



World Bank Administrative Tribunal

2013

Decision No. 476

**CB,
Applicant**

v.

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

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

**CB,
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), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Jan Paulsson, Francis M. Ssekandi and Ahmed El-Kosheri.

2. The Application was received on 19 September 2012. The Applicant was represented by Veronika Nippe-Johnson of Schott Johnson, LLP. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 4 February 2013.

3. The Applicant contests the decision of the Vice President, Human Resources ("HRSVP") to impose disciplinary measures on him for misconduct, in the form of a written censure in his personnel file for five years and reassignment to a non-managerial position at the same grade level.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in 1996 as a Consultant and has since held various positions of increasing responsibility. In the summer of 2011, he was appointed to the position of Country Representative, Level GG, at a duty station in a small Bank office, a position he commenced in early December 2011.

5. In February 2012, the Applicant was the subject of investigation by the Office of Ethics and Business Conduct ("EBC") for repeatedly sending unsolicited or unwelcome personal e-mails between December 2011 and February 2012 to a colleague ("the Complainant"), who was the Country Economist for both the Applicant's duty station and a neighbouring country. Though based in the Applicant's duty station, the Complainant regularly commuted between the Bank offices in both countries. The Applicant was not the Complainant's direct supervisor; however,

in his capacity as Country Representative the Applicant was occasionally referred to as “country manager,” and referred to his position as “head of office” and “de facto Manager.”

6. During the two-month period in question, the Complainant spent a total of eight days at the Applicant’s duty station working side by side with the Applicant while the rest of their interactions were almost entirely via e-mail.

7. On 5 February 2012, the Applicant’s supervisor transmitted to EBC an e-mail message from the Complainant reporting alleged misconduct by the Applicant. The Complainant alleged that: a) the Applicant repeatedly sent unsolicited or unwelcome e-mails both from his personal and World Bank e-mail addresses to the Complainant’s personal and World Bank e-mail addresses; b) the Applicant’s e-mails contained sexual innuendoes and constituted unwelcome advances, and that the Applicant made repeated unwelcome comments and personal requests in furtherance of his advances; c) that the Applicant repeatedly ignored the Complainant’s requests to desist from making advances; and that the alleged inappropriate conduct constituted harassment and contributed to a hostile work environment; and d) that when his advances to the Complainant were ignored, the Applicant retaliated by making unjustified complaints about the Complainant’s performance. On 20 February 2012, EBC communicated to the Applicant a Notice of Alleged Misconduct, setting out these allegations and informing him of an investigation into the matter pursuant to Staff Rule 3.00. EBC interviewed the Applicant, the Complainant and four other witnesses as part of its investigation.

8. On 6 February 2012, prior to his interview on 21 February 2012, and prior to his receipt of the Notice of Alleged Misconduct, the Applicant responded to the allegations sent by his supervisor via the EBC Helpline. Once an investigation was initiated, the Applicant sent additional information to the EBC investigators on 15, 23 and 29 February 2012. He also provided comments on his interview transcript on 1 March 2012. At his request, the investigators conducted another interview with the Applicant on 6 March 2012. On 7 March 2012, he sent EBC an e-mail exchange he had with the Complainant as evidence to rebut the allegation of retaliation. On 19 April 2012, EBC sent the Applicant a draft of its findings, and he provided nine pages of comments on the draft on 29 April 2012.

9. Upon completion of its investigation, EBC submitted its Final Report on 10 May 2012 to the HRSVP for his determination as to whether misconduct had occurred and what disciplinary measures, if any, should be imposed on the Applicant. In its conclusion, EBC observed the following:

The investigators found sufficient evidence to establish that [the Applicant] sent several unwelcomed personal emails to [the Complainant]. These e-mails which were not less than twenty, were excessive and contained continued suggestions for social activity outside the workplace. The investigators found that [the Applicant] ignored [the Complainant's] objection to the emails. The investigators found that [the Applicant's] actions amounted to (a) a reckless failure to observe generally applicable norms of prudent professional conduct; (b) harassment; (c) an abuse of authority; and (d) contributing to a hostile work environment.

The investigators found insufficient evidence to support a finding that [the Applicant] retaliated against [the Complainant] for rebutting his advances.

The investigators found insufficient evidence to support a finding that the emails contained sexual innuendos.

10. The EBC report notes exculpatory factors including the fact that the Applicant had recently relocated to the duty station and found the country “extremely isolating and difficult and as a result attempted to reach out to [the Complainant].” However, the investigators noted that the Applicant admitted that his actions resulted from a lapse of judgment, and that in retrospect he made a mistake. The investigators also found that the Applicant sent no less than twenty unsolicited personal e-mail messages to the Complainant receiving only two replies, and he knew or ought to have known that his e-mails were unwelcome. EBC recommended the imposition of disciplinary measures as set forth in Staff Rule 3.00, paragraph 10.06.

11. On 21 June 2012, the HRSVP informed the Applicant, by letter, of his finding that the Applicant had engaged in misconduct under Staff Rule 3.00, paragraph 6.01(b) (reckless failure to observe generally applicable norms of prudent professional conduct) and paragraph 6.01(e) (harassment contributing to a hostile work environment). The HRSVP did not find that the Applicant's conduct amounted to sexual harassment, abuse of authority or retaliation. In determining the appropriate sanctions, the HRSVP took into consideration the fact that the Applicant had no prior record of misconduct, and there was no evidence that the Applicant had engaged in such behavior previously. Additionally, the HRSVP considered the Applicant's remorse and acknowledgement of his mistakes, as well as the fact that he was posted to a “difficult and isolated location in a fragile state” for his first assignment as an international staff member in a leadership role. The memorandum included the following passages:

In your statements, you acknowledged the impact of your behavior, but deny any ill intent and feel that you did not receive a clear enough indication that the

e-mails were unwelcome. However, you also admitted that the staff member who was the object of your e-mail messages had expressed intermittent discomfort about your actions and asked you to change the tenor of your communications. By your own admission, you recalled some e-mails because of your fear that the recipient would show them to third parties. Moreover, it is not your intention that is at issue, but your actions and the way in which your actions are received.

You also distanced your role from its leadership responsibility, and the behavioral expectations that go with it. This is not credible. As you acknowledge yourself you “should have been mindful that [you were] no longer just a staff member, an office colleague or a peer but had just become a Representative.”... Indeed, you were in a position of seniority compared with the staff member to whom [you] directed your attention; you have direction with respect to his work; you expected to be treated in line with your position (e.g. be briefed, kept informed etc.); and you were in a position to impact both his work and achievements and the appreciation thereof. It is incumbent upon the person in a position of leadership to ensure that his or her conduct is professional and meets the expectations of the position.

Given your role and position, your discussing your personal feelings for a staff member with another team member again reflects your failure to distinguish between the personal and the professional, with insufficient regard for how this might impact a small team such as the team [at the duty station]. Your conduct gives rise to concerns with respect to your sense of judgment, your professionalism and your adherence to the standards of conduct which are expected of staff under the Bank Group’s Principles of Employment.

In view of the foregoing and in consideration of the decision-making criteria set out in Staff Rule 3.00, I have decided that ... the appropriate sanction is written censure in the form of this letter to be maintained in the limited access section of your personnel record for five years. In addition, in view of the delicate working environment, including local context and the small size of the office, and of the impact of events investigated on the team, I have decided to reassign you within a period of sixty (60) calendar days from the date of this decision, to another, non-managerial, position at your current grade level, in a different location.

I caution you that were allegations of misconduct of a similar nature to be substantiated against you in the future, this censure may be considered an aggravating circumstance. In such instance, after consideration of the provisions of Staff Rule 3.00, para. 10.09, a decision ... could be taken by the Bank Group to impose disciplinary measures as specified in Staff Rule 3.00, para. 10.06, up to and including, termination of appointment.

12. Effective 1 September 2012, the Applicant was reassigned to the position of Senior Operations Officer at another duty station.

13. On 19 September 2012, the Applicant filed the present Application. He seeks rescission of the HRSVP's 21 June 2012 decision and removal of all references thereto from his personnel file; one year's salary as compensation for the moral injury caused to him and for his personal distress, as well as for harm done to his professional and personal life and reputation; all actual legal fees and costs incurred as a result of these Tribunal proceedings; and any other relief deemed fair and appropriate by the Tribunal.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

Whether the findings of fact constitute misconduct

14. The Applicant does not contest the finding that he sent several personal e-mail messages to the Complainant. However, he contends that the requisite factual elements for a finding of harassment or creating a hostile work environment are not present in this case, as: (1) he only sought a benign friendship with the Complainant, in a friendly and not hostile manner; (2) most correspondence was by e-mail and most interaction did not occur in the same physical work location; (3) it was never apparent that the Complainant was intimidated; and (4) the Complainant did not unequivocally signal to the Applicant that e-mail messages unrelated to work were unwelcome and that he wanted the Applicant to stop sending them. The Applicant attests that his interactions with the Complainant were motivated by the desire to maintain a friendship which began during a pre-assignment mission to the duty station in October 2011, but which appeared to have stalled after work related friction on 2 December 2011. These interactions were illustrative of his outgoing personality, as evidenced by similar general interest e-mail messages sent to other friends and colleagues.

15. The Applicant argues that one of the most important factual elements required to establish harassment or creation of a hostile work environment is proof that his e-mails were unwelcome. He contends that he did not receive an unequivocal signal that this was the case; had he received such a message but nevertheless continued sending the e-mails, his conduct could have reasonably been regarded as harassment, intimidating or offensive, even possibly creating a hostile work environment.

16. The Applicant points out that an e-mail message he sent on 7 December 2011 in which he informed the Complainant of his intention to send him non-work e-mails was “de facto a request for permission” to send personal messages, and he was given no reason to conclude that the Complainant’s silence indicated disagreement. Similarly, the Applicant argues that the Complainant’s e-mail message of Saturday, 10 December, following an inadvertent wake-up call he had made to the Complainant at 7 a.m. in the morning, cannot be considered to be an indication of the Complainant’s discomfort with personal e-mail messages from the Applicant.

17. The Applicant asserts further that the Complainant’s e-mail message of 23 December 2011, in which the Complainant noted that he tries “to be careful to maintain a distinction between personal and professional communications; personal and professional inter-personal relationships, personal time and at-work, on-the-job hours,” and requested that the Applicant respect this distinction, did not amount to an unequivocal statement that the Complainant did not want to receive any of the Applicant’s private or general interest e-mails.

18. The Applicant stresses that he had reasonable grounds to believe that the Complainant was agreeable to receiving personal e-mail messages following their 22 January 2012 meeting where the Applicant specifically asked if he could continue sending general interest e-mails, and the Complainant appeared to agree. The Applicant notes that even though the Complainant “did not respond to the private notes, he continuously maintained an active stream of work e-mails” with the Applicant in an amicable tone, which gave the Applicant further grounds to believe that the previous tensions in their relationship had been resolved.

19. The Applicant also argues that the elements of hostility, abusiveness, disruptiveness and intimidation are absent. It is the Applicant’s contention that to meet the standards of “harassment” or “hostile work environment” there furthermore should have been a demonstration that the Applicant’s conduct was hostile or abusive, and that it was disruptive or intimidating to the Complainant. The Applicant observes that the gist of his personal e-mails was harmless, intellectual and perhaps “nerdy.” Such e-mails on varied subjects such as travel, art, astrology or news pieces were regularly sent to selected colleagues, mostly without expectation of response, even though he did receive responses on a number of occasions. The Applicant contends that there is no evidence that his e-mails were particularly disruptive or intimidating to the Complainant and this raises a “legitimate question” about the level of intimidation the Complainant was conceivably feeling.

20. The Applicant acknowledges that some of his actions demonstrated poor judgment and fell short of the norms of “prudent professional behavior” expected of Bank staff in managerial positions in accordance with Staff Rule 3.00, paragraph 6.01(b). The Applicant accepts responsibility for failing to read the signals and that in striving for a friendship with the Complainant, his judgment was clearly affected. The Applicant also acknowledges his poor judgment in using his work e-mail address to draw the Complainant’s attention to his private e-mail messages.

21. Finally, the Applicant recognizes that his “three short but very annoyed e-mail responses” to the Complainant on 2 and 3 February 2012, after the Complainant declined the Applicant’s offer to be picked up at the airport, crossed the line into inappropriate behavior and were sent in poor judgment. The record shows that the Applicant responded with a succession of e-mails containing the following messages:

I offered to pick you up at the airport as soon as you had decided to delay your return here. Before I could even take a breath you had promptly decided to ask someone else to collect you without even responding to me for 24 hours. This is avoidance behavior. We have had a strained relationship for no real reason. I had hoped to interact with you this weekend. You decided to delay your return on one pretext or the other. I would like to meet you socially on Sunday. Let me know when. [Complainant], time is running out. If you want to provide fictitious reasons of other commitments, [it’s] not going to help. I am your colleague. We need to be comfortable with each other. I still am not convinced that its work alone that keeps you in [second duty station]. I have suffered a lot on account of these disagreements. Please give me a chance, not treat me like dirt!

[W]hat trash – not sure which flight but someone will be there nonetheless for a commitment ... give me a break...enough is enough. You sure have interpersonal skills.

I await your reply. I have never stepped back from you but if I do I am not sure it would help ... I wish you well otherwise – despite your lack of backbone and inability to communicate ... take care.

22. The Applicant admits that he allowed his irritation over the Complainant’s “false and misleading excuse” for declining the offer, and his “frustration over the fact that the [Complainant] still appeared to be avoiding him without having established good reason, take hold of him, instead of letting the matter go.” The Applicant accepts that these e-mail messages regarding a private matter had an inappropriately angry tone, should not have been sent, and fell short of what was expected and required from a Country Representative.

23. In response, the Bank contends that the HRSVP's decision was based on undisputed, ample documentary evidence in the form of unsolicited e-mail messages as well as testimonial evidence that are more than sufficient to meet the Tribunal's standard of review in misconduct cases. The Bank argues that the e-mail record shows that: a) the Applicant harassed the Complainant through repeated, unsolicited and inappropriate e-mail, and in-person, communications; b) the Complainant informed the Applicant that he was uncomfortable with the content, tone and timing of the e-mails; and c) the Applicant disregarded the Complainant's obvious discomfort and ignored his request to be treated in the same manner as other colleagues in the office.

24. The Bank refers to the 2009 document "Living Our Values – The World Bank Group Code of Conduct" ("Code of Conduct") which defines harassment as "any unwelcome verbal or physical behavior that interferes with work or creates an intimidating, hostile, or offensive work environment." In addition, the Code of Conduct provides that "impact – not intent – is the key factor. If conduct is reasonably perceived to be offensive or intimidating – whether or not it was intended to be so – it should be stopped." The Bank argues that the Applicant's behavior intruded into the Complainant's personal life in a manner which was unacceptable and inappropriate, particularly given the Applicant's role as Country Representative and head of office. According to the Bank, the Applicant's behavior also subjected the Complainant to stress and confusion regarding his job situation and security – so much so that the Complainant felt reluctant to return to his primary duty station as he did not wish to encounter the Applicant. The Bank asserts that by any standard the Applicant's conduct amounted to harassment and created a hostile work environment.

Whether the sanction imposed was disproportionate

25. According to the Applicant, since his misconduct could at most be considered imprudent and evidence of poor judgment, the sanction imposed by the Bank is significantly disproportionate. The Applicant maintains that the written censure, which is to remain in his personnel record for five years, will continuously affect his career over that entire period by negating any prospects for upward mobility or promotion for the duration, if not longer. Additionally, in the Applicant's opinion, the reassignment to a non-managerial position is a *de facto* demotion that has and will continue to cause him significant career damage. The Applicant argues that after 16 years of dedicated and successful service to the Bank with an outstanding performance record, the sanction imposed is harsh, unduly punitive and damaging given the

circumstances of the case. The Applicant notes that even if a formal sanction had been warranted for his lack of prudence and proper judgment in some of his interactions with the Complainant, he could have been properly disciplined with an oral reprimand, or even a written censure to remain in his personnel file for a shorter duration of time.

26. The Bank points out that Staff Rule 3.00, paragraph 10.06 lists the possible disciplinary measures which may be imposed for misconduct, including severe measures such as termination and permanent ineligibility for future employment. The Bank states that the Applicant's employment was not terminated; his compensation was not reduced; he was not banned from future employment; he was re-assigned at the same grade and salary level from a small office to a much larger office in an urban setting; and the written censure in the form of the HRSVP's decision letter will be removed from the limited access section of his personnel record after five years.

27. The Bank argues that in imposing these sanctions, the HRSVP took into consideration the fact that the Applicant's severe lapse of judgment demonstrated that he was not yet ready for promotion to a leadership role or management position. The Applicant's behavior also demonstrated that at the present time he was not well-suited to serve in such a remote area in such a small office. According to the Bank, the HRSVP reasonably deemed five years to be an appropriate period of time for the Applicant to learn from his mistakes and improve. Furthermore, until such time, the Bank argues that it would be irresponsible for the Applicant to be considered for promotion without alerting the hiring manager to the Applicant's misconduct. The Bank recognizes that this may delay the Applicant's career progression within the Bank but notes that the Applicant's actions do have consequences and the pace of the Applicant's career path must also be balanced with the Bank's clear obligation to provide a work environment free of intimidating, hostile and harassing behavior. The Bank further notes that one mitigating factor was the remorse the Applicant demonstrated during the EBC investigation. However, the Applicant's characterization of his actions, and continued insistence that the Complainant "did not unequivocally signal" that non-work related e-mails were unwelcome only demonstrate that "judgment is not acquired overnight or even in a year."

Whether the formal referral of the matter to EBC was appropriate or justified

28. The Applicant argues that management missed several opportunities to speak to him and deliver a simple directive that he should cease any private interaction, written or spoken, with the Complainant because these communications were making the Complainant uncomfortable.

Furthermore, the Applicant contends that the Bank failed to take steps to resolve the interpersonal conflict before a formal referral to EBC. The Applicant argues that in *Sjamsubahri*, Decision No. 145 [1995], paras. 9-11, the Tribunal held that complaints by staff members of “inter-personal” misconduct cannot automatically trigger full-scale formal investigations, and that before opening a formal investigation, an initial assessment of the complaint as a whole must be performed. The Applicant argues that there is no evidence that the complaint, and the e-mails, were subjected to preliminary scrutiny by EBC before launching a full, costly and “incredibly damaging” formal investigation.

29. The Applicant further argues that EBC’s own rules foresee that upon receiving an allegation of misconduct it shall undertake an initial review (Staff Rule 3.00, paragraph 8.01) which should include a consideration of whether the case can be closed by agreement, i.e. assisting the parties concerned in reaching a resolution of the matter acceptable to all parties concerned, or facilitating a process whereby a staff member whose conduct is at issue may voluntarily agree to a certain resolution of the matter (as outlined in paragraph 9.02 of Staff Rule 3.00). According to the Applicant, there is no evidence that EBC conducted such an “initial review” and if so, how in such a short period EBC ruled out any considerations of the possibilities for resolution of the case through the informal processes of paragraphs 9.01 and 9.02. The Applicant alleges that, in addition to failing to curb leakage of the investigation and maintain confidentiality, which resulted in further damage to the Applicant’s reputation, EBC failed to consider the Complainant’s own contributing behavior and certain evidence that he was pursuing self-serving ulterior motives with his complaint against the Applicant. Finally, the Applicant asserts that EBC’s investigations were tainted by the claims that he made unwelcome sexual advances towards the Complainant.

30. The Bank argues that EBC’s investigation was fair, unbiased and followed the proper procedures; the Applicant has not shown that his due process rights were violated in any way, and none of his complaints are legally actionable. The Bank further notes that the Applicant’s complaint that the investigation was tainted by the initial allegation of sexual harassment is unsupported by the facts.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

31. It is well established that the scope of the Tribunal’s review in disciplinary cases is not limited to a mere determination of whether there has been an abuse of discretion, but rather extends to an examination of (i) the existence of the facts; (ii) whether they legally amount to

misconduct; (iii) whether the sanction imposed is provided for in the law of the Bank; (iv) whether the sanction is not significantly disproportionate to the offence; and (v) whether the requirements of due process were observed. (*See, e.g., AB*, Decision No. 381 [2008], para. 53; *Mustafa*, Decision No. 207 [1999], para. 17; *Carew*, Decision No. 142 [1995], para. 32.) Additionally, the Tribunal has held that the burden of proof of misconduct is on the Bank and the standard of evidence “in disciplinary decisions leading ... to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.” (*Dambita*, Decision No. 243 [2001], para. 21.) Similarly, there must be substantial evidence to support the finding of facts which amount to misconduct. (*See, e.g., P*, Decision No. 366 [2007], paras. 33-34; *Arefeen*, Decision No. 244 [2001], para. 42.)

32. In the present case, it is undisputed that the Applicant sent the Complainant several e-mail messages of a personal nature to both his personal and work e-mail addresses. Some of these messages were on subjects of general interest such as art, history, travel and news; other messages concerned the tensions in interactions between the Applicant and the Complainant; others were unreciprocated invitations to socialize. In all these instances, the e-mail messages sent by the Applicant were unsolicited.

33. The Tribunal observes that the Applicant has admitted that his conduct amounted to misconduct under Staff Rule 3.00. He concedes that he exhibited a “reckless failure to observe generally applicable norms of prudent professional conduct” expected of a World Bank staff member, and of a Country Representative. This acknowledgement, repeated at various times in the Applicant’s pleadings and during his interviews with EBC, is recognition that his conduct was indeed sanctionable by any of the measures enumerated in Staff Rule 3.00, paragraph 10.06.

34. The Tribunal next considers whether the sanctions imposed by the Bank were provided for in the law of the Bank. Staff Rule 3.00, para. 10.06 sets out the disciplinary measures that may be imposed by the Bank to sanction misconduct based on the circumstances of the case. The measures are:

- a) Oral or written censure;
- b) Suspension from duty with pay, with reduced pay, or without pay;
- c) Restrictions on access to the Bank’s premises;
- d) Restitution, compensation or forfeiture payable to the Bank Group from a staff member’s pay or benefits either to penalize a staff member or to pay the Bank Group for losses attributable to misconduct;

- e) Removal of privileges or benefits, whether permanently or for a specified period of time;
- f) Reassignment;
- g) Assignment to a lower level position;
- h) Demotion without assignment to a lower level position;
- i) Reduction in future pay, including the withholding of future pay increases;
- j) Ineligibility for promotion, whether permanently or for a specified period;
- k) Termination of appointment;
- i) Loss of future employment and contractual opportunities with the Bank Group; and
- m) When the financial disclosure form that is submitted pursuant to the requirements set forth in Staff Rule 3.03 is not timely, complete or accurate, in addition to the disciplines described above, a fine to the staff member in accordance with Staff Rule 3.03, paragraph 3.06.

It is evident from this enumeration of disciplinary measures that the measures adopted by the HRSVP were indeed provided for by the law of the Bank.

35. The penultimate determination for the Tribunal is whether the sanctions imposed were proportionate. The Tribunal recalls that in *Z*, Decision No. 380 [2008], para 42, it considered disciplinary measures which were proportionate to a finding of reckless failure to observe norms of prudent professional conduct. In that case, the Tribunal found that the following sanctions would have been proportionate: demotion, withholding of a salary increase for the year in which the misconduct occurred, ineligibility for promotion for three years, and retention of the decision letter in the Applicant's personnel file for three years. In the present case, the Tribunal finds that the sanctions imposed by the HRSVP are not disproportionate to the misconduct of a "reckless failure to observe generally applicable norms of prudent professional conduct." The Applicant is held to a higher standard in that he was in a managerial position as the Country Representative. The Tribunal finds that there was no abuse of discretion in the HRSVP's decision to reassign the Applicant to a non-managerial position at the same pay grade, nor does the duration of the censure violate the principle of proportionality. The Tribunal is also satisfied that exculpatory factors were taken into consideration in determining the appropriate sanction.

Harassment

36. Given the Tribunal's findings that the disciplinary measures adopted were proportionate to the Applicant's misconduct under Staff Rule 3.00, paragraph 6.01(b), an assessment of

whether the facts also amounted to harassment is not necessary. However, the Tribunal notes that in contesting the allegations against him, the Applicant has enumerated criteria for the establishment of harassment which merit review.

37. According to the Applicant, to meet the standards of “harassment” or “hostile work environment” there must be a demonstration that the Applicant’s conduct was hostile or abusive, and that it was disruptive or intimidating to the Complainant. The Applicant stresses that the majority of the communications between the Applicant and the Complainant was by e-mail and that the element of intimidation was not present.

38. Harassment is defined in the Code of Conduct as “any unwelcome verbal or physical behavior that interferes with work or creates an intimidating, hostile or offensive work environment.” It is sufficient for any or all of the elements of interference, intimidation, hostility or offense to be present in any given case.

39. The definition of harassment, contrary to the Applicant’s assertion, does not require conduct to be hostile or abusive. Thus, it is possible that attempts to forge a “benign friendship” could constitute harassment if these are unwelcome and have the result of interfering with work or creating an intimidating, hostile or offensive work environment. The fact that typical cases of “harassment” and “hostile work environment” are in the form of public tirades or face to face personal interactions does not exclude the possibility that excessive e-mail correspondence of a particular nature may constitute harassment. Whether any act or series of acts amounts to harassment depends on the circumstances of each case.

40. Furthermore, the Tribunal is unconvinced by the Applicant’s argument that the Complainant’s collegiality in work e-mail correspondence is evidence that the personal e-mails sent by the Applicant were not particularly disruptive or intimidating to the Complainant. The record demonstrates that the Complainant was reluctant to return to the duty station where the Applicant was based to avoid physically encountering the Applicant, and as the Applicant himself acknowledges, “even an assertive person can experience harassment.” In addition, the Complainant’s supervisor testified in his interview with EBC that during the period in question there was a project for which the Complainant was required to travel to the duty station, but he felt uncomfortable doing so, and this suggested that “his work was being affected.”

41. Finally, even if the majority of the Applicant’s e-mail messages were considered not to constitute harassment, the three e-mail messages sent by the Applicant on 2 and 3 February 2012

(see paragraph 21 above) were sufficient, in the present case, to constitute harassment contributing to a hostile work environment.

Alleged procedural irregularities during the investigation

42. An assessment of the observance of due process is the final determination undertaken by the Tribunal in the review of misconduct cases. The Applicant argues that the Bank missed opportunities to address the matter as an interpersonal conflict without escalating the conflict to a full-fledged misconduct investigation. Additionally, the Applicant maintains that EBC did not conduct the initial review required in Staff Rule 3.00, paragraph 8.01. Finally, the Applicant contends that the initial charges of sexual harassment tainted the investigation and subsequent findings.

43. The Tribunal has previously indicated that an investigation into a disciplinary matter is administrative and not adjudicatory in nature; thus compliance with all technicalities of a judicial process is not necessary, if it is conducted fairly and impartially. (*Arefeen*, Decision No. 244 [2001], para. 45; *Rendall-Speranza*, Decision No. 197 [1998], para. 57.) As to whether the EBC investigation was warranted, the Bank's rejection of the Applicant's contention is correct. Through the February 2000 promulgation of a policy to eradicate harassment in the workplace, the Bank declared its commitment to take allegations of harassment seriously. The Tribunal finds the Applicant's contention that the Bank missed several opportunities to treat the conflict outside of the requirements of a formal investigation lacking in merit. The Applicant cannot hold the Bank responsible for his own failure to observe that his conduct in relation to the Complainant was unprofessional. The fact that management of both the Applicant and the Complainant were aware of aspects of the dispute and did not issue a directive to the Applicant to cease such communications does not detract from the Applicant's responsibility to observe generally applicable norms of prudent professional conduct.

44. The Tribunal is satisfied that EBC did conduct the requisite initial review of the allegations based on the information it had within its possession as of 20 February 2012. This information included the 3 February 2012 e-mail complaint sent by the Complainant to the Applicant's supervisor which was transmitted to EBC; the interview of the Complainant on 20 February 2012 in which the investigators clearly communicated that they were conducting an initial review; and that the interview was "part of that initial review;" and finally, the record of the Applicant's e-mail messages provided by the Complainant. Based on such information, EBC reached the conclusion that there was sufficient factual basis to warrant an investigation into the

allegations. The present case is therefore easily distinguished from *Sjamsubahri* on which the Applicant relies.

45. The Applicant also cannot show any significant procedural irregularities. The record demonstrates that he was provided with ample opportunity to participate in the investigation, and that the investigation was conducted fairly. The Applicant was in regular communication with the EBC investigators, providing them with additional comments, suggestions and theories which the investigators took on board in their interviews with other witnesses. The Applicant was also interviewed a second time at his request, and given a draft of the report to which he provided his commentary. Lastly, the record demonstrates that the investigators informed and reminded all witnesses, including the Complainant, of their obligation to maintain confidentiality. There is therefore no basis for the Applicant to contest the procedural regularity of the investigation.

46. Finally, the Tribunal finds that the record does not support the Applicant's complaint that the initial charges of unwelcome sexual advances tainted the subsequent EBC findings and the HRSVP's decision. EBC acted appropriately in conducting the investigation along the lines of all the initial charges, including "unwelcome sexual advances." The Tribunal's perusal of the transcripts does not reveal any bias, or lack of objectivity in examining the witnesses and analyzing their testimony. Such a complete line of questioning and investigation led EBC to find, in the Applicant's favor, no evidence of sexual harassment. The Tribunal concludes therefore that the Applicant's allegations of procedural irregularities are unsupported by the record.

Concluding remarks

47. The Tribunal is satisfied that the Applicant's conduct amounted to misconduct under Staff Rule 3.00. The circumstances of the case are unfortunate, particularly for the Applicant who understandably struggled to adjust to a new duty station which was both remote and isolated. Despite these challenges, the Applicant performed ably under the circumstances in his role as Country Representative. Nevertheless, it is the Applicant's conduct as described above – and nothing else – that is the subject of this case. That conduct, in the respects described above, fell short of that which was expected, and required, of a Country Representative. The Tribunal is satisfied that the HRSVP took account of exculpatory factors in issuing disciplinary measures against the Applicant, and that these measures, which are legally provided for in the Staff Rules, were proportionate to the misconduct. There is no evidence of procedural irregularities in EBC's investigation.

DECISION

The Application is dismissed.

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

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, D. C., 13 February 2013