



**World Bank Administrative Tribunal**

**2016**

**Decision No. 532**

**Rene Michel Bauman,  
Applicant**

**v.**

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

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

**Rene Michel Bauman,  
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-Koshi, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.

2. The Application was received on 17 April 2015. The Applicant was represented by Stephen C. Schott of Schott Johnson, LLP. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges the Bank's 18 November 2013 decision to terminate his Short Term Consultancy (STC) contract.

**FACTUAL BACKGROUND**

4. The Applicant is a national of the Democratic Republic of Congo (DRC). He began working for the Bank in December 2005 as an Operations Officer in the Kinshasa Country Office, DRC. From this date until September 2008, he worked on four successive STC contracts.

5. In September 2008, the Applicant was hired on a one-year Extended Term Consultancy (ETC) contract to work as a Conflicts Officer. This contract was extended in September 2009 for another year. From September 2010 to June 2013, the Applicant was hired on three consecutive STC contracts, serving as a Conflicts Officer.

6. On 14 August 2013, the Applicant received the STC contract at issue in the present case. Under this contract, with the Africa Region's Post-Conflict and Social Development Practice Group (AFTCS), the Applicant was to work for "about 150 days" from 16 August 2013 to 30 June 2014. The contract included the following clauses:

2. In the event the World Bank Group finds it necessary to cancel the assignment or to shorten its duration, the World Bank Group reserves the right to adjust the terms of the assignment as necessary. Your appointment will terminate accordingly, unless it is extended or a new appointment is made. The World Bank Group has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed to in writing before the time of the expiration of the appointment.

3. The World Bank Group will make every effort to give you as much notice as possible of any change to your appointment.

7. The STC contract further stated that the Applicant's appointment was subject to the conditions of employment of the World Bank Group (WBG), and that during his assignment he would be considered a WBG staff member, subject to the Staff Rules in effect at the time of appointment and as they might be amended from time to time. The Applicant signed this contract on 15 August 2013.

8. The Senior Operations Officer in the Social, Urban, Rural and Resilience Global Practice (GSURR) was to serve as Task Team Leader (TTL) for this assignment. The Practice Manager, GSURR was the Applicant's Manager. The Applicant worked primarily from the Bank's Kinshasa Office in the DRC, and also worked regularly from the Office in Brazzaville, Republic of Congo.

9. The Country Director at the time had been appointed to his position in September 2011. According to the Applicant, "[a] difficult work environment plagued the Kinshasa Country Office" under the Country Director's management. The Applicant alleges that it was widely perceived that staff in the office were divided into the Country Director's "closely aligned circle of staff" whom the Country Director trusted and favored, and those outside that circle. According to the Applicant, the "non-transparent recruitment and promotion" of some of the "inner circle" was questioned by many staff. On the Applicant's account, it was widely believed that the Country Director kept a "black list" of staff who had fallen out of his favor, which in turn led to "an unprofessional atmosphere of division, distrust, and intimidation" in the Country Office.

*The Applicant's relationship with the Country Director*

10. According to the Applicant, his personal interactions with the Country Director were limited due to their frequent travel, and on the surface their relationship was “civil and professional.”

11. At a staff meeting in early 2013, it was alleged that a staff member had diverted Bank funds for personal use. The responsible TTL had warned the staff member that this was prohibited, and the latter had been made to repay the funds. According to the Applicant, when the Country Director asked those attending the meeting for comment, the Applicant stated that the reputational risk caused to the Bank perhaps warranted an official Bank letter responding to the incident. According to the Applicant, the Country Director interrupted him “roughly,” stating that it was not the Bank’s task to write a letter every time there was “a small issue” that had already been rectified.

12. Around February 2013, the Country Director publicly complimented and then promoted his former driver to the position of Facilities Assistant. According to the Applicant, before this promotion, when the Applicant had once approached the Country Director’s former driver and advised him to be careful about using Bank cars for private purposes, the latter had “rebuffed him angrily.”

13. According to the Applicant, in the fall of 2013 he was informed by a local staff member that he had fallen into the Country Director’s “infamous ‘blacklist’ of disfavored staff.”

14. In September 2013, the Senior Agricultural Specialist requested the Applicant’s participation in a mission to eastern DRC scheduled for the first week of October. The Applicant’s TTL approved the Applicant’s participation in the mission.

15. According to the Senior Agricultural Specialist, on 20 September 2013 the Country Director called him to request that the Applicant be removed from the mission on the grounds that the team already had a Technical and Safeguard Specialist. The Senior Agricultural Specialist sent the Applicant an email the same day, informing him of the Country Director’s decision. In his subsequent testimony before Peer Review Services (PRS), the Senior Agricultural Specialist stated

that he had wanted the Applicant on the mission team for his knowledge of relevant contacts and facilitation skills more than his technical expertise, and that he had never before experienced the Country Director concerning himself with the composition of a mission team in this way.

16. In mid-October 2013, two staff members, a Resource Management Officer and a Program Assistant, asked the Applicant for advice regarding some suspicious pro-forma invoices and bidding documents received from companies bidding to provide painting and masonry services to the International Finance Corporation (IFC) building, in a project under the supervision of the Facilities Assistant. They asked the Applicant to verify the authenticity of the invoices from the three companies. According to the Applicant, the invoices looked identical not only with regard to the stated price, but also the print and printing imperfections; they only differed with regard to names and addresses. Also, the address provided for one of the companies was a residential street familiar to the Program Assistant and the Applicant; when they called the phone numbers provided for the three companies, they only reached residential houses.

17. According to the Applicant, the Facilities Assistant walked in on the discussion between the Applicant and the Program Assistant regarding the invoices, turned around, and then soon afterward the Program Assistant was called into the Country Director's office, where the latter accused her of sabotaging and delaying the work of the Facilities Assistant. The Country Director stated that he had personally visited the companies in question, and confirmed that they were the best qualified to perform the services. Subsequently, the Country Director complained to the Program Assistant's supervisor about her conduct, including her decision to involve the Applicant who, in the Country Director's view, should not have been involved. The Program Assistant was then directed to clear the invoices, while the Resource Management Officer was also reprimanded for not letting the Program Assistant "do her work correctly."

18. From 20-23 October 2013, one of the Bank's Ombudsmen visited the Kinshasa Country Office. He held a session for all staff, explaining the Bank's dispute resolution mechanisms. He also made himself available to meet with any staff who wished to do so in one-on-one meetings. The Applicant met with the Ombudsman on 23 October for over two hours. According to the Applicant, he informed the Ombudsman of an issue relating to the over-charging of invoices by a

company to the Bank; the Applicant states that he verified that the company did not exist at the address provided. Thereafter, on the Applicant's account, they discussed matters unrelated to work.

19. According to the Applicant, it was clear to both him and his colleagues that the Country Director was aware of the Applicant's meeting with the Ombudsman (primarily because the Country Director's Executive Assistant "knew about all comings and goings into the meeting room"). The Country Director has denied knowledge of the Applicant's meeting with the Ombudsman.

*Letter from the DRC Government*

20. On 2 November 2013, the DRC Finance Minister sent a letter to the Country Director, sharply protesting against the Bank's organization (under the Country Director's leadership) of several days of information sessions before the DRC parliament between 4-8 November, without the prior involvement of the Government. According to the letter, the Bank had thereby involved itself in political issues in a manner inconsistent with its mission. The Finance Minister also noted that the Government had been "repeatedly" forced to reimburse ineligible expenses initiated by the Bank without prior consultation.

21. The same day, this letter was forwarded to the Applicant. The Applicant states that he was concerned about the gravity of the facts described in the letter and their implications on the project. On 4 November, therefore, he forwarded the letter to his TTL and also to the Senior Development Specialist, GSURR, who was in charge of the project budget. The Applicant copied the letter to the Senior Private Sector Development Specialist and to a Senior Procurement Specialist. According to the Applicant, his TTL responded, copying the Senior Development Specialist, stating "[w]ell noted." The Applicant claims that the colleague who had forwarded the letter to the Applicant, also forwarded the letter to the regional Vice President (VP), and that the latter reacted angrily at the colleague for doing so.

22. Shortly afterward, according to the Applicant, the Resource Management Officer informed him that she had heard that the Country Director was furious at the Applicant and even suspected

that the Applicant was himself behind the letter from the DRC Government and had helped the Finance Minister to draft it. The Applicant states that this was “of course, a completely baseless allegation.” The Resource Management Officer warned the Applicant that the Country Director was planning to get the Applicant “out of the Bank.”

*Termination of STC contract*

23. On 7 November 2013, the Country Director called the Applicant’s Manager to report that the Applicant had approached a DRC Government official regarding the Country Director. The Country Director considered this behavior to be “inadmissible.” According to the Applicant’s Manager, their conversation on 7 November was very brief.

24. On 8 November 2013, the Country Director sent an email to the Applicant’s Manager, summarizing what he had said in the phone call, as follows:

We talked. Just to put in writing what I told you. [The Applicant] went to meet a high level official here in Kinshasa to ask him to do everything he can to get me out of the country and that he was working to make it happened [sic]. When asked why he wanted me to be out of the country, the reason was that I was arrogant. When asked if he raised the issue with me, he responded no.

This is an inadmissible behavior from a Bank consultant and I don’t think consultants with such a behavior should work for the World Bank.

25. The email did not identify the DRC Government official in question, or state the date on which the Applicant allegedly made the statements at issue. The Applicant “has consistently maintained, and continues to do so, that the allegation is completely false.”

26. The Applicant’s Manager subsequently informed his own manager, then the Senior Advisor, of the situation, and also sought advice from the Senior Human Resources (HR) Business Partner. According to the Senior HR Business Partner, by the time the Applicant’s Manager contacted him, the Applicant’s Manager had already decided to terminate the Applicant’s contract. The Senior HR Business Partner advised the Applicant’s Manager that a manager may terminate an STC contract at any time for any business reason, but recommended that termination be done in writing and with 14 days prior notice. He further advised the Applicant’s Manager to also

consult with the Legal Department. He did not advise the Applicant's Manager to take further steps in connection with terminating the Applicant's contract. At the time, the Senior HR Business Partner believed that the Applicant's Manager had already spoken with the Applicant about the upcoming termination of his contract.

27. According to the Applicant, in fact, neither the Applicant's Manager nor the Country Director had contacted him. The Applicant remained "entirely unaware of [the Country Director's] allegations and [the Applicant's Manager's] decision to follow [the Country Director's] demand to terminate" him.

28. On 14 November 2013, the Applicant's Manager sought advice from a Senior Counsel, Legal Vice Presidency. He also contacted the Sector Leader and the Applicant's TTL to get background information regarding the situation. According to the Applicant's Manager, at this point, neither the Sector Leader nor the Applicant's TTL knew of any problems between the Applicant and the Country Director.

29. On 17 November 2013, a colleague from the Bank's Brazzaville Office called the Applicant to ask if the latter was "really" being terminated, as that colleague had heard. The Applicant states that he was "stunned" to hear about his pending termination.

30. On 18 November 2013, the Applicant's Manager sent an email to the Applicant, stating as follows:

This is to notify you that we have determined that your services are no longer required. Your current STC contract will end 14 days from the date of this notification. Your contract therefore ends on December 2, 2013.

31. The Applicant responded to his Manager by email on 22 November. He stated that he was very surprised at the "nature and the tone" of the latter's email which, he said, was inconsistent with Bank Staff Rules and procedures regarding STC contracts. The Applicant stated that:

I have never been reprimanded for my work since I joined the Bank in 2005 and my contract has even been re-conducted August 14<sup>th</sup> 2013.



As I do not see any rationale and justification that relate your decision to my work and performance, I am force[d] to conclude that this is about retaliation and proxy retaliation with regard to harassment and hostile work environment that are been developed by the [Country Director] (copied).

32. The Applicant's email continued:

In effect, I have talked to the Ombudsman (copied) during his mission in Kinshasa to described [sic] to him several malfunction and breaking of ethic and integrity rules, which as a Bank staff the Bank rules obliged me to do.

Doing so, I have only done my job as per Bank prescriptions.

Therefore. Terminating my contract without any work related reason can be explained only by retaliation and proxy retaliation which is formally and explicitly prohibited by bank Staff rules 6.06 and 3.00.

33. The email stated that the Applicant was therefore petitioning the Bank's Ethics, Integrity, and Ombudsman offices regarding the alleged retaliation and premature termination of his contract. This email was copied to the Country Director, the Ombudsman, the Senior HR Business Partner, and both the Ethics and Investigation Hotlines.

34. After seeing this email, the Senior HR Business Partner spoke to the Applicant's Manager regarding the Applicant's allegations. According to the Senior HR Business Partner, the Applicant's Manager informed him that he had not terminated the Applicant's contract in retaliation for the Applicant's meeting with the Ombudsman, but did so because, based on what the Country Director had reported, the Applicant would not be able to continue to perform his tasks.

35. According to the Applicant, neither his Manager nor the Senior HR Business Partner contacted him subsequently.

#### *EBC Investigations and PRS Review*

36. On 26 November 2013, the Bank's Office of Ethics and Business Conduct (EBC) opened a case with respect to the Applicant's complaint that the Applicant's Manager had abused his authority in making the termination decision. The same day, EBC investigators conducted an

interview with the Applicant. They subsequently conducted interviews with the staff members who had been consulted by the Applicant's Manager regarding the termination decision.

37. On 30 November 2013, the Applicant filed a Request for Review with PRS. He challenged the termination decision, which he said had not been made in good faith and constituted an abuse of managerial discretion. He alleged that he had been the victim of retaliation.

38. On 2 December 2013, the Applicant's STC appointment terminated.

39. On 8 January 2014, EBC closed the case regarding the Applicant's complaint with respect to the Applicant's Manager, due to insufficient evidence.

40. In January/February 2014, EBC put various questions to the Applicant, over the phone and by email, regarding allegations of misconduct in the DRC Country Office. According to the Applicant, the issues discussed included: use of Bank vehicles; invoices for apparently excessive amounts; the general working environment within the Country Office; the letter sent by the DRC Government to the Country Director; and "wide spread rumors about fraud and corruption involving the [Country Director]." The Applicant states that he had further exchanges with EBC and the Integrity Vice Presidency (INT) on these matters, by telephone and in person (in Kinshasa) between March and June 2014.

41. On 18 February 2014, the Applicant's Manager filed the Manager's Response with PRS. He maintained that management had followed proper Bank procedures, and that the termination decision was based on business reasons. Specifically, he asserted that the Applicant's actions in voicing criticisms of the Country Director to DRC Government counterparts "posed a reputational risk to the Bank," and could negatively affect its relationship with donors and the DRC. He also stated that the Applicant's actions meant that he could no longer interact constructively with the Country Director, so would be unable to effectively carry out the services he was hired for. As such, the termination decision was based on a business rationale.

42. On 4 March 2014, EBC received a complaint from another staff member, alleging retaliation, the creation of a hostile work environment, abuse of authority, and misuse of Bank resources by the Country Director. EBC commenced its review into these allegations on 6 March 2014.

43. On 27 March 2014, EBC investigators interviewed the Applicant once more. The following day, EBC opened a new case, based on the Applicant's complaint that the Country Director had retaliated against him for speaking to the Ombudsman and had also falsely represented facts regarding the letter from the DRC Finance Minister, resulting in the termination of the Applicant's appointment.

44. On 2 April 2014, the Applicant was interviewed by EBC with respect to the complaint made against the Country Director by the other staff member on 4 March.

45. Between 3 April and 27 June 2014, EBC investigators (re)interviewed a number of staff members, including the Applicant's Manager, the Country Director, and other staff from the DRC Office. On 24 June, a Notice of Alleged Misconduct was sent to the Country Director.

46. On 4 April 2014, the PRS Panel stayed the review proceedings pending the outcome of EBC's investigation.

47. From 25 June to 4 July 2014, EBC investigators carried out a number of interviews in the DRC of the Country Director and other staff members, in respect of the complaint made by the Applicant.

48. On 31 July and 1 August 2014, EBC investigators interviewed a DRC Government official in respect of the complaint made by the Applicant regarding the Country Director. On 12 August 2014, EBC concluded its investigation in respect of this complaint. It concluded that the allegations were not substantiated and closed the case.

49. On 9 September 2014, EBC informed PRS that it had concluded its review of the Applicant's allegations. EBC issued two Case Closure Memoranda regarding these allegations, in which it outlined its factual findings and closed the cases due to insufficient evidence.

50. The PRS Panel finalized its report on 5 December 2014. It found that the termination decision was a valid exercise of managerial discretion, and that there was insufficient evidence of retaliation or other abuse of discretion. It also found, however, that the Bank had violated its obligations under Principle 2.1 of the Principles of Staff Employment, by failing to provide the Applicant with a "fair and proper process." For these procedural failures, the PRS Panel recommended monetary compensation to the Applicant in the amount of \$15,000.

51. The recommendation of the PRS Panel was accepted by the Vice President of the Africa Region on 11 December 2014. The Applicant was notified of this decision on 18 December 2014. The Applicant did not accept the compensation offered.

52. On 30 March 2015, EBC concluded its investigation with respect to the complaints made against the Country Director by the other staff member on 4 March 2014. It found that the allegations of abuse of authority and misuse of Bank resources were substantiated, and referred the case to Human Resources.

#### *Application to the Tribunal*

53. The Application was filed with the Tribunal on 17 April 2015. The Applicant challenges the 18 November 2013 decision to terminate his STC appointment. He seeks rescission of the termination decision. He further seeks reinstatement, and/or compensation for economic losses caused by the Bank's wrongful termination decision, for moral injury and personal distress, as well as for the reputational and professional harm suffered, "equivalent to the amount of two years of salary." He also seeks attorney's fees, and any other relief deemed appropriate by the Tribunal.

## SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

*The Applicant's Main Contentions*

54. The Applicant contends that the termination decision must be set aside, on several grounds. First, he argues that he was not terminated because his services were no longer needed, but rather due to allegations of misconduct. The Bank should therefore have conducted a “fair and proper” investigation into these allegations, under Staff Rule 3.00, and should have accorded the Applicant due process in this regard. The Applicant claims that though the PRS Panel correctly found that management had committed a number of procedural violations in making the termination decision, the Panel failed to draw the correct legal consequences from this finding.

55. Second, the Applicant argues that the termination decision was an act of retaliation against him by the Country Director as a result of the Applicant's use of the Bank's internal justice system (in meeting with the Ombudsman) and/or his reporting of possible misconduct by the Country Director to his line managers (when he forwarded the email from the DRC Minister of Finance). The Applicant contends that the evidence of retaliation is “overwhelming.”

56. The Applicant argues that rescission of the termination decision and reinstatement into his STC contract would constitute appropriate remedies. He also seeks compensation for his moral injuries, personal distress, and professional harm. As of October 2015, the Applicant had not yet been able to obtain new employment.

*The Bank's Main Contentions*

57. The Bank contends that the termination decision was a responsible and reasonable exercise of managerial discretion.

58. The Bank submits that the Applicant was neither accused nor charged with misconduct, and that the termination of his appointment “was not a disciplinary action but an administration [sic] decision that falls within managerial discretion.” Therefore, according to the Bank, the Applicant's due process rights “were not implicated” as the termination of his appointment was based neither on performance nor on any misconduct. In any event, the Bank argues that the

Applicant was provided with a 14-day notice of the termination of his STC appointment, and that this was consistent with his Letter of Appointment.

59. Regarding the retaliation claim, the Bank contends that the Applicant bears the burden of establishing facts which would bring his claim within the prohibition of retaliation in the Staff Rules, but has failed to do so. The Bank argues that the Applicant's retaliation claim is "bereft of evidence," and that the Applicant's appointment was in fact terminated "because [the Applicant's Manager] made the business decision that Applicant can no longer perform the work for which he was hired to do." According to the Bank, the Applicant's appointment was not terminated for his engagement in any protected activity.

60. With respect to the remedies sought, the Bank argues that the Applicant's request for reinstatement should be dismissed as baseless because "by its nature an STC appointment does not guarantee continued employment with the Bank." In any event, the specific term for which the Applicant's work was required is "long past."

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

### TERMINATION OF STCS: STATUTORY FRAMEWORK AND JURISPRUDENCE

61. Staff Rule 7.01, paragraph 3.02 (Early End of Appointments) provides that various categories of appointments, including STCs,

may be ended by the staff member's Manager prior to expiration on grounds that the employment is no longer required, with such advance notice to the staff member as the Manager determines consistent with the staff member's letter of appointment.

62. Principle 2.1 of the Principles of Staff Employment provides that the Bank "shall at all times act with fairness and impartiality and shall follow a proper process in [its] relations with staff members." It also obliges the Bank to "respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal."

63. Principle 7.1 of the Principles of Staff Employment provides that separations initiated by the Bank “shall be based on the needs for efficient administration and for upholding the standards of the Organizations,” and that staff members separated at the initiative of the Bank “have the right to be notified in writing of the decision and the reason for it.” Such reasons shall be based on, *inter alia*:

iii. when the Organizations determine that a position or positions are no longer necessary, or that the responsibilities of a position have changed so that the staff member is not qualified to fill it [...] or

iv. unsatisfactory service, personal or professional misconduct, abandonment of duties, or action adversely reflecting upon the reputation and integrity of the Organizations or their staff.

64. In *BY*, Decision No. 471 [2013], para. 42, the Tribunal confirmed that a staff member must be given “adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached” (citing *Samuel-Thambiah*, Decision No. 133 [1993], para. 32; *see also Mpoy-Kamulayi (No. 2)*, Decision No. 457 [2011], para. 69). The staff member “must be given adequate opportunities to defend himself” (*Samuel-Thambiah*, para. 32).

65. Similarly, the Tribunal has stated that “a basic guarantee of due process requires 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). This is a general obligation on the Bank Group (*see, recently, CS*, Decision No. 513 [2015], para. 100), and applies with respect to termination decisions as much as any other adverse decisions.

#### WAS THE APPLICANT’S CONTRACT TERMINATED FOR ALLEGED MISCONDUCT?

##### *The basis for the decision: a business rationale?*

66. It is common ground that the decision to terminate the Applicant was made on the basis of the Country Director’s allegation to the Applicant’s Manager that the Applicant had spoken critically of the Country Director to a DRC Government official. The Applicant, who denies the

allegation, disagrees with the Bank on whether this constitutes a legitimate basis for the termination of his contract.

67. The Applicant submits that given the circumstances of the case the Bank could not rely on Staff Rule 7.01, paragraph 3.02. The Applicant contends that in light of a “completely unproven and uninvestigated allegation” of misconduct against him, it was “improper for the Bank to forego the proper and mandatory investigative processes under the Staff Rules” and instead present the allegation itself as a “business rationale” to justify the termination decision. The Applicant submits that he was accused of undermining the Country Director, an act which would constitute misconduct and should therefore have been reported to EBC and investigated. According to the Applicant, the Bank’s failure to follow the applicable rules in this regard is “so grave in nature” that it warrants, in and of itself, the rescission of the termination decision.

68. The Applicant further contends that STCs are entitled to the same basic guarantees of due process as other staff members, and are subject to the same Staff Rules regarding allegations of misconduct and disciplinary procedures: “They are thus entitled to the same due process protections as any other Bank staff when accused of misconduct.”

69. According to the Bank, the termination decision was motivated by a “business rationale” in that, having made the alleged statements, the Applicant could no longer interact constructively with the Country Director and therefore was unable to effectively perform his functions. The Applicant had “undermined the authority of a World Bank Group Country Director before the very government officials that the Country Director is responsible for engaging with.” The decision to terminate him was therefore a “reasonable and responsible exercise of managerial discretion.”

70. The PRS Panel concluded that the rationale provided by the Bank for the termination decision was reasonable and within the Applicant’s Manager’s discretion, “if indeed [the Applicant] had engaged in such communications.” That qualifier in the PRS conclusion is crucial.

71. In its assessment, the PRS Panel first considered the Applicant’s relationship with the Country Director, which was widely perceived to be “rocky.” It “questioned” the Country



Director's credibility with respect to his testimony regarding both the Applicant's participation in the mission to eastern DRC and the Ombudsman's visit to the Kinshasa Office. However, the Panel relied on a statement in the EBC Case Closure Memos to the effect that EBC had interviewed the DRC Government official "and that he confirmed both that [the Applicant] criticized [the Country Director] to him and that he reported this to [the Country Director]." In this light, PRS found that the Country Director was "truthful in his report to [the Applicant's Manager]." Nevertheless, the PRS Panel expressly acknowledged that it was "not in a position to assess the credibility of the Government official EBC had interviewed," and it refrained from making a finding on whether the Applicant had, in fact, made the statements in question.

72. As the Applicant correctly notes, PRS based its conclusion on factual findings contained in EBC memoranda which resulted from an investigation initiated *after* the termination decision had been taken. That investigation was ultimately completed in August 2014. From the Case Closure Memos, it appears that EBC investigators only spoke to the DRC Government official in question regarding the Applicant's alleged statements in late July–early August 2014: that is, more than eight months after the termination decision had been taken.

73. In determining whether the termination decision constituted an abuse of discretion, the Tribunal will first assess the procedures followed in reaching that decision. The Tribunal will then determine whether the decision had a reasonable and observable basis and was not arbitrary, discriminatory, or improperly motivated.

74. The Tribunal observes that the Bank has not claimed that the termination decision was taken because of problems in the Applicant's performance, or because the business needs of the offices to which he had been assigned had changed. The Bank acknowledges that the Applicant was terminated on the basis of the allegation that he had spoken critically of the Bank's Country Director to a DRC Government official. This was the sole basis for the termination decision. In the email in which he informed the Applicant's Manager of the alleged actions of the Applicant, the Country Director described the action as "inadmissible behavior" from a Bank consultant, and stated his opinion that consultants "with such a behavior" should not work for the Bank. The

Applicant's Manager has confirmed that his decision to terminate the Applicant's contract was taken in response to this email.

75. The record therefore indicates that the termination of the Applicant's contract was *de facto*, if not formally, a disciplinary measure imposed in respect of alleged conduct stated to be inconsistent with the Applicant's obligations as a World Bank staff member. The fact that neither the Country Director nor the Applicant's Manager cited a particular Staff Rule or Principle of Staff Employment which they believed to have been breached does not alter this conclusion.

76. In its Rejoinder, the Bank contends that in fact the Country Director "did not ask [the Applicant's Manager] to rid him of the Applicant," and that in fact all the Country Director did "was express his sentiment that the Bank is not the place for consultants who behave like Applicant [...]." This interpretation of the Country Director's email of 8 November 2013 is not convincing. Whether or not the Country Director expressly requested that the Applicant's appointment be terminated, the implication in his email was unmistakable: the Applicant's Country Director informed the Applicant's Manager that the Applicant had engaged in behavior of a nature such that he should no longer work for the Bank. The Applicant's Manager interpreted this as a request that the Applicant's appointment be terminated. He acted on this basis and, again, no other basis has been invoked for the termination decision.

77. The Tribunal notes that the termination of an STC contract can constitute a legitimate administrative measure imposed for verifiable business reasons (a possibility envisaged, for example, in the STC contract at issue in the present case – see paragraph 6 above). However, termination is also one of the disciplinary measures envisaged in cases of misconduct under Staff Rule 3.00, paragraph 10.06. In any given case, whether a termination decision should rightly be characterized as (a) a disciplinary measure or (b) an administrative measure taken for legitimate business needs, will depend on the circumstances of the case. The way in which a measure has been characterized by the Bank will not be conclusive.

78. Moreover, the absence of a formal finding of misconduct will not necessarily determine that a given measure falls to be considered as administrative rather than disciplinary. This issue

arose in *BF*, Decision No. 430 [2010], paras. 70-72 and *AY*, Decision No. 431 [2010], paras. 61-64. In both of those cases, arising from a controversial Bank project in Albania, the Tribunal concluded that the circumstances in which certain measures were imposed on the applicants (without any findings of misconduct) “support[ed] an inference” that they were disciplinary measures (*BF*, para. 73; *AY*, para. 64). The Tribunal did not deem it necessary to take a final position on this matter as, even if the impugned measures were to be characterized as administrative measures, certain procedural requirements had not been observed (e.g. *BF*, para. 88; *AY*, para. 75).

79. It is well-established, as stated in *Dambita*, Decision No. 243 [2001], para. 21, that:

In disciplinary matters, strict adherence to the Staff Rules is imperative and a conclusion of misconduct has to be proven. The burden of proof of misconduct is on the Respondent. The standard of evidence in disciplinary decisions leading [...] to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.

80. Similarly, the Tribunal stated in *M*, Decision No. 369 [2007], para. 53, that:

[D]isciplinary cases are different from the broader range of disputes relating to managerial decisions. The Tribunal has always recognized that the Bank has discretion to run its business. But punitive measures are not business decisions. They must be subjected to meaningful checks and balances, in the interest not only of individual applicants but also to realize expectations that the Bank will eschew arbitrary behavior in this sensitive sphere.

81. In the present case, the Bank has submitted that the Applicant was “neither accused nor charged with misconduct,” and that the termination of his appointment “was not a disciplinary action but an administration [sic] decision that [fell] within managerial discretion.”

82. The Tribunal disagrees. The Applicant’s contract was terminated by his Manager, who acted in response to a telephone call and email from the Applicant’s Country Director. The termination decision was taken on the basis of an allegation that the Applicant had acted in a manner contrary to his obligations as a World Bank staff member. This is the essence of a disciplinary measure.

83. The Bank further contends that, “[s]ince [the Applicant] was not subjected to any disciplinary proceedings, his due process rights were not implicated.” Again the Tribunal disagrees. A failure to follow necessary procedures when imposing a disciplinary measure does not transform that measure into a business decision. To put it another way, the need for “strict adherence” to procedural guarantees in disciplinary matters, which the Tribunal highlighted in *Dambita* (see above), does not disappear merely because the Bank has incorrectly characterized a disciplinary measure as a business decision.

*Procedural flaws*

84. In its Report, the PRS Panel considered a number of procedural issues around the termination decision. First, the Panel noted that, consistent with best practice in the Bank, the Applicant was provided with two weeks’ notice, in writing, of the termination of his STC contract. In its submissions before the Tribunal, the Bank has reiterated that requisite notice was provided. The Applicant does not challenge this.

85. The PRS Panel then turned to consider whether the Bank had acted with “fairness and impartiality” and followed a proper process, as required under Principle 2.1 of the Principles of Staff Employment. The Panel found that the Bank had failed to do so, observing that:

[T]he Bank decided to terminate a staff member’s appointment based wholly on the statements of a Government official, without conducting any diligence regarding the official’s credibility, and without so much as informing the staff member of the basis for his termination or providing him with an opportunity to respond to the allegations made against him.

86. The Panel later concluded as follows:

In a case in which the sole basis for terminating a staff member’s appointment was unverified allegations made by a non-Bank staff member, the Bank did not conduct sufficient diligence, at the time of the termination decision, regarding these allegations.

87. On the basis of its findings, the Panel concluded that the Bank had failed to fulfill its obligations under Principle 2.1, and recommended compensation in the amount of \$15,000.

88. The Tribunal agrees with the findings of the PRS Panel regarding the multiple breaches of procedure in this case. The Applicant's appointment was terminated on the basis of unverified allegations which were not brought to his attention until after the termination decision had been made. The decision-maker, the Applicant's Manager, did not seek additional details from the Country Director regarding the alleged statement(s) by the Applicant to the DRC Government official; indeed, when the termination decision was made, the Applicant's Manager does not appear to have even known the identity of the official in question. No efforts were made to assess the credibility of the official. From the record before the Tribunal, it appears that the first time anyone from the Bank other than the Country Director spoke to the DRC Government official in question regarding the alleged statements of the Applicant was in July-August 2014, when EBC investigators interviewed the DRC Government official. That is eight months after the termination decision was taken.

89. Moreover, not having been informed of the allegation, the Applicant plainly had no opportunity to respond to or challenge the allegation. Nor was the Applicant given the opportunity to identify other factors (such as his deteriorating relationship with the Country Director, of which the Applicant's Manager was apparently not aware at the material time) which the decision-maker ought to have taken into account when assessing the veracity of the allegation.

90. Furthermore, the Applicant's Manager did not delay the decision to allow time for any investigation; indeed, the Senior HR Business Partner stated before PRS that by the time the Applicant's Manager consulted with him, the decision to terminate the Applicant's appointment had already been made. Before PRS, the Applicant's Manager stated that he had intended to contact the Applicant after the termination of the latter's appointment to follow up. What the purpose or effect of such a step would have been is unclear; in any event, the Applicant's Manager chose not to do so once the Applicant had made the allegation of retaliation in his email of 22 November 2013.

91. The Tribunal finds that the problems identified, including a decision based on unverified allegations which were never brought to the attention of the staff member, constituted more than

mere ancillary issues. They were procedural failings of such nature and gravity as to vitiate the decision itself.

92. As discussed above, the termination decision constituted a *de facto* disciplinary measure. In this light, the Tribunal recalls statements it has previously made in cases where a staff member has been terminated for alleged misconduct. In *Arefeen*, Decision No. 244 [2001], para. 42, the Tribunal affirmed that “[t]he standard of evidence in disciplinary decisions leading [...] to dismissal must be higher than a mere balance of probabilities [...] there must be substantial evidence to support the finding of facts which amount to misconduct” (*see also Carew*, Decision No. 142 [1995], para. 32). When reviewing the disciplinary procedure followed in *P*, Decision No. 366 [2007], the Tribunal described the use against the applicant of evidence unseen by him as “violating the most basic principle of due process” (para. 61). The Tribunal further observes that in line with Staff Rule 3.00, paragraph 10.09, the Bank is obliged to determine the imposition of disciplinary measures on a case-by-case basis, taking into account the seriousness of the matter, extenuating circumstances, the situation of the staff member, and the frequency of the conduct at issue (*see also Planthara*, Decision No. 143 [1995], paras. 38, 42; *CI*, Decision No. 492 [2014], paras. 28-29). In the present case, where the Applicant’s appointment was terminated on the basis of allegations that he had behaved in a manner inconsistent with his obligations as a World Bank staff member, none of these essential requirements were met. This reinforces the conclusion reached in paragraph 91 above regarding the legal consequences to be drawn from the procedural breaches identified.

*The substance of the decision: lack of a reasonable and observable basis*

93. Management retained a discretion to terminate the Applicant’s appointment, but such decisions, like any exercise of discretion, are subject to review to ensure that they are not “arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis” (*AK*, Decision No. 408 [2009], para. 41; *de Raet*, Decision No. 85 [1989], para. 67).

94. In the present case, as outlined above, the termination decision was plainly taken in violation of a fair and reasonable procedure. Furthermore, given the unverified information

available to the decision-maker at the time, which was no more than hearsay, the Tribunal finds that the decision also lacked a reasonable and observable basis. In both respects, the decision constituted an abuse of managerial discretion and must be rescinded pursuant to Article XII of the Statute.

#### WAS THE TERMINATION DECISION AN ACT OF RETALIATION?

##### *Retaliation: Staff Rules and jurisprudence*

95. As the Tribunal has frequently observed, the Staff Rules are clear that retaliation 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” is prohibited. *See* Staff Rule 3.00, paragraphs 6.01(g) and 7.06, and Staff Rule 8.01, paragraph 2.03; *see also* CS, Decision No. 513 [2015], para. 104; *Sekabaraga (No. 2)*, Decision No. 496 [2014], para. 60. This prohibition extends also to retaliation against any person who is believed to be about to report misconduct or believed to have reported misconduct, even if such belief is mistaken. *Id.*

96. Staff Rule 8.02, paragraph 3.01, provides as follows:

Where a staff member has made a *prima facie* case of retaliation for an activity protected by this Rule (i.e., by showing that the staff member reported suspected misconduct under this Rule and has a reasonable belief that such report was a contributing factor in a subsequent adverse employment action), the burden of proof shall shift to the Bank Group to show – by clear and convincing evidence – that the same employment action would have been taken absent the staff member’s protected activity.

97. The Tribunal has noted that “[t]he burden lies with an applicant to establish facts which bring his or her claim within the definition of retaliation under the Staff Rules” and that:

An applicant bears the onus of establishing some factual basis to establish a direct link in motive between an alleged staff disclosure and an adverse action. A staff member’s subjective feelings of unfair treatment must be matched with sufficient relevant facts to substantiate a claim of retaliation, which in essence is that the [alleged reason for the adverse action] is a pretext to mask the improper motive.

*O*, Decision No. 337 [2005], para. 47; *CA*, Decision No. 475 [2013], para. 58.

98. The Tribunal has confirmed that if an applicant makes out a *prima facie* case or has pointed to facts “that suggest that the Bank is in some relevant way at fault” then “the burden shifts to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner.” (*de Raet*, Decision No. 85 [1989], para. 57; *BI*, Decision No. 439 [2010], para. 47.)

99. The Tribunal has made clear, however, that “[i]t is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person. There must be a direct link between the alleged motive and the adverse action to amount to retaliation” (*AH*, Decision No. 401 [2009], para. 36). The Tribunal has also recognized that “[a]lthough 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.” (*O*, para. 49.)

#### *Bases for the Applicant’s claims of retaliation*

100. The Applicant contends that he engaged in at least two instances of protected activities: first, when he spoke to the Ombudsman and thereby utilized the WBG’s internal justice system; second, when the Applicant forwarded the letter from the DRC Finance Minister to his line managers on 4 November 2013. The Applicant observes that both incidents occurred shortly before the Country Director made his allegations regarding the Applicant to the Applicant’s Manager, stating that the Applicant “went to meet a high level official here in Kinshasa to ask him to do everything he can to get me out of the country” and that “I don’t think consultants with such a behavior should work for the World Bank.”

#### Meeting with the Ombudsman

101. In its Report in the present case, the PRS Panel found that the Applicant, in speaking with the Ombudsman regarding office matters, had indeed engaged in protected activity. However, the Panel was unable to conclude that the Country Director had known that the Applicant had met with the Ombudsman. Moreover, the Panel identified no evidence indicating that the Applicant’s Manager knew, at any time prior to the termination of the Applicant’s appointment, that the latter



had met with the Ombudsman. Finally, the Panel found no direct link between the Applicant's meeting with the Ombudsman and the termination of his appointment. On this basis, the Panel found that the evidence did not support the Applicant's claim of retaliation.

102. According to the Applicant, it was clear to both him and his colleagues that the Country Director was aware of the Applicant's meeting with the Ombudsman. The Applicant submits that this was confirmed by witnesses during the subsequent PRS hearing. During that hearing, the Country Director denied knowledge of the Applicant's meeting with the Ombudsman: he stated that he had been provided with general information about the Ombudsman's visit, but not specific information about conversations with particular staff members. He insisted that he was not aware that the Applicant had spoken with the Ombudsman and was unaware of the Applicant's concerns regarding the administration of the office. In its Report, the PRS Panel "questioned" the Country Director's testimony in this regard. However, in light of the fact that EBC had been unable to verify that the Country Director was aware that the Applicant had spoken with the Ombudsman, the Panel "was unable to conclude" that the Country Director knew of this meeting.

103. The Applicant asserts that "[c]ontrary to the findings of the PRS Panel, testimonial and circumstantial evidence supports a finding that [the Country Director], despite his later self serving denials in the PRS hearings, was well aware that Applicant had met with [the Ombudsman]." The "circumstantial evidence" relied on by the Applicant here is that, first, it was well known that the Ombudsman offered one-on-one meetings with Bank staff. Be that as it may, this does not assist the Applicant in proving that the Country Director knew that the Applicant in particular had met with the Ombudsman during this particular visit. The Applicant further notes that the meetings with the Ombudsman took place "in a room located across, and in plain sight" of an office occupied by a relative of the Country Director's "trusted assistant." The link here is too tenuous to support the Applicant's claim. While it is true that the PRS Panel "questioned" the Country Director's testimony on this issue, on the evidence before the Tribunal it is difficult to conclude that the Country Director was aware that the Applicant met with the Ombudsman.

104. While there were certain incidents that can be seen as evidence of a deteriorating relationship between the Country Director and the Applicant, they do not on their own satisfy the

standard for proving retaliation. The Tribunal recalls that “[i]t is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person. There must be a direct link between the alleged motive and the adverse action to amount to retaliation.” (*AH*, para. 36).

Transmittal of letter to line managers

105. The Applicant also highlights his transmittal of the DRC Government official’s letter to his line managers on 4 November 2013. This element of his retaliation claim has greater merit.

106. According to the Applicant, this “must have raised [the Country Director’s] ire so much that he ordered Applicant to be fired.” The Applicant contends that his forwarding of this letter, which raised concerns about irregularities in procurement, was clearly a protected activity. The Applicant also asserts that, from the moment he forwarded this letter to the various recipients, both the Country Director and the Bank knew that the Applicant was engaged in a protected activity.

107. The Bank does not contend that the Country Director was unaware of the Applicant’s transmittal of this letter. Rather, the Bank argues that the Applicant did not conform to the reporting requirements of Staff Rule 8.02, paragraph 2.02 in that he forwarded the 4 November 2013 email to his line managers rather than INT/EBC, and so has not satisfied the requirements for a claim of retaliation. On this point, the Tribunal disagrees. First, Staff Rule 8.02, paragraph 2.02 does mention reporting of suspected misconduct to line management as one possible reporting channel. Second, the Bank’s contention here, in any event, misses the breadth of the prohibition of retaliation. In the present case, the Applicant forwarded a letter from the host Government alluding to possible misconduct to four of his line managers. Whether or not his action conformed precisely with the reporting requirements of Staff Rule 8.02, paragraph 2.02, a matter on which the Tribunal need not pronounce, such action is likely to have created a belief that the Applicant “was believed to be about to report misconduct or believed to have reported misconduct, even if such belief [was] mistaken” (Staff Rule 3.00, paragraph 7.06). It therefore satisfies the standard required here.

108. The telephone conversation between the Country Director and the Applicant’s Manager took place only three days after the Applicant had transmitted the letter in question, with the email

from the Country Director to the Applicant's Manager sent one day after the telephone conversation. In this context, the Applicant can therefore be held to have had a "reasonable belief" that his forwarding of the letter to his line managers was a contributing factor in the Country Director's communications with the Applicant's Manager leading to the termination decision.

109. In these circumstances, in line with Staff Rule 8.02, paragraph 3.01 and the applicable jurisprudence, the burden of proof switches to the Bank to prove a non-retaliatory basis for that decision. That Staff Rule requires the Bank to show, by "clear and convincing evidence" that the same employment action – here, the termination decision – would have been taken absent the Applicant's involvement (or perceived involvement) in a protected action. The Tribunal observes that the Staff Rule establishes a high standard of evidence for the Bank to meet in order to discharge its burden of proof here. On the record before it, the Tribunal finds that the Bank has failed to do so.

110. The Country Director had certain obligations with respect to the allegation that the Applicant had engaged in misconduct. Under Staff Rule 3.00, paragraph 7.01, "[a] manager who suspects or receives a report of suspected staff misconduct [...] has an obligation to report it" to EBC or INT, as appropriate. The Tribunal has previously observed that senior staff members have particular responsibilities and are expected to "lead by example" (*AJ*, Decision No. 389 [2009], para. 118). Rather than report the allegation for further investigation by EBC, however, the Country Director related the allegation to the Applicant's Manager, first in a telephone conversation and then by email. In the email, the Country Director did not direct the Applicant's Manager to see that this allegation be investigated further. Rather, he stated – with unmistakable implication – that persons who engaged in such conduct should not work for the Bank.

111. The Tribunal observes that, for a finding of retaliation under Staff Rule 8.02, paragraph 3.01, the retaliatory animus must be a contributing factor in the adverse employment action: it need not be the *sine qua non*. The Tribunal finds that the Country Director reacted to hearing about the Applicant's alleged discussions with a DRC Government official in a precipitous manner, contrary to Bank Rules. On the basis of the record before it, including (a) the deteriorating relationship between the Applicant and the Country Director and, in particular, (b) the Applicant's forwarding

of the DRC Government official's letter to his line managers just a few days earlier, the Tribunal concludes 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.

112. The Applicant contends that for the purposes of his retaliation claim it is "irrelevant" that the Country Director did not take the termination decision himself but rather requested that the Applicant's Manager do so. According to the Applicant, his Manager "acted only upon [the Country Director's] request, and thus was [the Country Director's] 'instrumentality' in his retaliation." In the specific circumstances of the present case, where the decision-maker acted in response to an implied direction from a senior staff member (the Country Director), the Tribunal agrees.

113. In view of the foregoing considerations, the Tribunal finds that the Bank has failed to produce "clear and convincing evidence" that the termination decision would have been made absent the Country Director's retaliation against the Applicant for the latter's involvement in the prior protected act (namely, the transmittal of the DRC Government letter to his line managers). The termination decision therefore constituted an act of retaliation.

#### DUE PROCESS

114. While the Applicant appears to raise due process concerns as a separate basis for challenging the termination decision, these have already been considered in detail above.

#### REMEDY

115. The Applicant contends that the compensation recommended by PRS – \$15,000 – fell "far short" of his actual economic losses and also failed to consider the "reputational damage and loss of career opportunities" which the Applicant suffered. He argues that rescission of the termination decision and reinstatement into his STC contract would constitute appropriate remedies. He also seeks compensation for his moral injuries, personal distress, and professional harm.

*Remedies for flawed termination decisions*

116. In *P*, Decision No. 366 [2007], the Tribunal found numerous breaches of procedure in the investigative process which led to the applicant's termination. It invalidated the termination decision (paras. 62-63), and ordered payment of the remaining period of the applicant's contract (six months), as well as further compensation in the amount of three months' salary "for damages to his personal and professional life." Contrary to the present case, the applicant in *P* had apparently not asserted that he had been unable to find new employment subsequent to the wrongful termination decision.

117. In *Planthara*, paras. 41-42, the Tribunal found the termination of the applicant's appointment to have been significantly disproportionate to the misconduct, and that the Bank had failed to comply with its obligation to impose disciplinary measures on a "case by case basis," taking into account various factors prescribed by the Staff Rules. The Tribunal there quashed the termination decision, and ordered compensation in the amount of 18 months' salary.

118. In *M*, Decision No. 369 [2007], the applicant had been terminated following investigations into alleged sexual harassment, retaliation, and abuse of authority, as well as conflict of interest (para. 3). The Tribunal found that there had been inadequate factual bases for the findings of misconduct in respect of the first three allegations, and that the sanction imposed was therefore "wholly disproportionate" (paras. 81-82). The Tribunal also found a range of procedural problems with the investigation, and that the Bank had failed to act when information regarding the applicant's alleged misconduct was circulated in the media (paras. 85-96). It rescinded the termination decision, ordered reinstatement and back-payment of all salary and benefits due from the date of that decision, and ordered compensation in the amount of three years' salary for damage to the applicant's personal and professional life. It explained its award as follows (para. 103):

The severity of this judgment corresponds to the gravity of the unjustified disciplinary measure. If the defectiveness of the Bank's conduct were to be crystallized in a single word, it would be "superficiality." [...] The process as a whole creates an overwhelming impression of hasty conclusions defended beyond reason. When a staff member's career is at stake, such conduct is unacceptable.

Remainder of STC contract

119. The Applicant has requested reinstatement to his STC contract. The Bank argues that this remedy is inappropriate, not least as the Applicant has claimed retaliation to be rife and condoned within the Bank, and has “expressed disdain for the Vice President of the Region where he worked.” The Tribunal finds that, less than those remarks, which have been made in the context of the Applicant’s submissions before the Tribunal, reinstatement at this stage is inappropriate given that almost two years have passed since the Applicant’s STC contract was due to expire.

120. The Bank submits that the Applicant misunderstands the nature of STC contracts, which are “offered for a maximum of 150 days in a fiscal year but do not guarantee the 150 days.” It contends that an STC appointment is “by its nature tenuous.” The Bank also states that “[w]hether it is fair for the Bank to grant STCs less job security than other regular staff is a policy question beyond the Tribunal’s scope of review.”

121. While the latter observation may be correct, it is difficult to see how it is relevant to this case. The Tribunal is not engaged in considering the nature of STC appointments as a policy question, but rather is charged with assessing whether the existing Staff Rules pertaining to STCs were complied with in the case of the Applicant. The Tribunal has previously acknowledged that a Short Term Consultant “inherently lacks job security” (*P*, Decision No. 366 [2007], para. 73), but that certainly does not remove the Bank’s obligation to make reparation where it has violated the employment rights of such staff members.

122. The Bank has not directed the Tribunal to any other factors which existed at the time of the decision, or indeed between that date and the scheduled end of the Applicant’s STC contract on 30 June 2014, which would likely have led to the premature termination of contract on other grounds. The Bank does not contend that there were problems with the Applicant’s performance, or that the need for the work he had been performing reduced or disappeared before 30 June 2014. Indeed, the continuing importance of the programs which the Applicant had been involved in was highlighted in the Applicant’s Manager’s 18 February 2014 response to PRS.

123. The Bank's reliance on the Tribunal's previous observation, in *McKinney*, Decision No. 187 [1998], para. 16, that performance at a satisfactory level "cannot reasonably give rise to an expectation of greater employment rights than those expressly provided in the contract of employment" is misplaced. At issue in the present case are precisely those employment rights provided in the Applicant's contract of employment, which also incorporated by reference the relevant provisions of the Staff Rules as clarified in the Tribunal's jurisprudence.

124. The Applicant's STC contract envisaged 150 days of employment between 16 August 2013 and 30 June 2014. It could be ended prematurely by the Bank, on certain grounds, but no such grounds exist in this case. The decision to terminate the Applicant's contract, as set forth above, constituted an abuse of discretion. Absent that wrongful act on the part of management, the record indicates that the Applicant would in all likelihood have completed the 150 days envisaged in the contract. At the time of termination of his contract, on 2 December 2013, the Applicant had worked 30 out of the 150 days. Appropriate restitution for the wrongful act of the Bank therefore includes payment for the remaining 120 days at the applicable daily rate, together with any benefits due.

#### The Applicant's private business ventures

125. The Applicant further states that following the termination decision and resulting loss of his income, he also lost a promised financial loan he had previously secured, in the amount of EUR150,000, and also had to suspend his farming activities.

126. The Bank responds that it is not and should not be a guarantor of an STC staff member's business venture, that the Applicant's loan application with a commercial bank is his own private affair, and that "the responsibility for that cannot be imposed on the Bank." The Tribunal agrees with the Bank on this point.

#### *Remedies for retaliation and damage to career prospects*

127. In *AN*, Decision No. 411 [2009], the Tribunal found that management had lowered the applicant's Salary Review Increase (SRI) in retaliation for the applicant having raised concerns about certain management practices (para. 45). The Tribunal observed that "[a] finding that the Bank's management has been guilty of retaliation is a matter of gravity and would ordinarily lead

to severe sanctions,” but that in that case the Bank had already instituted corrective actions to the applicant’s SRIs, and indeed had subsequently promoted the applicant (para. 46). In those circumstances, the Tribunal concluded that the retaliatory actions “have therefore been corrected, and this will be reflected in the damages awarded to the Applicant by the Tribunal for retaliation” (*Id.*). The Tribunal proceeded to award the applicant six months’ salary for the retaliation.

128. The present case is different in two respects. First, rather than resulting in lower SRIs, the retaliation at issue contributed to the significantly more serious outcome of termination of contract. Second, no corrective measures were taken by the Bank.

129. The Applicant submits that the termination decision has affected his search for alternative employment in Kinshasa until today. He states that the circumstances of the abrupt termination of his contract “under a cloud of allegations of misconduct” are “widely known in the international development community in Kinshasa and Brazzaville.” He has “since been turned down repeatedly for government, international organization and NGO positions for which he has applied, because a reputation as a whistleblower and troublemaker precedes him.” As of October 2015, the Applicant had not yet been able to find re-employment.

130. The Tribunal notes that, contrary to the situation in *Pizarro*, Decision No. 507 [2015], paras. 81-82, 114, in the present case the Applicant has not produced evidence of specific instances where he lost employment opportunities due to negative perceptions of him resulting from the actions of the Bank.

131. At the same time, the Tribunal is satisfied that the premature termination of his contract with the Bank, in the circumstances set forth above, has had professional reputational repercussions for the Applicant. He had been employed by the World Bank Group consistently, under various contractual arrangements, from December 2005 until the termination decision was taken in November 2013. Since the latter date, he has been unable to find employment. That is, eight years of consistent employment have been followed by over two years of unemployment. The Tribunal also notes that within the Bank the hiring of STCs often appears to be conducted



through a relatively informal process and to be influenced by a variety of factors including an individual's reputation.

132. In these circumstances, the Tribunal finds that the Applicant is entitled to additional compensation.

#### CONCLUSION

133. The Tribunal finds, first, that the Applicant is entitled to compensation in respect of the abuse of managerial discretion, including the procedural violations set forth at paragraphs 88-92 above. Second, the Tribunal finds that the Applicant is entitled to additional compensation for the act of retaliation and its consequences for his professional reputation.

#### DECISION

- (1) The Bank shall pay the Applicant the salary and benefits due for 120 days' employment at his most recent STC rate;
- (2) The Bank shall pay the Applicant additional compensation in the amount of the salary due for 150 days' employment at his most recent STC rate;
- (3) The Bank shall pay the Applicant's attorney's fees in the amount of \$24,975; and
- (4) All other claims are dismissed.

/S/ Stephen M. Schwebel  
Stephen M. Schwebel  
President

/S/ Zakir Hafez  
Zakir Hafez  
Acting Executive Secretary

At Washington, D.C., 8 April 2016