



World Bank Administrative Tribunal

2014

Decision No. 497

**CJ,
Applicant**

v.

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

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

**CJ,
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, and Mahnoush H. Arsanjani.
2. The Application was received on 6 November 2013. The Applicant was not represented by counsel. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 19 September 2014.
3. The Applicant challenges the 16 July 2013 decision of the Vice President, Human Resources (HRVP) that the Applicant committed misconduct as defined by Staff Rule 3.00.

FACTUAL BACKGROUND

4. In January 2008, the Applicant commenced an open-ended appointment as an Auditor, Level GF, in the Bank's Internal Audit Vice Presidency (IADVP). He served in this capacity until he resigned in October 2012 to take up other employment.
5. On 17 February 2012, the Applicant filed a request for review with Peer Review Services (PRS) relating to his 2011 Overall Performance Evaluation (OPE) ratings and comments. He contended that they were arbitrary, discriminatory and retaliatory.
6. On 13 August 2012, the Applicant printed a Verification of Employment Letter (EVL) generated by the Human Resources system on the Bank's intranet known as the "self-service HR

Kiosk.” This was a standard letter confirming his job title, department, duty station, appointment type, date of appointment, and estimated annual gross salary. A control number was automatically added to the letter by the HR Kiosk system. The letter included the name of the Applicant’s manager (the “Manager”) and stated in bold and italic text: “Not valid unless signed by Manager and assigned a control number.” Above this text—on the opposite side of the page from the Manager’s name—the Applicant affixed his own signature. The Applicant sent the EVL to a rental agent (the “rental agent”) in support of an application to rent an apartment.

7. A month later, on 13 September 2012, a representative of the rental agent, telephoned the Manager regarding the EVL submitted by the Applicant. In response to her inquiry, the Manager told her he was not sure he had signed the EVL as he had no recollection of having done so. He asked her to send him a copy of the letter which she did by e-mail, stating “As requested ... [this] is the verification of employment/income ... Once received, please print, complete and fax back ... Please note: It is necessary that your signature be included on this document to authenticate this verification.”

8. The Manager did not recognize the signature on the EVL. He chose not to respond to the rental agent because he “understood” he would be telling her that the EVL was “a forged document.”

9. The Manager e-mailed a copy of the EVL to his supervisor, the Vice President, IADVP, and to the Director, Strategy and Professional Practices, IADVP (the “Director”), stating:

I wanted to immediately bring to your attention what could be a pretty significant breach of ethics on the part of [the Applicant.] I just received this afternoon a phone call from [the rental agent who] wanted me to confirm that I had indeed signed an employment verification letter that [the Applicant] had submitted and indicated that his manager had provided to him. Since I did not have any recollection of having had any discussion with [the Applicant] about employment verification, let alone having reviewed or signed a letter to that effect, I simply told [the rental agent] that I needed to review my records and I would get back to her, but in the meantime I asked her to send me a copy of the letter she was referring to ... To my surprise, although my name and title are stated next to the statement “Not valid unless signed by Manager and has been

assigned a control number”, the signature in the letter is not mine (not sure whose signature it is).

I was going to respond to [the rental agent] and let her know I did not sign this letter. But, on second thoughts, I decided that I should consult internally first before I do so. While all the information in the letter may very well be correct and I’m not concerned about any of it being inaccurate, my concern is more around process. I find it profoundly disturbing that, for whatever reason, [the Applicant] would present to an external party an official bank document and allege that I signed it when in fact I had never even seen the document. Further, while in this case I was made aware of this because of the independent verification process that the third-party initiated, I’m also quite concerned as to what else may have been submitted bearing my name and under a false pretense. So I’m strongly inclined to refer this matter to the office of Ethics and Business Conduct. I’d appreciate your advice before I take any further step.

10. On 17 September 2012, the Director reported the matter in a meeting with the Office of Ethics and Business Conduct (EBC). He provided EBC with a copy of the EVL and correspondence, including an e-mail from the rental agent to the Manager. EBC asked the Director and the Manager not to speak with the Applicant about the allegations to allow for independent interview by its investigators.

11. On 20 September 2012, the Manager e-mailed the rental agent in response to several voicemail messages he had received from her. He asked the rental agent to request that the Applicant submit to him a request for employment verification. He said he would be happy to sign it and send it to the rental agent as soon as he received the request from the Applicant. When the rental agent replied saying “All I need is for you to confirm you created the employment letter we received,” the Manager told her he had not created it. The rental agent subsequently notified the Applicant that his employment reference had been rejected by the Manager.

12. On 21 September 2012, EBC interviewed the Manager. The EBC investigators sought to confirm their understanding of the relevant events and asked the Manager whether it was correct that the rental agent had telephoned him to “confirm a signature on the verification of employment document.” The Manager confirmed it was “correct.” The investigators asked the Manager for a sample of his official signature. The signature on the verification letter had no

resemblance to his signature. They also asked the Manager if there were any “underlying tensions” between him and the Applicant as a result of discussions about the Applicant being granted an Early Out package. The Manager said that he did not think so because the decision on that matter had been in the hands of the Vice President and his own input had been limited to asking about the Applicant’s anticipated work program. The Manager added “in the interest of full disclosure” that the Applicant had requested a PRS review of his 2011 OPE because he was unhappy with the Manager’s appraisal of his performance. According to the Manager, this had caused not what he would call “tension because it really didn’t affect our day-to-day interactions or working relationship” and that he respected the staff member’s right to request peer review. He also added that he had denied the Applicant’s request for External Service Without Pay, which preceded his request for the Early Out package, because “after evaluating what we needed to do and whether the criteria were met,” he had determined they were not.

13. Asked by the EBC investigators about his general relationship with the Applicant, the Manager commented that he had a good working relationship with the Applicant “interpersonally” in that they had “never had any argument or anything contentious going on,” but that he “was not happy with [the Applicant’s] performance” and “had a lot of issues with” it as “reflected in his performance evaluation” with which the Applicant disagreed. The Manager said he had “absolutely no idea” why the Applicant did not come to him to sign the EVL. He commented that he did not ask his staff why they needed EVLs because they may be for personal matters including for renting property and seeking alternative employment. He added that “generally” he did not do any verification before signing an EVL because it “is from the system” and it is “not like you can make up anything.”

14. On 24 September 2012, the Applicant generated another EVL and asked the Manager to sign it. The Manager did so immediately. The Applicant e-mailed the rental agent with the second EVL signed by his Manager, stating the “confusion occurred because I sent you a draft copy of the Verification of Employment without my manager’s signature, just my own initial in one corner of the letter in the same way like all the other papers that I have submitted to you.”

15. On 26 September 2012, EBC e-mailed the Applicant a Notice of Alleged Misconduct. This informed him that EBC was conducting a review into allegations that he had committed misconduct under Bank Group rules and policies by (i) printing “an official World Bank verification of employment letter ... which required the signature of” the Manager and forwarding the letter to the rental agent “with a signature that was not” the Manager’s and (ii) that the rental agent was led to believe the EVL had been signed by the Manager.

16. Two hours after receiving the Notice of Alleged Misconduct, the Applicant e-mailed EBC with a detailed response. He stated that he had signed the letter on the side of the page—as he said he had also done with copies of salary and bank statements, a copy of his drivers’ license and certain other documents provided to the rental agent—as a “way of confirming that all of the photocopies were taken by me and are authentic.” He said he forwarded the letter as a “draft directly downloaded from our Intranet” and affixed his signature on the opposite side from and not above the Manager’s printed name. He believed that a draft version would be sufficient because he was also providing paystubs and bank statements in order for the rental agent to verify his income. He also noted that as he was planning to leave the Bank and would shortly be working for a different employer, he had provided the rental agency with evidence of the terms of his new employment.

17. He alleged that since he had filed a request for review with PRS, his Manager had retaliated against him by not assigning him work; assigning him to work under less experienced staff; and telling him he represented “a risk for the image” of his office. He stated that because of the “disgraces” that he had experienced for the first time in his career under the supervision of the Manager, he had been desperately looking for another job.

18. He noted that prior to receiving the Notice of Alleged Misconduct he had discussed with the Director the possibility that he would bring a retaliation claim. In his opinion, the allegation of misconduct was “another way of retaliation.” He said that he had “no bad intentions” in transmitting the employment letter and had submitted correct information downloaded from the intranet such that the lack of the Manager’s signature was a “formal issue ... which is minor

according to the circumstances and objective of the letter of verification.” He asked the EBC investigators to analyze the case considering the “hostile environment” he had described and the fact he had already disclosed his intention to make a complaint about his Manager’s retaliation.

19. On 27 September 2012, EBC e-mailed the Applicant explaining that his comments would form part of their official records, but that his allegations of retaliation and a hostile work environment would need to be referred to a separate investigative team in accordance with EBC’s investigative practices.

20. Later that day, EBC interviewed the Applicant. In that interview, the Applicant reiterated that he had mentioned the possibility of a retaliation claim to his Director and Vice President, and it was after this that the allegation of misconduct was made against him. When asked why he had not asked the Manager to sign the EVL, the Applicant explained that he understood he was submitting a draft version inasmuch as it did not bear his Manager’s signature as required and that the rental agent would check the letter against his pay stubs and bank statements in order to verify his income. He said he had affixed his signature just to confirm that he had made the photocopy of the letter, that he had not put his signature above the Manager’s name on the letter, that he had not presented the letter as a “valid” verification of employment, and that when later asked to do so by the rental agency, he had sent an “official” version of the letter signed by his Manager.

21. The Applicant also affirmed that he had signed the cover letter, as well as all the other documents he had sent to the rental agency, using the same signature. He said that he had not kept copies of these documents for himself and asked EBC not to contact the rental agent to request copies as he did not want to “complicate” his rental application because he had to move in the following weekend. He said, however, he was making a declaration that he had signed all of the documents in the same way, that this was “totally true,” that he was conscious of his ethical responsibilities and was willing to provide a signed statement to support his claim. EBC told him they accepted his statement, would “take it to the record” and that an additional signed statement would not be necessary because the interview would be transcribed and EBC would

refer to the transcript such that the Applicant did not need to “spell it out again.” EBC also told the Applicant that the fact of his having signed other documents in the same way would reinforce his case and that they would “take [his] statement for those purposes.”

22. The Applicant said he wanted to avoid asking for his Manager’s signature because the Manager systematically ignored his questions and requests; never read his e-mails, answered his telephone calls or paid “attention to” him; and might ask a lot of questions about why he needed the EVL. He provided EBC with a list of e-mails sent by him which he said his Manager never opened. He said that the last time he had requested an EVL, his Manager had taken a month to sign it and that he did not want to ask his Vice President to sign it because it related only to renting an apartment.

23. He commented that he and his Manager had been in “conflict” for two years and that the allegation of misconduct was “a strategy to bother” him. He said that these conflicts with his Manager had led him to resign from his open-ended position to take up a two-year fixed term position with his new employer.

24. He told EBC that, in his view, the matter of the signature was a “minor issue in the big sea of conflict that I have with my [M]anager” and did not raise a reputational or ethical issue for the Bank nor cause harm to anyone. He suggested the rental agent had initially telephoned his Manager precisely because the agent had noticed that the Manager’s signature was missing. He accepted the suggestion that it would have been clearer had he written “draft” on the corner of the letter, but felt it was implicit that it was a draft version because the letter stated that it was not valid without the Manager’s signature.

25. As regards the separate investigation of his retaliation claim, the Applicant told the investigators he preferred EBC to wait to start that investigation and that he would submit all his evidence at a later date.

26. On 3 October 2012, the Applicant e-mailed EBC his comments on the interview transcript and a PowerPoint presentation setting out his explanations for his actions and suggesting that his Manager's allegation of misconduct was retaliatory, which he had also sent to EBC on 28 September 2012.

27. Later in October, the Applicant resigned from the Bank to take up a job with another employer.

28. On 6 February 2013, EBC e-mailed the Applicant its draft investigative report. On 25 February 2013, not having received any comments on the draft investigative report from the Applicant, EBC telephoned him and sent him a text message, but received no response.

29. On 26 February 2013, a copy of the draft EBC Report was delivered to the Applicant's address by courier. EBC invited his comments within five days.

30. On 7 March 2013, not having received any comments from the Applicant, EBC submitted its Final Report of Findings to the HRVP.

31. In his decision letter of 16 July 2013 (the "decision letter"), the HRVP informed the Applicant that he had determined

that clear and convincing evidence was presented in the [EBC] Final Report to support a finding that you printed an official World Bank Verification of Employment letter which required the signature of your supervisor ... and ... that you forwarded the letter to the [rental agent] with a signature that was not [the Manager's]. Although there was insufficient evidence that, as a result of your actions, [the rental agent] was led to believe that the Verification of Employment letter had been signed by [the Manager], there is sufficient evidence that, by affixing your own signature without any explanatory notes, you attempted to mislead [the rental agent] that the Verification of Employment letter had been signed by [the Manager] ... your printing and presenting an official document with a signature that was not your supervisor's raises fundamental concerns regarding your professionalism and your adherence to the standards of conduct which are expected of staff under the Bank Group's Principles of Employment.

32. The HRVP found that this constituted misconduct under Staff Rule 3.00 including:

(i) a reckless failure to observe generally applicable norms of prudent professional conduct (paragraph 6.01(b)); and

(ii) acts or omissions in conflict with the general obligations of staff members as set forth within the Principles of Staff Employment (*e.g.*, Principle 3.1(c), which provides that staff members have a special responsibility to avoid situations and activities that might reflect adversely on the Bank and to conduct themselves at all times in a manner befitting their status as an employee of an international organization) (paragraph 6.01(c)).

33. The HRVP imposed the following disciplinary measures: (i) a permanent bar to re-hire with ineligibility for any future employment at the World Bank Group as a staff member, contractor, or employee of a contractor; and (ii) placement of the decision letter on the Applicant's staff record with indefinite duration.

34. On 28 August 2013, the Applicant wrote to the HRVP requesting reconsideration of the disciplinary measures imposed and its "replacement by a simple letter calling ... attention for a minor administrative issue, having neither consequences for my reputation nor my ineligibility for rehire." He reiterated that the EVL was "part of a group of photocopies used for rental purposes" including paystubs and bank statements, and that all documents were signed in the same way. He complained that EBC did not verify this. He stated that his case did not involve "misconduct but a mere minor administrative omission, and was generated in [a] deliberate manner by my management" and was a consequence of an "abnormal" and "very hostile" work environment in the midst of which some 44 of 64 staff left IADVP.

35. On 21 October 2013, the Applicant wrote to the HRVP requesting a response to his letter of 28 August 2013.

36. On 24 October 2013, the HRVP wrote to the Applicant requesting that he provide documentation supporting his assertion that he had signed the entire package of documents provided to the rental agent in the same way and indicating that, in the absence of additional evidence, the Applicant would need to appeal the HRVP's decision to the Tribunal.

37. On 6 November 2013, the Application was received by the Tribunal.

38. The Applicant seeks rescission of the disciplinary measures imposed and compensation for pain and suffering, including for harassment, abuse of power and retaliation by the Manager. He also requests that the Bank be warned or reprimanded about the use of resources in relation to the investigation undertaken by EBC, as well as the reimbursement of his costs in the sum of \$400.

THE CONTENTIONS OF THE PARTIES

The Applicant's Main Contentions

39. The Applicant asserts that his case does not involve “misconduct but a mere minor administrative omission, and was generated in [a] deliberate manner by” his managers. He argues that there were no risks involved for the Bank or any third party related to his submission of the unsigned EVL to the rental agent, particularly because he provided the EVL with paystubs and bank statements permitting the rental agent to cross-check the information. He contends that it is not correct to characterize the requirement of the manager’s signature as an “internal control” because the information in the EVL cannot be edited and because the signature does not vary the information in the EVL. He refers to audit standards adopted by the Bank and contrasts “risk-based” controls with “compliance controls.” He contends that the latter, which include “strictly following a manual,” are “old fashioned” and “obsolete today.” Strict compliance with manuals is, he argues, not fully necessary. In his view, sending the unsigned EVL to the rental agent was a prudent and “risk-free procedure.”

40. He considers that the allegation of misconduct arose in the context of an abnormal, “very hostile work environment” and “horrible working atmosphere” related to a managerial strategy involving the replacement of the Bank’s internal auditors with external consultants. He also contends that the misconduct allegation was made by the Manager in retaliation for the Applicant’s instigation of PRS proceedings in relation to his 2011 OPE, at a time before the PRS recommendation was issued. He says that while he intended to make a formal complaint of

retaliation to EBC, as he was departing from the Bank and was pressed for time given his relocation to take up a new job, he decided to try to “forget about this unhappy period.”

41. He also notes that in the period of time immediately before he left the Bank, his requests to be granted Leave Without Pay or a Mutually Agreed Separation were rejected; he was expecting to receive the PRS report regarding his challenge to his 2011 OPE ratings; and he had to complete his work for the Bank and make all the moving and rental arrangements necessary to take up his new job. In the circumstances, he submits it was not realistic or practical to expect him to “pay attention to the minor and formal issue of the signature.” He asserts that he did not request the Manager’s signature in case he took the opportunity to insult him. He further asserts that the EBC investigation ignored the relevance of his working environment and urges an “integrated and complete analysis of all interrelated facts.” He calls the events leading up to the allegation of misconduct a “premeditated trap prepared by” the Manager.

42. He contends that EBC “misunderstood” his case “by omitting key information.” In particular, he refers to his assertion that the EVL was one of several documents submitted to the rental agent all signed in the same way and contends that the EBC investigation failed to take this into account. He notes that he informed EBC of this from the outset of the investigation, and made the same assertion in an e-mail to the rental agent two days before receiving EBC’s Notice of Alleged Misconduct. He submits that in certain cultures it is common to certify a photocopy by signing in the corner of the document, similar to the “usual style in notarization.” He says, however, that he cannot produce the original package of documents in these proceedings because he did not retain copies and they are “not available.”

43. He also argues that the EBC investigation failed to take note of the fact that he had provided his Manager’s contact information to the rental agent and that this is inconsistent with an attempt to mislead the rental agent. He considers that the investigation additionally failed to take into account the lack of harm; the lack of bad intention; that there was no misrepresentation; and his conflict with the Manager. He contends that “the administrative, formal, mechanic[al] or bureaucratic process” is “not enough to find the truth in this case.”

44. He considers the HRVP's finding that his actions with regard to the EVL called into question his professionalism and suitability for employment to be "an exaggeration with no basis." He states that as he has spent much of his career fighting corruption as an auditor, the finding of misconduct is a major "dishonor" for him. He argues that the Bank has unnecessarily expended time and resources simply to caution him that he should "follow the administrative manual."

The Bank's Main Contentions

45. The Bank contends that the Applicant's conduct legally amounts to misconduct in that the record "shows that the Applicant's actions were misleading, violated basic professional norms, and displayed unacceptably poor judgment and disregard for internal controls – particularly considering [the] Applicant's role as a Bank auditor." More specifically, the Bank submits that the conduct is a breach of a policy stated on the Bank's HR website ("Employment Verification Letter – Request"); Staff Rule 3.00, paragraphs 6.01(b) and 6.01(c); and Staff Principle 3.1(c).

46. The Bank contends that the policy published on the HR Kiosk website states that staff members must request their manager's signature after generating EVLs and notes that the EVL itself states that the letter is not valid without a manager's signature.

47. The Bank takes the view that there are no circumstances in which "someone working in any professional context [should] send a letter that states it is from another person, without that person's knowledge or consent." It considers that a seasoned professional such as the Applicant should have understood this, even more so since he was an auditor who should have had a "special appreciation for the control function served by the manager's" signature. According to the Bank, he should have appreciated that it is misleading to place a signature on a letter that expressly requires someone else's signature.

48. The Bank contends that a manager's authentication of the EVL is an "important internal control" because it is possible to alter such letters by manipulating them using word-processing

software or “scissors, glue and a photocopier.” In the absence of such verification, the Bank considers that it runs the risk “of certifying incorrect information to external parties.” The Bank adds that staff members are not free to decide which internal controls to observe “based on their own estimations of the relative utility of such controls” and refers in support of this to *K*, Decision No. 352 [2006], paras. 38–41.

49. The Bank does not accept that the fact the Applicant’s signature was placed on the opposite side of the letter from the Manager’s name was sufficient to dispel confusion and points out that the signature was directly above the words “Not valid unless signed by manager.”

50. The Bank refers to the fact that the Applicant has not provided any evidence that he signed all the documents submitted to the rental agent in a similar manner and contends that doing so is not a common practice in commercial contexts. In any event, the Bank submits, if this measure was indeed taken by the Applicant, it was inadequate to signal to the rental agent that the Applicant had signed the letter because the rental agent called the Manager to ask him whether he had signed it. Furthermore, the Bank comments that the Applicant could easily have indicated that the letter was not signed by the Manager by writing “Draft” or some other explanatory note on it.

51. The Bank states that the Applicant’s desire to avoid the Manager does not excuse his failure to comply with Bank policy. The Bank also contends that the Applicant has presented no evidence of retaliation by any of his managers and submits that “[s]ince February 2012, the Applicant has labeled as ‘retaliatory’ every adverse managerial decision, without any evidence that such decisions were motivated in any way by his use of the” PRS or other of the Bank’s Conflict Resolution System resources. The Bank states that the Manager properly escalated the matter of the unsigned EVL to his supervisors and had legitimate and reasonable concerns about it.

52. According to the Bank, the severity of the sanction imposed on the Applicant is justified by the seriousness of the misconduct, the interests of the Bank Group in ensuring the

professionalism of its staff, and the fact that the Applicant was an internal auditor who “demonstrated an unacceptable belief that staff may disregard those internal controls they do not find useful or convenient” and “should have been well aware of the importance of internal controls such as the one he disregarded.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

53. In reaching its conclusions the Tribunal has not considered the Applicant’s additional pleading dated 28 May 2014. The Bank objected to this pleading as contrary to the Rules of the Tribunal. The Tribunal observes that the additional pleading does no more than reiterate points the Applicant makes elsewhere in the record. It is in the circumstances of this case therefore unnecessary to consider whether it should be admitted.

SCOPE OF REVIEW

54. The scope of review by the Tribunal in disciplinary cases is well-established. In *Koudogbo*, Decision No. 246 [2001], para. 18, the Tribunal stated that

its scope of review in disciplinary cases is not limited to determining whether there has been an abuse of discretion. When the Tribunal reviews disciplinary cases, it “examines (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.

55. It is also 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, as here, to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.

THE EXISTENCE OF THE FACTS

56. The HRVP made two key factual findings based on the EBC Final Report of Findings (the “EBC Report” or the “Report”). First, that the Applicant had sent an EVL, which required the signature of his Manager, to the rental agent “with a signature that was not his Manager’s.” Second, that the Applicant attempted to mislead the rental agent that the EVL had been signed by the Manager.

The first finding of misconduct: that the Applicant sent an EVL, which required the signature of his Manager, to the rental agent with a signature that was not his Manager’s

57. The record establishes beyond doubt that the Applicant sent the EVL to the rental agent and that the only signature on it was his own. The Applicant acknowledged this during the EBC investigation and in the present proceedings. There is a copy of the EVL in question in the record. Contemporaneous correspondence from the Manager, the rental agent and the Applicant himself is consistent with the Applicant’s admission.

The second finding of misconduct: that the Applicant attempted to mislead the rental agent that the EVL had been signed by the Manager

58. The EBC Report states:

In its fact-finding, EBC was not able to find sufficient evidence to establish that [the rental agent] was led to believe that the Verification of Employment letter had been signed by [the Manager]. The fact that the rental agent requested [the Manager] to confirm if this was his signature showed that she felt the need for additional verification. EBC, however, found sufficient evidence that, by affixing his own signature without any explanatory notes (such as the inclusion of the word “draft” on the document or the inclusion of his own name below his signature), [the Applicant] attempted to mislead [the rental agent] that the Verification of Employment letter had been signed by [the Manager].

59. This finding appears in similar form in the HRVP’s decision letter. The Tribunal is troubled by the fact that neither the EBC Report nor the decision letter describe the “sufficient

evidence” that the finding was based upon. Both imply only that decisive weight was accorded an inference drawn from the fact that the Applicant affixed his signature to the standard form EVL without any explanatory note. The Tribunal is left with the impression that this inference was drawn without full consideration of the relevant context.

60. Certain considerations discussed in the EBC Report in a section relating to the first key finding (that the Applicant sent the EVL with his signature on it to the rental agent) in fact appear to provide an indication of EBC’s reasoning as to the second key finding (that he attempted to mislead the rental agent that the EVL had been signed by the Manager). EBC notes that it did not consider credible the Applicant’s claims that he had signed the side of the letter only as proof “that he took a photocopy” and there was no potential for confusion because there was blank space above the Manager’s signature line. EBC sustains this conclusion by reference to its findings and conclusions that: the Applicant accepted that it “would have been helpful to put the word ‘draft’ on the letter”; that the placement of the Applicant’s signature was on the side of the letter was “not necessarily” enough to make clear that it was not the Manager’s signature; and that the rental agent had “requested [the Manager] to confirm if” he had signed the first EVL. Referring to the Applicant’s explanation that he and the Manager were involved in a PRS case and that he alleged the Manager had taken retaliatory actions against him, the EBC Report concludes these “underlying issues” did not “fully explain” the Applicant’s reluctance to request his Manager’s signature.

61. The misconduct at issue relates to the possibly misleading nature of the signature affixed to the letter, *not* the employment information in the letter. The Applicant claims that the EVL was submitted with other documents that evidenced his income, such as bank statements and payroll statements, each of which he also signed in the same way. This is consistent with his claim that he did not consider it necessary to submit a validated EVL, but it does not in itself establish that his signature on the EVL would not have misled the rental agent into thinking it had been validated.

62. Similarly, the Applicant notes that as he was resigning from the Bank, his income from his new employer would be more relevant in terms of assessing his rental application and that he also attached the letter of appointment from his new employer. Again, this is consistent with his claim that he did not consider it necessary to submit a validated EVL, but it does not in itself mean he did not attempt to mislead the rental agent that the EVL had been signed by the Manager.

63. The Applicant argues his actions must be understood in the context of an unusually difficult working atmosphere and relationship with his Manager. He states that while his first two years at the Bank were happy and productive, his last two years were “the worst experience in [his] entire professional life.” It is clear from the record that he was extremely unhappy with his working environment, so much so that he was prepared to resign from an open-ended appointment at the Bank for a two-year fixed term appointment elsewhere. In the PRS proceedings regarding his 2011 OPE, the Applicant claimed that the way in which the Manager engaged with him caused him significant stress and humiliation that was “very hard to have at [his] ... age” and after a “life of continuous professional success in Internal Audit.” He refers to breaking down in front of colleagues after one meeting with the Manager and says he was “extremely demoralized, anxious, sad and concerned” about the Manager’s assessment of his performance. The Tribunal accepts the Applicant’s evidence that in his perception he had an unusually stressful and difficult relationship with his Manager.

64. In general, extenuating circumstances of this nature are to be taken into account when considering the proportionality of the disciplinary measure rather than the fact of misconduct itself. In *Z*, Decision No. 380 [2008], at para. 42, the Tribunal referred to *K*, para. 39, and observed that the applicant’s unusually heavy workload and stressful environment was “certainly not an excuse for not following the rules of the Bank. No matter how busy he or she may be, a staff member cannot be ‘exempted from the inconvenience of obeying applicable rules.’”

65. Work pressure, stress, lack of job security and interpersonal conflicts can be unfortunate facts of life in every workplace. They will not generally excuse noncompliance with the Bank’s

Staff Principles and Rules. Put another way, a breach of the rules by a staff member under unusual stress is still a breach of the rules, although the stress may be an extenuating circumstance relevant to the proportionality of the disciplinary measure. This having been said, the Tribunal considers it may sometimes be relevant to take into account unusual work or other pressures when the misconduct alleged is a violation of generally applicable norms of prudent professional conduct or conduct not befitting an employee of an international organization. These categories of misconduct are, to a limited extent, dependent on context.

66. The Bank submits that had the Applicant “truly wanted to signal unequivocally that the letter had not been signed by” the Manager, he could easily have ensured there was no possibility that the rental agent would confuse the Applicant’s signature with the Manager’s signature by writing “draft” or some other explanatory note on the letter or in his cover note. As the Tribunal has observed, EBC and the HRVP appear to have given decisive weight to the fact he did not so. The Bank also points out that the HR Kiosk makes it possible to print a draft version of the EVL which states that it is for “Preview Only” and includes the word “VOID” in place of the control number. It contends the Applicant therefore made a deliberate decision to print the official version of the letter. The Tribunal notes, however, that the Bank omits to mention that the preview version of the EVL appears to state “Don’t print this page” in bold text at the top of the document. It is not clear it represents a genuine option for a staff member who wishes to share an unvalidated EVL.

67. The fact that the Applicant’s signature does not appear above the Manager’s name, but on the opposite side of the EVL is, in isolation, not enough to refute the allegation that he attempted to mislead the rental agent. As an experienced professional, the Applicant must appreciate that, unless the rental agent was otherwise alerted that the signature on the EVL was the Applicant’s and not the Manager’s, any signature on the EVL might be confused with the Manager’s given that the Manager’s name and title are printed on the letter and it bears the statement “Not valid unless signed by Manager.” In his interview with EBC, the Applicant maintained that it was implicit that the EVL was a draft since it did not bear the Manager’s signature but accepted

EBC's suggestion that it would have been "helpful" to write "draft" on the letter. He was right to accept this.

68. At the same time, the Tribunal notes that the Applicant's signature was in no way altered to resemble his Manager's signature and was not placed next to the Manager's name on the EVL. While these facts alone do not support a conclusion that the Applicant did not attempt to mislead the rental agent, they are consistent with the Applicant's repeated claim that he affixed his signature in the manner of a notary to each item in the package of documents that he sent the rental agent. This claim is the heart of the matter.

69. Whether an attempt to mislead the rental agent can be reasonably inferred from the Applicant's lack of annotation hinges on whether a reasonable person would have understood that the signature on the EVL was the Applicant's and not the Manager's. If the EVL was submitted with other documents that made it clear expressly (because, for example, a cover letter or application form bearing the Applicant's printed name were signed in the same way) or by implication (because, for example, all of the Applicant's documents were signed in the same way), the Bank's inference that he attempted to mislead the rental agent may be unjustified.

70. The Bank submits that if all of the other documents submitted were signed in the same way, the rental agent might equally have been led to assume that the Manager had signed them all, including the EVL. The other documents, however, included a cover letter, an application form, a copy of the Applicant's driving license, his current rental information, the letter of appointment from his new employer and forms relating to his wife's personal information. The Tribunal does not accept that a reasonable person would assume that the Manager would sign documents of this nature.

71. During their interview with the Applicant, the EBC investigators recognized the potential significance of his claim to have signed accompanying documents in the same way as the EVL. They asked the Applicant to provide a copy of the package he had sent to the rental agent. The Applicant told them he had sent it by regular mail and did not keep copies. He asked EBC not to

contact the rental agent in case this complicated the approval of his rental application because he wanted to move to the new apartment the following week. He asked them to rely on his “formal declaration” in the interview. He offered to sign a declaration to the same effect if EBC so required.

72. In these proceedings, the Applicant has been unable to produce a copy of the original package of documents he sent to the rental agent. Following a request from the Tribunal, he produced e-mail correspondence from late October and early November 2013 in which he requested a copy from the rental agent. But he states that when he was allowed to review the rental agent’s file he found that the original package had been replaced by a “new clean set” of documents. The Bank responded to this by stating that the Applicant had not explained “why the rental agent would have required him to transmit clean, unsigned copies to replace” documents such as the signed Bank paystubs he claimed to have previously submitted. The Applicant responded in turn that the rental agent requested new documents after his Manager caused “confusion” by informing the rental agent that he had not created the original EVL. The Applicant also states that he cannot provide additional evidence because he no longer has access to his Bank e-mail account.

73. The Tribunal notes the explanation from the Applicant as to why the rental agent requested a complete new set of the other documents such as paystubs lacks clarity. The burden is on the Bank, however, to establish to the “more than a mere balance of probabilities” standard that the Applicant attempted to mislead the rental agent as alleged.

74. In evaluating the Applicant’s claim, the Tribunal notes that the Applicant first made it in a 24 September 2012 e-mail to the rental agent, *two days before he was notified of the EBC investigation* and became aware he would be called upon to respond to allegations of misconduct. In that e-mail he told the rental agent, who had requested that he send another EVL signed by his Manager, that the “confusion occurred because I sent you a draft copy of the Verification of Employment without my manager’s signature, just my own initial in one corner of the letter in the same way *like all the other papers that I have submitted to you.*” (Emphasis

added.) The Applicant made the same claim in the e-mail he sent to EBC two hours after receiving the Notice of Alleged Misconduct and in a PowerPoint presentation he sent to EBC on 28 September 2012, two days after receiving the Notice of Alleged Misconduct. Indeed, he has maintained this claim throughout the investigation and the present proceedings.

75. The 13 September 2012 e-mail sent by the rental agent to the Manager tends to support the Applicant's claim that it was clear to the rental agent that the signature on the EVL was not the Manager's. Notwithstanding the fact that by his own account the Manager had taken care not to tell her that the signature was not his and had mentioned only that he did not recall signing the letter, the rental agent's e-mail states "As requested ... [this] is the verification of employment/income ... Once received, please print, complete and fax back ... Please note: It is necessary that your signature be included on this document to authenticate this verification." The rental agent appears to be asking the Manager to complete the EVL and send it back to her, with a reminder that it needs to include his signature.

76. In seeking to confirm exactly what the rental agent asked the Manager, the EBC investigator asked the Manager a leading question ("And in that phone call, [the rental agent] asked you to confirm a signature on a verification of employment document[?]"). That the answer was suggested to him limits the weight that may be attached to the Manager's affirmation. This having been said, the Tribunal also weighs the fact that in the e-mail to his Vice President and Director immediately following his call with the rental agent, the Manager stated that the rental agent wanted him "to confirm that I had indeed signed an employment verification letter that [the Applicant] had submitted" In the context of the alleged tension between the Applicant and his Manager (particularly in relation to the PRS proceedings ongoing at the time), the Tribunal regards this evidence with caution. While the Tribunal is not in a position to pass upon the rectitude of the Applicant's allegation that there was a contentious relationship between the Applicant and his Manager, the Tribunal considers that the tone of the Manager's 13 September 2012 e-mail to his Vice President and Director may reflect a rather swift decision to characterize the inquiry he had received from the rental agent as indicating a "significant breach of ethics" by the Applicant.

77. Critically for this case, notwithstanding the EBC investigators' assurance that the Applicant's claim that all the items accompanying the EVL were signed in the same way would be taken into account, this assertion goes unmentioned in the body of the EBC Report, as does the fact that the wording of the rental agent's 13 September e-mail may corroborate the Applicant's claim that the rental agent understood the signature on the EVL was the Applicant's and not the Manager's.

78. This omission of potentially significant exculpatory evidence in the body of the Report suggests relevant facts were not drawn to the attention of the HRVP before he made his disciplinary decision. This conclusion is buttressed by the fact that when the Applicant wrote to the HRVP requesting that he reconsider his disciplinary decision and referring to his claim to have signed the entire package of documents in the same way, the HRVP responded by letter of 24 October 2014 asking for supporting evidence of this claim. It may be implied that the claim had not been properly drawn to the HRVP's attention when he first made his decision.

79. In *BP*, Decision No. 455 [2011], the Applicant challenged a finding of misconduct that arose out of a felony conviction based on a plea bargain she entered into related to false statements made to law enforcement authorities. The Tribunal observed that EBC, by "[s]imply attaching documents [to the EBC Report] without presenting and justifying conclusions drawn from them," had rendered "an incomplete presentation of findings likely to result, in turn, in an erroneous review of the factors to be properly taken into account when [the HRVP] decided the disciplinary measure to be imposed." *Id.*, para. 31.

80. In the present case, the EBC investigators told the Applicant they accepted his statement that he signed the entire package of documents in the same way, would "take it to the record" and that an additional signed statement would not be necessary because the interview would be transcribed and EBC would refer to the transcript such that the Applicant did not need to "spell it out again." They also told the Applicant that the fact of his having signed other documents in the same way would "reinforce" his case and that they would "take [his] statement for those purposes." Yet they then omitted to refer to the Applicant's claim in the body of their Report.

This coupled with the lack of any reference to the wording of the rental agent's 13 September e-mail is indicative of a superficial approach to justifying their conclusions.

81. The same observation can be made about EBC's consideration of the implications of the Applicant's difficult relationship with his Manager. It is limited to noting that the Applicant and the Manager "were involved in" a PRS case and that the Applicant claimed the Manager had taken "retaliatory actions against him." EBC concluded that "there were underlying issues" between the Applicant and his Manager but these did "not seem to fully explain" the Applicant's reluctance to approach his Manager. There is no discussion of the precise nature and severity of the issues or why they did not explain the Applicant's reluctance. EBC appears to discount the question, as has the Bank in these proceedings, by referring to the fact that the Manager immediately signed the second EVL at the Applicant's request. But this ignores the fact that at that time the Manager was aware that there would be an EBC investigation and this might have influenced his behavior.

82. The Tribunal is concerned that the body of the Report contains insufficient information to enable these potentially exculpatory or mitigating circumstances to be genuinely factored into the HRVP's decision. Whether or not EBC found the Applicant's claim regarding the accompanying documents signed in the same style to be credible, it should have presented and considered that critical contention in the body of the Report in order to justify its conclusions in light of it. Equally, EBC's conclusion that the issues raised by the Applicant did not fully explain his reluctance to approach his Manager should have been justified with stated reasons. A hallmark of a professional investigation is the careful justification of its conclusions against potentially relevant contentions. The Tribunal has held before that subjective evaluations arrived at "for unstated reasons are entitled to no weight, precisely because they are unstated"; *P*, Decision No. 366 [2007], para. 66.

83. Nor is the Tribunal convinced that the EBC investigators made reasonable inquiries into the exculpatory evidence to which the Applicant drew their attention. They appear to have readily accepted the Applicant's unwillingness to complicate his rental application by requesting copies

of the documents. The Tribunal appreciates they may have done so out of respect for the Applicant's desire not to complicate his rental application. While it might have risked unnecessary complications for the Applicant to request the documents before his application was approved, however, EBC could have proposed that he request copies shortly after the application process was complete and he had secured accommodation or that they themselves would contact the rental agent after a suitable period to obtain a statement as part of their duty to seek both inculpatory and exculpatory evidence. They could also have asked the Applicant to produce copies of other documents supporting his claim that he signed formal documents in the style of a notary. The Tribunal notes that at its request the Applicant produced a copy of an employment document which appears to have been signed in this way on each page and is dated long prior to the EBC investigation.

84. In previous cases, the Tribunal has considered the implication of the Bank's use of neutral fact finders in disciplinary cases. In *Z*, paras. 27 and 30, the Tribunal held that INT was under a duty to seek both inculpatory and exculpatory evidence and to give it proper weight. This was affirmed in *BC*, Decision No. 427 [2010], para. 58. The Tribunal does not accept that this obligation, which applies equally to EBC, is fulfilled where the subject of investigation merely expresses discomfort at the prospect of obtaining certain evidence. The Bank's investigators are obliged to ensure the subject understands that choosing not to obtain the evidence may have significant consequences and to consider alternatives by which it might be obtained. They must also take care not to give the subject the impression that an oral statement will be given weight in their analysis of the case and then omit to refer to it. The investigation report is not simply a cover note transmitting evidence gathered in the course of the investigation to the decision-maker. Quite to the contrary, the report makes findings and draws conclusions that are presented to the decision-maker alongside a recommendation that disciplinary measures be imposed.

85. Staff Rule 3.00, paragraph 10.04, makes clear that staff members are under a duty to cooperate with an EBC investigation. Nothing in the record indicates that the Applicant was uncooperative however. The Tribunal considers that the EBC investigators gave him the

impression his oral statement would be transcribed and accepted for the purposes of reinforcing his case.

86. The omission of potentially exculpatory evidence in the body of the EBC Report is likely to have prejudiced the Applicant. In other words, in the Tribunal's judgment, EBC's "incomplete presentation" was "likely to result" in an "erroneous review" of relevant factors by the HRVP, as the Tribunal put it in *BP*. Had the factors discussed above been canvassed in the EBC Report, and had EBC pressed the Applicant to obtain a copy of the package of documents once his rental application had been approved, the HRVP may well have found there was no attempt to mislead the rental agent.

87. In all the circumstances, the Tribunal concludes that the record does not establish the Applicant attempted to mislead the rental agent.

WHETHER THE ESTABLISHED FACTS LEGALLY AMOUNT TO MISCONDUCT

88. As it has not been established the Applicant attempted to mislead the rental agent, the Tribunal must consider whether the fact he sent the EVL to the rental agent with a signature that was not his Manager's amounts to misconduct.

89. In these proceedings (although not in the EBC Report or decision letter), the Bank has referred to instructions to staff members regarding EVLs published on its Human Resources website. Under the heading "Action by Staff 01" the instructions state that EVLs can be printed from the self-service HR Kiosk and can also be requested from HR Operations with a four working day turnaround time "only ... if the self-service HR Kiosk does not work for you." They also state under the heading "Action by Staff 02": "Request your Manager's Signature." Under the heading "Action by Manager 03" they state that the staff member's manager should "[v]erify and sign the [EVL] in hard copy given by the Staff Member."

90. The EVL itself states “Not valid unless signed by Manager ...” and includes the Manager’s surname and then his first name above his job title in a manner resembling a signature block often used on letters (save for the fact the Manager’s surname is stated before his first name).

91. In interpreting the Bank’s rules, the Tribunal first looks to the plain and ordinary meaning of the relevant rule (*Mould*, Decision No. 210 [1999], para. 13). In appropriate cases, in addition to the text of the relevant rule, the Tribunal may have regard to the object and purpose of the rule (*Cissé*, Decision No. 242 [2001], para. 23). The Tribunal has also held that, where there is ambiguity, the applicant should receive the benefit of the doubt (*Cissé*, para. 31).

92. The instructions relied upon by the Bank do not expressly prohibit a staff member from generating and sharing an unvalidated version of the EVL without their Manager’s validating signature. The Tribunal considers that, in this case, there is a degree of ambiguity as to whether a staff member may do so. In these circumstances, the Applicant receives the benefit of the doubt in line with *Cissé*, para. 31.

93. The Bank argues that “[e]ven in the absence of an express rule, [the] Applicant’s conduct fell short of his obligation to conduct himself in a manner befitting [his] status as an employee of an international organization” (contrary to Staff Principle 3.1(c) and thus Staff Rule 3.00, paragraph 6.01(c)) and amounted to a reckless failure to observe “generally applicable norms of prudent professional conduct” (contrary to Staff Rule 3.00, paragraph 6.01(b)).

94. The Bank also states that “[u]nder no circumstances should someone working in any professional context send a letter that states it is from another person, without that person’s knowledge or consent” and that it is “misleading to place one’s own signature on a letter that expressly requires someone else’s signature.” These latter submissions, however, go to the alleged attempt to mislead the rental agent rather than the sharing of the unvalidated EVL.

95. In his decision letter, the HRVP found that the Applicant's conduct constituted misconduct under Staff Rule 3.00 "to include ... a reckless failure to observe generally applicable norms of prudent professional conduct" and conduct in conflict with the Principles of Staff Employment including a failure to avoid a situation that may reflect adversely on the Bank and conduct not befitting an employee of an international organization.

96. The Tribunal considers that these categories of misconduct refer to conduct that diminishes the trust and confidence the public place in the Bank and its staff. In other words, they are intended to sanction conduct that could reasonably be seen by the public to seriously undermine a staff member's honesty and integrity and/or to be seriously discreditable or offensive.

97. The Tribunal is not convinced that, in the circumstances of this case, the Applicant's inclusion of an unvalidated EVL in the package he sent the rental agent rises to this level. A reasonable member of the public, in possession of all the facts that emerge from the record before the Tribunal, would not conclude that sharing the EVL in such a way was dishonest, misleading, or seriously discreditable or offensive. Critically, no misrepresentation has been established. Nor has any intent to mislead the rental agent. The record suggests the only thing the Applicant attempted to achieve was to avoid an interaction with a Manager with whom he perceived a very stressful relationship.

98. The Applicant's claim that he thought it unnecessary to send a valid version of the EVL considering the range of other personal documents he also submitted is plausible. As already noted, there is also some ambiguity as to whether the applicable Bank policy prohibits the sharing of an unvalidated EVL. Indeed, the seriousness of the signature requirement is called into question by the Manager's own admission in the course of the EBC investigation that he generally did not verify EVLs before signing them. The Tribunal further notes that, in terms of the importance of the control function of the Manager's signature, an EVL might just as well be altered by the scissors, glue and photocopier method referred to by the Bank after a Manager's

signature has been obtained as before. Nor is there evidence of reputational or other harm caused by the Applicant's conduct.

99. To be clear, the Tribunal considers—notwithstanding its finding that no attempt to mislead is established in the record—that there were more prudent courses of action open to the Applicant than sharing the EVL with his signature on it and not his Manager's. In the context of what he saw as an unusually stressful and difficult working relationship, the Applicant's lapse of judgment had the potential to cause confusion and legitimately gave rise to a fact-finding investigation. In all the circumstances of this case, however, the Tribunal finds that this lapse cannot be deemed a breach of professional conduct or conduct unbefitting an international civil servant so as to constitute misconduct.

100. The Applicant shall be compensated for the prejudice caused by the Bank's omission to further investigate and to refer to significant exculpatory evidence in its investigation report, as described in paragraphs 77–86 of this judgment. This resulted in relevant facts going unconsidered when the disciplinary decision was made and led to the present litigation. At the same time, the Applicant's own conduct shall be a factor in the amount of compensation awarded.

101. Since the Tribunal has set aside the finding of misconduct in this case, the disciplinary measures imposed are also set aside and there is therefore no need to consider their proportionality.

WHETHER THE REQUIREMENTS OF DUE PROCESS WERE OBSERVED

102. In *Kwakwa*, Decision No. 300 [2003], para. 29, the Tribunal held that while the Bank was not to be held to the full panoply of due process requirements applicable in the administration of criminal law, due process needed to be observed and that

the due process requirements for framing investigations of misconduct in the context of the World Bank Group's relations with its staff members are specific

and may be summarized as follows: affected staff members must be appraised of the charges being investigated with reasonable clarity; they must be given a reasonably full account of the allegations and evidence brought against them; and they must be given a reasonable opportunity to respond and explain. (*See King*, Decision No. 131 [1993], paras. 35–37.)

103. In his Reply, the Applicant states that he first saw the EBC Final Report of Findings, the transcript of his Manager’s EBC interview and the 13 September 2012 e-mail from his Manager to his Vice President and Director when they were annexed to the Answer.

104. The Bank states that EBC attempted to contact the Applicant by telephone, text message and e-mail, and sent the draft EBC Report for his comments to his new address. This is the same address used by the Applicant in the present proceedings and to which the HRVP’s decision letter was sent. The Bank produces a courier receipt of delivery, although this indicates only that the courier delivered a shipment to a “guard/security station” at an unstated location in the city of the Applicant’s residence on 26 February 2013.

105. The Applicant states that he cannot confirm nor deny EBC’s claims to have attempted to contact him regarding their draft report because he changed his address, e-mail and telephone contact details after leaving the Bank. In any event, he states that he had “nothing to add or deduct” and does not include claims regarding “EBC administrative procedures” in his Application. The Tribunal concludes that the Applicant makes no claim related to his opportunity to comment on the EBC draft report. Moreover, the record supports the conclusion that EBC made reasonable efforts to share the draft report with him and seek his comments.

DECISION

The Tribunal decides that:

- (1) The findings in the HRVP’s decision letter and the disciplinary measures imposed are rescinded.

- (2) The Bank shall remove from the Applicant's personnel file all records relating to the allegations of misconduct, including the EBC Report and the decision of the HRVP.
- (3) The Bank shall pay the Applicant compensation in the sum of six months' salary, net of taxes, based on the last salary drawn by the Applicant.
- (4) The Bank shall meet the Applicant's costs in the amount of \$400.
- (5) All other pleas are dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 26 September 2014