



World Bank Administrative Tribunal

2017

Decision No. 552

**DK,
Applicant**

v.

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

(Merits)

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

**DK,
Applicant**

v.

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

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

2. The Application was mailed on 2 October 2015 and received by the Tribunal on 7 October 2015. An amended Application was filed on 26 October 2015. The Applicant was represented by Douglas C. Melcher, Attorney-at-Law. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges the following decisions: (i) the decision by the Office of Ethics and Business Conduct (EBC) not to reinvestigate her allegations of sexual harassment against a Senior Advisor; (ii) her non-selection for the Senior Knowledge Management Officer position; (iii) the Peer Review Services (PRS) Panel's decision to dismiss some of her claims in Request for Review No. 195; (iv) the non-extension of her contract; (v) the failure of management to provide her interim protection; (vi) false revision of her personnel records and People Page profile on the Bank's intranet; and (vii) the termination of her contract. In addition, she alleges certain procedural violations committed by EBC in its investigation of her allegations and by PRS in her Requests for Review Nos. 191, 195, and 217.

4. The Bank raised a preliminary objection to the admissibility of certain claims in the Application. The Tribunal rendered its judgment on the preliminary objection in *DK* (Preliminary Objection), Decision No. 537 [2016], and found that it has jurisdiction over the following claims: (i) EBC's decision not to reinvestigate the Applicant's allegations; (ii) the Applicant's non-selection for the Senior Knowledge Management Officer position; (iii) the non-extension of her contract on 30 September 2013; (iv) failure of management to provide her protection, to the extent

it was raised before PRS in Request for Review No. 195; (v) false revision of her People Page profile; and (vi) the termination of her contract on 11 July 2014. This judgment addresses the merits of these claims.

FACTUAL BACKGROUND

5. The Applicant worked at the Bank from 13 August 1997 to 15 September 2015, first as a Long-Term Consultant, and after 2006, as a Short-Term Consultant (STC) under different contracts.

EBC's decision not to reinvestigate the Applicant's allegations against the Senior Advisor

6. The Applicant reported her former supervisor, who was a Senior Advisor to one of the Bank's Vice Presidents (Vice President), to EBC on 16 September 2013 for sexual harassment and retaliation. EBC conducted an investigation and in its Investigative Report of 17 April 2014 found sufficient evidence to substantiate that the Senior Advisor had "failed to resolve a *de facto* conflict of interest that arose due to a sexual relationship that he had with [the Applicant]." EBC found insufficient evidence to substantiate the Applicant's allegations of sexual harassment.

7. On 21 April 2014, EBC informed the Applicant that it had sent the Investigative Report to the Vice President of Human Resources (HRVP) for a final decision.

8. On 9 June 2014, the Applicant was informed that the HRVP had made a finding of misconduct against the Senior Advisor, but she was not provided with a copy of the decision. She was advised to contact HR to obtain information regarding the outcome.

9. The Applicant made multiple efforts to contact senior officials at the Bank to request a reinvestigation of her claims before EBC. On 30 September 2014, the Applicant sent a letter to the World Bank Group President alleging that EBC had committed a mistake in its investigation and findings, and requesting that a separate, impartial, and objective investigation be conducted by an

outside entity. The Applicant reiterated her requests to the President on 30 March 2015, 12 and 26 April 2015, and 20 May 2015. She did not receive a response from him to any of her emails.

10. The Applicant contacted other senior Bank officials about the EBC investigation. On 1 April 2015, she met with the Vice President and Chief Ethics Officer and requested transcripts of her five recorded interviews with EBC. The Applicant also requested, from the EBC Senior Investigator who interviewed her during the investigation, copies of the transcripts of her interviews, audio recordings of her testimony, and clarification over how much of her testimony was included in EBC's Investigative Report to the HRVP. In response, the Senior Investigator told her in an email of 18 May 2015:

EBC is under no obligation to inform you of what was or was not included in the investigative report [...]. Going forward, we will provide you only the transcripts of your interviews included in the investigative report.

[...]

Regarding your other queries about contacts with EBC; since those contacts did not result in an investigative report sent to HRSVP we will not be providing them to you. Further, EBC will not provide you the opportunity to review any audio files that we obtained from you as this is EBC work product and does not belong to the individual who has provided the information. Please let me know when you would like to pick up the transcript's [sic] listed above.

11. On 11 June 2015, the Applicant was informed that EBC had agreed to provide her with the transcripts and audio recordings of her testimonies. She was also informed that, while she was not entitled to see the Investigative Report, the HRVP would decide, at his discretion, whether to share a copy.

12. The Applicant sought further clarification of the EBC investigation and her request for a reinvestigation and received a reply to her queries from an EBC Manager of Investigations on 2 July 2015, in which he informed the Applicant that "[t]he investigation conducted by EBC covered all the allegations [the Applicant] brought forward against [the Senior Advisor] including the allegations of sexual misconduct," and that "neither EBC nor HRVP could re-investigate her

allegations.” The EBC Manager asked the Applicant to contact the HRVP for a copy of the Investigative Report.

13. The Applicant subsequently learned that EBC had concluded that she and the Senior Advisor had “engaged in a consensual sexual relationship during certain portions of her STC assignment from approximately July 2012 through December 2012.”

The Applicant’s non-selection for the Senior Knowledge Management Officer position

14. In a meeting of 26 June 2012 between the Applicant and the Senior Advisor, the Applicant claims that he mentioned that a Senior Knowledge Management Officer position would open in the Bank and that he would talk to the Chief Economist in the unit in order to recommend her.

15. On 3 July 2012, the Senior Advisor told the Applicant in an email that he had strongly recommended her to the Chief Economist and had suggested to her to schedule an interview with the Applicant.

16. On 7 May 2013, while still under an STC contract with the Senior Advisor, the Applicant applied for the Senior Knowledge Management Officer position, Level GG. The Applicant alleges that, at the time of the application, she possessed over twelve years of experience in knowledge management and had been performing in her unit similar functions as described in the vacancy announcement, “making her very well qualified for the position.”

17. On 20 June 2013, the Applicant was informed that she had been shortlisted for the position and was invited for an interview. On 28 June 2013, the Applicant and five other candidates were interviewed for the position by an Interview Panel composed of a Lead Economist from the hiring unit, three Senior Economists from other units and one Knowledge Management Officer from another unit. No HR representative was present. The Panel did not recommend the Applicant for the position, and found that “there was a grade and skill mismatch between the position advertised and [the Applicant]’s competencies.”

18. On 29 July 2013, the Lead Economist emailed the Applicant to inform her she had not been selected for the position.

19. On 30 July 2013, the Applicant met with a Senior HR Business Partner to inquire about her ranking and the reasons for her non-selection. The Senior HR Business Partner informed her he did not know the reasons for her non-selection, but confirmed that one candidate had been selected.

20. The selected candidate did not accept the position. Subsequently, the position was cancelled in anticipation of the changes to the World Bank Group's organizational structure. The Applicant was notified of the cancellation on 26 September 2013.

21. On 23 April 2014, the Applicant challenged her non-selection in Request for Review No. 191. PRS stayed the proceedings from 3 July 2014 until 24 September 2014, to allow EBC to investigate the Applicant's allegations of abuse of authority by the Hiring Manager to manipulate the hiring process.

22. EBC conducted an initial review but closed the case on 20 August 2014 finding that "the allegations were not substantiated by the facts of the hiring process." EBC also found that the Hiring Manager did not discuss the Applicant's candidacy with the Senior Advisor, nor was she influenced by the Senior Advisor not to select the Applicant for the position.

The non-extension of the Applicant's STC contract on 30 September 2013

23. On 1 August 2012, the Applicant accepted an offer for an STC appointment with the Office of the Vice President and Head of Network, with the Senior Advisor as her Task Team Leader (TTL). The Bank subsequently extended the Applicant's contract under this appointment multiple times, with the final extension expiring on 30 September 2013.

24. According to the Applicant, the Senior Advisor "promised to help [her] obtain a long-term assignment regular staff position," and to extend her STC appointment until then.

25. In September 2012, the Applicant alleges that the Senior Advisor praised her work, introducing her to the Community of Practice as an “experienced knowledge manager and web designer,” and recommending her to the Chief Economist for a soon-to-be-created senior position in the Chief Economist’s unit.

26. In January 2013, the Applicant asserts that she refused the Senior Advisor’s sexual demands, and his behavior toward her then changed. According to her, he “dropped his promised extension of [her] contract,” excluded her from the work she was previously assigned, urged her to leave, and reduced her responsibilities.

27. On 9 January 2013, the Senior Advisor emailed the Chief Economist seeking funding to extend the Applicant’s contract, to no avail. Having identified some alternative funding afterwards, the Senior Advisor extended the Applicant’s STC appointment on 1 March 2013, and again on 3 June 2013.

28. On 1 August 2013, the Applicant reported the Senior Advisor’s alleged sexual harassment to his manager, the Vice Presidents. The Applicant alleges that the Senior Advisor immediately learned about the meeting and stopped contacting her throughout the remaining two months of her contract.

29. On 9 October 2013, the Applicant claims that the Senior HR Business Partner informed her by phone that her request for renewal had been rejected because there was no business need for her skills.

30. On 29 May 2014, the Applicant filed Request for Review No. 195 challenging the expiration of her STC contract. PRS stayed the proceedings while EBC conducted an investigation into the Applicant’s allegations of retaliation.

31. On 7 April 2015, EBC closed its investigation and issued a Case Closure Memorandum, finding that “no evidence was identified that [the Applicant] suffered retaliation as [a] result of her reporting misconduct.”

Management's failure to provide the Applicant protection, to the extent it was raised before PRS in Request for Review No. 195

32. On 1 August 2013, the Applicant reported the Senior Advisor's alleged sexual harassment to his manager, the Vice President, who, according to the Applicant, replied that "this is not a good time for [her] to raise such an issue" and took no action to protect her from retaliation from the Senior Advisor.
33. The Vice President relayed the allegations to the Senior HR Business Partner. On 8 August 2013, the Senior HR Business Partner reported the allegations made by the Applicant to the EBC Manager. On 16 September 2013, the Applicant reported the Senior Advisor to EBC.
34. On 24 and 30 September 2013, the Applicant emailed the Vice President, requesting protection from the Senior Advisor's retaliatory actions and renewal of her STC contract.
35. On 29 May 2014, the Applicant filed Request for Review No. 195. On 24 June 2014, PRS issued a decision on a partial dismissal of claims and held jurisdiction over claims that had been submitted within the applicable time period. The Applicant's claim of management's failure to provide interim protection was retained insofar as it was related to any of the Bank's inactions from 29 January 2014 through 29 May 2014.
36. On 16 December 2014, the Applicant filed Request for Review No. 217, challenging the termination of her contract and alleging retaliatory motives.
37. On 7 April 2015, EBC closed its investigation in relation to the Applicant's allegations of retaliation, which had been referred by PRS in the context of Requests for Review Nos. 195 and 217, finding that "no evidence was identified that [the Applicant] suffered retaliation as [a] result of her reporting misconduct."

False revision of the Applicant's People Page profile

38. The Applicant alleges that her People Page profile in the World Bank Group's internal staff directory had been unilaterally altered and included false information on several occasions. The first alleged manipulation of her records took place in September 2013 regarding her hiring date at her unit. In March 2014, the Applicant's records again reflected incorrect data. In an email of 28 March 2014, a Senior Information Technology (IT) Officer explained to the Applicant that the root cause of the incorrect data stemmed from her name being associated with two different profiles, a problem that "[his] team [was] correcting." A few days later, on 31 March 2014, the Applicant reported more inaccuracies in her profile page, noting that her profile under the People Page had been removed; that under Skill Finder she was listed incorrectly as working for the "agriculture, fishing and forestry" and "energy" sectors; and that her last contract was listed as ten days in 2012 under the wrong supervisor and project. On 22 May 2014, the Applicant also reported to HR operations that her professional awards were incorrectly listed.

39. On 13 May 2014, the Applicant met with EBC to report these alterations. The Applicant further reported to EBC that her personal email log-in page, "displaying [her] personal email addresses," was hyperlinked to a Trade web page on the Bank's website and published. She also reported that the alterations to her People Page were "curated and filled with all inaccurate information, some of which were damaging to [her]."

40. The Applicant had a follow-up meeting with the EBC Manager on 2 June 2014. The EBC Manager emailed the Applicant the same day to inform her that EBC could not proceed with a misconduct investigation with respect to the reported changes to her People Page information, given the "[in]sufficient factual basis or justification to attribute these errors to any individuals." He added that "the responsibility, if any, for mistakes/omissions to [her] information possibly lies with ITS and/or HRS," noting in particular that PRS was the appropriate forum for raising her concerns.

The termination of the Applicant's STC contract on 11 July 2014

41. On 13 November 2013, the Applicant received an offer for an STC appointment with another unit at the Bank. A Program Coordinator was the TTL for this assignment. The Applicant's appointment was initially set to expire on 28 February 2014, but was later extended through 30 June 2014. It was subsequently extended from 1 July to 29 August 2014.

42. In an email of 30 April 2014 with subject "final evaluation," the Program Coordinator wrote to the Applicant asking her to "articulate to me an overall approach," on "where we stand on preparing the material," and whether the work would be ready before the start of the evaluation on 1 June.

43. On 7 June 2014, the Program Coordinator emailed the Applicant noting that "I have articulated to you my priorities," adding "my interest at this time is whether or not you want to help me address any of them. At the minimum I expected a report on your meeting [...]." The next day, the Applicant responded that she would report to him after that meeting. The Applicant also noted that she would request the unit's Program Assistant, to "split 10–20 days of my current contract to FY15 (July/August)."

44. In an email of 18 June 2014, the Program Assistant noted that the Applicant would have her remaining 36 days of fiscal year 2014 transferred to fiscal year 2015 and that the end of her contract would be 31 December 2014. The following day, however, the Program Coordinator asked the Program Assistant not to process the extension until he reviewed the Applicant's request for payment. The Program Coordinator ultimately renewed the Applicant's contract for ten days from 1 July 2014 through 29 August 2014.

45. The Applicant asserts that on 29 June 2014 she reported to the Program Coordinator progress made on the work he had assigned as priority. They met the following day, on 30 June, and, according to her, she informed him she would complete the work when she came back in July, to which she claims the Program Coordinator agreed.

46. On 1 July 2014, the Program Coordinator emailed the Applicant stating he was waiting for her to submit a report on what she had done to support the last payment request and that, if they were to continue working together, it had to be on different terms. He further stated he had a hard time making a connection between the work she submitted and the time allocated in producing such work. He reiterated that “no payment will be made from now on for work done without prior agreement on level of effort.”

47. On 14 July 2014, the Applicant replied to the Program Coordinator:

As regards your email in response to my June 30 submission of the work, as I wrote in that submission/note, I can complete the work (the webpages on the results/outputs of the TFF) as soon as getting access to the Bank system [...] I will need 2–3 days to complete the webpages [...].

In addition, in your last email you mentioned your concern over the level of efforts and outputs. Please would you be specific? In all of the RFPs I submitted for your approval since I began working for your program on November 12, I attached the main outputs I delivered during the specified time period, indicating a specific number of days for each output, asking for your feedback and any question you might have. I never received feedback nor question from you on any of those [...].

Again, please let me know when I can regain access to the system for completion of the work [...].

48. On 15 July 2014, the Program Coordinator responded, stating: “I do not wish to request access to the system for [you]. If there is any hand-over note you wish to send, please do so. Do send the name of the person you were dealing with at GSD.” That same day, the Applicant requested to know the status of her contract and noted “[c]hange of my contract, if any, should have been discussed with me, or at least, you should have given me a notice in advance.”

49. On 21 July 2014, the Program Coordinator emailed the Applicant:

As you would recall the issue of satisfaction about your work has been debated several times and the termination of your contract was not arrived at suddenly or based on anything but on my assessment of the quality of your work [...].

I did review your work and was not satisfied and communicated this to you. I recently took away what I had considered the priority #1 because of unsatisfactory progress [...].

I can understand that you might not like the termination of your contract but as you know very well I tried to accommodate you and was not satisfied with your work and you have been paid for all that you have worked and while I was approving the last payment I explicitly told you what I would do [...].

50. On 22 July 2014, the Applicant responded:

[...] About the termination, I need to know when it was and the reason for this sudden reverse from the 2nd extension you provided on June 30 for my further work for the Trade Facilitation Facility program. How come you did not honor the contract you had given me a few weeks ago? You should have discussed with me in advance, or at least given me a notice.

[...] On July 14, as you know, I came to see you in the office [...]. At the time and later that day in your email (forwarded), you still did not mention anything like termination.

[...]

I do not agree with you on your note below claiming that you were not satisfied with my work and discussed several times, because it is different from my recollections [...]. Not even once, you made a complaint on the quality of my work. Furthermore, you never raised a question (nor provided any feedback) about the outputs and other works I delivered/attached in my RFPs.

51. The Application was received by the Tribunal on 7 October 2015. An amended Application was filed on 26 October 2015. The Applicant challenges the decisions noted in para. 3 above. The Applicant seeks: (i) reinvestigation by EBC or independent review by a third party; (ii) reinstatement to the Senior Knowledge Management Officer position or an equivalent position; (iii) payment for the work she was tasked and completed under the Senior Advisor's supervision; (iv) lost wages for the wrongful non-extension of her contract on 30 September 2013 and wrongful termination of her contract on 11 July 2014; (v) compensatory damages, including compensation for lost career opportunities, emotional pain and suffering and moral injury, as well as harm done to her professional and personal life and reputation in the amount of no less than US\$ 3,000,000.00; (vi) an extension of her employment status during these proceedings; and (vii) legal fees and costs in the amount of US\$ 42,237.04.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

EBC'S DECISION NOT TO REINVESTIGATE THE APPLICANT'S ALLEGATIONS AGAINST THE SENIOR
ADVISOR

The Applicant's Contention No. 1

EBC did not conduct a full and fair investigation

52. The Applicant challenges EBC's manner of conducting the investigation and its assessment of the facts and evidence. In the Applicant's view, the facts establish that the Senior Advisor sexually harassed her. She alleges that the EBC investigation discounted the Applicant's extensive evidence proving sexual "abuse" and harassment. She alleges that EBC only transcribed four of the eight interviews she had with them and that one interview was audio recorded.

53. The Applicant further challenges the EBC finding that her relationship with the Senior Advisor was consensual. The Applicant claims that EBC used the wrong legal standard in determining that the relationship was consensual.

54. The Applicant also alleges that the EBC Investigative Report drew its conclusions from an incomplete and partial record of her claims and supporting testimony. She claims that the EBC Investigative Report was based on her initial interviews on 16 and 17 September 2013 only, completely ignoring all of her testimony given on 6 November 2013, 13 March 2014, and 14 May 2014. Moreover, the transcripts were filled with changes and errors, some of which were very significant.

55. The Applicant claims that the HRVP was deprived of critically important information when making his decision on the Senior Advisor's sexual misconduct as he was only provided with a partial record, which excluded evidence she had provided to EBC in December 2013 and February 2014 and evidence relating to the changes to her People Page profile of May 2014.

The Bank's Response

EBC conducted an impartial and good-faith investigation, and acted within its discretion not to reinvestigate the Applicant's allegations

56. The Bank submits that the Applicant has no legal right to a reinvestigation. The Bank asserts that according to the Staff Rules, EBC itself, and not complaining staff, has the discretion to decide when an investigation is complete.

57. The Bank contests the Applicant's allegation that the investigation was flawed. The Bank asserts that EBC, in good faith, followed an investigative methodology in conducting its investigation. The Bank explains that EBC (i) interviewed the Applicant and reviewed written materials provided by her; (ii) reviewed all STC employment actions related to the Applicant's assignments from August 2012 through July 2013; (iii) interviewed a witness proposed by the Applicant; (iv) determined that there was a sufficient factual basis to investigate the alleged misconduct and, consequently, interviewed the Senior Advisor; and (v) reviewed the submissions by the Senior Advisor. The Bank adds that EBC also applied all appropriate standards as provided for in Staff Rule 3.00, paragraph 6.01(b); Staff Rule 3.00, paragraph 6.01(c); Staff Rule 3.00, paragraph 6.01(e); and the "Living Our Values: Code of Conduct. Supervisory Relationships."

58. The Bank argues that, as long as due process requirements are met, EBC retains discretion in how it uses its recordings of the interviews. By exercising this discretion, the EBC investigators chose to use only four of the five interviews with the Applicant, as the fifth interview did not provide any relevant information. The four interviews were deemed sufficient to support the findings in the Investigative Report they communicated to the HRVP for decision. The Bank denies the Applicant's new claim that she was interviewed eight times by EBC when in fact EBC considered some of the multiple-day interviews to be a single interview interrupted by night.

59. The Bank submits that in *CR*, Decision No. 511 [2015], para. 56, the Tribunal confirmed, after reviewing the EBC records, that it was undisputed that the Applicant had engaged in a consensual sexual relationship with the Senior Advisor. In the Bank's view, EBC's conclusion on this point was the result of a careful and exhaustive investigation.

The Applicant's Contention No. 2

EBC violated the Applicant's rights of due process

60. The Applicant submits that as a complaining staff member in a case of misconduct, she possesses due process rights, which were infringed when she was not provided with the opportunity to review and respond to the Senior Advisor's submissions to EBC describing her as "predatory" and "threatening"; accusing her of blackmail; and describing the sexual abuse as "a situation which she welcomed and exploited." She claims that the investigation must be reopened in order to provide her with the opportunity to respond to these accusations and defend herself.

The Bank's Response

There is no obligation under the Staff Rules to inform the complaining staff of the outcome of the investigation

61. The Bank submits that under the Staff Rules, the Applicant does not possess rights other than being generally informed of the outcome of the investigation. The Bank submits that EBC went beyond this minimal notice and allowed her to review her recorded interviews several times and responded, when possible, to her requests for information. The Bank also submits that in a further attempt to be as transparent and fair to the Applicant as possible, EBC gave the Applicant an additional opportunity to provide her observations on the online chats between her and the Senior Advisor.

62. The Bank further maintains that the Applicant misstates the Tribunal precedent in *McCall*, Decision No. 201 [1998] since there is a distinction between the rights of a witness and those of an actual subject of an EBC investigation, and that the Tribunal itself acknowledged that "there is no obligation for the Bank always to adopt the course of action urged by a complaining staff member."

THE APPLICANT'S NON-SELECTION FOR THE SENIOR KNOWLEDGE MANAGEMENT OFFICER
POSITION

The Applicant's Contention

The Applicant's non-selection was arbitrary, improperly motivated, and contrary to fair and proper procedures

63. The Applicant alleges that her qualifications were "stellar" when she applied for the position because she possessed "over 12 years of experience including on complex Knowledge Management projects." She claims that the Interview Panel's conclusion that she was not fit for the position contradicts the fact that she was deemed qualified for the position when selected for an interview.

64. The Applicant further alleges that the entire selection process was not transparent. The Applicant asserts that the fact that the hiring process was conducted orally, as acknowledged by the Responding Manager before PRS in Request for Review No. 191, is highly suggestive of impropriety. The Applicant also asserts that the Hiring Manager favored a pre-selected candidate.

65. The Applicant alleges that the decision to cancel the position was retaliatory as it was made after she reported the Senior Advisor's sexual harassment and made it clear she would be contesting her non-selection.

The Bank's Response

The Applicant's non-selection for the Senior Knowledge Management Officer position was a reasonable business decision

66. The Bank submits that the decision not to select the Applicant for the Senior Knowledge Management Officer position was reasonable, made in good faith, and followed procedural requirements. The Bank asserts that the Applicant was not selected because she was deemed to be less qualified than other candidates. Furthermore, the Bank denies improper motivation or undue influence by the Senior Advisor in the hiring process or the existence of a pre-selected candidate.

The Bank states that ultimately the position was not filled because of the organizational uncertainty at the World Bank Group at the time and not for the reasons argued by the Applicant.

THE NON-EXTENSION OF THE APPLICANT'S STC CONTRACT ON 30 SEPTEMBER 2013

The Applicant's Contention

The Bank's decision not to extend the Applicant's contract after 30 September 2013 was retaliatory

67. The Applicant claims that after she reported the Senior Advisor's sexual misconduct, first to the Vice President, and then to EBC, the Senior Advisor immediately stopped talking to her and, subsequently, did not extend her contract as a measure of retaliation "despite the continued need for her services." The Applicant submits that the Senior Advisor knew of her reporting because the Vice President had admitted that he discussed this matter with the Senior Advisor after she reported him on 1 August 2013.

68. The Applicant disagrees with the conclusions reached by EBC and PRS regarding her claim of retaliation. In the Applicant's view, EBC conducted little additional investigation, discrediting the Applicant's claims and declining to interview the Senior Advisor. The Applicant also disagrees with the PRS Panel's findings and alleges that any disagreement regarding the funding of her position took place in early 2013 and was unrelated to the non-extension decision taken nine months later.

69. The Applicant further submits that the Bank has violated her rights to be given notice of non-renewal in contravention of her STC contract, which states that "[t]he World Bank will make every effort to give you as much notice as possible [...]."

The Bank's Response

The decision not to extend the Applicant's STC contract on 30 September 2013 was based on an observable business rationale

70. The Bank submits that the decision not to extend the Applicant's STC appointment was based on the lack of funding, and denies the Applicant's claims that the non-extension decision was retaliatory or based on improper motivations. The Bank asserts that the Applicant's allegations of retaliation are not supported by evidence and that the Applicant has failed to show a causal link between her reporting to EBC and the expiration of her STC contract. The Bank notes that EBC closed the case of retaliation because it found no evidence to corroborate the Applicant's claims.

MANAGEMENT'S FAILURE TO PROVIDE THE APPLICANT PROTECTION, TO THE EXTENT IT WAS
RAISED BEFORE PRS IN REQUEST FOR REVIEW NO. 195

The Applicant's Contention

The Bank failed in its duty to protect the Applicant from sexual harassment and retaliation

71. The Applicant claims that the Bank failed to provide her with interim protections during the EBC investigations by not placing the Senior Advisor under administrative leave or assigning her to work under a different manager, even though staff members accused of misconduct are routinely placed on administrative leave during a misconduct investigation.

72. The Applicant contends that the decision to provide her with interim protections should have been taken as soon as she made her report to the Vice President in August 2013, which the Senior Advisor immediately discovered. The Applicant asserts that she was terrified and feared for her life given that the Senior Advisor had implied that he owned a gun, and while communicating those fears to the EBC Manager, she was told that protecting her from physical violence was not the Bank's role.

73. The Applicant claims that she still needed protection after she stopped working for the Senior Advisor. As she was still working at the Bank, the Applicant claims that she feared that the

Senior Advisor would poison her relationship with her new manager, would physically attack her, or would interfere in her attempts to find further employment.

The Bank's Response

The Bank reasonably decided that there were no appropriate interim protection measures that would have applied

74. The Bank asserts that the Applicant was not entitled to any type of interim protection when she requested it. The Bank contends that the Applicant had not suffered any retaliatory interference with seeking further Bank positions and had in fact obtained multiple STC contracts with the Bank since that time. Also, during January through May 2014, the period retained by the PRS Panel to assess the validity of the request for interim protections, the Applicant was no longer working with the Senior Advisor and therefore the need for protection was moot.

75. The Bank submits that it is not clear whether the Applicant expected permanent employment as a form of protection, but submits that any complaint of misconduct does not oblige the Bank to offer that kind of protection to the complaining staff without regard for funding or performance.

76. The Bank submits that placing a staff member on administrative leave is a measure to be decided by the Senior Advisor's management after consideration of numerous facts, only one of which was the Applicant's request for protection.

FALSE REVISION OF THE APPLICANT'S PEOPLE PAGE PROFILE

The Applicant's Contention

Neither EBC nor PRS took appropriate notice of the extraordinary changes made to the Applicant's official Bank records

77. The Applicant submits that the alterations to her People Page in September 2013 and April and May 2014 cannot just be "oversights," "innocent mistakes," or "coincidental," as they

happened when the Senior Advisor was terminating the Applicant's contract and EBC was wrapping up its investigation into his misconduct.

78. The Applicant asserts that the changes to her People Page were harmful as the inaccurate employment history downplayed the importance and duration of her past contracts and gave completely incorrect information about the sectors for which she worked. As potential managers were therefore misinformed about her extensive experience, the Applicant claims these alterations have interfered with her career opportunities.

The Bank's Response

The Applicant does not provide any evidence demonstrating she was harmed by the changes to her People Page profile or that they were intentional

79. The Bank submits that the Applicant does not provide any facts that would demonstrate that the alleged errors in the Bank's listing of her employment history were anything other than oversights. The Bank asserts these oversights were corrected as soon as the Bank was informed, and it has not been demonstrated that these caused the Applicant any harm.

80. The Bank asserts that there is no objective evidence that anyone intentionally altered the Applicant's People Page profile, as corroborated by PRS and EBC.

THE TERMINATION OF THE APPLICANT'S STC CONTRACT ON 11 JULY 2014

81. The Applicant's main contentions are that (i) there is no evidence of the Program Coordinator's alleged dissatisfaction with her work; (ii) the Program Coordinator failed to give her adequate notice of any performance problems and termination; (iii) the Program Coordinator treated her unfairly and without any respect; and (iv) contrary to EBC's findings, her termination was retaliatory.

The Applicant's Contentions

82. The Applicant submits that there is no evidence that the Program Coordinator had issues with her performance or that his alleged dissatisfaction with her work might have alerted her that her contract was in danger of being cancelled. The Applicant contends that the Program Coordinator's email of 30 April 2014 does not expressly accuse her of performing poorly and that expressions such as "where we stand" or "we are not on top of this" cannot be interpreted as such. The Applicant also claims that the only criticism from the Program Coordinator came on 1 July 2014, just ten days before the contract was terminated, and those criticisms related only to his uncertainty about her claims for payment.

83. The Applicant claims that the Program Coordinator failed to give her notice of termination even though he had multiple opportunities to do so. As he did not articulate his decision clearly but instead gave her instructions on 15 July 2014 to complete a hand-over note, she asserts that she reasonably believed she continued to be employed by the Bank. It was only on 21 July 2014, ten days after her termination, that she was given notice of it.

84. The Applicant asserts that she was not treated fairly and that unlike Term staff, she was not afforded notice of any performance issues, did not receive timely and meaningful feedback, and was not given the chance to correct her performance and defend herself.

85. The Applicant alleges that her termination was in retaliation of her reporting her former supervisor for misconduct. The Applicant claims that the EBC investigation of her claims of retaliation was inadequate because EBC treated all of the Applicant's allegations of retaliation as if they were a single case, even though they took place almost a year apart, involved different managers, and concerned quite separate facts.

The Bank's Response

86. The Bank alleges that the decision to terminate the Applicant's STC contract had a reasonable, observable, and non-retaliatory basis. The Bank claims that the Program Coordinator

was entitled under Staff Rule 7.01, paragraph 3.02 and Principle 7.1 of the Principles of Staff Employment to cancel or shorten the term of the contract as necessary. The Bank further claims that it terminated the Applicant's contract solely on the basis of her failure to deliver satisfactory results.

87. The Bank maintains that the Program Coordinator first raised concerns to the Applicant about the progress of her work in April 2014 and in good faith gave her several opportunities to resolve her performance issues. The Program Coordinator also spoke with the Applicant about his discomfort in approving her payment requests because he believed they were not commensurate with the degree of work she was delivering, and expressed this to the Applicant in several emails.

88. The Bank contends that Staff Rule 5.03 and Staff Rule 7.01, paragraph 11, regarding the performance management process, do not apply to STCs. The Bank asserts that despite this the Applicant was provided with numerous chances to perform her tasks, was given feedback, and was also given the opportunity to resume employment but she never took that offer.

89. The Bank alleges that the Applicant's claims of retaliation are baseless because the Applicant was hired for the STC assignment on 13 November 2013 after she made the report to EBC on 16 September 2013, after which her contract was extended by 100 days from February to June 2014, and again for ten days from 1 July through 29 August 2014.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

EBC'S DECISION NOT TO REINVESTIGATE

90. The record shows that the Applicant's numerous requests for reinvestigation to senior Bank officials, including EBC, were based on her allegations that the EBC investigation was substantially and procedurally flawed. In her requests, she has claimed that EBC has ignored her extensive evidence and submissions and mishandled her case; has not transcribed her testimonies; has not credited all her testimonies; has not given her the opportunity to respond to the Senior Advisor's comments; and has shown bias in witness selection.

91. The record also shows that EBC's grounds for not reinvestigating were spelled out in an email of 2 July 2015 as follows:

The investigation conducted by EBC covered all the allegations [the Applicant] brought forward against [the Senior Advisor] including the allegations of sexual misconduct. The report of EBC's investigation which was submitted to the HRDVP resulted in the imposition of disciplinary measures against [the Senior Advisor]. This disciplinary decision by the HRDVP and the underlying EBC investigation may only be reviewed by the World Bank Administrative Tribunal. Consequently, EBC or HRDVP cannot re-investigate your allegations.

92. The Tribunal has stated that EBC possesses discretion in determining the best way to conduct and conclude its investigations, as long as the investigations are conducted fairly and impartially. In *BB*, Decision No. 426 [2009], para. 56, citing *K*, Decision No. 352 [2006], para. 20, the Tribunal found:

[The Tribunal's] assessment of the Bank's conduct at the prior stage, i.e., the investigative process, is limited to verifying that the requirements of due process have been met.

93. Also in *Houdart*, Decision No. 543 [2016], para. 112, citing *G*, Decision No. 340 [2005], para. 73, the Tribunal stated that

the Tribunal has no authority to micromanage the activity of INT. What is required of INT is not that every inquiry be a perfect model of efficiency, but that it operates in good faith without infringing individual rights.

94. EBC's independence and discretion in handling its investigations are also established in the Staff Rules. Under Staff Rule 3.00, paragraph 8.01, it is stated:

If EBC receives an allegation within the scope of section 6 of this Rule, or if the basis for any such allegation otherwise comes to EBC's attention, EBC shall undertake an initial review. Alternatively, EBC may request that line management (at the level of the manager of the supervisor of the staff member whose conduct is at issue or above) conduct the initial review. Based on the initial review, EBC may conduct a further review of the matter by:

- a. Assisting the parties concerned in reaching a resolution of the matter acceptable to all parties concerned, in accordance with paragraph 9.01, below;

- b. facilitating a process whereby a staff member whose conduct is at issue may voluntarily agree to a resolution of the matter in accordance with paragraph 9.02, below; or
- c. conducting a fact finding in accordance with Section 10, below.

Alternatively, EBC may request that line management (at the level of the manager of the supervisor of the staff member whose conduct is at issue or above) conduct the procedures provided for in Sections 9 and 10 of this Rule. EBC may at any time determine that an initial or further review will be conducted by the Chief Ethics Officer or a designated EBC official. The Chief Ethics Officer, or a designated EBC official, may at any time decline to consider a matter further if it is determined that there is insufficient factual basis to warrant further consideration.

95. Staff Rule 3.00, paragraph 10.01, provides for EBC's discretion to decide whether to conduct a fact finding. It reads:

If the Chief Ethics Officer, or a designated EBC official, determines that there is a sufficient basis to believe that facts may develop that would effectively be addressed through performance management measures or disciplinary measures, or that a fact finding may otherwise be useful in understanding and resolving the matter, EBC, or a line manager requested by EBC to perform this function, may conduct a fact finding to determine further information regarding the substance and circumstances of the matter.

96. EBC's independence from improper interference is also guaranteed under Staff Rule 3.00, paragraph 2.03, which reads as follows:

In carrying out its functions under this Rule, EBC shall be free from improper interference, by any official or staff member of the Bank Group. For purposes of this Rule, any control, limitation or penalty, imposed for retaliatory purposes, shall be considered interference. In carrying out its functions, EBC staff shall adhere to the Principles of Staff Employment, Staff Rules, Administrative Manual, Code of Conduct, and other applicable Bank Group policies.

97. It is clear that EBC possesses discretion in deciding the best way to start, conduct, and conclude an investigation. In the present case, the record shows that EBC conducted a fair and full investigation. The Tribunal therefore finds that proper reasons were given to the Applicant, as set out in para. 91 above, for not reinvestigating her allegations of sexual harassment.

NON-SELECTION FOR THE SENIOR KNOWLEDGE MANAGEMENT OFFICER POSITION

98. It must be noted at the outset that this position was cancelled after the selected candidate rejected the offer. The Responding Manager alleged genuine reasons for cancellation before the PRS Panel noting that due to the Bank's structural changes announced at the time, she anticipated the "disappearance" of her unit and reduced need for a common knowledge management platform.

99. In *BE*, Decision No. 407 [2009], para. 25, the Tribunal held:

The Tribunal, like other judicial bodies, will not review a claim if the claim has become moot. Generally, a claim is considered moot when, due to an event or happening, it no longer presents a justiciable controversy and judicial intervention is no longer necessary to grant effective remedy. International courts and tribunals follow a similar practice and refrain from reviewing a claim if the claim no longer has any object.

100. The Applicant's main allegation is that the hiring process lacked transparency and the cancellation of this position was unfair and improperly motivated. The Bank has not alleged that this claim has become moot as a result of the cancellation. In her Application, the Applicant requests as a remedy that she be reinstated to this or an equivalent position. The Tribunal will proceed with reviewing her allegations on the objectivity and fairness of the selection process.

Whether the hiring process was conducted objectively and whether the Bank's decision not to select the Applicant was improperly motivated and constituted an abuse of discretion

101. The Applicant contends that the Bank did not conduct a transparent or proper selection process for this position as attested to by the lack of any written record of the hiring process, save for a one-page Interview Report in which she is considered unfit, and by the subsequent cancellation of the vacancy.

102. In *Iqbal*, Decision No. 485 [2013], para. 40, the Tribunal held:

The Tribunal has addressed the need to observe the principles of objectivity, transparency, rigor, diversity and fairness in the selection process (both shortlisting

and interviewing) in a number of judgments. (*See e.g. Jassal*, Decision No. 100 [1991]; *Riddell*, Decision No. 255 [2001]; *Hitch*, Decision No. 344 [2005]; *Perea*, Decision No. 326 [2004]).

103. The Tribunal has also held that “the shortlisting process should be guided by principles such as “objectivity,” “transparency,” “rigor,” and “diversity.” *Id.*

104. The Tribunal further found in *Iqbal*, para. 41, citing *BK*, Decision No. 444 [2010], para. 56, that

[t]he principles of “objectivity,” “transparency,” “rigor,” and “diversity” cannot be implemented unless the SLC is composed of staff members from more than one unit in addition to an HR Officer. These objectives in recruitment are realized if the Bank makes its shortlisting process uniform with clear guidelines and when the composition of a shortlisting committee is diverse. *Furthermore, staff members’ confidence in the shortlisting process will be enhanced by the Bank’s proper and contemporaneous documentation of the deliberations of the SLC in as much detail as practicable. Contemporaneous and detailed documentation of SLC deliberations is also a guarantee of a transparent, sound and fair recruitment process.* (Emphasis in original.)

105. In *DO*, Decision No. 546 [2016], para. 40, the Tribunal, noting the Bank’s Non-Managerial Recruitment Guide for Open-ended/Term Staff (Non-Managerial Recruitment Guide), stated that

[the] Guide was designed by Human Resources to “guide Hiring Managers and those who are involved in staffing through the competitive recruitment process for open-ended/term staff.” It describes “the major roles and responsibilities of Hiring Managers, Recruiters/HRDTA, HR Business Partners, the Selection Advisory Committee (SAC) and others involved in the recruitment process.” In particular, it assists in ensuring “that the process is carried out efficiently, objectively, and fairly,” and provides “checklists, guidelines, templates/forms, toolkits and references.”

106. The Tribunal has found the Non-Managerial Recruitment Guide to be based on “principles of recruitment as well as good practices.” However, the Tribunal observed in *DO*, para. 46 that

any decision to deviate from established best practices, which are recommended for the efficient and fair recruitment of staff, must not be arbitrary or lack a reasonable and observable basis. The importance of flexibility in decision-making is

recognized; yet, established guidelines cannot be rendered purposeless by awarding managers unfettered discretion to stray from them as they see fit.

107. The Bank's Non-Managerial Recruitment Guide entrusts the shortlisting process to the Selection Advisory Committee (SAC). The SAC is formed for the specific purpose of "advis[ing] the Hiring Manager during the shortlisting and interview process." Depending on the position, it is recommended that the SAC be composed of at least three to four persons. It is also recommended that such composition be diverse and include a staff member from the hiring unit, an HR representative, a Network representative, and an additional technical/sector representative.

108. In *Iqbal*, para. 51, the Tribunal noted:

The Bank's Guidelines on interviewing and selecting candidates require that the hiring manager and panel interview the shortlisted candidates, that the candidates be rated, and that interview reports be prepared. The Guidelines provide samples of such "Candidate Assessment Forms" with ratings as to the "technical" skills and "people" skills of the candidates as well as overall ratings and recommendations as to which candidates should be selected. The Tribunal found in *Perea*, Decision No. 326 [2004], paras. 53 and 55, that selection decisions will be made based on a comparative assessment of staff skills, knowledge, and performance record against job requirements and that such assessment should be recorded.

109. In this case, the record shows that the Shortlisting Committee selected six candidates, including the Applicant who was notified by email of 20 June 2013. The selected candidates were interviewed on 28 June 2013 by an Interview Panel composed of five members, comprising a member of the hiring unit, and another four members from other units, not including HR. Following the process, the Interview Panel submitted an Interview Report to the Hiring Manager recommending two candidates. The Applicant was notified on 29 July 2013 that she had not been selected for the position.

110. The Tribunal observes that there is nothing in the record regarding the composition of the Shortlisting Committee or its deliberations. Of the entire selection process, the record only contains the Interview Report. The Tribunal further observes that no HR representative was present in the Interview Panel and no explanation was given to justify this absence. The Interview Panel did not

use the matrices or forms recommended by the Bank’s Non-Managerial Recruitment Guide but prepared a one-page narrative that has been produced in redacted version, which states as follows:

4. [the Applicant]: Level mismatch. Not enough leadership initiative and understanding of KM [Knowledge Management] needs. KM experience very narrow.

[...]

[The Interview Panel] also agreed unanimously to the following ranking: (1) [redacted]; (2) [redacted], followed at a considerable distance by (3) [redacted] and (4) [redacted]. The other two candidates [including the Applicant] did not meet the minimum required for a GG position.

111. In *BK (No. 2)*, Decision No. 452 [2011], the Tribunal held that the use of matrices or prescribed candidate assessment forms is not required provided the principles of “objectivity,” “transparency,” “rigor,” and “diversity” are observed. The interview panel in that case did not use the matrices or forms suggested by the HR officer and the Bank’s recruitment procedures but, instead, prepared its own report, which consisted of a narrative comparing the candidates’ skills and competencies primarily on the basis of the interviews, and recorded an overall ranking for each candidate. The Tribunal found at para. 42 that

[t]he Bank’s process requires, at a minimum, that a report of the results of the panel interviews should be prepared and should “clearly document the Panel’s findings and identify the top candidates...” In the present case, the record demonstrates that there was contemporaneous and detailed documentation of the deliberations of the interview panels, and the Interview Summary and Interview Report provided a comparison of the candidates relative to the selection criteria.

112. The Tribunal observes that not all the procedures recommended in the Bank’s Non-Managerial Recruitment Guide were followed in the instant case. The Tribunal notes that the shortlisting process was not properly documented and that the Interview Panel lacked the presence of an HR representative. The Tribunal further notes that the Interview Report does not conform with the matrices and forms recommended by the Bank’s recruitment procedures. Nonetheless, the Tribunal finds that the Interview Report does not appear to have suffered from any deficiency because it provides an overall ranking for each candidate, ranking the Applicant as one of the two bottom candidates of the six interviewed. The Interview Report also shows that the Applicant was

unfit for the position as she did not have enough leadership initiative and possessed very narrow knowledge management experience. Based on the record, the Tribunal therefore is not convinced that the selection process was tainted by lack of objectivity, transparency, or fairness.

113. The Tribunal will now address the Applicant's final claim that the Senior Advisor interfered in the selection process. The Tribunal notes that the PRS Panel Report concluded that there was no improper interference by the Senior Advisor in the selection process. The Interview Panel members and the Hiring Manager testified before the PRS Panel that they did not exchange emails with the Senior Advisor during the recruitment process and that he was not in any way involved in the process. Witnesses also stated that the Senior Advisor did not manage the budget for the unit and that he was in no position to influence the outcome of the process. Testimonies also confirm that there was no pre-selected candidate. The Tribunal finds that no improper motivation has been shown to exist regarding the cancellation of the vacancy, which as confirmed by the record, was due to structural changes at the Bank. The Tribunal agrees with the PRS Panel's finding and concludes that there was no improper interference in the selection process.

114. The Tribunal has identified above some deficiencies in the selection process for the position of Senior Knowledge Management Officer and therefore calls the Bank's attention to the importance of ensuring that selection processes are in accordance with the Bank's Non-Managerial Recruitment Guide.

THE NON-EXTENSION OF THE APPLICANT'S CONTRACT ON 30 SEPTEMBER 2013

Whether the Bank's decision not to extend the Applicant's contract was properly motivated and did not constitute abuse of discretion

115. Regarding temporary appointments, the Tribunal has in the past held in *McKinney*, Decision No. 187 [1998], para. 10, that

[a]s a matter of principle, there is no justification for requiring that the Bank provide a reason for the non-reappointment of a person who is employed by the Bank on an appointment that is expressly stated, in the letter of appointment, to be temporary, and the termination date of which is expressly set forth in that letter. Absent unusual circumstances, the individual should be fully aware of the reason why his or her

appointment does not continue beyond the stipulated date: because the parties so agreed and have stipulated to that effect in the employment contract. As the Tribunal has stated in Mr. X (Decision No. 16 [1984], para. 35): “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 the staff performs, his legal position is controlled by the terms of his appointment.” Mr. X was a regular staff member appointed for a fixed term; temporary employees are entitled to no greater rights.

116. More recently, in *CP*, Decision No. 506 [2015], para. 36, citing *Kopliku*, Decision No. 299 [2003], para. 9, the Tribunal found that

[a] staff member appointed to serve for a fixed period is not entitled, absent unusual circumstances, to the extension or renewal of that appointment. Staff Rule 7.01, para. 3.01, states: “A staff member’s appointment shall expire on the completion of an appointment for a definite term, as specified in the staff member’s letter of appointment, or as otherwise amended.” As the Tribunal has held before, in *Mr. X*, Decision No. 16 [1984], para. 35: “A fixed-term contract is just what the expression says: it is a contract for a fixed period of time.” Even so, the decision not to extend a Fixed-Term contract, like all decisions by the Bank, must be reached fairly and not in an arbitrary manner.

117. The Tribunal then noted in *CP*, para. 37, citing *Kopliku*, para. 10, that there might nevertheless be circumstances which lead to the creation of a right to renewal:

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. “[T]here may be something in the surrounding circumstances which creates a right to the renewal of a consultant appointment.” *Carter*, Decision No. 175 [1997], para. 13. But absent such assurances on the part of the Bank, simply performing to an expected level of performance does not entitle a staff member on a Fixed-Term contract to renewal or extension.

118. The Applicant’s Letter of Appointment (LOA) provided in part as follows:

We expect to need your services for about 10 days from August 6, 2012 to February 28, 2013. In the event the World Bank finds it necessary to cancel the assignment or to shorten its duration, the World Bank reserves the right to adjust the terms of the assignment as necessary. Your appointment will terminate accordingly unless it is extended or a new appointment is made. The World Bank has no obligation to extend the appointment or to offer a new appointment, even if your performance is

outstanding, but it may do so if agreed to in writing at the time of the expiration of the appointment.

119. The Applicant acknowledges that while the Bank had no obligation to renew her STC contract upon its expiration on 30 September 2013, the decision not to extend it was improperly motivated, was retaliatory, and constituted an abuse of discretion.

120. In *AQ*, Decision No. 412 [2009], para. 41, the Tribunal held:

Decisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or 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. *See De Raet*, Decision No. 85 [1989], para. 67; *Marshall*, Decision No. 226 [2000], para. 21; *Desthuis-Francis*, Decision No. 315 [2004], para. 19.

121. Retaliation is prohibited under the Staff Rules. The Tribunal held in *Bauman*, Decision No. 532 [2016], para. 95, that

[a]s the Tribunal has frequently observed, the Staff Rules are clear that retaliation against any person “who provides information regarding suspected misconduct or who cooperates or provides information in connection with an investigation or review of allegations of misconduct, review or fact finding, or who uses the Conflict Resolution System” is prohibited. *See* Staff Rule 3.00, paragraphs 6.01(g) and 7.06, and Staff Rule 8.01, paragraph 2.03; *see also CS*, Decision No. 513 [2015], para. 104; *Sekabaraga* (No. 2), Decision No. 496 [2014], para. 60. This prohibition extends also to retaliation against any person who is believed to be about to report misconduct or believed to have reported misconduct, even if such belief is mistaken.

122. In *Sekabaraga*, Decision No. 494 [2014], para. 42, the Tribunal has acknowledged EBC's important contribution to a proper consideration of the complex factual background against which retaliation is alleged. The Tribunal observed:

Retaliation is one of the more serious forms of staff misconduct. In the present case, there is no indication in the record of a review by the Office of Ethics and Business Conduct (“EBC”) of the Applicant's allegation of retaliation [...] it appears to the Tribunal that there are good grounds for having EBC undertake a review of allegations of retaliation before such allegations are considered by PRS or by the Tribunal. EBC is the unit with the primary mandate and the resources to review

allegations of retaliation, and review by EBC could make an important contribution to a proper consideration of the often complex factual background against which retaliation is alleged. In addition to ensuring a more complete factual record, prior review by EBC would also eliminate the possibility of EBC reaching conclusions that are at variance with findings of fact made by PRS or the Tribunal. In appropriate cases, the Tribunal may suspend proceedings before it to allow for review of retaliation claims by EBC.

123. In the present case, the record shows that the Applicant raised allegations of retaliation as a basis for the non-extension of her contract in Request for Review No. 195. PRS stayed the proceedings and referred the allegations to EBC for investigation. EBC conducted an initial review of the Applicant's claims of retaliation.

124. In conducting its initial review, EBC interviewed the Vice President. He testified that as soon as he characterized the Applicant's complaints as potential harassment, he informed the Senior HR Business Partner and sought his guidance on the matter. The Senior HR Business Partner reported the allegations to HR and subsequently to EBC. The Vice President also recalled having informed the Senior Advisor that the allegations had been made, but there is no indication of when this discussion took place. The Vice President denied having told the Applicant on 1 August 2013 that it was not a good time to raise that issue.

125. EBC also interviewed the Senior HR Business Partner, who confirmed that he reported the Applicant's allegations to EBC and advised the Applicant to do the same. The Senior HR Business Partner also stated that he and the Vice President took great care to act quickly on the Applicant's claims.

126. Staff Rule 3.00, paragraph 8.01, states that EBC may "at any time decline to consider a matter further if it is determined that there is insufficient factual basis to warrant further consideration." Based on the material before it, EBC closed the case on 7 April 2015, stating that "no evidence was identified that [the Applicant] suffered retaliation as [a] result of her reporting misconduct."

127. Regarding proof of retaliation, the Tribunal requires that “an applicant asserting discrimination or retaliation must still make a *prima facie* case with some evidence to show the discriminatory or retaliatory motives behind the impugned decision.” *See Bodo*, Decision No. 514 [2015], para. 77. The Tribunal has also stated in *O*, Decision No. 337 [2005], para. 47, that

[t]he burden lies with an applicant to establish facts which bring his or her claim within the definition of retaliation under the Staff Rules. 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 allegation of poor performance is a pretext to mask the improper motive.

128. In this case, the record shows that the Applicant reported the Senior Advisor’s misconduct to the Vice President on 1 August 2013. On the advice of the Senior HR Business Partner, the Applicant reported the Senior Advisor to EBC on 16 September 2013, two weeks prior to the expiration of her contract. The Applicant claims that the Senior Advisor knew of the Applicant’s reporting of misconduct to the Vice President immediately after she discussed it with him and, in any event, prior to the expiration of her contract. The Tribunal finds that there is no evidence to support the Applicant’s claim in this respect. While the Vice President acknowledged before EBC to have discussed the Applicant’s allegations with the Senior Advisor, there is no clear indication in the record that the conversation took place prior to 30 September 2013, the date of expiration of the Applicant’s contract. The Tribunal therefore finds that the Applicant has failed to discharge the required burden of proof.

129. The record rather supports the conclusion that the non-extension was based on the lack of funding for the Applicant’s position. Evidence before PRS attests to this fact. One of the witnesses who testified before the PRS Panel stated that her unit had provided funding for the Applicant’s position but stopped it in early 2013 because the work on the internal Community of Practice, of which the Applicant’s work was a part, was not a high priority use of resources in her unit. The extension of the Applicant’s contract thereafter was secured from another source. The Senior Advisor’s statements before PRS show that since he secured further funding from the Europe and Central Asia region, the Applicant was able to continue work from March to the end of September 2013. By that time, the Senior Advisor stated, work had been done on five regional webpages.

However, as the sixth region did not want to proceed, the project came to a halt, and the Applicant's contract could not therefore be extended.

130. The evidence on record leads the Tribunal to conclude that the decision not to renew the Applicant's contract was properly motivated. The next question is whether, despite being motivated by business reasons, the Bank provided sufficient notice to the Applicant that her STC contract would not be extended beyond 30 September 2013.

131. Staff Rule 7.01, paragraphs 3.01 and 3.02, states:

A staff member's appointment expires on the completion of an appointment for a definitive term, as specified in the staff member's letter of appointment, or as otherwise amended.

Extended Term Consultant, Extended Term Temporary, Short Term Consultant, Short Term Temporary, and Special Assignment Appointments may be ended by the staff member's Manager prior to expiration on grounds that the employment is no longer required, with such advance notice to the staff member as the Manager determines consistent with the staff member's letter of appointment. A staff member separated under this paragraph is not entitled to severance payments.

132. The Applicant's LOA states that the "World Bank will make every effort to give you as much notice as possible." The Tribunal will rely on the record in order to determine whether the Bank indeed made an effort to provide the Applicant a reasonable amount of time to allow her to make necessary arrangements regarding her career and, most important for STC staff under a G-4 visa status like the Applicant, to make arrangements regarding her immigration status in the United States.

133. The Tribunal observes that while the record shows that the Applicant by 1 August 2013, when she reported allegations of sexual harassment to the Vice President, already worried about the non-renewal of her contract, there is no communication in the record proving that the Senior Advisor, or any other manager, made an effort to give the Applicant notice of non-renewal prior to the expiration of her contract.

134. The Tribunal finds that there has been a disregard of the Applicant's rights to appropriate notice under the Staff Rules.

THE BANK'S FAILURE TO PROTECT THE APPLICANT FROM JANUARY THROUGH MAY 2014
Whether the Bank failed to offer protection to the Applicant during the EBC investigations

135. In *DK* (Preliminary Objection), Decision No. 537 [2016], para. 89, the Tribunal narrowed the focus of this claim to the "failure of management to provide [the Applicant] protection, to the extent it was raised before PRS in Request for Review No. 195." The claim before PRS in Request for Review No. 195 was the Bank's failure to protect the Applicant from retaliation from 29 January 2014 through 29 May 2014. The record shows that during the relevant period, the Applicant was no longer working for the Senior Advisor, who had retired from the Bank in early February 2014, but she was under an STC contract with the Program Coordinator.

136. Principle 8.1, of the Principles of Staff Employment states:

The Organizations' policy on protections and procedures for reporting misconduct shall set out the rights and responsibilities of staff with respect to reporting misconduct that may threaten the operations or governance of the Organizations, so as to encourage staff to raise concerns and enable the Organizations to effectively address such cases, manage risks, and uphold standards of good governance. The policy shall provide protections to staff who report such misconduct or who cooperate or provide information during an ensuing review or investigation. These protections shall include:

- a. the prohibition of retaliation by managers or other staff against any person for reporting misconduct, or for cooperating or providing information during an ensuing review or investigation;
- b. with the consent of the staff member involved, the provision of interim protections during the course of review or investigation as necessary to safeguard the interests of a staff member who has reported misconduct or cooperated or provided information in that review or investigation; and
- c. where a staff member has made a *prima facie* case that an adverse employment action was taken in retaliation for an activity protected under the misconduct reporting policy, a shift in the burden of proof to the Organizations to show that the challenged action would have been taken absent the staff member's protected activity.

137. Staff Rule 8.02, paragraph 2.05, states:

Staff members who report suspected misconduct under this Rule, as well as staff members who cooperate or provide information regarding suspected misconduct in the course of an ensuing review of allegations under Staff Rule 3.00, or investigative process under Staff Rule 8.01, shall be accorded interim protections during the course of review or investigation as necessary to safeguard the interests of such staff members. At the direction of the Vice President, Human Resources, and with the consent of the staff member, such interim protections may include temporary reassignment to another unit in accordance with Staff Rule 5.01, "Reassignment" or, in exigent circumstances, temporary placement on administrative leave in accordance with Staff Rule 6.06, "Leave."

138. The Tribunal observes that the EBC investigation of the Applicant's allegations of sexual harassment began in mid-September 2013 and continued until April 2014. In an email of 30 September 2013 sent by the EBC Manager to the Senior HR Business Partner and the Vice President, he informed them that during the EBC investigation, "it is not uncommon for interim measures to be implemented to protect the complainant" and noted that "it may be prudent to consider extending [the Applicant]'s contract and have her work under a different TTL pending the outcome of EBC investigation." The Applicant was not, however, afforded any of the suggested measures.

139. The Tribunal notes that one of the Responding Managers before PRS explained the reasons why the Applicant was not granted the protection sought. He stated that the Bank, prior to granting protection, determines whether there is any imminent risk of irreparable harm and since no imminent risk existed in the Applicant's case, protection was not necessary.

140. The Tribunal notes that the Staff Rules provide for interim protections only during the course of review or investigation. The EBC investigation of the Applicant's allegations of sexual harassment against the Senior Advisor ended in April 2014. The Tribunal further notes that the Senior Advisor stopped being the Applicant's manager at the end of September 2013, the Applicant was offered an STC contract with another TTL from November 2013, and the Senior Advisor retired from the Bank in February 2014.

141. Taking all these factors into consideration, the Tribunal finds that during the period under review, i.e. January through May 2014, there was no imminent risk justifying any interim protections for the Applicant.

FALSE REVISION OF THE APPLICANT'S PEOPLE PAGE PROFILE

Whether the Applicant's People Page was ill-intentionally altered and whether it was detrimental

142. The Tribunal notes that these allegations were brought as part of the claims of retaliation submitted by the Applicant in Request for Review No. 195. PRS referred the allegations to EBC for investigation. EBC conducted an initial review and closed the case on 7 April 2015 due to lack of evidence. Regarding these allegations, EBC relied on the statement made by the Senior HR Business Partner that he thought that the changes alleged by the Applicant were not intentionally made but were due to a system error.

143. The Tribunal further notes that the PRS Panel heard testimonies from an HR Senior Specialist and a Senior IT Officer in relation to the Applicant's allegations of alterations to her People Page profile. The Tribunal observes that the HR Senior Specialist stated that the multiple changes alleged by the Applicant were due to a system error at the time, which affected many staff members' People Page profiles, and not only the Applicant's. On his part, the Senior IT Officer stated that work history data on the People Page is only "fed" by one or more HR databases and cannot be manually manipulated by staff members.

144. Based on the record, the Tribunal finds that the changes in the Applicant's People Page profile were the result of a system error and cannot be attributed to an intentional act of the Bank. The Tribunal further finds that the Applicant has not proven any harm as a result of the changes to the profile and that the record attests of the numerous efforts by the Information and Technology Solutions office to correct the mistakes in the Applicant's People Page profile.

TERMINATION OF THE APPLICANT'S CONTRACT ON 11 JULY 2014

Whether the termination was properly motivated

145. As noted above, Staff Rule 7.01, paragraph 3.02, allows for the early end of short-term consultancy appointments “on grounds that the employment is no longer required, with such advance notice to the staff member as the Manager determines consistent with the staff member’s letter of appointment.”

146. In CS, Decision No. 513 [2015], para. 70, the Tribunal found:

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.

147. The Applicant claims that the decision to terminate her contract was retaliatory. The record shows that the Applicant raised allegations of retaliation as the basis for the termination of her contract in Request for Review No. 217. PRS accordingly stayed the proceedings and referred the allegations to EBC for investigation. In conducting its initial review, EBC interviewed the Program Coordinator on 6 April 2015. The Program Coordinator testified that he did not know the Senior Advisor or of any complaints against him made by the Applicant. Based on the evidence gathered during the initial review, EBC closed the case due to “lack of any evidence to corroborate the claims of retaliation.”

148. An applicant “asserting discrimination or retaliation must still make a *prima facie* case with some evidence to show the discriminatory or retaliatory motives behind the impugned decision” *Bodo*, Decision No. 514 [2015], para. 77. The Tribunal observes that there is nothing in the record that supports the Applicant’s allegation that the Program Coordinator terminated her contract in retaliation for having reported the Senior Advisor’s misconduct. As stated by the Program

Coordinator before PRS, he heard about the Applicant's allegations of misconduct against the Senior Advisor for the first time in April 2015, that is nine months after the termination of the Applicant's contract.

149. The Tribunal also finds that the Applicant has not demonstrated a causal link between her reporting of the Senior Advisor's misconduct and the Program Coordinator's decision to terminate her contract. Instead, the record shows that the Applicant was offered an STC contract with the Program Coordinator in November 2013. The Program Coordinator subsequently extended the Applicant's contract on several occasions. The Tribunal finds it difficult to reconcile the Applicant's claims of retaliation with this job offer and subsequent renewals, all of which happened after the Applicant's reporting of misconduct to EBC.

150. Principle 7.1(b), of the Principles of Staff Employment provides that

b. Separations may also be initiated by the World Bank or the IFC. They shall be based on the needs for efficient administration and for upholding the standards of the Organizations. Staff members separated at the initiative of the Organizations have the right to be notified in writing of the decision and the reason for it, which shall be based on the following:

- i. a decision not to confirm a staff member's appointment at the end of or during probation; or
- ii. grounds of health; or
- iii. when the Organizations determine that a position or positions are no longer necessary, or that the responsibilities of a position have changed so that the staff member is not qualified to fill it, provided that no vacant position in the same type of appointment exists for which the Organizations determine that the staff member is eligible and has the required qualifications or for which he or she can be retrained in a reasonable period of time; or
- iv. unsatisfactory service, personal or professional misconduct, abandonment of duties, or action adversely reflecting upon the reputation and integrity of the Organizations or their staff.

151. The Bank submits that the termination of the Applicant's contract was based on unsatisfactory performance. The Tribunal finds that, while acknowledging the Bank's discretion in this respect, the Principles of Staff Employment require that the Bank notify staff in writing of the reasons for separation.

152. The record includes a series of email exchanges between the Program Coordinator and the Applicant from April through July 2014. In an email of 30 April 2014 with subject “final evaluation,” the Program Coordinator wrote to the Applicant expressing his concern and asking her to “articulate to [him] an overall approach,” to reassure him “where we stand on preparing the material,” and whether “if the evaluation is to start on June 1, would we be ready?”

153. The record further shows that in the email of 7 June 2014, the Program Coordinator articulated his priorities to the Applicant and asked her to address them and report on her meeting with another staff member, to which the Applicant agreed. Other email exchanges of June 2014 rather focus on the extension of the Applicant’s contract. The Tribunal notes that until the end of June 2014, there is nothing in the record to corroborate the Bank’s assertions that the Program Coordinator informed the Applicant of her performance issues or gave the Applicant opportunities to resolve them.

154. The Tribunal observes that the email of 1 July 2014, in which the Program Coordinator expressed his discontent with the Applicant’s requests for payment and amount of delivered work, although stronger in terms than previous emails, is not sufficient to conclude that notice of the reasons for separation were clearly articulated. Nor was such notice given on 15 July 2014, when the Program Coordinator refused to request access to the system for the Applicant.

155. It was only on 21 July 2014, ten days after the termination, that the Program Coordinator stated the reasons why the Applicant had been terminated, clearly articulating that “the issue of satisfaction about your work has been debated several times and the termination of your contract was not arrived at suddenly or based on anything but on my assessment of the quality of your work.”

Whether the termination decision followed due process

156. Principle 2.1 of the Principles of Staff Employment provides that the Bank “shall at all times act with fairness and impartiality and shall follow a proper process in [its] relations with

staff members.” It also obliges the Bank to “respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal.”

157. In *BY*, Decision No. 471 [2013], para. 42, citing *Samuel-Thambiah*, Decision No. 133 [1993], para. 32, the Tribunal confirmed that “a staff member must be given ‘adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached.’ This is essential to ensure that the staff member’s due process right to defend himself is respected.”

158. Similarly, the Tribunal has stated in *CS*, para. 100, citing *Garcia-Mujica*, Decision No. 192 [1998], para. 19, 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.” The Tribunal has observed that this obligation also applies with respect to termination. *Id.*, para. 77.

159. According to the record, the Applicant was given notice of termination and the reasons thereof on 21 July 2014, ten days after her contract was terminated. The Tribunal finds that such *post facto* notice deprived the Applicant of the possibility of defending herself against the unsatisfactory performance alleged by the Program Coordinator and infringed upon her rights to due process.

160. The Tribunal therefore finds a breach of the Applicant’s right to be given advance notice of termination and the reasons thereof.

161. The Tribunal concludes that the deficiencies and procedural irregularities identified in paras. 114, 134, and 160 give rise to compensation.

FINAL OBSERVATIONS

162. The circumstances of this case prompt the Tribunal to recall that the Bank's Code of Conduct states:

The World Bank Group does not expect staff to tolerate sexual harassment from managers, colleagues, or any other World Bank Group Stakeholders.

[...]

The World Bank Group takes allegations of sexual harassment seriously [...]. Anyone experiencing and reporting such unwelcome behavior should know that the matter will be handled with the utmost sensitivity.

163. The Tribunal has held that “[j]ust as an accused is entitled to an investigation that does not amount to an abuse of discretion, the same is true for an accuser,” *McKinney* (No. 2), Decision No. 194 [1998], para. 12. It is clear that any EBC findings on allegations of sexual harassment may affect the rights of the complaining staff member. In this regard, the Bank is encouraged to consider whether in conducting such investigations it takes due account of the rights of the complaining staff member who claims to be the victim of sexual harassment.

DECISION

- (1) The Bank shall pay a compensation in the amount of US\$ 7,500.00 for the deficiencies and procedural irregularities identified above;
- (2) The Bank shall contribute to the Applicant's legal fees and costs in the amount of US\$ 10,000.00; and
- (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., 21 April 2017