



**World Bank Administrative Tribunal**

**2015**

**Decision No. 513**

**CS,  
Applicant**

**v.**

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

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

**CS,  
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 31 October 2014. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. 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 Bank's decision of 26 February 2014 notifying him that his Term appointment would not be renewed after its expiry on 30 September 2014. He alleges that the Bank "fabricated" reasons for the non-renewal of his appointment and that it was in fact an act of retaliation related to (i) his outspoken support of reform initiatives at the Bank and (ii) the fact that he had reported his Manager's allegedly harassing behavior to his Director. He also makes a separate claim that he was harassed by his Manager.

#### **FACTUAL BACKGROUND**

4. The Applicant, an accountant by profession, joined the Bank in September 2005 as a locally recruited Financial Management Specialist, Level GF, on a three-year Term appointment in the country office in Country L. The Bank's Financial Management (FM) staff support project preparation and implementation, advise on management of FM risks through audit compliance and portfolio monitoring, and assist countries to build their FM capacity.

5. By a Letter of Appointment dated 20 December 2007, the Applicant was offered “reassignment to a Term appointment until the end of your four year limit, September 18, 2009” based in the country office in Country C. The Letter of Appointment stated that his “reassignment will terminate on September 18, 2009 unless a new appointment is made” and that “the World Bank has no obligation to offer a new appointment, even if your performance is outstanding, but it may do so if agreed in writing at the time of the expiration of the appointment.” The Applicant signed his Letter of Appointment on 11 January 2008, including the statement that he accepted his “appointment to the staff of the World Bank Group, under the terms and conditions of employment set forth in my letter of appointment and the policies and procedures of the World Bank Group presently in effect and as may be amended from time to time.”

6. On 20 July 2009, the Applicant’s appointment was extended until September 2011. On 4 May 2011, it was extended until September 2012. In July 2011, he was promoted to Senior Financial Management Specialist, Level GG. On 27 December 2011, his appointment was extended until 30 September 2014.

7. In early 2012, the Applicant’s Director suggested that the Applicant be reassigned to another office to assist his professional growth, his awareness of corporate issues and culture, and his mid-term objective of becoming one of the Bank’s Country Managers. In an e-mail of 22 June 2012, the Applicant’s Director offered to reassign him to, among other offices, the Bank’s headquarters in Washington, DC. In an e-mail of 23 June 2012, the Applicant replied, saying that he had discussed the offer with his family, and that:

We have decided that Washington DC will be best option in terms of my future career developments, as you all suggested ... I would like to start HR processes as soon as possible and move to DC around September 1, 2012. I hope that my term contract will be at least for 3 years so that we are sure about location during high school period for my two older boys.

8. In July 2012, Ms. J (“the Manager”) was appointed as manager of the Financial Management team in the Applicant’s region. Ms. J had been involved in the earlier exchanges relating to the Applicant’s proposed move to Washington, DC. On 3 September 2012, the

Applicant was reassigned to the Bank’s headquarters in Washington, DC. He had two years remaining on his Term appointment.

9. On 26 September 2012, the Applicant’s 2011–12 Overall Performance Evaluation (OPE) was completed. This covered his last year working in Country C. He received five “Superior” ratings. He drew particular praise for significantly improving the performance of a Corporate and Public Sector Accountability Project (CAPSAP) in which he served as Task Team Leader (TTL). Among the observations on his performance, it was noted that the Applicant sometimes became “too excited and emotional” about the project he worked on. In the view of his (then) supervisor, the Applicant’s “move to HQ is intended to provide him with the broader and balanced institutional perspective and provide him with further opportunities of growth and career development.” In his remarks on the OPE, the Applicant expressed the hope that the move to Washington, DC “will give me more opportunities to develop my technical and interpersonal skills.”

10. In early October 2012, an independent review of the Operations Services and Quality Department noted that the region in which the Applicant worked was “facing a significant funding gap in FY13” and that the FY13 budget for lending and supervision was 10% lower than it had been in FY10. It went on to say that:

Budget estimates for FY13 suggest a rapid decline in the size of the investment lending portfolio and a commensurate drop in fiduciary spending. However, this does not take into account the large and expanding trust funds portfolio ... [O]ver the medium term, [the region] can expect a significant shift in the nature of the demand for fiduciary services as a result of greater reliance on country systems; there will be less emphasis on transactions and more on analysis and capacity building.

...

There are six drivers that will affect [the region’s] fiduciary needs over time:

- Fiduciary staff levels (pay)/grade mix: staff in field offices [are] clearly less expensive, even though the gap has been narrowing ...
- Fiduciary staff location (travel) also has an impact on travel costs. Over 50% of travel costs are for trip to [a specific part of the region] and increasing the use of local staff there will have a particularly strong impact on the travel budget.

...

While budget allocations for fiduciary functions in [the region] are low, both when compared to the rest of the Bank and to projected costs, there is still space for improvement. On procurement in particular, we have seen how over 89% of financial resources are spent on supervision. It is interesting to note that the [region] had the highest number of prior reviews in FY11.

...

A specific target for the reduction of procurement supervision costs should be set, combined with a revision of prior reviews thresholds. Efficiency gain in the order of 10-20% should be achievable even in the short term.

11. According to Ms. J, the Applicant's Manager, the consequence of this review was that "[d]ue to ... budget constraints and changing business needs in [the region], we needed to recruit [Locally Recruited Staff] and build local capacity. I was asked to explore options to rebalance [Locally Recruited Staff and Internationally Recruited Staff] to identify savings and reduce the department overrun on fiduciary tasks."

12. In November 2012, in a casual conversation while on mission with his Manager, the Applicant commented that he supported the reform initiatives of the World Bank President, and told the Manager that many critical views of the Bank had been expressed on its internal website (known as "Spark"). According to the Applicant, the Manager became angry and told him that "all who criticize the Bank should leave the Bank." According to the Bank, the Manager "did not, in any way, change her demeanor toward [the] Applicant after learning of his support [for] the Bank's reform initiatives."

13. On 13 November 2012, and 14 and 15 January 2013, the Applicant posted comments regarding the Bank's reform process on Spark.

14. Also in January 2013, at a Town Hall meeting with the Bank President, the Applicant commented that he thought benefits for Washington-based staff were very good. The Applicant states that his Manager, who was also at the meeting, subsequently told him that she did not agree at all. At another meeting, according to the Applicant, she openly expressed opposition to many of the President's reform initiatives.

15. On 7 May 2013, the Applicant posted a further comment on the Spark website.

16. The Applicant's 2013–2014 Results Agreement (RA) stated that his work objectives for the period 1 July 2013 to 30 June 2014 would be: (1) to hand over the Country O portfolio to a colleague in the Country N country office; (2) to ensure timely review and advise on Quality Assurance (QA) reports in four countries; (3) to provide assistance to an identified FM team in the management of public financial management and fiduciary work in a sub-region, including supporting pipeline projects in Country S and Country G and producing audit report reviews for all Country G projects until March 2014; (4) to act as TTL for the CAPSAP project; (5) to monitor audit compliance for the region; and (6) to act as TTL for a grant project in Country Q.

17. On 12 September 2013, the Manager wrote an e-mail to her staff stating:

Due to a variety of factors, including relocation and leave plans, our staff number is temporary [sic] down in numbers. Consequently, there is a need for some of our colleagues to carry an extra burden on fiduciary responsibilities for the coming 3 months until around the end of 2013 by which time I hope to have recruited additional staff to fill the current gaps. In addition, [Mr. M (Lead Financial Management Specialist in the unit), and another staff member] are running data on the FY14 workload with the intention of providing me with information to identify [Quality Assurance Financial Management Specialists (QA-FMSs)] and FMS Sector Leader for the portfolio along our discussion in [a city in the region]. Reallocation of country responsibilities for FMSs at HQ is also under consideration. This information will be shared with you in due course and before the end of this month. In the meantime, due to workload pressures ... the following interim arrangements will apply until December 2013 ....

Wherever possible STCs may be appointed to alleviate the extra workload ....

18. On 25 September 2013, the Applicant's OPE was finalized. This covered his first year working in Washington, DC. He received two Superior ratings and the significant improvement of the CAPSAP project, for which he was TTL, was again noted. The Manager commented:

The past year was a year of transition for [the Applicant] who relocated to DC after spending 7 years in the [country offices] since his recruitment. I'm glad to notice that since [the Applicant] has taken the responsibility as TTL for CAPSAP,

the project has made significant improvement. The turnaround the project has experienced in terms of technical progress over the last year owes a lot to the strong relationship that [the Applicant] as the TTL seems to have built with the MOF and the project implementation team. He is passionate about his project and has a good understanding of the country's political economy. ... With respect to fiduciary work [the Applicant] conducts regular FM supervision missions and follows up. He did good work on FM project preparation and implementation support/supervision, and maintained good relationships with clients and task teams.

19. The Manager noted that the Applicant "seems sometime unease [sic] to provide comments as part of his QA function to avoid frustrating FM colleagues." She stated that she would "work with him to ensure that he uses well his knowledge of FM policies and procedures to play more effectively his QA role," and continued that:

[The Applicant] is focused on the client's needs and does everything he can to deliver. ... [To] be more effective in his communication and gain support from his audience, [he] would benefit from adapting his communication style. Without compromising the courage of his conviction this would help him be more effective in convincing his audience. I remain open to exploring any training opportunity that could help [the Applicant] in that respect. Going forward, [the Applicant] is expected to maintain the momentum gained by CAPSAP and make a quantum leap in implementation to take full advantage of the on-going restructuring. On the fiduciary side and PFM, [he] has great ability to contribute even better to the team success. I'm looking forward for him to proactively raise the bar on his contribution and display his full potential to be a key member of FM team.

20. On 27 September 2013 at 12:01am, the Manager sent an e-mail to the Applicant attaching a workload analysis that had been undertaken "to ensure equitable distribution of our program in the unit." The Manager commented:

As discussed today, you will find attached the estimate that was done for your FY14 work program. With respect to CAPSAP, I have allocated 15 weeks as you will be able with your TTL budget to recruit a consultant to support you ... As to IDF in [Country O], in our current context of budget restrictions, I will ask [Ms. L, an FM colleague based in a country office] for now to take on the project and provide support to [a third staff member]. ...

As mentioned to you during your OPE and RA discussion I'm expecting you to provide fiduciary support in [the sub-region] during the transition while I am making arrangement to recruit an [Extended Term Consultant (ETC)]. This

support includes preparation of all pipeline projects in [Country S] and [Country G], as well as the review of audit reports for all [Country G] until March 2014.

21. At 4:50am the same day, the Applicant replied:

[Y]ou and [Mr. M] should have shared work analysis for me with me, adjust it as necessary after consultations with me and then add additional workload. ...

I am anyway doing [Country Q] SAFE grant and there will be no additional travel costs for [Country O] IDF. But, I am fine with your decision.

I am also fine with [Country G, Country S] pipeline projects support. However, I would like to know list of projects that I will be supporting so that I will be accountable for them.

Re review of audit report: I still think that this should be done by FMS who were actually responsible for those projects in FY 13 as I do not know project issues/details for [Country G] projects. However, if you still insist then I will do them.

22. At 5:17am, the Applicant followed up with an e-mail stating:

Your workload analysis is still not correct for me ... [it] did not take into account time of more than 5 weeks that I already spent or will be spending on [Country O] portfolio.

23. The Applicant has subsequently explained that he was “very upset that he had not been consulted about his current workload” and that the workload analysis was inaccurate. By his account, when he questioned the Manager about this, she became very angry, shouted at him, and threatened him with “a different conversation if you choose that route.” The Applicant states he felt “very threatened” by this exchange.

24. The Applicant also discussed the work program changes with Mr. M, the Lead Financial Management Specialist in the unit. According to the latter, when the Applicant learned of the changes he became “angry and disrespectful,” and “acted in a very unprofessional manner” towards Mr. M. The Applicant has acknowledged that he “may have had a ‘wrong tone’ during the conversation” with Mr. M, to whom he later apologized.



25. On 29 September 2013, the Manager sent an e-mail to the Applicant stating:

We met and spoke.

As I mentioned to you the workload analysis was done meticulously and thoroughly ... I thank you for providing information that will help revising the document which is, as you know, an attempt to rebalance workload among team members, align our resources with our work program, and find temporary solutions while I am filling positions in DC and [two cities in the sub-region].

... I confirm my previous emails that your support will include preparation of all pipeline projects in [Country S and Country G], as well as the review of audit reports for [Country G] until March 2014.

I take good note of your views according to which FMS should be better positioned to perform the audit review report. However I know that you are an experienced [Senior] FMS and able to review an audit report based on your job knowledge as well as all relevant information available ....

Many thanks for your support.

26. Two minutes later, the Manager sent an e-mail to the unit, stating:

As per my earlier E-mail of September 12 ... I have reviewed the workload based on the current portfolio data, WPA tasks and the reallocation of QA-FMS and FM Sector Leader responsibilities. In addition to the interim fiduciary arrangements announced on September 12, the following changes will come into effect on November 1 to allow for a smooth transition:

...

[Work assignments to other team members]

...

[The Applicant]: Support to [identified] colleagues on pipeline projects in [Country S and Country G] and Audit Report Reviews for all [Country G] projects (until March 2014).

27. According to the Applicant, in October 2013 the Manager accused him of “lecturing the entire world” through his postings on the Spark website.

28. Around this time, the Applicant consulted the Bank’s Ombudsman, who suggested that the Applicant speak with his Department Director.

29. On 7 October 2013, the Manager circulated an e-mail stating:

We have recently reviewed the workload, governance and quality review arrangements in our FM-unit. As a result, I have asked [the Applicant] to take up different responsibilities.

Consequently [Ms. L], based in the [Country N] Office, will take over full country FMS responsibility for the portfolio in [Country O] in addition to her current [Country N] portfolio.

This change will come into effect on November 1 to allow for a smooth transition between [the Applicant] and [Ms. L] and to minimize ... any disruptions on providing FM support.

30. On 29 October 2013, the Applicant spoke with his Department Director about his treatment by the Manager. The Department Director suggested that the three have coffee or lunch together to resolve the issues. While this lunch did not take place, the Applicant states that from this point onwards his Manager did “moderate her tone and no longer openly insulted” him.

31. On 1 November, 11 December and 19 December 2013, the Applicant posted further comments regarding the Bank’s reform process on the Spark website.

32. In January 2014, the Manager rejected the Applicant’s request to combine mission travel to the region with personal travel that would enable him to renew his passport and obtain a necessary exit visa from his national government.

33. On 15 January 2014, a Senior Financial Management Specialist was hired to join the Manager’s team. According to the Bank, he was hired to replace a staff member who had left the unit in September 2013.

34. On 3 February 2014, the Applicant posted another comment on the Spark website.

35. On 24 February 2014, a second Senior Financial Management Specialist was hired to join the Manager’s team. According to the Bank, he was hired to replace another staff member who left the team in April 2014.

36. The same day, the Manager informed the Applicant that she would not be renewing his contract, which was due to expire on 30 September 2014. According to the Applicant, she told him that she did not need his services anymore. According to the Manager, she offered to help the Applicant in his job search but he declined this offer as he did not “trust her.” On 26 February 2014, the Manager sent the Applicant written notice of her decision not to renew his contract, noting that his contract would expire on 30 September 2014.

37. In or around March 2014, the Manager hired a Short Term Consultant (STC) to share the Country G portfolio with another colleague.

38. In March 2014, the Applicant contacted the Bank’s Office of Ethics and Business Conduct (EBC), to complain about his Manager’s refusal to extend his contract, and her alleged retaliation.

39. On 6 March 2014, the Applicant posted another comment on the Spark website.

40. In or around May 2014, the Manager hired two new colleagues into one of the Bank’s offices in the region, one of whom became one of two TTLs taking over the CAPSAP project that had been previously led by the Applicant. She also announced that one Senior FM Specialist position and one FM Analyst position would be opened in other offices in the region.

41. On 2 May 2014, following failed mediation sessions on 9 and 14 April that had been requested by the Manager, the Applicant filed a Request for Review with Peer Review Services (PRS) in which he requested review of the Bank’s decision not to renew his Term appointment.

42. In the Manager’s Response to that Request, filed on 27 June 2014, she commented, in relevant part:

As a result of the workload reorganization and the transfer of FM responsibilities to [Country Office FM Specialists], [the Applicant] was asked to provide support to the [sub-regional] FM team with regard to pipeline projects and audit reviews. [The Applicant] objected in a negative and loud manner .... He clearly told [both the Manager and Mr. M] that he was not interested in fiduciary work .... He made

it clear that he was not interested in helping out the FM team in [the sub-region] on fiduciary work, even on a temporary basis. ... I told him that I neither could afford nor could allow one staff member to refuse to perform fiduciary work. ...

Faced with the situation in which a staff member refused to do core work that was indispensable and required ... I had to explore other staffing alternatives ....

Based on the fact that [the Applicant] did not want to do fiduciary work and that the CAPSAP project could be managed by the [Country Office FM Specialists] until the closing date of June 30, 2015, from a business perspective it did not make sense to renew his contract ending September 2014.

43. On 14 July 2014, the Applicant met with the EBC investigators, who informed him that their investigation did not reveal evidence to substantiate his allegations against Ms. J, the Manager.

44. On 6 August 2014, the PRS Panel sent its Report to the responsible Vice President. In the Panel's view, the Bank had acted consistently with the Applicant's contract of employment and terms of appointment. The Panel recommended that the Applicant's request for relief be denied. On 8 August 2014, the Vice President accepted the Panel's recommendation and rejected the Applicant's request.

45. From early August through to late September 2014, the Applicant communicated with colleagues in country offices and in Washington, DC, regarding the possibility of an STC position with the Bank from October to December that year. On 19 September 2014, a colleague in the Bank's Country C office wrote to the Applicant to say that a more senior colleague was "not convinced" that hiring the Applicant for an STC appointment was justified.

46. The Applicant states that the Manager, Ms. J, "apparently interfered with [his] attempt to find alternative Bank employment" in the form of this STC contract, which was ultimately not forthcoming. The Applicant raised these concerns with EBC, but the latter concluded that there was no factual basis to support the allegations of interference by Ms. J, and closed the case as unsubstantiated.

47. The Applicant's 2013-2014 OPE was finalized on 29 September 2014. In terms of the first two tasks which had been outlined in his 2013-2014 RA (*see* paragraph 16 above), the Manager stated that "the handover of the [Country O] portfolio went seamless" and that "overall [the Applicant] did perform his QA function adequately."

48. Turning to his third task (provide assistance to an identified FM team in the management of public financial management and fiduciary work in a sub-region), the Applicant stated that he had not been asked to work on pipeline projects in Countries S and G, or to review audit reports for Country G, but that he had been asked to, and did, assist with tasks relating to other countries. For her part, the Manager stated that the Applicant "could have been more proactive and like other colleagues use the monthly portfolio report sent to all FMS to engage in fiduciary work."

49. With respect to his fourth task, the CAPSAP project, the Manager commented that the Applicant "continued to demonstrate keen interest in CAPSAP," that he "contributed to the November 2013 restructuring" and that he "tracks projects' achievements and provides regular feedback to management on progress made."

50. In terms of monitoring audit compliance, the Manager stated that the Applicant "did follow-up on audit receipt when asked ... He could have been less reactive and demonstrate more leadership on this critical area." Regarding his work as TTL for a grant project in Country Q, "the substantial delays with this project are not necessarily his fault but mainly due to cumbersome ... procedures," albeit "closer communication with clients to ensure that they did what was required could have reduced slightly those delays."

51. In evaluating his core Bank competencies, the Manager stated that the Applicant "is active and motivated on subjects he enjoys such as CAPSAP projects and matters that are important to him," that he usually works well with FM colleagues, but "could adapt his communication style to build relationship with other important stakeholders in the Region and sectors." Similarly, the Applicant "would benefit from improving his communication style to better build partnerships for learning and knowledge sharing."

52. The Manager's overall comments were as follows:

[The Applicant] has continued to demonstrate his passion for CAPSAP and motivation for project's success. [He] is focused on the client's needs and contributes to project's success. With respect to fiduciary work [he] conducts regular quality assurance and has the ability to contribute to the fiduciary agenda but expresses less interest in this area and could proactively raise the bar and display his full potential in the area. As mentioned last year, to be more effective in his communication and gain support from his audience, [the Applicant] would benefit from adapting his communication style. Without compromising the courage of his conviction this would help him be more effective in convincing his audience.

53. In the Applicant's comments included in this OPE, he stated as follows:

I believe that non renewal of my term contract after 9 years of successful performance is directly linked to my style of communication and my views on certain things in the Bank. I have usually my own views, which are usually significantly different than views of others, on many things within the Bank. I openly expressed my interest in PFM areas and not interest in fiduciary areas to my manager. I have been doing fiduciary work for more than 9 years and wanted to move to areas that are more interesting to me. Instead of assisting in this transition, my manager gave me more fiduciary work, transferred my own PFM responsibilities to other staff ([Country O] grant etc.). My manager created a hostile environment where I could not work to my full potential.

54. On 30 September 2014, the Applicant's appointment expired.

55. In October 2014, the Manager hired a third Senior Financial Management Specialist. According to the Bank, he was hired to replace a staff member who had left the unit in March 2014.

56. On 31 October 2014, the Application, including a request for provisional relief, was received by the Tribunal.

57. On 16 December 2014, having considered the submissions of the parties, the President of the Tribunal decided to grant provisional relief.

58. The Applicant seeks the following remedies: his reinstatement as a Senior Financial Management Specialist reporting to a manager other than Ms. J; an amount equivalent to his salary and benefits from 1 October 2014 until the date of his reinstatement; such additional compensation as the Tribunal deems fair and just for the reputational damage and harm to his career, the loss of potential benefits and income, the intangible damages and distress caused by the unfair non-renewal of his contract, and the pain and suffering caused to him and his family; and his attorney's fees in the amount of \$13,865.56.

## SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

### *The Applicant's Main Contentions*

59. The Applicant submits that he was treated unfairly and retaliated against for (i) reporting his manager's harassment and (ii) his active support of the President's reform initiatives. He asserts that the Manager "developed great personal animosity towards him initially because of his active and outspoken involvement with the President's reform initiatives and later because he reported her for harassment" and that after committing "considerable resources to hiring his replacements ... she told him he had an insufficient work program and that she did not have the budget to extend his contract."

60. The Applicant strongly denies the Bank's assertion that he refused to do work that he was assigned, and asserts that the Manager's "abusive and offensive comments" dissuaded him from seeking extra work in the sub-region. He also denies the Bank's assertion that he did not have a full work program in 2014. He contends that the Bank's assertion that there was budget pressure in his unit is false, as illustrated by the fact that his Manager hired three new Senior Financial Management Specialists immediately prior to informing the Applicant that his services were no longer required. He states that the new staff members were given his former tasks. He contends that his Manager "deliberately set about replacing him, gave the replacements the available work, and then said there was neither a work program nor funds for him"; she thereby "fabricated" business reasons for not renewing his contract.

61. The Applicant contends that there was sufficient work for him to have a full work program but that the Manager simply wanted other newly hired staff to do it rather than him. According to the Applicant, given his “excellent performance record, the only possible explanation for her hostility can be retaliation for his challenging her abusive treatment of him or for so enthusiastically supporting the President’s reform initiatives.” He adds that given “the many work opportunities available that were instead offered to the three new Senior Financial Management Specialists hired by [the Manager] in early 2014, and the false accusations made against him that he refused to do assigned work, it is impossible to escape the conclusion that her decision to get rid of him was in retaliation for his outspoken involvement in the changes taking place in the Bank.”

62. The Applicant also contends that Ms. J created a hostile work environment by shouting at him, insulting him, isolating him, depriving him of information about the pipeline projects he was supposed to be overseeing, accusing him repeatedly of misusing official travel for personal reasons, and hiring others to do his job.

*The Bank’s Main Contentions*

63. The Bank states that managers have no obligation to consult staff members prior to establishing their work programs and contends that the fact that the Applicant’s Manager reassigned tasks within her unit to meet business needs “cannot be construed as retaliation.”

64. The Bank asserts that the Manager acted fairly, respectfully and in accordance with the Applicant’s contract and terms of appointment, and that the Applicant’s claims of retaliation are baseless. According to the Bank, the record contains no evidence that the Manager bore any personal animus towards the Applicant, and on the contrary, contains evidence that the Manager maintained a professional and supportive relationship with him.

65. The Bank submits that the Applicant’s contract was not renewed because the Manager “had been tasked with identifying cost-saving measures within her unit, and addressing shortfalls in her staff’s work program.” The Bank contends that the “newly hired staff” were hired to



replace other, long-standing, staff members who had left the unit, and were given work different to that of the Applicant. The Bank further submits that “[i]n light of the fact that Applicant refused to perform work and only took responsibility for the CAPSAP project, which the Manager determined could be completed by the Country Office [Financial Managers], the Manager did not have a full time work program that would justify extending [the] Applicant’s term contract.” The Bank goes on to argue that the Manager “was in the best position to assess whether there was sufficient reason to renew [the] Applicant’s term contract. Without proof of the Manager’s abuse of discretion or retaliatory conduct, [the] Applicant’s claims are merely speculative and should be dismissed.”

## THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

### THE NON-RENEWAL DECISION

#### *The Nature of Fixed-Term Contracts*

66. The Applicant does not dispute that he was employed pursuant to a Term appointment, that is, an appointment for a specified duration pursuant to Staff Rule 4.01, paragraph 2.01(d). His Letter of Appointment included the standard provision, according to which “the World Bank has no obligation to offer a new appointment, even if your performance is outstanding, but it may do so if agreed in writing.”

67. The Tribunal has previously explained, in *Mr. X*, Decision No. 16 [1984], para. 35, that:

A fixed-term contract is just what the expression says: it is a contract for a fixed period of time .... Whatever may be the character of the work which a member of staff performs, his legal position is controlled by the terms of his appointment. The possibility exists, of course, that the character of the work may encourage a staff member to seek some formal amendment of his standing. But that is a matter of negotiation; such modification cannot come about automatically.

68. Notwithstanding the foregoing, the Tribunal has held that there may be circumstances which create a right to renewal. In *Carter*, Decision No. 175 [1997], para. 13, the Tribunal held that

consistent with the prevailing decisions of all international tribunals ... “[t]he possibility exists ... that there may be something in the surrounding circumstances which creates a right to the conversion of a fixed-term appointment to a permanent one” ....

69. In *Kopliku*, Decision No. 299 [2003], para. 10, the Tribunal noted that:

Another restriction upon the Bank arises when circumstances warrant the inference by a staff member that the Bank has indeed made a promise to extend or renew his or her appointment either expressly or by unmistakable implication.

70. The decision to extend the Applicant’s contract of employment falls within the Bank’s discretion. As the Tribunal held in *Barnes*, Decision No. 176 [1997], para. 10, such decisions, “like any other exercise of discretion by the Respondent, must be reached fairly and not in an arbitrary manner.” Discretionary decisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or which lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a staff member’s contract of employment or terms of appointment (*AK*, Decision No. 408 [2009], para. 41). The Tribunal will accordingly consider whether the Bank properly exercised its discretion in deciding that it would not extend the Applicant’s contract.

*The reasons given for the non-renewal*

71. On 24 February 2014, the Manager informed the Applicant that she had decided not to renew his appointment because “she did not need his services anymore.” In her response to the Applicant’s request for review by PRS, she provided more detailed reasons, stating that the Applicant

was given a solid Results Agreement ... and every opportunity to justify a full-time job before I considered other options. However, based on his reluctance and selectivity about the work he was willing to do, the tasks were transferred to other colleagues in the field.

I oversee a limited budget with a specific number of positions allowed. Faced with the situation in which a staff member refused to do core work that was indispensable and required from each staff member, I had to explore other staffing alternatives and, ultimately, not to renew the contract of the staff member

who refused to do the work. I do not at this time have a full work program to offer [the Applicant], which is a prerequisite for every extension.

Based on the fact that [the Applicant] did not want to do fiduciary work and that the CAPSAP project could be managed by the [country office FM Specialist] until the closing date of June 30, 2015, from a business perspective it did not make sense to renew his contract ending September 2014. ...

I have always supported [the Applicant] both professionally and personally with the goal of helping him to grow and succeed.

72. In its Answer, the Bank asserts that a desire to improve the efficiency of work allocation and budget constraints “created the need to rebalance the tasks performed in [country offices] and in Washington, D.C.” and that “the Manager was asked to explore options to make the work distribution more efficient and reduce the departmental budgetary overrun in fiduciary (e.g., supervisory) tasks.” It goes on to say that, in view of the reassignment of some tasks from Washington to country offices, the Applicant “was asked to provide more support by performing additional fiduciary tasks” but that as his “preference was to not perform fiduciary-related work, his workload was limited to the management of the CAPSAP project.”

73. The Applicant says first that, contrary to the Bank’s claims, he did not refuse to do the work assigned to him by the Manager in late September 2013, and made clear that if she insisted, he would do it. He indicates that he was not proactive in seeking extra work in the region near his home country because his Manager had made “offensive comments” about him only being interested in such work so that he could visit his home country and his aging parents.

74. Secondly, he says that, contrary to the Bank’s claims, his work program was full and that he “was doing far more work in February 2014 ... than he had been doing in September 2012 when he first moved to Washington.” He states that in 2012 he had three assistants working with him on the CAPSAP project, but by 2014, had no assistants at all. He adds that he had QA responsibilities for four countries in 2014 but only one in 2012, and had also taken on TTL responsibilities for a Trust Fund in Country Q.

75. Thirdly, he states that the Bank’s claim that budgetary pressure was a reason for not

renewing his contract is belied by the fact that the Manager hired “three new Senior [FM] Specialists immediately prior to informing [the Applicant] that she no longer needed his services,” and asserts that the Manager “deliberately set about replacing [the Applicant]” and “gave the replacements the available work.”

76. On the latter point, the Bank responds that the three “newly hired staff” were in fact brought in (in January, February and October 2014) to replace three long-serving staff members who had left the unit (in September 2013, April 2014 and March 2014, respectively). The Bank further points out that these staff members performed work different from that of the Applicant.

77. The Tribunal observes that the Bank must give an honest reason for the non-renewal of a Term appointment. This is congruent with the Tribunal’s observation in *Skandera*, Decision No. 2 [1981], para. 28, that:

It is in the interest of the Bank that the employment of qualified employees not be terminated on the basis of inadequate facts or ill-founded justifications, and one way to assure this is to furnish the staff member at the time of termination with a specific and true assessment which will provide a fair opportunity to the individual to dispute, and possibly to seek rectification of the decision of the Bank.

78. In the present case, the Bank advances two – related – justifications for the non-renewal decision. First, the re-organization of the unit which reduced the amount of work which could, even in theory, be assigned to the Applicant. Second, the Applicant’s refusal to perform some of the tasks assigned to him. The combined effect of these factors, according to the Bank, was that it made little business sense to extend the Applicant’s contract beyond September 2014. The Tribunal will consider these two factors in turn.

79. *Re-organization of the Unit.* The Tribunal notes that as of early September 2013, the independent review which had been carried out the year before, and which had identified a range of possible cost-cutting measures, had not had any discernable consequences so far as the Applicant was concerned. Moreover, it is not clear from the record that the reassignment of

the Applicant's workload from late September 2013 onwards was motivated exclusively by the need to cut costs in the unit as identified in that review.

80. The Manager's e-mail to the unit of 12 September 2013 stated that some reallocation of tasks within the unit would be necessary because "our staff is temporary [sic] down in numbers" and so there was a need "for some of our colleagues to carry an extra burden on fiduciary responsibilities for the coming 3 months until around the end of 2013 by which time I hope to have recruited additional staff to fill the current gaps." Rather than a long-term cost-cutting measure, this constituted a response to a temporary shortfall in staff numbers resulting, in the Manager's words, from "a variety of factors, including relocation and leave plans." In a subsequent e-mail to the unit, the Manager described these as "interim fiduciary arrangements." The workload analysis and reassignment of work which was carried out later in September 2013 was described by the Manager as "an attempt to rebalance workload among team members, align our resources with our work program, and find temporary solutions while I am filling positions in DC and [two cities in the sub-region]." Again, it was not exclusively a measure aimed at cost-cutting.

81. More closely linked to cost-cutting, it appears, was the move to transfer some of the tasks to staff based in the country offices. The Bank states that this decision did not just affect the Applicant, that the tasks of one other staff member were also transferred. As of 1 November 2013, the Applicant's FM responsibilities for the Country O portfolio were transferred to a country office colleague. This transfer had been anticipated in the Applicant's 2013-2014 Results Agreement. The Bank states that a second transfer of FM responsibilities to country offices occurred after the Applicant's contract ended. However, the evidence adduced here by the Bank (a 3 October 2014 e-mail from the Manager to her unit) does not fully support the contention; the reallocation of work is stated by the Manager to be an effort to "balance work load amongst all staff in our unit" rather than cutting costs *per se*, while at least four of the nine tasks appear to have been reassigned to staff based in Washington, DC.

82. Turning to the consequences which these processes had for the Applicant's workload, while there is support in the record for the Bank's assertion that his work program was not full

following the Manager's reorganization, the evidence is not entirely consistent.

83. According to the Workload Analysis, conducted by Mr. M and produced by the Bank following a request by the Tribunal, even after the Country O work had been reassigned to country office staff, the Applicant still had a workload for FY14 of 46.5 weeks. According to the Analysis, this was greater than that of several other staff in the unit.

84. The Bank contends that, in view of the reassignment of some tasks from Washington to country offices, the Applicant "was asked to provide more support by performing additional fiduciary tasks" but that as his "preference was to not perform fiduciary-related work, his workload was limited to the management of the CAPSAP project." The latter comment is not supported by the record. As noted at paragraphs 47-50 above, the Applicant's 2013-2014 OPE indicates that of the six tasks included in his RA for that year, only one (the Country O project, accounting for 15 of the Applicant's 46.8 staff weeks in FY13) had been handed over to the country office. In the 2013-2014 OPE the Manager assessed the Applicant's performance in respect of four tasks other than the Country O project and CAPSAP. True, her evaluation of his performance was not entirely positive, and certainly more critical than in the preceding OPE, but that is a separate issue. The Bank has not claimed that the Applicant performed tasks other than CAPSAP poorly, but rather that he essentially had no tasks other than CAPSAP. The Tribunal observes that of the four tasks (other than CAPSAP and the Country O project) for which the Applicant was evaluated, his apparent failure to be proactive was flagged in respect of two only.

85. According to his final OPE, then, there were at least two tasks (in addition to CAPSAP) on which the Applicant was continuing to work without displaying any of the problematic reluctance (or, still less, refusal) with which the Manager had taken issue. This is contrary to the Bank's assertion that, due to his attitude and the reallocation of work within the unit, the Applicant was left with only CAPSAP.

86. Moreover, the record reveals a lack of clarity regarding how much of the Applicant's time the CAPSAP project itself might have been expected to absorb. The Manager's e-mail to the

Applicant of 27 September 2013 indicates that the Manager believed CAPSAP would absorb 15 weeks and that this could be achieved by recruiting a consultant to support the Applicant. Before PRS the Manager stated that “there was no way [the Applicant] could be tasked only with managing CAPSAP for approximately 8 weeks of his time per year.” In these proceedings, the Bank suggests, first, that the CAPSAP work was “guaranteed” to take only eight weeks of the Applicant’s time. Subsequently, the Bank has stated that when the Applicant’s contract ended the “newly hired staff members” took over the “fifteen (15) weeks” the Applicant had left as part of his work on CAPSAP.

87. The Bank’s arguments regarding the newly hired staff members are on firmer ground. First, rather than being hired to replace the Applicant, these three staff members were hired to replace three other long-serving staff members who left the unit in September 2013, March 2014 and April 2014. Second, the record supports the Bank’s argument that the newly hired staff were – largely – given work different to that of the Applicant, albeit not necessarily the same work as those they had replaced. The Applicant contends that any of them, including the Applicant, could have taken the work of the others. This contention is supported by some documents on file, and in practice there was some overlap – as noted above, after September 2014 the new staff members shared some of the CAPSAP responsibilities which had previously been assigned to the Applicant, as well as a project he had been working on for Country Q – but overall the record supports the Bank’s contention that they actually worked on different tasks.

88. Aspects of the Applicant’s own evidence give some support to the Bank’s contention that his work program was not entirely full. He acknowledges that at times he was “unaware of what needed to be done,” albeit he says that this is because the Manager isolated him. He also acknowledges that he was “less than proactive” in seeking extra work in the region near his home country, though he states that this was because Ms. J had “insulted” him by suggesting that he was only interested in such work because it would give him an opportunity to use operational travel to visit his aging parents. However, while the Applicant claims that Ms. J accused him “over and over again” of misusing Bank travel for personal reasons, he has not directed the Tribunal to evidence of any such accusations being made, or indeed responded to.

89. In view of the foregoing, the Tribunal finds that, on balance, the record does not bear out the Applicant's claim that the business reasons invoked by the Manager were "false, pretextual and fabricated."

90. *The refusal to carry out work.* The Bank also contends that the Applicant refused to do the work assigned to him by the Manager. This contention finds little support in the record, however. In his 27 September 2013 e-mails to the Manager (*see* paragraphs 21-22, above), the Applicant objected to the fact that she had not consulted him about the workload analysis, and questioned the accuracy of the analysis, but indicated that although he was not happy about his Manager's instructions, he would comply with them ("if you still insist then I will do them"). On 29 September, the Manager responded to the Applicant's objections by "confirming" her instructions to him in her previous e-mail and what she had discussed with him verbally. At least at that time, therefore, the Manager's understanding appears to have been that the Applicant would do the assigned work.

91. The Bank also refers to an e-mail exchange which indicates that the Applicant failed to respond to an inquiry he received from a colleague in December 2013. The Applicant told the PRS Panel that this was an oversight on his part. Whether or not it was an oversight, the Applicant's omission does not appear to have come to light until 18 March 2014, and so cannot have been relevant to the non-renewal decision which the Manager had notified to the Applicant almost a month before.

92. While this latter incident was described by Ms. J, in her submissions before PRS, as "an example" of the Applicant's failure to respond to communications regarding fiduciary work assigned to him, no other examples of such failure have been brought to the attention of the Tribunal. The Applicant's 2012-2013 OPE, for example, noted that he "would benefit from adapting his communication style" so as to better "gain support from his audience," but said nothing of any failure by the Applicant to carry out tasks which had been assigned to him. Indeed, this OPE noted that "with respect to fiduciary work [the Applicant] conducts regular FM supervision missions and follows up."



93. What is apparent from the record is that following the exchanges between the Applicant and the Manager in late September 2013, the relationship between them was somewhat difficult. The Applicant states that he felt so threatened by the Manager's reaction to his objections that he decided to consult the Bank's Ombudsman and that, on the Ombudsman's recommendation, he discussed what he considered the Manager's "abusive treatment" with the Manager's Director. For her part, the Manager perceived the Applicant's objections as "negative and loud" and understood from him that he had no interest helping with the required fiduciary work, "even on a temporary basis." Before PRS, the Applicant acknowledged that he had used a "wrong tone" when discussing the work reassignment with Mr. M, to whom he subsequently apologized.

94. The Manager's comments in the 2013-2014 OPE do not record any examples of the Applicant refusing to perform any tasks assigned to him. Rather, the Manager remarks that the Applicant "could have been more proactive" in some respects, and that in terms of fiduciary work he "expresses less interest in this area and could proactively raise the bar and display his full potential in this area."

95. The Tribunal is of the view that there is a significant difference between a failure to proactively look for additional work, on the one hand, and a refusal to perform tasks expressly assigned, on the other hand. The assertion that the Applicant did the latter was made by the Manager before the PRS, and was repeated by the Bank before the Tribunal. The Bank implies that this was a pattern of behavior on the part of the Applicant. Such assertions are not supported by the record. In this respect, the Tribunal recalls its observations in *Bertrand*, Decision No. 81 [1989], at para. 18, that:

In any particular case, though the management may be entitled to take a given factor into account, there must at the least be some plausible indication that there is factual support for the factor given negative weight, that such factor has not been weighed in a manner that is discriminatory when compared with its application to other staff members, and that the weight given to such factor is not otherwise arbitrary or manifestly unreasonable.

96. The Tribunal finds it significant that the Manager informed the PRS Panel that "even if [the Applicant] had undertaken the fiduciary work, [he] still would not have a full work program

because the additional fiduciary work was only temporary.” As such, the Applicant’s “lack of proactivity” (and the Bank’s unwarranted characterization thereof) was not the exclusive, or even the principal, factor underlying the non-renewal decision. That decision, as discussed above, was motivated by business reasons. The Applicant’s “lack of proactivity” may have highlighted for the Manager the fact that his workload was diminishing, while the acknowledged issues with his communication style may have created some difficulties in his interaction with his Manager and other colleagues. In his 2013-2014 OPE, the Applicant acknowledged that “I openly expressed my interest in PFM areas and not interest in fiduciary areas to my manager. I have been doing fiduciary work for more than 9 years and wanted to move to areas that are more interesting to me.” It is reasonable for the Manager to have taken this attitude into account when evaluating whether there were sufficient business reasons to justify renewal of the Applicant’s contract. Taking these factors together, as the Manager was entitled to do, the Tribunal finds that there is insufficient support for the Applicant’s contention that the Manager wrongfully exercised her discretion.

97. While acknowledging some inconsistencies in the record, the Tribunal therefore concludes that the Applicant has not made out his claim that the reasons given for the non-renewal decision were “false, pretextual and fabricated,” or that the decision otherwise constituted an unlawful exercise of discretion. This was not an arbitrary exercise of discretion, or one which lacked a reasonable basis.

98. That said, the Tribunal is aware that informed and constructive performance evaluation is a crucial factor in ensuring the efficiency of staff members, and fostering their professional development. The Tribunal is troubled by the fact that a staff member who had performed strongly for some eight years, who had been reassigned to the Bank’s headquarters in 2012 to support “the corporate interest as well as [his] career needs,” and who was acknowledged to be in a “year of transition” after relocating to Washington, DC, went from showing the “great ability” and promise indicated in his 2012-2013 OPE to being told, less than five months later, that his appointment would not be extended. The record suggests the Applicant contributed to this rapid turn of events with what appear to have been rather intemperate responses to work assignments. Staff members are, of course, appointed for the convenience of the organization.

In every workplace, staff may have to take on work which does not best suit their career goals or personal interests. If they wish to object to their managers' decisions, they are well-advised to do so with great professional courtesy.

*Elements of procedural unfairness*

99. It is not clear that the Manager “supported [the Applicant] both professionally and personally with the goal of helping him to grow and succeed” as she claims. The initial discussions around his proposed move to Washington, DC, as well as his OPEs for both 2011-2012 and 2012-2013 had all flagged the need for the Applicant to (in the words of Ms. J) “adapt his communication style.” In the latter document, Ms. J confirmed that she “remained open to exploring any opportunity that could help [the Applicant]” improve his communication skills. As a rule, it would be reasonable to expect that the staff member, rather than the Manager, would follow-up in such a situation. In this case, however, it does not appear that any such training opportunities were in fact pursued, by either party, at any point since the Applicant began working in Washington, DC. The Tribunal observes that the manner in which the Applicant responded to the workload analysis, and the manner in which he communicated his displeasure to the Manager and Mr. M, appears to have been a major factor in the deterioration of their working relationship.

100. The Tribunal recalls that “a basic guarantee of due process requires that the staff member affected be adequately informed with all possible anticipation of any problems concerning his career prospects, skills or other relevant aspects of his work” (*Garcia-Mujica*, Decision No. 192 [1998], para. 19). In the present case, there is no evidence that the Manager indicated to the Applicant that unless he were more flexible in his work interests, and proactive in pursuing work, his appointment would not be renewed.

101. In light of the foregoing, the Tribunal considers that the record reveals some elements of unfairness: in particular the repeated assertion by the Bank that the Applicant refused work, but also the Manager's failure to alert the Applicant to the possibility that his reluctance to take on certain tasks could be a factor in the renewal of his contract. These elements of unfairness

warrant compensation.

102. The Tribunal will now turn to consider whether there is any evidence that the Manager's non-renewal decision constituted an act of retaliation against the Applicant.

#### THE CLAIM OF RETALIATION

103. The Applicant contends that the non-renewal of his contract was an act of retaliation by the Manager relating to (i) his outspoken support for the reform initiatives instigated by the World Bank President and (ii) his October 2013 complaint to his Director regarding his treatment by the Manager.

104. The Staff Rules are clear that retaliation against any person "who provides information regarding suspected misconduct or who cooperates or provides information in connection with an investigation or review of allegations of misconduct, review or fact finding, or who uses the Conflict Resolution System" is prohibited. *See* Staff Rule 3.00 ("Office of Ethics and Business Conduct (EBC)"), paragraphs 6.01(g) and 7.06, and Staff Rule 8.01 ("Disciplinary Proceedings"), paragraph 2.03.

105. The Tribunal has noted in *O*, Decision No. 337 [2005], para. 47 that "the burden lies with an applicant to establish facts which bring his or her claim within the definition of retaliation under the Staff Rules" and that:

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

106. The Tribunal has also held that if an applicant makes out a *prima facie* case or has pointed to facts "that suggest that the Bank is in some relevant way at fault" then "the burden shifts to the Bank to disprove the facts or explain its conduct in some legally acceptable manner" (*de*

*Raet*, Decision No. 85 [1989], para. 57; *BI*, Decision No. 439 [2010], para. 47).

107. The Tribunal has made clear, however, that “it is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person. There must be a direct link between the alleged motive and the adverse action to amount to retaliation” (*AH*, Decision No. 401 [2009], para. 36). The Tribunal has also recognized that “[a]lthough staff members are entitled to protection against reprisal and retaliation, managers must ... have the authority to manage their staff and to take decisions that the affected staff member may find unpalatable or adverse to his or her best wishes” (*O*, para. 49).

*Retaliation for the Applicant’s engagement in the reform process*

108. The Applicant contends that where “the Bank President himself, and higher Bank management, are soliciting staff for feedback for change, a staff member must surely be protected from retaliation for responding.” According to the Applicant, if this were not so, it would be a “gross violation” of Staff Principles 2.1 and 9.1. Whether or not it would amount to retaliation as defined by the Staff Rules, the Tribunal considers that adverse action against an individual who has been specifically invited to provide feedback could well amount to an abuse of discretion and unfair treatment.

109. The record indicates that the Applicant was an active contributor to the discussions relating to reform of the Bank. He posted suggestions for reform on the Spark website on eight occasions between November 2012 and the time the Manager’s non-renewal decision was notified to him in February 2014. He also appears to have spoken up at a Town Hall meeting in January 2013. According to the Applicant, the Manager made at least three comments indicating that she did not agree with the Applicant’s opinions on reform of the Bank. The Applicant says that during a casual conversation in November 2012 in which he mentioned that there were many critical views of the Bank expressed on the Spark website, the Manager became angry and said that “all who criticize the Bank should leave the Bank.” After the Applicant spoke up in the January 2013 meeting, the Applicant says that the Manager told him that she did not agree with him at all. In October 2013, the Applicant says that the Manager told him he was

“lecturing the entire world” through his postings on the Spark website.

110. While the Applicant has not provided evidence that the Manager made such comments, the Tribunal notes that the Bank has not challenged the accuracy of the Applicant’s assertions in this regard. Rather, the Bank disputes the Applicant’s contention that such statements illustrated hostility towards the Applicant on the part of the Manager. The Tribunal accepts that each party had their own strong views on the reform process, and, because of that, neither could persuade the other.

111. The Applicant contends that given his “excellent work record, the many work opportunities available that were instead offered to the three new Senior Financial Management Specialists hired by [the Manager] in early 2014, and the false accusations made against him that he refused to do assigned work, it is impossible to escape the conclusion that [the Manager’s] decision to get rid of him was in retaliation for his outspoken involvement in the changes taking place in the Bank.”

112. The Bank points to several actions taken by the Manager which appear to have helped the Applicant and which may therefore be inconsistent with the allegation that the Manager’s decision not to renew the Applicant’s contract was an act of retaliation. The Bank contends that after learning of the Applicant’s position with regard to the President’s reform efforts, the Manager nevertheless maintained a cordial relationship with the Applicant. The Bank refers to the fact that the Manager: (i) designated the Applicant as Acting Manager while she was away from the office in November and December 2012 and in August 2013; (ii) informed the Applicant of a professional development opportunity in another of the Bank’s regions in January 2013; (iii) granted the Applicant flexible home-based work arrangements in March 2013 while his wife was away; (iv) requested support from Bank officials in connection with a security incident affecting the Applicant’s brother in April 2013; (v) recognized his “good work” in his OPE completed in September 2013; and (vi) approved the Applicant’s participation in a training course in January 2014.

113. The Tribunal observes that these assertions by the Bank appear to be broadly supported by the record. In particular, the 2012-2013 OPE appears to be a significant piece of evidence. This was completed on 25 September 2013, and included two “Superior” ratings as well as very supportive comments from the Manager, who recognized the Applicant’s “good work.” The Manager referred to the significant improvement of the CAPSAP project and commented on the Applicant’s strong relationship with the government ministry involved in that project, his “good work on FM project preparation and implementation support/supervision” and “good relationships with clients and task teams.” She also commented that the Applicant “has great ability to contribute even better to the team success,” and stated that she was “looking forward for him to proactively raise the bar on his contribution and display his full potential to be a key member of FM team.” It is to be noted that the Applicant, in his own OPE comments, seemed to acknowledge and accept some of the constructive criticism the Manager made about his communication skills (“FY 13 was a year of transition and adaptation to HQ environment. I am learning how to communicate and interact more effectively. ... In FY14 I am willing to take more responsibility and improve my communication”). Nothing in the OPE – which, the Tribunal observes, was completed just two days before the Manager e-mailed the Applicant regarding the workload analysis – suggests that she was preparing the way to retaliate against the Applicant by not renewing his contract.

114. While the Applicant’s outspoken support for the reform process seems to have done little to endear him to the Manager, the Tribunal is satisfied that the Manager’s decision not to renew the Applicant’s appointment was not an act of retaliation.

*Retaliation for the Applicant’s complaints about the Manager*

115. Turning to the second basis for the alleged retaliation, the record indicates that the Applicant first consulted the Ombudsman regarding his treatment by the Manager, and then complained to his Department Director on 29 October 2013. In particular, he felt threatened by comments the Manager had allegedly made during discussions relating to the workload analysis and reassignment of work within the unit. The Director recommended that the three of them meet. Though this never took place, the Applicant states that the Manager moderated her

tone with him from this point on, “and no longer openly insulted” him. The Tribunal observes that even where a claim made by a subordinate against a Manager does not lead to any finding of misconduct on the part of the Manager, this does not preclude the possibility that the Manager might nevertheless retaliate against the subordinate for having made the claim in the first place. In the present case, therefore, the merits of the claim of retaliation are unaffected by the merits of the complaint of harassment which the Applicant had made to the Ombudsman and Department Director.

116. According to the Bank, the record indicates that the Manager remained supportive of the Applicant after he had complained to his Director about his treatment by the Manager on 29 October 2013. The Bank refers to the fact that the Manager approved the Applicant’s request to participate in an Islamic Finance course, even though it was not relevant to the unit’s work, and also obtained funding for him to register for an additional three related courses in the months prior to the end of his contract. However, contrary to the Bank’s contentions it appears that the Applicant’s training request had, prior to his communication with Ms. J, in fact already been approved by the Department.

117. For his part, the Applicant cites two incidents to support his contention that, subsequent to his approach to the Ombudsman, Ms. J interfered in his work “in a way that made life very difficult for him.” First, when the Applicant said that he was willing to assist with pipeline projects in the sub-region, she “accused him of only being interested so that he could use operational travel to visit his aging parents.” As has been noted at paragraph 88 above, however, the Applicant has not provided any evidence of the Manager making, or indeed of the Applicant himself responding to, such allegations. Second, the Applicant cites the Manager’s rejection of his 22 January 2014 request to go to his home country to obtain a necessary exit visa while he was on mission in the sub-region. The Tribunal notes that the Manager’s comments in response to this request appear to have accurately reflected the Bank’s policy on combining annual leave with mission travel. In any event, as the Applicant acknowledges, the Manager did in fact approve a similar request made by the Applicant in March 2014; that this approval was delayed until May and was only given after the Manager consulted Human Resources is not evidence of retaliation.



118. Of the witnesses called to appear before PRS one, Mr. M, addressed the issue of alleged retaliation. His evidence was to the effect that, while some differences and tensions did surface between the Applicant and Ms. J, those differences did not play a role in the decision not to extend the Applicant's contract. Mr. M stated that on many occasions he had observed Ms. J acting "in a very professional manner" towards the Applicant. The Tribunal has not been directed to any witness testimony to the contrary effect.

119. The Tribunal recalls that, subsequent to being informed of the non-renewal decision, the Applicant also contacted EBC to complain about a number of matters, including that decision and the alleged retaliation by Ms. J, as well as her alleged interference in his application for other jobs within the Bank. The Applicant's first contact with EBC was in March 2014, with follow-up meetings with EBC investigators taking place later that month as well as in July 2014. On 14 July 2014, EBC investigators informed the Applicant that, according to their investigation, "there was no evidence to substantiate the allegation" of retaliation by Ms. J. EBC therefore closed the case as unsubstantiated.

120. The Tribunal concludes that the Manager did not retaliate against the Applicant because of his contributions to the reform process or because he reported the Manager's treatment of him to the Director.

#### THE CLAIM OF HARASSMENT

121. The Applicant also claims that he was a victim of harassment by the Manager. He states that he "found it increasingly impossible to discuss anything with [the Manager] because she shouted at him and insulted him." He says further that the Manager "removed his work, isolated him, deprived him of information about the pipeline projects he was supposed to be overseeing, and accused him over and over again of misusing Bank travel for personal reasons."

122. The Bank's policy is clear that staff members are required to treat one another with courtesy, dignity, and respect. A "single incident can be considered harassment if it is so severe that it has a negative impact on the individual or the work environment." *See* The World Bank

Group Code of Conduct (2009), and Working with Respect in the World Bank Group: Building a Positive Work Environment (2007).

123. Regarding the Manager's reluctance to approve the Applicant's personal leave during mission travel, the Bank explains that it is not considered good practice to take annual leave while on mission travel because of concerns that staff members may fashion mission travel to accommodate their personal interests. Nevertheless, the Bank points out that the Manager approved five of the Applicant's nine requests to take personal leave during mission travel.

124. The Tribunal observes that in his 2012-2013 OPE the Manager commented positively on the Applicant's "regular FM supervision missions" in the context of fiduciary work. Also, as late as 22 January 2014 the Applicant e-mailed the Manager to propose combining work travel to Country C with a trip to his home country to renew his passport and obtain a new exit visa. This exchange, coming three months after the Applicant approached the Ombudsman to complain about the Manager and one month before the non-renewal decision, is contrary to the Applicant's contention that he avoided seeking work in the sub-region as a result of the Manager's insults. Also, as noted above, the Manager in fact approved a similar request in May 2014.

125. The Tribunal takes note of the statements made by two of the witnesses called to appear before PRS. The first, Ms. C, testified that Ms. J interacted with the Applicant "like everyone else," treated "everyone the same," and was generally "friendly" and "cordial." The second witness, Mr. M, testified before PRS that while he was aware of some differences and tensions that surfaced between the Applicant and Ms. J, he had observed Ms. J act "in a very professional manner" towards the Applicant, that she "would never speak ill of him," and that she "treated everyone with respect and professionalism and in a compassionate way." The Applicant did not produce before PRS, nor has he produced before the Tribunal, evidence to counter these statements.

126. The Applicant's allegations of harassment are vague and general. The Tribunal concludes that while such general allegations may indicate a difficult and unpleasant working atmosphere between the Applicant and the Manager, the record does not include any particular incidents so

severe that they might constitute harassment.

#### DECISION

- (1) For the reasons given in paragraph 101, the Bank shall pay the Applicant compensation in the amount of three months' salary, net of taxes, based on the last salary drawn by the Applicant.
- (2) The Bank shall pay the Applicant's attorney's fees in the amount of \$13,865.56.
- (3) All other claims are dismissed.

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

/S/ Zakir Hafez  
Zakir Hafez  
Acting Executive Secretary

At Washington, D.C., 29 May 2015