



World Bank Administrative Tribunal

2015

Decision No. 511

**CR,
Applicant**

v.

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

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

**CR,
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.

2. The Application was received on 26 September 2014. The Applicant was represented by Peter C. Hansen of the Law Offices of Peter C. Hansen, LLC. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration). The Applicant's request for anonymity was granted on 15 May 2015.

3. The Applicant challenges the 30 May 2014 decision of the Vice President, Human Resources (HRVP) that the Applicant had violated Staff Rule 3.00, paragraphs 6.01(b) and 6.01(c), and Staff Rule 3.01, paragraph 4.02, and the disciplinary measures imposed.

FACTUAL BACKGROUND

4. The Applicant joined the Bank on 18 January 1994. Before retiring from the Bank on 31 January 2014, he was a Senior Adviser, level GI, to one of the Bank's Vice Presidents. Around 2003–2004, the Applicant worked with Ms. R, also a member of Bank staff, on the development of a website.

5. On 22 June 2012, the Applicant unexpectedly met Ms. R at the Bank's headquarters. Later that day, Ms. R sent the Applicant an e-mail saying: "So nice to run into you! As always, you are so cheerful and full of fun even in this tough time. Please squeeze me in. It would be lovely to chat and catch up." The Applicant and Ms. R met on 26 June 2012. After that meeting,

Ms. R sent an e-mail to the Applicant with her CV saying, among other things: “As discussed with you, I am very interested in [a Bank website project], and would be delighted to have another opportunity to work with you.” She also set out her relevant experience and qualifications.

6. On 3 July 2012, the Applicant sent an e-mail to Ms. G, the Chief Economist who controlled a website project the Applicant was managing at that time, attaching Ms. R’s CV, stating that “her current [Bank] contract has just finished” and recommending her as, among other things, “a pretty energetic and capable person ... to who[m] you can delegate large and complex projects and feel confident that they will get done on time and well. I think you would most likely find it advantageous to meet and [size] her [u]p before you go on your summer break.”

7. The same day, Ms. G sent an e-mail to the Applicant noting that she had shared Ms. R’s CV with another colleague who thought “she may be over-qualified for the internal website but would be an ideal candidate to become the platform’s knowledge content person.” In another e-mail to the Applicant of the same day, Ms. G indicated that she planned to meet with Ms. R.

8. On 12 July 2012, after learning that Ms. G had yet to contact Ms. R, the Applicant urged the latter to follow up. He also sent Ms. G an e-mail reminding her about Ms. R, to which Ms. G replied saying that Ms. R’s CV had been sent to the unit interviewing for the position she had mentioned. The Applicant forwarded this message to Ms. R.

9. In e-mails to the Applicant the same day, Ms. R, referring to herself and a female staff member whom the Applicant had mentioned as a useful contact for Ms. R, urged the Applicant to “host a conference of two beautiful women ... over wine, coffee, or lemonade, or all of these.” The Applicant replied and suggested that he pick up Ms. R “from [her] place” for “another field trip ... or conference ... with just one beautiful woman” Ms. R responded saying that she looked forward to “another nice field trip!”

10. On 16 July 2012, Ms. R e-mailed the Applicant asking if he knew a certain female Bank staff member. She referred to the latter as “strikingly beautiful.” In response, the Applicant queried how this was relevant. In a later e-mail of the same day, Ms. R stated “I am so amazed ... how come you have all those beautiful women around you!”

11. On 26 July 2012, Ms. R informed the Applicant, by e-mail, that she had not heard from the unit interviewing for the position mentioned by Ms. G, thanked him for his willingness to recommend her to another Bank staff member, and stated: “As for my work with you to enhance the [website project], please just let me know when to begin. I am looking forward to it.”

12. Ms. R was offered a Short Term Consultant (STC) appointment to work for an initial period of ten days on the website project. As task team leader of the website project, the Applicant provided the terms of reference for Ms. R’s assignment, proposed the number of days’ work she would be offered, and provided feedback on her performance. On 6 August 2012, Ms. R took up this appointment under the Applicant’s supervision. She reported to the Applicant on a day to day basis.

13. The Applicant states that “later” in August 2012, Ms. R and the Applicant first had “physical relations.” The Bank states that “[a]round the same time as [Ms. R] started her STC appointment” she and the Applicant began a consensual sexual relationship, and refers to a statement by Ms. R that she first had sex with the Applicant on 28 July 2012.

14. The Applicant states that they began “sporadic physical relations which lasted about four months.” Ms. R told investigators in the Bank’s Office of Ethics and Business Conduct (EBC) that she had sexual contact with the Applicant “about ten times” over the next few months.

15. On 8 October 2012, Ms. R’s STC contract for work on the website project was extended.

16. In late December 2012, physical relations between the Applicant and Ms. R ended.

17. From September to December 2012, the Applicant had given Ms. R three personal checks for \$5,000, \$7,500 and \$7,500 to pay off her credit card debt.

18. On 9 and 10 January 2013, the Applicant asked a program assistant in the unit for assistance in urgently adding 25 days to Ms. R's STC contract. The Applicant's request was forwarded to another colleague, who queried the source of funding for the extension and noted that it would need to be approved by Ms. G.

19. On 16 January 2013, Ms. G objected to the extension of Ms. R's contract based on her performance and pay rate, saying: "As you know [Ms. R] is very expensive and is clearly not a very good fit for this work. Partly because she has had too much time she has overdesigned the website." Ms. G recommended a different candidate to work on the website project.

20. On 17 January 2013, the Applicant wrote to Ms. G, objecting to the position she had taken.

21. On 18 January 2013, for about two hours, the Applicant and Ms. R engaged in an internet chat session which included graphic sexual language.

22. On 22 January 2013, the Applicant and Ms. R exchanged e-mails and internet chat messages regarding Ms. R's STC contract, and an IT training course for Ms. R which the Applicant had offered to pay for.

23. On 23 January 2013, Ms. R wrote to the Applicant expressing her disappointment that, on visiting the Bank, she had learned from a colleague that her contract had not been extended because Ms. G had not approved it. Ms. R stated: "I am not sure who is the boss here. Please check my note via Bank email and do something. Thank you, dear!" Later that day, the Applicant replied explaining that Ms. G controlled the budget and did not want to provide the funding for Ms. R's contract extension.

24. On 24 January 2013, Ms. G sent an e-mail to the Applicant stating

we have confirmed that there is an alternative consultant whose rate is substantially lower than [Ms. R] ... As the [Task Manager] with fiduciary duties over this money, I will not authorize more for [Ms. R]. I was uncomfortable with the arrangement from the beginning but you claimed she was a reasonable choice because she would be quick as well as exceptionally good. This has not proven to be the case and you want to almost double the original budget. You are absolutely free to choose who you want to work on this but not someone who is in a different skill/pay bracket.

25. The same day, Ms. R sent an e-mail to the Applicant expressing her dissatisfaction with the situation and asking whether there might be alternative sources of funding available for her work. In his response, the Applicant stated that there was “little probability of more resources” for Ms. R to work on the website, and as such “it’s over, as I told you from the start it would be.” He continued: “you can go into one of your dangerous crazy rages, and scream and shout in an effort to intimidate me. But that will not change the facts.” He suggested that they look at alternatives, and consider how he might be able to help Ms. R.

26. The same day, in two separate e-mail messages, Ms. R replied:

I see. This is your game plan from the beginning. Let me consult with your wife.

...

You did not really push the website. I have seen through. In fact, it is not about the website, but about me. If you had genuinely supported me, as you promised in the summer, you would have already got resources and made things work. ... Honey, you did not keep your words, simply jerking me around, stringing me along. So deceptive.

27. On 26 January 2013, the Applicant forwarded his 16-24 January e-mail exchange with Ms. G (see above) to Ms. R saying “[u]nfortunately I have no control over this.” Later on 26 January, Ms. R responded saying that she would request a meeting with Ms. G.

28. Following a further exchange of e-mails, on 2 February 2013 the Applicant wrote to Ms. R saying:

Your increasingly abusive and threatening behavior towards me has become unacceptable. During our phone conversation on Wednesday evening you went beyond all limits when you threatened to harass me in my home as a way to pressure me into obeying your demands. I have discussed the situation with my

wife and I have her full confidence and support. As I have already told you, I refuse to live under threats and blackmail. I will therefore take no further action on any of your demands and I do not wish to entertain further communication on these matters. At the same time I have no desire to obstruct your ability to work elsewhere. I suggest you move on and I wish you good luck in your future endeavors.

29. In an e-mail of 3 February 2013, Ms. R stated that the Applicant had to “help her” if he wanted her to “move on.” She said:

This is not “threats and blackmail” as you did mischaracterize in your last note ... It is about the truth – what actually has happened between us and what has been our mutual understanding ... since July when you coerced me into having relations with you, using your authority of hiring and influencing hiring as a WB manager. ... With your repeated broken promises, now I cannot but come to the conclusion that you just abused your authority to get sex and other personal gains for yourself, exploiting especially those in a vulnerable position. ... Good to know you told your wife a story and have her full support. I would be glad to meet her/you to talk over the issue. If not through her/you, I will be pursuing other channels for resolution. Let me know by today.

30. Late in the evening of 5 February 2013, the Applicant tried to engage Ms. R in a flirtatious internet chat. Ms. R replied saying that she thought it best they not think of each other.

31. On 7 February 2013, the Applicant again contacted Ms. R by internet chat. Ms. R suggested they should not see each other and said that the Applicant had “not kept the promise” of her “contract extension as agreed.”

32. On 12 February 2013, the Applicant gave Ms. R a personal check in the amount of \$6,000 to pay for an IT training course for her.

33. On 20 February 2013, the Applicant tried to engage Ms. R in a flirtatious internet chat. Ms. R replied that her “imagination [was] not working anymore” and wished him a good night.

34. On 1 March 2013, Ms. R’s STC contract was extended drawing upon funding the Applicant obtained from an alternative source.

35. Ms. R's STC contract was further extended on 3 June and 1 July 2013.

36. On 16 September 2013, Ms. R presented the following allegations to EBC: (i) she had been subjected to sexual harassment by the Applicant, her manager, in return for employment as an STC and that the Applicant had demanded sex to continue to renew her assignment; and (ii) that her assignment had not been extended as a result of retaliation because she refused to continue to have a sexual relationship with the Applicant.

37. On 20 November 2013, the Applicant received a Notice of Alleged Misconduct from EBC, informing him of Ms. R's allegations.

38. On 31 January 2014, the Applicant retired from his open-ended appointment at the Bank as a Senior Advisor, Level GI.

39. Following an investigation, EBC sent its Draft Report to the Applicant on 7 April 2014, for comment. On 16 April 2014, the Applicant, through counsel, submitted his comments. On 17 April 2014, EBC issued its Final Report. It concluded:

The investigation did not find sufficient evidence to substantiate the allegations that [the Applicant]:

- (i) engaged in sexual harassment of [Ms. R] via *quid pro quo* that she have sex with him in exchange for employment as an STC. Rather, the investigation identified evidence that [the Applicant] and [Ms. R] engaged in a consensual sexual relationship during certain portions of her STC assignment from approximately July 2012 through December 2012, and
- (ii) that [the Applicant] demanded sex in order to continue to renew [Ms. R's] STC assignment. Rather, the investigation identified evidence that after the conclusion of the sexual relationship between [the Applicant] and [Ms. R], her STC assignment was subsequently renewed by him on three separate occasions.

The investigation did substantiate the fact that [the Applicant] failed to promptly resolve the resulting *de facto* conflict of interest that developed due to his sexual relationship with [Ms. R], as he informed no other WBG staff (i.e., his manager, Human Resources or EBC) of this relationship.

40. On 30 May 2014, the HRVP notified the Applicant of his decision that the record, including the Applicant's own testimony, "fully substantiates the allegation that [the Applicant] engaged in an inappropriate sexual relationship with a reporting staff member" between August and December 2012, that this "in and of itself, constituted a *de facto* conflict of interest," and that the Applicant did not end the relationship nor seek some other reporting arrangement for Ms. R. The HRVP determined that the Applicant had engaged in misconduct as defined under Staff Rule 3.00, paragraphs 6.01(b) and 6.01(c); and Staff Rule 3.01, paragraph 4.02. The HRVP imposed the following disciplinary measures: (i) ineligibility for any future employment at the World Bank Group, as a staff member, contractor, or employee of a contractor; (ii) access to any of the Bank Group's buildings to be restricted to entry for business needs relevant to the Bank Group, at the determination and discretion of the Vice President, HR or his delegate; and (iii) a misconduct letter to remain in the Applicant's staff record for indefinite duration.

41. On 26 September 2014, the Application was received by the Tribunal. The Applicant requested, as provisional relief pending the Tribunal's judgment, the lifting of the restriction on his access to Bank premises. Following further submissions from the parties, the Tribunal denied the Applicant's request on 9 December 2014, noting that in the course of its submissions, the Bank had "provided guidance on the information it requires when the Applicant applies for access to Bank premises."

42. The Applicant seeks the rescission of the HRVP's decision of 30 May 2014; removal of all evidence of the disciplinary process from the Applicant's personnel file; rescission of the disciplinary measures imposed by the HRVP; removal of "all negative flags" from the Applicant's personnel file; reinstatement of his full eligibility for entry to the Bank's premises and for re-hire; one-year's salary in moral damages; reimbursement of all his attorney's fees and costs in this case; and all other relief as the Tribunal may deem just and appropriate.

THE CONTENTIONS OF THE PARTIES

The Applicant's Main Contentions

43. The Applicant submits that his case turns entirely upon narrow questions of law and that only a few of the facts on record are required to adjudicate these questions. While he considers certain factual findings by EBC to be mistaken, he submits that these disputed facts are immaterial to the issues before the Tribunal.

44. The Applicant identifies the following matters as “settled”:

(1) a sexual affair took place between [the Applicant] and Ms. [R] starting in August 2012, after Ms. [R] joined [the Applicant's] team, and ending by no later than February 2013; (2) this affair raised the issue of a *de facto* conflict of interest on [the Applicant's] part since he was Ms. [R]'s manager; (3) after the affair ended, [the Applicant] and Ms. R worked together without impropriety or trouble from February 2013 to September 2013, at which time Ms. [R]'s final consultancy contract ended; and (4) there has been no accusation or finding that [the Applicant] at any point showed or sought to show any illicit favor or disfavor to Ms. [R].

45. The Applicant contends that the HRVP wrongly held him to a standard contained in the Bank document “Living Our Values: Code of Conduct” which differed from the standard contained in Staff Rule 3.01, paragraph 4.02 (“Supervisory Relationships”). He contends that the Bank “tries to amend the Staff Rules” through the Code of Conduct, and argues that the Staff Rule in question does not impose any obligation on the supervisor to disclose the existence of a sexual relationship unless the supervisor deems such disclosure necessary in order to resolve the conflict of interest.

46. The Applicant submits that if there was a conflict of interest on the facts, which he denies, he resolved it “promptly” as required by Staff Rule 3.01, paragraph 4.02, “by declaring early and often that he would not provide any undue aid to Ms. [R]. After a short while, Ms. [R] realized that he was serious, and she then refused to engage in sex. This ended the affair, and any possible concern to the Bank.”

47. The Applicant further contends that there are no facts to suggest “an illicit loyalty” between him and Ms. R, that the HRVP should have considered the existence of such a loyalty on the facts, and should not have imputed such a loyalty “as a matter of law.” The Applicant contends that EBC made no finding that he misused his Bank position on Ms. R’s behalf. He argues that the conflict of interest referred to in Staff Rule 3.01, paragraph 4.02 is “*de facto*,” and “not *de jure*” so that the facts do matter and may be shown to be absent. In his view, there can be no misconduct resulting from “a mere possibility (never realized) that he *might* succumb to Ms. [R]’s wrongful demands” and that as he “never succumbed” there was no misconduct.

48. The Applicant also argues that the disciplinary measures imposed on him relate to “an alleged failure to confess a brief, consensual affair that entailed no abuse of office and no *quid pro quo*” and were disproportionate, without legitimate purpose and cruel.

The Bank’s Main Contentions

49. The Bank notes that the Applicant admits that he was engaged in a sexual relationship with Ms. R while he was also directly supervising her work on the website project assignment, and that he does not dispute that (i) these facts created a *de facto* conflict of interest pursuant to Staff Rule 3.01, paragraph 4.02 and (ii) it was incumbent upon him to resolve such conflict of interest.

50. The Bank accepts the Applicant’s submission that his case “turns entirely upon narrow questions of law.” The Bank notes that Staff Principle 3.1 requires staff members to “avoid situations that might ... lead to real or apparent conflicts of interest,” and that Staff Rule 3.01, paragraph 4.01 provides that supervisors’ “[t]reatment of staff shall not be influenced by personal ties between the supervisor and the staff member... .” According to the Bank, because the Applicant took no action to resolve the *de facto* conflict of interest which arose as a result of his sexual relationship with Ms. R, he committed misconduct under Staff Rule 3.01, paragraph 4.02.

51. The Bank argues that the Applicant’s contentions that he could himself determine that this sexual relationship with Ms. R did not result in any conflict, or that he resolved the conflict

by making it clear to Ms. R “that he would never act against the Bank” or “provide undue aid” to her, would, if correct, undermine the purpose of the Staff Rule. The Bank also rejects the Applicant’s contention that he “promptly resolved” any conflict of interest when his sexual relationship with Ms. R ended around February 2013, that is, after a “5 to 7 month period.”

52. The Bank contends that Staff Rule 3.01, paragraph 4.02 is properly interpreted to mean that a conflict of interest *in fact* arises where a staff member engages in a sexual relationship with another staff member who reports to him or her. The supervisor must take action to resolve the conflict either by ending the relationship, seeking alternative reporting arrangements or consulting with management. This interpretation, the Bank submits, accords with the guidance set out in the Bank’s Code of Conduct which is “an integral component of the ‘pertinent regulations and rules’ which form part of a Bank staff member’s contract of employment and terms of appointment.”

53. The Bank submits that the disciplinary measures imposed on the Applicant were proportionate, pointing out that the Applicant decided to retire from the Bank while the EBC investigation was ongoing, thereby limiting the disciplinary measures available to the Bank. The Bank submits that the Applicant’s continued lack of remorse or appreciation for the seriousness of his misconduct make him unsuitable for future employment with the Bank; that the written censure for indefinite duration is complementary to this and necessary for “record purposes”; and that the restriction on his access to the Bank’s premises is not unreasonable or disproportionate to his misconduct.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

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 this review

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 ... to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.

The existence of the facts and whether they legally amount to misconduct

The existence of the facts

56. The key facts are undisputed. The Applicant engaged in a consensual sexual relationship with Ms. R, who was his direct report, from around August 2012 to December 2012. The Bank states that, in its view, while the Applicant's physical relationship with Ms. R ended in December 2012, "their relationship" lasted until February 2013 when Ms. R "rebuffed [the] Applicant's final attempts to engage in flirtatious internet chats." The Applicant accepts that he was involved in a "sexual affair" with Ms. R, starting in August 2012 "and ending by no later than February 2013."

57. The Tribunal notes that the record indicates that the last time the Applicant and Ms. R exchanged messages of a sexual nature was on 18 January 2013. Ms. R declined to respond to the Applicant's overtures on 7 and 20 February 2013. The Tribunal will therefore proceed on the basis that the sexual relationship between the Applicant and Ms. R began in August 2012 and ended on or around 18 January 2013, therefore lasting some five-and-a-half months.

58. It is also common ground that, for the duration of this sexual relationship, the Applicant was Ms. R's direct supervisor on the website project. Both during and after the sexual relationship, the Applicant actively sought to have the contract of Ms. R extended. This included seeking alternative funding sources for the purpose of extending her contract.

Whether the facts legally amount to misconduct

59. EBC concluded that their investigation had not substantiated the allegations made by Ms. R against the Applicant, namely, that he had sexually harassed her or demanded sex in order to extend her STC assignment. However EBC found that the Applicant had failed to promptly resolve the conflict of interest which arose as a result of his sexual relationship with a subordinate. EBC characterized disclosure of the relationship to management as a “key element” in resolving such conflicts. It relied on the Bank’s Code of Conduct “Living Our Values” as well as applicable Staff Rules.

60. The HRVP concurred with EBC’s finding that the Applicant had failed to resolve the *de facto* conflict of interest created by his consensual sexual relationship with Ms. R, and had thereby acted contrary to the Staff Rules. The HRVP found that the Applicant had engaged in misconduct, in violation of the following provisions:

- (i) Staff Rule 3.00, paragraph 6.01(b): Failure to observe generally applicable norms of prudent professional conduct;
- (ii) Staff Rule 3.00, paragraph 6.01(c): Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment including the requirements that staff avoid situations and activities that might reflect adversely on the Organizations (Principle 3.1) and conduct themselves at all time in a manner befitting their status as employees of an international organization (Principle 3.1c); and
- (iii) Staff Rule 3.01, paragraph 4.02: A sexual relationship between a staff member and his/her direct report, or direct or indirect manager or supervisor is considered a *de facto* conflict of interest. The manager/supervisor shall be responsible for seeking a resolution of the conflict of interest, if need be in consultation with management, who will take measures to resolve the conflict of interest. Failure to promptly resolve the conflict of interest may result in a finding of misconduct.

61. In their submissions before the Tribunal, both the Applicant and the Bank have focused on Staff Rule 3.01, paragraph 4.02. The Tribunal will begin its assessment by considering the

application of this Rule to the circumstances of the present case, before turning to the other two Staff Rules referred to by the HRVP.

62. Staff Rule 3.01, section 4 (“Supervisory Relationships”) provides in full that:

4.01 Supervisors shall at all times treat staff in a fair and unbiased manner. Treatment of staff shall not be influenced by personal ties between the supervisor and the staff member, nor shall it be influenced by the race, nationality, sex, religion, political opinions, or sexual orientation of the supervisor or staff member.

4.02 A sexual relationship between a staff member and his/her direct report, or direct or indirect manager or supervisor is considered a *de facto* conflict of interest. The manager/supervisor shall be responsible for seeking a resolution of the conflict of interest, if need be in consultation with management, who will take measures to resolve the conflict of interest. Failure to promptly resolve the conflict of interest may result in a finding of misconduct.

63. The Bank’s Code of Conduct “Living Our Values,” which states that it “provides general guidance and complements World Bank Group rules and policies”, also includes a number of sections relevant to the present case. On conflicts of interests generally, it states the following:

A conflict of interest may arise when a staff member has competing professional and/or personal interests that can make it difficult to fulfil his or her duties impartially. ...

Conflicts of interest can adversely impact the World Bank Group’s activities and reflect poorly on the institution. Furthermore, even *potential* or *perceived* conflicts can undermine stakeholder relationships and damage the World Bank Group’s reputation. That is why we must always be alert and consider how actions both inside and outside the World Bank Group may be viewed by a third party. Having a conflict of interest does not necessarily mean a staff member has done something wrong. However, promptly disclosing and dealing with this conflict is critical to avoiding potentially serious consequences.

(Emphasis in original.)

64. This guidance is stated by the Code to be relevant to, *inter alia*, Staff Rule 3.01. Moving on to the issue of sexual relationships between supervisors and subordinates, the Code says the following:

Supervisors and managers have a special responsibility to treat all staff fairly and objectively, without showing any favoritism. Because a sexual relationship between a subordinate and a direct or indirect supervisor undermines the supervisor's objectivity, it creates a conflict of interest. It also can create morale issues among colleagues. For these reasons, it is the responsibility of the more senior person to promptly resolve the conflict of interest by bringing it to the attention of the next-in-line senior manager, HR professional, or EBC and by taking appropriate action. Failure to do so may result in disciplinary action.

65. A supplement to the Code of Conduct, annexed to the document itself, provided some answers to sample questions that might arise. Under the heading 'Supervisory Relationships', it included the following:

Q: Why is a private sexual relationship between a supervisor and a subordinate a problem if it is consensual?

A: A supervisor has authority over the employment decisions of a subordinate and cannot be objective if there is a sexual relationship. Therefore, this is considered a *de facto* conflict of interest. It doesn't matter if the reporting relationship is direct or more distant. Should such a case arise, the more senior staff member of the pair has a duty to resolve the conflict, first by disclosing it to his or her own manager. That manager must consult HR and act promptly to resolve the conflict. Failure to do so could result in disciplinary measures.

66. The HRVP's decision letter stated that the Applicant's sexual relationship with a reporting staff member "in and of itself, constituted a *de facto* conflict of interest," that this relationship went on between August and December 2012, and that the Applicant "did not stop the relationship once it began, nor did [he] seek some other reporting arrangement for [Ms. R]."

67. The Tribunal observes that Staff Rule 3.01, paragraph 4.02 makes clear that a *de facto* conflict of interest arises when a manager becomes involved in a sexual relationship with a reporting staff member. Contrary to the submissions of the Applicant, use of the phrase "*de facto*" in this Rule does not indicate that this is merely a presumption which can be rebutted on the facts of a given case. Rather, under this Staff Rule, a sexual relationship between a supervisor and a subordinate will automatically be characterized as a conflict of interest. This is true irrespective of whether there is evidence that the parties did in fact take any action against the

best interests of the Bank. This strict standard exists precisely to preclude conflicts of interest, both actual and apparent.

68. The Tribunal has previously had occasion to consider the rationale underlying this Staff Rule, which was originally promulgated in 1999 (as Staff Rule 3.01, paragraph 4.01). In *BB*, Decision No. 426 [2009], para. 18, the Tribunal observed that the 1999 formulation of the Rule, which did not differ in any material respect from the present iteration, was motivated by concerns explained in a 1999 Bank Intranet Announcement, according to which:

When a supervisor and subordinate engage in a sexual relationship, the unequal institutional power heightens the vulnerability of the subordinate and the potential for coercion. Other negative effects include perceptions by others of unfair advantage enjoyed by the person involved in the relationship, and the potential for one or both parties to injure the other if the relationship does not end amicably. Experience of other organizations and of the Bank Group has shown that the costs of relationships between managers and subordinates, even when initially consensual, are high in terms of staff morale, perceptions of fairness, and in extreme cases, legal fees.

69. The Tribunal also notes that the Bank's Principles of Staff Employment specifically emphasize that staff have to avoid apparent conflicts of interest. Paragraph 3.1 states that the sensitive nature of much of the Bank's work,

requires of staff a high degree of integrity and concern for the interests of the Organizations. ... [S]taff members have a special responsibility to avoid situations and activities that might reflect adversely on the Organizations, compromise their operations, or lead to real or apparent conflicts of interest. Therefore, staff members shall:

a. discharge their duties solely with the interest and objectives of the Organizations in view

...

c. ... not engage in any activity that is incompatible with the proper discharge of their duties with the Organizations. They shall avoid any action ... that would adversely or unfavorably reflect on their status or on the integrity, independence and impartiality that are required by that status

70. In *AJ*, Decision No. 389 [2009], para. 46, the Tribunal explained:

Principle 3 of the Principles of Staff Employment requires staff members to serve the Bank with a high degree of integrity and loyalty. Every staff member has a special obligation to avoid situations and activities that might (i) reflect adversely on the Bank; (ii) compromise operations of the Bank; and (iii) lead to real or apparent conflicts of interest. The obligation is broad; its objectives are prohibitive as well as preventive. The Applicant had an obligation not to engage in real or apparent conflicts; he also had an obligation to avoid situations and activities that might “lead to real or apparent conflicts of interest.” Principle 3 obligates staff members to “discharge their duties solely with the interest and objectives of the [Bank] in view.” This singleness of purpose should not be compromised by other considerations, such as a staff member’s personal interest in a business relationship of the Bank. This is why the scope of Principle 3 is very broad. It prohibits not only conduct that is clearly wrongful but also conduct that leads to a possible appearance of impropriety.

71. In the present case, it is common ground that the Applicant and Ms. R had a sexual relationship for at least five months while he was her direct supervisor. This created a conflict of interest.

72. Under Staff Rule 3.01, paragraph 4.02, the Supervisor – upon whom the responsibility is clearly placed – is obliged to take appropriate and prompt action to resolve that conflict of interest.

73. The Applicant contends, first, that he “promptly resolved” any conflict of interest that arose by making it clear to Ms. R that he would never “act against the Bank.”

74. The Tribunal finds this argument unconvincing. Perception of a conflict of interest cannot be resolved by private statements made by one sexual partner to another. It is highly implausible that a reasonable observer would consider an actual or apparent conflict between personal and professional loyalties to be resolved in such a way.

75. In the present case, the Applicant repeatedly, and actively, sought to bring about the extension of Ms. R’s contract, both during and after their sexual relationship. Her contract was extended once during their sexual relationship, in October 2012. From January 2013 the

Applicant's colleagues objected to any further extensions of Ms. R's contract, on a number of bases including whether she was a good fit for the work and pay rate. They recommended a different candidate to work on the website project. Despite this opposition, the Applicant pushed for further extensions of Ms. R's contract after their sexual relationship ended (a point to which the Tribunal will return, below), and finally secured a further extension for Ms. R in March 2013 by identifying an alternative funding source. Under the circumstances it would be reasonable to conclude that there were competing professional and personal interests. This conclusion would not be altered by knowledge of private statements allegedly made by one sexual partner to another.

76. The Tribunal also rejects the Applicant's contentions that "the mere fact that an affair occurred in the past does not justify belated charges. Where the participants have put the affair behind them, they are legally entitled to 'get away with it.'" If the Applicant's reference to "belated charges" here is an assertion of a procedural breach, then such assertion is without merit. The mere cessation, by a staff member, of wrongful conduct of which the Bank was unaware, does not somehow absolve that staff member of responsibility for that prior conduct nor does it, in and of itself, time bar the Bank's legal proceedings against the staff member. Under Staff Rule 3.00, paragraph 1.03, EBC exercises its functions regarding allegations of misconduct in respect of both current and former staff members. The relevant time-limit is stipulated in Staff Rule 3.00, paragraph 10.06, which provides that for disciplinary measures to be imposed by the Bank the determination of misconduct must generally occur within three years from the date the misconduct is discovered (*see also BN*, Decision No. 451 [2011], paras. 11, 76; *AB*, Decision No. 381 [2008], paras. 72-73). In the present case, the determination was made well within this time-limit.

77. If the Applicant's argument here is one of substance, the Tribunal is similarly unconvinced. The Tribunal rejects the contention that any conflict of interest was resolved with the end of the sexual relationship. The Tribunal recalls that on 18 January 2013 the Applicant and Ms. R engaged in a two-hour internet chat session which included graphic sexual language. There followed a week of e-mail exchanges between them regarding the extension of Ms. R's contract and the opposition to that extension from Ms. G and others in the unit, with Ms. R

becoming increasingly frustrated and angry with the Applicant. On 3 February 2013, Ms. R e-mailed the Applicant, accusing him of having exploited her for sex and personal gain, and threatening to tell his wife and/or “pursue other channels for resolution.” On 5 and 7 February, the Applicant tried to engage Ms. R in flirtatious internet chats, unsuccessfully. On 12 February he gave her \$6,000 to pay for an IT training course. On 20 February he once more tried to engage her in a flirtatious internet chat, again unsuccessfully. On 1 March Ms. R’s contract was extended, drawing upon funding which the Applicant had obtained from another source after colleagues in his unit opposed funding the extension from the existing source.

78. A reasonable observer, knowing those facts, would perceive that the Applicant, having until recently had a sexual relationship with a subordinate who now appeared to be blackmailing him, had competing personal and professional interests at the time when he pushed for an extension to her contract. This only reinforces the reasonable and serious doubt about the Applicant’s ability to remain objective in such circumstances.

79. Staff Rule 3.01, paragraph 4.02 requires the supervisor to take “prompt” action to resolve the conflict of interest. Depending on the circumstances in each case, promptly ending the sexual relationship may be an important step towards resolving the conflict, albeit not the only one, or sufficient, in and of itself, in all circumstances. In the present case, the Applicant did not even take prompt action to end the sexual relationship, which lasted for at least five months. As is clear from the record, it was Ms. R who decided to bring an end to the physical relationship in December 2012, while it was the Applicant who sought – unsuccessfully – to reengage her in flirtatious internet chats up to 20 February 2013. Moreover, the Applicant failed to seek an alternative reporting arrangement for Ms. R, to disclose the relationship to the Bank, or to request assistance from management to resolve the conflict. There is nothing in the record to suggest that the Applicant pursued any of these options. The Tribunal finds that the Applicant failed to promptly resolve the conflict of interest.

80. The Applicant contends that there is an inconsistency between the Staff Rule relied on by the HRVP (which, on the Applicant’s account, does not oblige disclosure of the sexual

relationship to management), and the Code of Conduct, relied on by EBC (which, on the Applicant's account, does).

81. By its own terms, the Code of Conduct “provides general guidance and complements World Bank Group rules and policies”, and “[w]here there is a discrepancy between the Staff Rules and the Code, the Staff Rules prevail.” However, the Tribunal sees no inconsistencies between the two instruments on this point. The Code of Conduct lists a number of measures to address a situation where there is a sexual relationship between supervisor and subordinate (and thus a conflict of interest). These include: ending the sexual relationship; seeking alternative reporting arrangements for the subordinate; disclosing the relationship to management; and requesting the assistance of management in resolving the conflict. Which of these measures, or which combination of these measures, will be required to adequately resolve the conflict will depend on the facts of each particular case. As is clear from the Staff Rules, any such measures must be taken ‘promptly’.

82. In the present case, as outlined above, the Applicant failed to take any action that might plausibly resolve the conflict of interest that had arisen. This constitutes misconduct under Staff Rule 3.01, paragraph 4.02.

83. Considering the above findings, and taking the circumstances of the case as a whole, the Tribunal finds that that the Applicant's conduct also constituted misconduct under Staff Rules 3.00, paragraph 6.01(b) and (c) (respectively, failure to observe generally applicable norms of prudent professional conduct, and failure to avoid situations and activities that might reflect adversely on the Organizations).

Whether the sanction imposed is provided for in the law of the Bank

84. The HRVP imposed the following disciplinary measures on the Applicant:

- (i) Ineligibility for any future employment at the World Bank Group, as a staff member, contractor, or employee of a contractor;

- (ii) Access to any of the Bank Group’s buildings to be restricted to entry for business needs relevant to the Bank Group, at the determination and discretion of the Vice President, HR or his delegate; and
- (iii) Misconduct letter to remain in his staff record for indefinite duration.

85. Staff Rule 3.00, paragraph 10.06 provides for disciplinary measures including “written censure,” “[r]estrictions on access to the Bank’s premises” and “[l]oss of future employment and contractual opportunities with the Bank Group.” The Tribunal therefore finds that the sanctions imposed on the Applicant were provided for in the law of the Bank.

Whether the sanction is not significantly disproportionate to the offence

86. In *CI*, Decision No. 492 [2014], para. 28, the Tribunal affirmed that whether the disciplinary measures imposed pursuant to Staff Rule 3.00 are significantly disproportionate is to be determined in line with paragraph 10.09, according to which:

Upon a finding of misconduct, disciplinary measures, if any, imposed by the Bank Group on a staff member will be determined on a case-by-case basis. Any decision on disciplinary measures will take into account such factors as the seriousness of the matter, any extenuating circumstances, the situation of the staff member, the interests of the Bank Group, and the frequency of conduct for which disciplinary measures, as provided in paragraph 10.06 above may be imposed

87. Since *Gregorio*, Decision No. 14 [1983], para. 47, it has been clear that the Tribunal

has the authority to determine whether a sanction imposed by the Bank upon a staff member is significantly disproportionate to the staff member’s offense, for if the Bank were so to act, its action would properly be deemed arbitrary or discriminatory.

88. Distinguishing disciplinary cases from other cases involving managerial discretion in *M*, Decision No. 369 [2007], para. 53, the Tribunal held that it

has always recognized that the Bank has discretion to run its business. But punitive measures are not business decisions. They must be subjected to meaningful checks and balances, in the interest not only of individual applicants

but also to realize expectations that the Bank will eschew arbitrary behavior in this sensitive sphere.

89. The Applicant refers to *CK*, Decision No. 498 [2014], a case involving sexual harassment, in which the applicant was demoted by one grade, made ineligible for an annual salary review increase, and had a letter of censure placed on his staff record for a period reduced by the Tribunal to three years. The Applicant in the present case, who was not found to have engaged in sexual harassment as Ms. R had alleged, points out that the applicant in *CK* did not have his employment terminated nor have restrictions placed on his access to the Bank's premises.

90. The Bank responds that few of the disciplinary measures provided for in Staff Rule 3.00, paragraph 10.06 were available in this case, because the Applicant retired from the Bank before the investigation and disciplinary process had concluded. On this point, the Tribunal notes that the Applicant retired in January 2014, while the EBC investigation was ongoing. However there is evidence in the record that, due partly to his deteriorating health condition, as of December 2012 the Applicant had "want[ed] to retire in 1-2 years' time." The Tribunal therefore does not view the Applicant's decision to retire when he did as an act necessarily taken in bad faith to avoid any impending sanctions. The fact remains, however, that it limited the scope of sanctions available to the Bank.

91. It is common ground that the Applicant had a sexual relationship with a direct report, for at least five months. This created a conflict of interest, which the Applicant failed to resolve in a prompt manner. During the sexual relationship, the Applicant pushed for the contract of Ms. R to be extended, which it was in October 2012. After the sexual relationship ended, the Applicant continued to push for the extension of Ms. R's contract. He did so in spite of the objections to such extension on the part of his colleagues, who were of the opinion that the work on the website project could be carried out more effectively, and at a lower cost to the Bank, by another candidate.

92. In considering the seriousness of the misconduct in the present case, the HRVP noted that the Applicant's failure to resolve the *de facto* conflict of interest was more serious "in light of his

supervisory role and relative position of influence and authority to Ms. R.” The Tribunal recognizes that managers are in a position of special trust and must therefore be even more vigilant as to actual and apparent conflicts of interest.

93. EBC found evidence of a *de facto* conflict of interest, which constitutes a breach of a fiduciary relationship that any employee has with the Bank. In light of the fact that the Applicant failed to promptly resolve the conflict of interest which arose as a result of engaging in a sexual relationship with a direct subordinate, his continuing failure to appreciate, having worked at the Bank for 20 years, that his conduct resulted in a conflict of interest, and the circumstances of the case as a whole, the Tribunal is of the view that the disciplinary measures imposed by the HRVP are not significantly disproportionate.

Whether the requirements of due process were observed

94. The Applicant contends that the application, by EBC and the HRVP respectively, of “two competing laws” in the Code of Conduct and Staff Rule 3.01, paragraph 4.02, violated the Applicant’s right to legal certainty, and thus constituted “serious due process violations.”

95. The Tribunal disagrees. Legal certainty requires that the applicable rules be clear and accessible to persons who are bound by them. The Staff Rules of the Bank were clear and easily accessible to the Applicant who, it is recalled, had been with the Bank for 20 years. Moreover, the Applicant can reasonably be expected to have acquired a thorough knowledge of the Rules, Principles of Staff Employment, and guidelines relevant to the important responsibilities he had as a supervisor (*Koudogbo*, Decision No. 246 [2001], para. 31). Even setting aside his senior position, the Tribunal has frequently found that staff members “must be held to awareness of the Staff Rules” (*Mahmoudi (No. 3)*, Decision No. 236 [2000], para. 21), and that ignorance of the law is no excuse (*see Vick*, Decision No. 295 [2003], para. 28).

96. Turning to the Code of Conduct, as stated in the President of the Bank’s introductory letter this was “required reading for all staff.” As the Bank observes, in 2010/2011, EBC sponsored a “Living our Values E-Learning course”, completion of which by 31 January 2011

was mandatory for all Bank staff, including the Applicant. The Tribunal has previously had regard to the Code to inform its interpretation of Staff Rules (*CB*, Decision No. 476 [2013], para. 38; *CK*, Decision No. 498 [2014], para. 73).

97. As a senior staff member of the Bank, the Applicant was obliged to comply with the Bank's law on, *inter alia*, supervisory relationships; this included the relevant provisions of the Principles of Staff Employment, the Staff Rules, and the Code of Conduct (*see* Staff Rule 3.01, paragraph 3.01). Further, Staff Rule 3.00, paragraph 6.01, on the scope of misconduct allegations to be addressed by EBC, provides that misconduct "does not require malice or guilty purpose, and it includes failure to observe the Principles of Staff Employment, Staff Rules, Administrative Manual, Code of Conduct, other Bank policies, and other duties of employment...."

98. The Tribunal is similarly unpersuaded by the argument that the alleged conflict between Staff Rule 3.01, paragraph 4.02, on the one hand, and the Code of Conduct on the other, undermined this legal certainty. As discussed above, the Tribunal does not perceive any conflict between the two.

99. The Tribunal therefore finds that the requirements of due process were observed.

DECISION

All pleas are dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 29 May 2015