined the headquarters in August 2015.

42. On 24 November 2015 the Applicant filed this Application.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

43. The Applicant claims that the Bank violated his rights with respect to the EBC investigation that resulted in the HRVP's decision of 16 June 2015, that the Bank retaliated against the Applicant, and that the Bank has caused harm to the Applicant. As remedies, the Applicant requests the following: (i) rescission of the HRVP's decision and the EBC's Final Report, and removal of all evidence of the EBC process from the Applicant's personnel file; (ii) three years of salary in compensation and moral damages; (iii) restoration of the Applicant to a position and work program similar to those which he had prior to his administrative leave; (iv) a full and unequivocal statement of exoneration from all charges and any other allegations of misconduct – (a) to be circulated to all third parties involved in this case (e.g. the SAC), (b) to be posted as a press release in Washington, Country X and Country Y, in both English and French, and (c) posted online

indefinitely in English and French by the Bank for public reference, in such a manner that major search engines (e.g. Google) are able to access and catalog the posting; (v) reimbursement of legal fees and costs in the amount of \$76,105.52; and (vi) all other relief as the Tribunal may deem just and appropriate.

44. The Bank argues that the actions taken by management in relation to the Applicant were reasonable and fair; that the Bank did not engage in any form of retaliation; and that the Applicant's claims should be dismissed.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

### *The HRVP's decision of 16 June 2015 following the EBC investigation*

45. As stated in the Application form, the Applicant is contesting the HRVP's decision of 16 June 2015 following the EBC investigation. In that decision, the HRVP concluded that the Applicant had not engaged in misconduct regarding the article published in *Forbes Afrique*. The Tribunal will examine whether the Bank violated any rights of the Applicant.

46. In examining the Applicant's complaints, the Tribunal is mindful that the Bank's disciplinary proceedings are administrative rather than criminal in nature. In *Kwakwa*, Decision No. 300 [2003], para. 29, the Tribunal observed that the Bank is not required to accord a staff member accused of misconduct "the full panoply of due process requirements that are applicable in the administration of criminal law." The Tribunal in *Rendall-Speranza*, Decision No. 197 [1998], para. 57, explained the nature of disciplinary proceedings in the Bank as follows:

In order to assess whether the investigation was carried out fairly, it is necessary to appreciate the nature of the investigation and its role within the context of disciplinary proceedings. After a complaint of misconduct is filed, an investigation is to be undertaken in order to develop a factual record on which the Bank might choose to implement disciplinary measures. The investigation is of an administrative, and not an adjudicatory, nature. It is part of the grievance system internal to the Bank. The purpose is to gather information, and to establish and find facts, so that the Bank can decide whether to impose disciplinary measures or to take any other action pursuant to the Staff Rules. The concerns for due process in

such a context relate to the development of a fair and full record of facts, and to the conduct of the investigation in a fair and impartial manner. They do not necessarily require conformity to all the technicalities of judicial proceedings.

47. The Tribunal further observes that even though it takes “a fuller examination of the issues and circumstances” in misconduct cases, it does not endeavor to micromanage the activity of investigative bodies. In *G*, Decision No. 340 [2005], para. 73, the Tribunal stated that

the Tribunal has no authority to micromanage the activity of INT. What is required of INT is not that every inquiry be a perfect model of efficiency, but that it operates in good faith without infringing individual rights.

48. First, the Applicant claims that it was retaliatory on the part of the Applicant’s manager and the Director in the Africa Region to report to EBC allegations of misconduct against the Applicant.

49. The Tribunal finds that the record, in particular, the EBC Report and the transcript of the manager’s interview by EBC, provides a proper context for the allegations of misconduct. The context as explained by the manager and the Director in the Africa Region for reporting to EBC is as follows: (i) the Applicant had a history of making unauthorized statements; (ii) before the publication of the *Forbes Afrique* article, the Applicant was instructed numerous times not to attend the Build Africa Forum and he disregarded the instructions; (iii) he was provided with the Bank rules relating to public statements and was asked to comply with these rules; (iv) he disregarded the Bank rules and claimed that he had general authority to do whatever he liked; (v) the article contained misleading information and created reputational risk for the Bank; and (vi) the article prompted negative reactions from the Government of Country X and the SAC.

50. The Tribunal finds that in view of this record, the manager and the Director in the Africa Region had a proper basis for filing allegations of misconduct against the Applicant. Staff Rule 3.00, paragraph 7.01 states that: “Staff members are encouraged to report suspected staff misconduct that falls within the scope of matters addressed by EBC [...] to EBC or to line management, but are not required to do so. A manager who suspects or receives a report of suspected staff misconduct, however, has an obligation to report it either to EBC or, as provided

in this Rule, to INT.” Staff Rule 3.00 does not require certain threshold or evidentiary requirements before reporting to EBC. Of course, neither managers nor staff members should file allegations of misconduct against others for purposes of harassment or retaliation. The Tribunal concludes in this case that the manager and the Director in the Africa Region had a proper basis for reporting to EBC and the Tribunal rejects the claim of retaliation in this regard.

51. Second, the Applicant claims that EBC wrongfully pursued the investigation against him.

52. The Tribunal notes that under Staff Rule 3.00, paragraphs 8 and 10, when EBC receives an allegation or complaint it undertakes an initial review. If EBC determines that there is sufficient basis to the complaint, it proceeds to an investigation or fact-finding stage. It is a discretionary decision of EBC to determine in what cases to conduct an initial review and when to proceed to a formal investigation. In *Koudogbo*, Decision No. 246 [2001], para. 43, the Tribunal observed that: “The initiation of investigations, preliminary or otherwise, on the basis of rumors and allegations by questionable sources, clearly does not comport with the basic elements of due process.” The Tribunal’s observation in *G*, Decision No. 340 [2005], para. 78 is instructive:

The first matter to be considered is whether there must be a defined evidentiary basis for initiating a preliminary inquiry. It is difficult to articulate a positive standard. Neither Staff Rule 8.01, paragraph 4.02, nor INT’s Standards and Procedures for Inquiries and Investigations define any threshold in this regard; it appears to be a matter of discretion. A meaningful negative answer, on the other hand, was given by the Tribunal in *Koudogbo*, Decision No. 246 [2001], at para. 43, to the effect that a preliminary inquiry cannot be launched on the basis of rumors or allegations from questionable sources. An inquiry may be disruptive. It should not be triggered merely because there have been isolated, anonymous, indirect, word-of-mouth tips. Such indications may be very valuable in law enforcement everywhere, but they must be considered critically. The line to be drawn may be difficult to define in the abstract, but the need to do so does not arise in this case. The facts upon which the preliminary investigation was launched were objective. They were of the Applicant’s own doing. They may have been susceptible of innocent explanation, but that required that they be explored, even at the cost at some inconvenience and anxiety. This does not justify a claim for compensation, unless investigations cross the line into harassment.

53. Accordingly, as long as the Tribunal finds there is a sufficient basis for EBC's decision to proceed with a formal investigation, the Tribunal will not question such a discretionary decision of EBC.

54. In this case, the Tribunal finds that EBC had a sufficient basis for pursuing an investigation into the allegations of misconduct against the Applicant. The EBC Final Report of 4 March 2015 provides as follows:

On April 9 and 10, 2014 [the Director in the Africa Region] and [Mr. B, the Applicant's manager] reported to EBC that the Article had been published in breach of Administrative Manual 14.20 paragraphs 7 and 8 ("AMS"). [...] [They] also provided a copy of a letter from SAC dated April 9, 2014 alleging that according to the Article the process which the WBG followed to select architects in the [Country X] was not competitive. [...]

On April 11, 2014 the investigators interviewed Mr. [B]. [...]

On April 17, 2014, [Mr. B] shared with EBC a letter from the [Country X] Ministry of Industry dated April 15, 2014 which stated that the Article appears to doubt the Project's sustainability. [...]

In light of sufficient factual basis to proceed with fact finding (investigation), EBC provided the [Applicant] with written notice of the allegations of misconduct on April 23, 2014.

55. Considering the above, the Tribunal concludes that EBC had a sufficient basis for the investigation; it was not conducted "on the basis of rumors and allegations by questionable sources," nor was it conducted to harass the Applicant.

56. The Tribunal is satisfied that EBC conducted the investigation while respecting the Applicant's due process rights. EBC provided the Applicant with a Notice of Alleged Misconduct in a timely manner, it interviewed the Applicant and gave him the opportunity to defend himself, EBC shared the Draft Report of Investigation with him, and the Applicant was given the opportunity to provide his comments.

57. The Applicant complains that EBC proceeded with unmeritorious charges as shown by the fact that the HRVP disagreed with EBC's conclusions and declared that the Applicant did not commit misconduct.

58. In the circumstances of this case, the Tribunal does not accept that EBC can be faulted solely because the HRVP ultimately disagreed with EBC's conclusions. EBC's role in the Bank's disciplinary proceedings is to conduct an investigation as an impartial fact-finder and then submit a report of the investigation to the HRVP. It is then up to the HRVP to make a determination of misconduct and imposition of sanctions. The role of EBC is different from that of the HRVP. The fact that the HRVP decided that no misconduct occurred does not bear on the issue of whether EBC pursued the investigation in a wrongful manner. In this regard, the Tribunal's observation in *G*, Decision No. 340 [2005] is relevant. The applicant in that case argued that the Department of Institutional Integrity (INT), another investigative body in the Bank, should be faulted because statistics show that INT's investigations often do not result in findings of misconduct.

59. The Tribunal rejected such arguments and observed at para. 79 that:

The Tribunal rejects the Applicant's harsh words for INT, and her assertion that the high percentage of investigations which do not lead to disciplinary sanctions bespeaks a pattern of rushing into disruptive proceedings without just cause. INT is not to be criticized when it acknowledges fairly that there is insufficient evidence of wrongdoing; what would be intolerable is if INT were put under pressure to distort its findings in order to justify its decision to conduct a full investigation.

60. Here as well the Tribunal does not accept the Applicant's argument that the investigation was wrongful or the charges were unmeritorious because the HRVP concluded that no misconduct occurred. The focus should be whether EBC had a sufficient basis to commence an investigation and whether it conducted the investigation in a reasonable manner while respecting the Applicant's due process rights. The Tribunal is satisfied that EBC acted reasonably and consistently with the Applicant's due process rights.

61. Finally, the Applicant claims that he was improperly placed on administrative leave during the investigation.



62. The Tribunal notes that the Bank placed the Applicant on paid administrative leave under Staff Rule 3.00, paragraph 8.5, which states that: “The World Bank Group Human Resources Vice President may [...] place a staff member on Administrative Leave pending completion of a preliminary enquiry or further review.” The Tribunal notes that placing a staff member under investigation on paid administrative leave is a discretionary decision of the Bank. As administrative leave during an investigation is not in itself a disciplinary measure, the Tribunal will examine whether the Bank abused its discretion in placing the staff member on administrative leave. In *G*, Decision No. 340 [2005], the Tribunal stated at para. 67:

The jurisprudence of the Tribunal is clear to the effect that the scope of its review in connection with disciplinary cases is broader than with respect to decisions of a purely managerial or organizational nature. (*Kwakwa*, Decision No. 300 [2003], para. 20.) But the Tribunal has also stated that placing a staff member on administrative leave under Staff Rule 8.01 is, in itself, not a disciplinary measure. If a decision to impose administrative leave is challenged, the Tribunal will consider whether the decision was an abuse of discretion – while still acknowledging that it is indeed a matter of discretion. (*Ismail*, Decision No. 305 [2003], para. 54.)

63. The basis for the Bank’s decision to place the Applicant on administrative leave was stated in the Notice of Administrative Leave dated 7 May 2014. The Lead Specialist and Head of HRD Corporate Operations had determined that the administrative leave was warranted

in view of the nature of the allegations of misconduct against you, related to granting a press interview without the appropriate clearance, resulting in complaints with respect to the Bank and to questions and criticisms from the side of civil society and the press. I have considered that under the circumstances, it will be difficult for you to continue to perform your work and that doing so in itself might inadvertently exacerbate and complicate the situation.

64. In support of its decision, the Bank explains that:

Here, Applicant was alleged to have granted a press interview without the appropriate clearance. The incident was not Applicant’s first time disobeying management’s clear instructions regarding public statements. Applicant had spoken at the Build Africa Forum without authorization mere months before. Moreover, Applicant expressed no intention of changing his behavior, but rather stated that he would not apologize for the relevant press interview. Applicant’s manager, [Mr. B], had already expressed concerns about reputational risks stemming from these

actions. Thus, Respondent's decision to place Applicant on administrative leave until the conclusion of the EBC investigation and HRVP's decision, was a reasonable exercise of discretion.

65. In view of the Notice of Administrative Leave of 7 May 2014 and the Bank's explanation, which is consistent with the record, the Tribunal holds that the decision to place the Applicant on paid administrative leave was not an abuse of discretion. Moreover, the Bank considered the Applicant's complaint that it would be difficult for him to fulfil his work program while responding to the investigation. The Tribunal finds no wrongdoing on the part of the Bank in respect of the administrative leave.

66. In sum, the Tribunal concludes that the Bank did not violate any rights of the Applicant with respect to the EBC investigation and the HRVP's decision of 16 June 2015. The Tribunal rejects the claim that the investigation was pursued for purposes of harassment or retaliation.

#### *Retaliation*

67. The Applicant claims that he was subjected to retaliation by the Country Director of Country X. The Applicant claims that he was a whistleblower because he repeatedly reported misconduct by the Country Director to various Bank officials in 2013 and 2014. The Applicant further claims that the Bank failed to protect him from retaliation even though he was a whistleblower. The Applicant also claims that he was retaliated against by the allies of the Country Director – his manager, Mr. B, and the Country Manager of Country X.

68. The Bank responds that the Country Director was not the Applicant's manager and did not exercise managerial control over the Applicant. The Bank adds that there is no evidence of any adverse action taken by the Country Director that amounts to retaliation. As for retaliation by his managers like Mr. B, the Bank states that: "The examples provided by Applicant of [...] retaliation are the instances when management asked him to follow its reasonable instructions and abide by the policies and procedures of Respondent – standards which apply to all staff members." The Bank states that the Applicant apparently believed he had the authority to do whatever he liked and if management disagreed with him, he concluded that it must be because of retaliation.

69. The Tribunal notes that Staff Rule 3.00 treats retaliation as a form of misconduct. Under Staff Rule 3.00, paragraph 6.01(g), misconduct includes:

Retaliation by a staff member against any person who provides information regarding suspected misconduct or who cooperates or provides information in connection with an investigation or review of allegations of misconduct, review or fact finding, or who uses the Conflict Resolution System, including retaliation with respect to reports of misconduct to which Staff Rule 8.02, & “Protections and Procedures for Reporting Misconduct (Whistleblowing)”, applies.

70. The Tribunal notes that EBC as part of its investigation against the Country Director looked into the allegation that the Country Director retaliated against the Applicant. EBC reviewed various documents provided by the Applicant as well as interviewed numerous Bank officials. EBC concluded that it found sufficient evidence regarding certain allegations against the Country Director, in response to which the HRVP imposed disciplinary measures. EBC, however, did not find sufficient evidence to conclude that the Country Director engaged in retaliation against the Applicant. EBC also investigated whether the Country Director engaged in proxy retaliation through the Applicant’s manager and the Country Manager of Country X and concluded that it did not find sufficient evidence of retaliation.

71. The Tribunal has reviewed the Applicant’s submissions and documents and it too is not persuaded that the Country Director, the Applicant’s manager, or the Country Manager of Country X retaliated against the Applicant.

72. In support of his claim of retaliation, the Applicant relies on a recent judgment of the Tribunal – *Bauman*, Decision No. 532 [2016]. Mr. Bauman worked in the Bank’s Office in the Country X as a Short-Term Consultant (STC). His STC appointment was terminated and he challenged the termination. The Tribunal concluded *inter alia* that: “the Country Director’s retaliatory animus was, at the very least, a contributing factor in this regard. The termination of the Applicant’s contract resulted directly from this action by the Country Director.” *Id.* para. 111.

73. The Applicant claims that like the *Bauman* case the same Country Director also retaliated against him. The Applicant states that:

As the Tribunal found in *Bauman*, Mr. Bauman's consultancy was terminated by [the Country Director's] subordinate, at [the Country Director's] demand, simply because [the Country Director] suspected that Mr. Bauman had complained about him. Early in [the Applicant's] own situation, [the Country Director] angrily confronted [the Applicant] with suspicions that [the Applicant] had blown the whistle on him, and [the Country Director] did not bother to deny it when [the Applicant] complained about this action in an email to him. Later, and in parallel to *Bauman*, in which a subordinate did the actual firing, two managers who received copies of [the Applicant's] email [...] became [the Applicant's] accusers at [the Country Director's] instigation. The Tribunal in *Bauman* held that even a manager's mistaken impression that misconduct is being alleged by a staff member, or is about to be alleged, is sufficient for a finding of retaliation. [The Applicant] is entitled to the same scope of legal protection as was Mr. Bauman.

74. The Bank responds that *Bauman* is not binding precedent for the current case for the following reasons. First, *Bauman* was decided on the facts specific to the case, which are different from the facts alleged in the current case. Second, the Country Director was not the Applicant's manager, did not exercise managerial control regarding any employment actions with respect to the Applicant. Unlike Mr. Bauman, the Applicant's employment was not terminated, nor was he subjected to any negative employment action. Third, the Applicant was not similarly situated to Mr. Bauman in any other way. Mr. Bauman was a local STC working on a short-term assignment directly in the Country Office of Country X. The Applicant was and is a level GG staff member reporting to managers not beholden to the Country Director. He was only on a temporary assignment to the Country Office of Country X, which also would have tended to insulate him from any influence by the Country Director. In sum, in the Bank's view, the circumstances of the two cases are entirely different.

75. The Tribunal finds that the circumstances in the *Bauman* case are different from those in the Applicant's case. It does not follow that because Mr. Bauman suffered retaliation, the Applicant also suffered retaliation. It cannot be said that since the Bank found some wrongdoings on the part of the Country Director, other employment decisions regarding other staff members linked with the Country Office of Country X are also wrongful. The Bank has provided an organizational chart of the Bank which shows that no Country Director appears in the Applicant's line of management. The record includes an email of the Applicant to his manager dated 8 April 2014 in which he considered the Country Director as "internal client" and no document in the

record shows that the Country Director exercised any managerial control over the Applicant. The Tribunal finds that the record does not demonstrate that any adverse employment action was taken against the Applicant for retaliatory purposes.

76. The Applicant cites as examples of retaliation incidents such as management's instructions (at the instigation of the Country Director as alleged by the Applicant) not to attend the Build Africa Forum, management's criticism of him for participating in the article in *Forbes Afrique* and management reporting him to EBC.

77. After reviewing the record as a whole, it is clear to the Tribunal that management had a proper basis for their decisions in these respects. The Applicant's manager told him in January 2014 that in management's view the Applicant should not attend the Build Africa Forum because the topic at the Forum was not within the Applicant's department, and given the sensitivity of the topic management decided that others in the country office should deal with the Forum. In response, the Applicant sent a lengthy email to his manager copying a number of people including EBC and the Ombudsman providing eight reasons why he had to attend. Included among them is that he was the "recognized international expert" and he wrote a book on the topic, which was a "best seller." He considered this instruction of management as "retaliation" and stated "a new line was crossed."

78. In 2014 he participated in the interview of the *Forbes Afrique* article in which he discussed Bank projects. Management inquired whether his involvement in the article was cleared by the relevant Bank units because in management's view the article might cause reputational risk for the Bank. The Applicant viewed this as "unjustifiable assaults" and stated that he did not feel he needed clearance from anyone, he saw no harm to the Bank and he would not apologize for his participation. Ultimately, management's concerns were validated because the article did generate criticism of the Bank.

79. The Tribunal cannot help but observe that in all work places, including the Bank, it is management's instruction that has to be followed by an employee not the other way around. Disagreements between a supervisor and a staff member over job-related activities can happen,

but it is the supervisor or management who has the prerogative to decide the scope of work assignments and the course of action an employee has to follow. In this case, the record shows a reasonable basis for the actions of management, including their decision to file allegations of misconduct against the Applicant, as discussed in paragraphs 48-50 above. The Tribunal is not persuaded that any retaliatory action was taken against the Applicant by the Country Director or by his manager or by the Country Manager of Country X.

80. The Tribunal recalls its observation in *O*, Decision No. 337 [2005], para. 49:

Although staff members are entitled to protection against reprisal and retaliation, managers must nevertheless have the authority to manage their staff and to take decisions that the affected staff member may find unpalatable or adverse to his or her best wishes. The “Tribunal accepts that it is not always easy for an applicant to produce evidence to support a claim of retaliation” (*Harou*, Decision No. 273 [2002], para. 68). Nevertheless, the Staff Rule on the Management of Unsatisfactory Performance is a legitimate rule and the fact that a staff member has made a good faith complaint about alleged irregularities does not confer any immunity upon that person from managerial authority. An allegation of retaliation is an allegation of very serious impropriety on the part of the alleged perpetrator and the Tribunal should not lightly find retaliation when a manager has made a difficult decision in relation to a staff member, simply because some time before, that staff member had had a troubled relationship with another manager.

81. Here too, the Tribunal finds it necessary to observe that the Applicant must accept that management has the general authority to manage his work activities. Management can instruct him to do or not to do certain actions to preserve a work environment that is governed by the rules and by a chain of command. It is true that the Applicant had a troubled relationship with management or with the Country Director. But that does not mean the Applicant is immune from managerial authority. The Tribunal finds that management’s instructions or actions regarding the 2014 Build Africa Forum and regarding the *Forbes Afrique* article were legitimate exercises of managerial prerogative.

82. As further evidence of retaliation, the Applicant claims that his performance evaluations for FY2013 were tainted by retaliation. As stated before, for his 2013 OPE, in five Key Work Program Results listed under Results Assessment, the Applicant received three “Superior” ratings and two “Fully Successful” ratings. Under Core Bank Competencies, the Applicant received

“Superior” ratings for Client Orientation and Drive for Results; and “Fully Successful” ratings for Teamwork, and Learning & Knowledge Sharing. These OPE ratings are very positive and the Applicant so agrees. But the Applicant claims that the OPE was tainted by retaliation because his OPE manager for 2013 included the Country Director as a feedback provider. His 2013 OPE was completed sometime in November 2013 and no challenge to it was filed in a timely manner. On the record before the Tribunal, the Tribunal finds no retaliation as alleged by the Applicant.

83. Finally, the Applicant claims that the SAC letter was an instrument of retaliation. As the Tribunal recalls, in response to the *Forbes Afrique* article, on 9 April 2014, the Bank received a letter from the SAC. The letter was addressed to the Country Director of Country X (copying various officials in Country X, officials of international organizations, and Bank officials). The letter criticized the Applicant’s statements in the *Forbes Afrique* article and questioned whether the Bank was following “fundamental principles of good governance in public procurement.” The Applicant claims that once the Country Director received the letter he forwarded it to the Applicant’s managers for retaliatory purposes. The Applicant claims that it was also retaliatory for the managers to share it with EBC. The Tribunal finds nothing retaliatory in the Country Director sharing the letter with the Applicant’s managers or in the Applicant’s managers sharing it with EBC.

84. In sum, the Tribunal finds no basis for the Applicant’s claims of retaliation.

#### *Other claims*

85. The Applicant claims that the Bank must pay for the intentional harm done to his career. The Applicant claims that he was harassed and subjected to retaliation, that his career suffered, and that he must be compensated. The Applicant states:

What emerges from the various disputes over [the Applicant’s] work are four salient points: (1) [The Applicant] was a high-powered executive who was able to work effectively with top-level national authorities to generate significant new business opportunities for the Bank; (2) [the Applicant’s] managers (led by [the Country Director]) interfered with [the Applicant’s] work in an occasional, unstructured, *ad hominem* and humiliating manner, without applying the same

standards to other staff; (3) [the Applicant's] managers acted in blatant disregard of the desires of the [Country X] and [Country Y] governments, which sought [the Applicant's] engagement to the point of rebuking the managers' interference; and (4) a wide gap existed between the highly positive recognition that [the Applicant] received outside the office, and the negative treatment he received from his direct managers.

86. The Bank argues that the Applicant has not experienced any harm. His employment was not terminated. His title, salary, and work program have not been negatively changed. He was not found to have committed misconduct, and was not sanctioned in any way as a result of the EBC investigation. He has not lost any benefits to which he was entitled.

87. The Tribunal has reviewed the record and concludes that there was no wrongdoing on the part of the Bank for which it must pay compensation.

88. The Applicant's remaining claim is that the Bank did not protect him from negative press coverage.

89. The record shows that after the *Forbes Afrique* article in April 2014, a newspaper published a negative article about Bank projects. The Applicant does not claim that the article in the newspaper raised specific allegations against him. But he claims that it was damaging to his reputation and the Bank failed to do anything in this respect.

90. The Bank maintains that despite being unable to show that the Bank had anything to do with the newspaper article, the Applicant, nevertheless, argues that the Bank is responsible for the contents of the article. The Bank states that the Applicant apparently failed to appreciate that it was his own unauthorized action - the interview with *Forbes Afrique* - that eventually led to the article in the newspaper. The Bank adds that despite the fact that the Bank was in no way responsible for the relevant article, the Bank agreed upon the Applicant's request to promptly issue a letter with regard to the EBC investigation into the Applicant's conduct. The Applicant was given permission to provide the letter to third parties as necessary if he wished to defend himself.



91. The Tribunal recalls its recent judgment in *Pizarro*, Decision No. 507 [2015], para. 99, in which it stated that:

The Tribunal recognizes the need for individual members of staff not to speak out publicly on allegations of wrongdoing. However, that confidentiality restriction then requires the Bank to take reasonable steps to protect the interests or mitigate reputational harm of staff members who are accused in the press of impropriety in the course of their duties as staff members of the Bank.

92. Here, the Applicant fails to show that the press made specific allegations of wrongdoing against him. The record does not show that the Bank failed to accommodate any reasonable requests the Applicant made in this regard. Therefore the holding in *Pizarro* does not apply in the Applicant's case to justify any compensation.

#### DECISION

The Application is dismissed.

/S/ Stephen M. Schwebel

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Stephen M. Schwebel

President

/S/Olufemi Elias

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Olufemi Elias

Executive Secretary

At Washington, D.C., 4 November 2016