



World Bank Administrative Tribunal

2016

Decision No. 542

**DM,
Applicant**

v.

**International Finance Corporation,
Respondent**

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

**DM,
Applicant**

v.

**International Finance Corporation,
Respondent**

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, and Mahnoush H. Arsanjani.
2. The Application was received on 14 December 2015. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The International Finance Corporation (IFC) was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 25 October 2016.
3. The Applicant challenges *inter alia* the 23 August 2015 decision of the IFC not to renew or extend his appointment.

FACTUAL BACKGROUND

4. The IFC hired the Applicant on 24 November 2008 as a Senior Portfolio Officer, Grade GG, on a two-year term appointment. His initial term was scheduled to expire on 23 November 2010.
5. In September 2010 his appointment was extended to an additional five-year term with an expiry date of 23 November 2015. In July 2011, the Applicant was promoted to a Grade GH Principal Portfolio Officer position.
6. The Applicant performed well in his work. In the Applicant's view, his performance evaluations and Salary Review Increases (SRIs) were always excellent. In the IFC's view, the Applicant's performance evaluations were generally favorable, but mixed. The IFC adds that while

the Applicant's strong technical skills were consistently praised, his managers frequently noted his "interpersonal skills" as an area that needed improvement.

7. The record includes the Applicant's performance review documents for FY2009-14. These documents demonstrate that the Applicant's technical skills were always praised. They also show that the Applicant had some problems with interpersonal skills. For example, in the FY13 Staff Member Feedback Report (the official performance document for IFC staff), the Applicant's supervisor noted that "[the Applicant] has coached and mentored his team mates; however, his communication style has sometimes been discouraging. He should work on trying to emphasize positives and encourage development learning from mistakes. He also can be condescending at times and needs to be careful to be respectful of more junior colleagues." In the FY14 Staff Member Feedback Report, the supervisor noted that "[the Applicant's] authoritarian style did not work out for him this past year. As his more senior macro-team member did not feel like he was appreciated or given room to grow and learn."

8. During FY2009-10, Mr. A served as the Applicant's supervisor. During FY2011-12, Mr. A served as the Applicant's supervisor and Mr. B as co-supervisor. During FY2013-14, Mr. B served as the Applicant's supervisor.

9. The Applicant had a good relationship with Mr. A but not so with Mr. B. According to the Applicant, he had a very difficult relationship with Mr. B who "had a long history of harassing and attempting to undermine [the Applicant]."

10. Mr. A tragically died in July 2014. At time of his death he was serving as the Director of the Applicant's unit. Mr. C was then appointed as the new Director of the unit. As Mr. C came to know the difficult relationship between the Applicant and Mr. B, he decided to change the reporting line for the Applicant. Mr. D accordingly became the Applicant's supervisor effective August 2014. The IFC states that Mr. C intended to provide the Applicant with a fresh start. The IFC adds that Mr. C deeply invested in the Applicant's success. Mr. C approved coaching for the Applicant and also approved the Applicant's participation in a leadership development program.

11. Around the same time, in September 2014, the Applicant was given a new assignment. He was given a mandate to be the responsible portfolio manager for the P7 portfolio. The Applicant explains the P7 portfolio as follows: “A new portfolio, P-7, was established in IFC to handle the IDA [International Development Association] money and make appropriate investments. P-7 was different from all other IFC portfolios because of its liabilities to be spread out over twenty years. The need to make those semi-annual payments to IDA meant that its investments had to be at least partially liquid and had to generate sufficient profits to make the payments.”

EBC investigation

12. During the week of 8 September 2014, the Applicant went to London for a conference. There the Applicant met some senior officials from Bank of America Merrill Lynch (BAML). On 12 September 2014, an official from BAML contacted Mr. D, the new supervisor of the Applicant, and informed him that the Applicant interacted with senior BAML officials in a manner that they considered inappropriate. Mr. D then spoke with the senior BAML officials. They reported to Mr. D that the Applicant (as stated in the investigative report prepared by the Office of Ethics and Business Conduct (EBC)):

- (i) requested that they prepare for him, a memorandum on investing in asset backed securities in peripheral countries (also known as mezzanine/peripheral securities) (“strategy memo”), which memorandum, he would rely on, in the course of his work, to justify investing in such securities to IFC’s Corporate Risk Committee, and
- (ii) disclosed confidential and sensitive IFC trading and securities information to them by email.

13. Mr. D then consulted the new Director of the unit (Mr. C), and the relevant Human Resources (HR) Officer. The HR Officer advised that the concerns should be shared with EBC for a determination as to whether the Applicant’s conduct constituted misconduct under the Staff Rules.

14. On 26 September 2014, Mr. D (the new supervisor) contacted EBC sharing the concerns that had been related to him by the BAML officials. EBC then interviewed Mr. D on 30 September

2014. It interviewed Mr. B (a former supervisor of the Applicant) on 21 October 2014. Also on that day EBC requested a meeting with the BAML officials. But BAML informed EBC that EBC could speak with them only if the World Bank Group (WBG) “would execute a hold harmless letter indemnifying BAML from all liability resulting from any information shared with EBC.” EBC responded that the WBG would not be able to provide such indemnity. EBC accordingly did not interview any officials of BAML. EBC then interviewed the Director of the unit, Mr. C, on 27 October 2014.

15. On 13 November 2014, EBC served the Applicant with a Notice of Alleged Misconduct. The Notice alleged:

- a. That [the Applicant] in a meeting with [a senior official] and other staff of BAML in London sometime in the second week of September 2014, requested that [the senior official] prepare on his behalf a memorandum on investing in asset backed securities in peripheral countries (also known as mezzanine/peripheral securities), which memorandum [the Applicant] would rely on, in the course of his work, to justify investing in such securities to IFC’s Corporate Risk Committee.
- b. That on September 11, 2014 [the Applicant] disclosed to [the senior official of BAML] and other staff of BAML, IFC market sensitive confidential information including a spreadsheet containing the details of IFC’s holdings in P7, thus sharing without authorization, confidential information obtained in course of his employment with WBG with a third party outside WBG.

16. In consultation with HR, Mr. D (the new supervisor) and Mr. C (the Director of the unit), the Applicant was placed on administrative leave effective 17 November 2014. The IFC explains that this was done in order to allow the Applicant to respond to the EBC investigation without creating any conflicts with his work responsibilities.

17. As part of its investigation, EBC interviewed the Applicant and a number of other IFC officials. EBC also reviewed email exchanges between the Applicant and one of the senior officials of BAML. EBC shared its draft report and the Applicant was given an opportunity to comment. Before EBC the Applicant insisted, among other things, that the spreadsheet in question did not

contain confidential information and that EBC should take into account the hostile work environment in which the Applicant was working in the IFC.

18. On 16 September 2015, EBC submitted its Written Summary of Factual Findings and Recommendations (EBC Final Report) to the Human Resources Vice President (HRVP). In its Final Report, EBC concluded as follows:

1. [EBC] reviewed and found sufficient evidence to substantiate the allegation that [the Applicant], Principal Portfolio Officer, International Finance Corporation (IFC) [...] without authorization disclosed IFC market sensitive confidential information, specifically a spreadsheet containing the details of IFC's securitized product holdings in Portfolio 7 (P7), to [a senior official of] Bank of America Merrill Lynch (BAML) on September 11, 2014.
2. EBC also reviewed but found insufficient evidence to substantiate the allegation that [the Applicant] requested [a senior official of BAML] to prepare a memorandum on investing in asset backed securities in peripheral countries (also known as mezzanine/peripheral securities), which memorandum [the Applicant] would rely on, in the course of his work, to justify investing in such securities to IFC's Corporate Risk Committee.

19. After reviewing the EBC's Final Report, the HRVP, however, concluded that the Applicant had not engaged in misconduct and so informed the Applicant by a letter of 14 January 2016.

Non-extension of the Applicant's contract

20. While the Applicant was under investigation and on administrative leave, the IFC management asked Mr. D (the new supervisor) to take over directly managing the P7 portfolio. The IFC states that management's strategy for investing the P7 portfolio was evolving over time. The initial focus was on getting an investment guideline framework approved for managing P7 to best fulfill the requirements of the IDA project. The IFC adds that a proposal was prepared and submitted to the IFC Corporate Risk Committee (CRC) on 22 January 2015. The proposal was approved by the Committee, allowing P7 to invest in one new asset class, corporate bonds rated "A" or higher. In addition, the IFC explains that the CRC allowed P7 to invest in Collateralized Loan Obligations (CLOs), which had been removed from eligibility after the Global Financial Crisis and with which Mr. D had experience.

21. The IFC states that in February 2015, the portfolio team for P7 proposed a new strategy for managing P7. They argued for selling the tier 1 portfolio of “US treasuries zero-coupon bonds (Strips)” and replacing it with an interest-rate swap, hedging the liability. The IFC further explains that the main reason for this new strategy was the efficiency to be gained in managing the portfolio. This would free up human resources that were previously occupied with borrowing the U.S. Treasury securities and placing the proceeds in deposits. The IFC adds that the new strategy was agreed to by the Investment Committee of the department and implemented by the portfolio manager on 10 February 2015.

22. The IFC states that the IFC’s Investment Committee had also decided to reduce its risk exposures arising from tactical trading. The IFC states that after it changed its trading strategies, the Applicant’s skills and experience as a macro trader and an inflation-protected securities trader no longer fit with the new investment strategies adopted by the IFC management.

23. In view of these developments and changes in investment strategy, the IFC states that in August 2015, Mr. D (the new supervisor) notified the Applicant that his existing contract would be extended until 23 February 2016 but would not be renewed after that date. In an official memorandum dated 23 August 2015, Mr. D notified the Applicant that:

By this memorandum, I am providing you six months’ written notice that your term appointment will not be extended and shall end on 02/23/2016.

In accordance with the provisions outlined in your Letter of Appointment dated November 20, 2008, Management has decided not to renew your contract.

To ensure you are afforded 6 months’ notice, as per current policy, your contract will be extended an additional 3 months and your last day of employment with the World Bank Group will be 02/23/2016.

24. The Applicant filed his Application on 14 December 2015 challenging the decision not to renew or extend his contract.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's contentions

25. The Applicant contends that: the non-renewal decision was a breach of promise; the IFC's decision was arbitrary and without proper basis; the EBC investigation and the administrative leave were improperly used to oust the Applicant from the IFC; and finally, the non-renewal was retaliatory and an unlawful disciplinary action. As remedies the Applicant requests the following: (i) reinstatement and renewal of his contract until November 2018; (ii) if no reinstatement and no renewal of his contract, compensation in the amount of three years' salary; (iii) settlement costs incurred from the sale of his house; (iv) moving expenses for him and his family to relocate back home; (v) compensation for the loss of pension rights; (vi) any other additional amount the Tribunal deems fit; and (vii) legal costs and fees in the amount of \$24,011.39.

The IFC's contentions

26. The IFC argues that: no promise of extension was made to the Applicant; the IFC had valid business reasons for not renewing the Applicant's term contract; the EBC investigation and the administrative leave were not abused to oust the Applicant; and finally, the Applicant was not retaliated against. Accordingly, the IFC requests that the Tribunal dismiss the Application.

The Staff Association's contentions

27. The Staff Association filed an *amicus curiae* brief in support of the Applicant on 27 May 2016. It argues in support of the Applicant that: the Applicant's contention that the promise made to him for an extension of his contract should have been honored; the Applicant's management did not give any reason for its decision not to renew his contract at the time he was informed of the non-renewal, and that the reasons given now, after the fact, are unconvincing; the Applicant was placed on administrative leave for a long period without proper basis and it led to the Applicant's removal; and finally, this was a misuse and indeed a perversion both of the EBC investigative process and of the discretion not to renew a renewable term contract. The methods used by

management to remove the Applicant from the IFC may have appeared legitimate on the surface, but the manner in which they were used was not legitimate, resulting in an unjustified termination in retaliation for the protected activity of raising concerns about his manager.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

Breach of promise

28. The Applicant argues that the non-renewal of his contract was a breach of a promise made to him by the former Director, Mr. A. The Applicant explains that in 2014, his then Director, Mr. A, promised him that his contract would be extended at least through November 2018. The Applicant adds that this promise was made multiple times during conversations when the Applicant sought assurances before committing to buy an acre plot of land on which he built a very expensive house. The Applicant adds that he was a seasoned Wall Street veteran of 14 years and would not normally trust a promise unless it was put in writing. In this case, however, he trusted Mr. A, he had the IFC's Vice President's encouragement, and Mr. A had already delivered on his earlier verbal promise to renew the Applicant's contract in 2010 and promote him. The Applicant certainly would not have been willing to take on the heavy liability of a large mortgage without being sure that his employment would continue for some time and that if it ended, he would at least have the security of a lifetime pension.

29. The Applicant states that probably sometime in May or June 2014, Mr. A asked the Applicant and Mr. B (a former supervisor of the Applicant) to contact their HR Representative to find out how to arrange for an early extension. Based on Mr. A's request, the Applicant sent an email on this matter (copying Mr. B) to the HR Representative. The Applicant states, however, that these emails somehow had been deleted and claims that the IFC destroyed evidence. The Applicant requests that the Tribunal give him the benefit of the doubt and accept the truth of his assertion about emails relating to the extension of his contract.

30. The Applicant states that other circumstances also show that a promise was made to him. In June 2014, while Mr. A was still alive, the Applicant confidently told Mr. C (the new Director

of the unit) that “I will remain as a portfolio manager for next 4-5 years.” Clearly, the Applicant was sure at the time that his contract would be extended. Also around that time Mr. C and the IFC’s Vice President assured the Applicant that he would have the opportunity to grow in the IFC. The Applicant adds he was convinced that he would remain and flourish in the IFC, and thus turned down alternative job offers. Based on these considerations, the Applicant argues there was a promise of extension.

31. The Staff Association supports the Applicant’s contention that the promise made to him for an extension of contract should have been honored.

32. The IFC contends that no promise of extension was made to the Applicant. The IFC explains that there is no reasonable evidence of any “express or unmistakably implied promise” to provide an extension or renewal. The Applicant’s belated recollection that his former Director, Mr. A, made him a specific promise that his employment would be guaranteed until November 2018 is not supported by the record. The IFC states that the Applicant has repeatedly reviewed his IFC emails and has been unable to find any documentary support for the promise. His allegation of tampering with his emails is completely baseless.

33. The IFC argues that the Applicant seems to have made assumptions in his own mind about his lifelong job tenure at the IFC despite a lack of any evidence, either written or oral. The IFC adds that it would be exceptionally unusual for a Vice President of the IFC to give an employee an impression of an “iron-clad” career opportunity. It would be even more unusual for there to be no paper trail of such a promise. Either the IFC or the Applicant would likely memorialize such an important amendment to the Applicant’s term of employment had it actually occurred.

34. The IFC maintains that the available circumstantial evidence suggests that no such promise was made. To begin with, the Applicant had not raised this alleged promise before filing the Application. One would have expected him to raise this promise repeatedly whenever he had discussions about his employment, and certainly when he received notice of his non-renewal. If a promise had been made, the Applicant would surely have been eager to correct the IFC’s mistaken

belief that his appointment expired in 2016. Instead, he remained silent and has only raised the promise before the Tribunal.

35. The IFC adds that the Applicant himself admits that he “was a seasoned Wall Street veteran of 14 years and would not normally trust a promise unless it was put in writing.” Especially after Mr. A passed away, the Applicant would have been expected to seek written confirmation of any oral promises he claimed to have received from Mr. A. He did not do so. The Applicant’s recent sudden recall of an oral discussion he may have had with his former Director years ago should not be enough to constitute an enforceable employment decision.

36. The Tribunal notes that regarding the expiration of a term appointment, Staff Rule 7.01, paragraph 3.01 states that: “A staff member’s appointment expires on the completion of an appointment for a definite term, as specified in the staff member’s letter of appointment, or as otherwise amended.”

37. In *Rittner*, Decision No. 339 [2005], paras. 30-32, the Tribunal reiterated its jurisprudence governing the issue of non-extension of term appointments:

The Tribunal has had several occasions in the past to consider claims by staff members serving on Fixed-Term, Term or Temporary appointments to have their appointments extended or regularized. In *Kopliku*, Decision No. 299 [2003], para. 9, the Tribunal explained the governing principles in the following manner:

The legal principles that govern this case have been well established in the jurisprudence of the Tribunal. 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.” Accordingly, the Bank need not provide reasons for the non-reappointment of a person serving for a temporary and fixed term. “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.” *McKinney*, Decision No. 187 [1998], para. 10.

The applicable principle is that the Bank has discretionary authority to grant the holder of a Fixed-Term appointment a further contract. That discretionary authority to renew or not to renew a contract at the expiration of its predetermined date is not, however, absolute and unlimited; it may not be exercised in an arbitrary manner. (*Barnes*, Decision No. 176 [1997], para. 10.)

The nature of applicable limitations was indicated by the Tribunal in *Carter*, Decision No. 175 [1997], para. 15: the decision not to renew or extend a contract may not be based “on considerations unrelated to the functioning of the institution, such as racial discrimination.”

Another kind of restriction upon the Bank’s discretionary authority to renew or extend, or not, a Fixed-Term contract arises when circumstances are shown which reasonably warrant the inference by a staff member that the Bank in fact made a promise to extend or renew his or her appointment “either expressly or by unmistakable implication.”

38. Therefore, in the context of non-extension or non-renewal of the Applicant’s term contract, it has to be shown that the IFC “in fact made a promise to extend or renew his [...] appointment ‘either expressly or by unmistakable implication.’”

39. The Tribunal notes that there is no documentary evidence showing that a promise of extension was made expressly. The Applicant suggests that he had certain email exchanges regarding this promise made by Mr. A, the former Director of the unit. He, however, fails to produce any emails and claims that the IFC has deleted them. The Tribunal finds no basis for this claim. Mr. A is not alive to testify on this matter. The Applicant suggests that Mr. B (a former supervisor) and a HR Representative were copied on email exchanges relating to the promise. Mr. B and the HR Representative have filed written declarations with the Tribunal stating that they both had reviewed their emails and other documents and found no emails or documents that would support the Applicant’s contention that he was promised an extension of contract through November 2018 or beyond that period. Given the record before it, the Tribunal cannot conclude that an express promise was made regarding the extension of the Applicant’s contract until 2018 or beyond.

40. The next point to discuss is whether such a promise was made by “unmistakable implication.” The Applicant states that in June 2014, while Mr. A was still alive, the Applicant confidently told Mr. C (the new Director of the unit) that “I will remain as a portfolio manager for next 4-5 years.” The Applicant states that this shows that he was sure at that time his contract would be extended. Even if the Applicant had proved that he made these statements to Mr. C, the Tribunal cannot accept that this type of subjective view of the Applicant exhibits evidence of unmistakable implication that a promise of extension was made.

41. In his support, the Applicant states that Mr. C in 2014 told the Applicant that “[you] have an excellent mandate and opportunity to grow in the organization.” The Applicant adds that in 2014 the Vice President of the IFC assured him in a conversation that the Applicant “had an ironclad career opportunity with IFC.”

42. Even if these statements were made, the Tribunal finds that such general statements of encouragement do not meet the threshold of a binding specific promise of a contract extension by unmistakable implication.

Arbitrariness

43. The Applicant argues that the business reasons invoked by the IFC for non-extension of the contract have no proper basis and therefore the decision was arbitrary. First, the Applicant argues that the IFC repeatedly asserts that the Applicant was a “macro” trader and that his “macro” skills were no longer needed in the IFC. The Applicant adds that this implies that he was somehow different from other Principal/Senior Portfolio Officers in having these “macro” skills. The Applicant states that in fact, all Principal/Senior Portfolio Officers have to be “macro” traders; this simply means that they make investment decisions and develop investment strategies based on global markets and economic and financial circumstances at the time. The Applicant adds that Mr. B (a former supervisor) and a number other staff were all macro traders who are still employed in the IFC; only the Applicant no longer works in the IFC.

44. Second, the Applicant argues that the IFC completely misrepresents the extent of the Applicant's responsibilities and tasks in the IFC prior to his being placed on administrative leave in November 2014. The Applicant adds that he had a wide range of investment responsibilities just like all other Principal Portfolio Officers. The Applicant adds that the IFC only mentions the Applicant's role in P7 and justifies the non-renewal of his contract solely on its supposed changed investment strategy. The IFC nowhere mentions all the other heavy responsibilities of the Applicant and cannot explain why his skills in other areas were no longer needed.

45. Third, the Applicant states that before the Applicant was placed on administrative leave, the IFC admits that Mr. C, the Director of the unit, gave the Applicant "a clear mandate to be responsible portfolio manager for the P7 portfolio." The only reason the Applicant could not continue managing the P7 portfolio was because the IFC improperly placed him on administrative leave. The Applicant adds that the changing investment strategies the IFC was articulating here actually were based on the Applicant's proposals. The Applicant argues that he has the relevant experience to carry on with the evolving investment strategies for the P7 portfolio.

46. The Staff Association argues that the Applicant's management did not give any reason for its decision not to renew his contract at the time he was informed of the non-renewal, and that the reasons given now, after the fact, are unconvincing. It argues that the IFC management attempts to show that the Applicant had a narrow set of skills that were no longer needed by the IFC. But this argument of the IFC management, in the view of the Staff Association, is completely at odds with the facts as the Applicant has demonstrated.

47. The IFC responds that while it is important to have a baseline understanding of "macro" trading for the purposes of understanding the Applicant's claims and the IFC's business reasons for not renewing the Applicant's employment contract, it is most critical to understand that the Applicant's expertise lay in inflation-protected securities and "macro" strategies. The IFC adds that its Asset Allocation Committee decided to no longer allocate investments or significant risks in this area. The IFC states that the Applicant was given a chance to gain additional expertise and was offered a development assignment with another department, which he refused. The IFC maintains that while the Applicant could have applied general knowledge outside his specialization

in performing routine trades, this would not have added much value. In addition, there was no surplus of work in the unit and any available responsibilities in the Applicant's field did not require a Grade GH level senior trader. As a result, the IFC states that Applicant was informed that his term would not be extended.

48. The IFC maintains that the Applicant's sole responsibility at the time he was placed on administrative leave was to manage the P7 portfolio. Contrary to the Applicant's assertion, he had no other significant responsibilities. Once the Applicant was placed on administrative leave, Mr. D took over the responsibility to manage the P7 portfolio. The IFC adds that given the changing investment strategy regarding the P7 portfolio, the IFC decided that the Applicant's skills were no longer necessary. The IFC explains that:

Applicant presents incomplete picture of the overall strategy for managing P7, Applicant's role in that strategy and the overall investment process followed for managing all investments. Applicant's sole responsibility at the time he was placed on Administrative Leave was to manage P7. Applicant designed a strategy for managing P7 comprising of two-tiers of investments: (i) "tier 1," which included investments in treasury securities that mirror the liability and (ii) "tier 2," which entailed "macro" risks, i.e. positions on the level of interest-rates, curve, volatility and inflation. The need for these strategies disappeared, as "tier 1" was replaced with an interest-rate swap to match the liability and the Asset Allocation Committee deemed "tier 2" no longer suitable for P7 or for any other portfolio. The Asset Allocation Committee decided against taking significant "macro" positions and substantially reduced the risk limits for tactical risk taking. Applicant was hired for his specialization in inflation trading, and as this skill is no longer necessary, IFC determined that his primary skills could not be used in managing IFC's liquid assets going forward. The responsibilities available in the unit that could conceivably be performed by Applicant were outside his area of expertise and not commensurate with Applicant's level of experience or grade. As a result, IFC made the business decision to not extend Applicant's contract.

49. The Tribunal finds that the record supports the reasons articulated by the IFC for its decision not to renew the Applicant's contract. The record shows that the Applicant's primary responsibility before he was placed on administrative leave was to manage the P7 portfolio. The record also shows that the IFC adopted changing investment strategies for the P7 portfolio. Identifying the skills that are suitable for these changing needs and who is the most suitable staff to perform these tasks are discretionary decisions of the IFC (*see Jassal*, Decision No. 100 [1991],

para. 37). The IFC concluded that Mr. D, the new supervisor of the Applicant, was in the best position to carry on managing the P7 portfolio and also concluded that the Applicant's skills with a GH level position were no longer in need. The Tribunal is not convinced that this discretionary decision of the IFC had been abused.

50. The Tribunal observes that in the notice of non-extension/non-renewal, the IFC did not state the reasons for the non-extension. In this regard, the Tribunal recalls its observation in *Skandera*, Decision No. 2 [1981], para. 28 that

notice of termination should communicate to the affected staff member the true reasons for the Bank's decision. 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. The prompt communication of reasons for termination will also facilitate the preparation and presentation of appeals and other remedies provided in the Bank's dispute-resolution procedure.

Whether the EBC investigation and administrative leave were improperly used to oust the Applicant

51. The Applicant argues that the protracted and unfounded EBC investigation directly led to the termination of the Applicant's appointment. The Applicant argues that his managers used the administrative leave to get rid of him. He adds that his managers were hostile, antagonistic and seized the opportunity of the EBC investigation to place the Applicant on administrative leave. The Applicant argues that once he was placed on administrative leave, Mr. B (a former supervisor) called at least 20 Wall Street banks saying that the Applicant "was no longer working for IFC" for reasons that were "confidential." This was a lie in the Applicant's view because the Applicant was still a full staff member and should have been considered innocent. The Applicant adds that Mr. B's action completely destroyed the Applicant's reputation and career, not only in Wall Street but even in his home country.

52. The Staff Association argues that the Applicant was placed on administrative leave without a proper basis and the leave effectively removed him from the office for over a year, leaving him out of the loop and unable to do any work right up until his contract expired.

53. The IFC argues that no one in the IFC orchestrated the events that unfolded in the fall of 2014. First, it is not as though the IFC invented general allegations of misconduct. The Applicant's behavior at the London conference spurred an unsolicited report from BAML's representative. The IFC duly considered BAML's account and appropriately reported these serious allegations to EBC. EBC conducted a preliminary review and independently decided to open a full investigation.

54. The IFC states that it consulted with HR and HR decided that an administrative leave would be an appropriate course of action pending the outcome of the investigation and decision by the HRVP following the investigation.

55. The Tribunal is not persuaded that the IFC managers orchestrated the EBC investigation and the administrative leave. The decision to investigate a staff member is an independent discretionary decision of EBC. In this case the record shows there was a proper basis for the investigation.

56. The record shows the chronological development of how the investigation unfolded. After the London conference in September 2014, it was BAML who approached the IFC management about the inappropriate behavior of the Applicant; the managers did not approach BAML. A representative of BAML found the Applicant's behavior so troubling that she traveled to Washington, D.C. from New York for an in person meeting with Mr. D, the Applicant's new supervisor. Mr. D did not immediately rush to EBC. He in fact personally spoke with the two senior representatives of BAML with whom the Applicant interacted in London. He explained to the EBC investigators that he did not want to rely on a "third-person account" and he wanted to "get the first-person account" from the two senior BAML officials. From these conversations, in Mr. D's view, what appeared to him was that the Applicant made unreasonable demands from the BAML officials, the Applicant was sharing confidential IFC information with a third party, and the Applicant created a situation which was detrimental to the IFC's reputation and the IFC's

business interests. Mr. D then consulted Mr. C, the Director of the unit, and an HR Officer. The HR Officer then advised them to refer their concerns to EBC.

57. The Tribunal finds that given these circumstances, the IFC management had a proper basis for reporting their concerns to EBC. Staff Rule 3.00, paragraph 7.01 states that: “Staff members are encouraged to report suspected staff misconduct that falls within the scope of matters addressed by EBC [...] to EBC or to line management, but are not required to do so. A manager who suspects or receives a report of suspected staff misconduct, however, has an obligation to report it either to EBC or, as provided in this Rule, to INT.” Staff Rule 3.00 does not require certain threshold or evidentiary requirements before reporting to EBC. Of course, neither managers nor staff members should file allegations of misconduct against others for purposes of harassment or retaliation. But in this case, the Tribunal is convinced that the IFC management had a proper basis for reporting to EBC and the Tribunal rejects the claim that management went to EBC with the ulterior motive to oust the Applicant from the IFC.

58. The Tribunal notes that under Staff Rule 3.00, paragraphs 8 and 10, when EBC receives an allegation or complaint it undertakes an initial review. If EBC determines that there is sufficient basis to a complaint, it proceeds to an investigation or fact-finding stage. It is a discretionary decision of EBC to determine in what cases to conduct an initial review and when to proceed to a formal investigation. In *Koudogbo*, Decision No. 246 [2001], para. 43, the Tribunal observed that: “The initiation of investigations, preliminary or otherwise, on the basis of rumors and allegations by questionable sources, clearly does not comport with the basic elements of due process.” The Tribunal’s observation in *G*, Decision No. 340 [2005], para. 78 is instructive:

The first matter to be considered is whether there must be a defined evidentiary basis for initiating a preliminary inquiry. It is difficult to articulate a positive standard. Neither Staff Rule 8.01, paragraph 4.02, nor INT’s Standards and Procedures for Inquiries and Investigations define any threshold in this regard; it appears to be a matter of discretion. A meaningful negative answer, on the other hand, was given by the Tribunal in *Koudogbo*, Decision No. 246 [2001], at para. 43, to the effect that a preliminary inquiry cannot be launched on the basis of rumors or allegations from questionable sources. An inquiry may be disruptive. It should not be triggered merely because there have been isolated, anonymous, indirect, word-of-mouth tips. Such indications may be very valuable in law enforcement everywhere, but they must be considered critically. The line to be drawn may be

difficult to define in the abstract, but the need to do so does not arise in this case. The facts upon which the preliminary investigation was launched were objective. They were of the Applicant's own doing. They may have been susceptible of innocent explanation, but that required that they be explored, even at the cost [of] some inconvenience and anxiety. This does not justify a claim for compensation, unless investigations cross the line into harassment.

59. In the present case, the Tribunal finds that EBC had a sufficient basis for pursuing an investigation. The Tribunal rejects the allegation that EBC's decision to proceed with an investigation was unfounded. Once EBC received the allegation from the IFC management on 26 September 2014, EBC interviewed Mr. D, the new supervisor, on 30 September 2014. EBC then interviewed Mr. B (a former supervisor) on 21 October 2014. Also on that day EBC tried to interview the two senior officials of BAML but could not do so because BAML demanded indemnity. EBC then interviewed the Director of the unit, Mr. C, on 27 October 2014.

60. After considering all these interviews, EBC decided to pursue a formal investigation and accordingly provided the Applicant with a Notice of Alleged Misconduct on 13 November 2014. Based on the record, the Tribunal is convinced that EBC had a sufficient basis to open an investigation; it did not proceed to an investigation based on rumors or questionable sources and certainly there is no evidence that the IFC management and EBC conspired together to pursue the investigation to ultimately oust the Applicant from the IFC.

61. The Applicant has rightly noted that the HRVP ultimately decided that the Applicant had not committed misconduct. But this does not mean that EBC's decision to initiate the investigation was wrongful. EBC's role in disciplinary proceedings is to conduct an investigation as an impartial fact-finder and then submit a report of the investigation to the HRVP. It is then up to the HRVP to make a determination of misconduct and imposition of sanctions. The role of EBC is different from that of the HRVP. The fact that the HRVP decided that no misconduct occurred does not bear on the issue of whether EBC's decision to pursue the investigation was unfounded. In this regard, the Tribunal's observation in *G*, Decision No. 340 [2005] is relevant. The applicant in that case argued that the Department of Institutional Integrity (INT), another investigative body in the Bank, should be faulted because statistics show that INT's investigations often do not result in findings of misconduct. The Tribunal rejected such arguments and observed at para. 79 that:

The Tribunal rejects the Applicant's harsh words for INT, and her assertion that the high percentage of investigations which do not lead to disciplinary sanctions bespeaks a pattern of rushing into disruptive proceedings without just cause. INT is not to be criticized when it acknowledges fairly that there is insufficient evidence of wrongdoing; what would be intolerable is if INT were put under pressure to distort its findings in order to justify its decision to conduct a full investigation.

62. The Applicant as well as the Staff Association also argue that the IFC management and HR placed the Applicant on administrative leave in an abusive manner to oust him from the IFC.

63. The Tribunal notes that HR, after consulting the IFC management, placed the Applicant on paid administrative leave under Staff Rule 3.00, paragraph 8.5, which states that: "The World Bank Group Human Resources Vice President may [...] place a staff member on Administrative Leave pending completion of a preliminary enquiry or further review." The Tribunal notes that placing a staff member under investigation on paid administrative leave is a discretionary decision of HR. As placing a staff member on administrative leave during investigation is not in itself a disciplinary measure, the Tribunal will examine whether HR abused its discretion in placing the staff member on administrative leave. In *G*, Decision No. 340 [2005], the Tribunal stated at para. 67:

The jurisprudence of the Tribunal is clear to the effect that the scope of its review in connection with disciplinary cases is broader than with respect to decisions of a purely managerial or organizational nature. (*Kwakwa*, Decision No. 300 [2003], para. 20.) But the Tribunal has also stated that placing a staff member on administrative leave under Staff Rule 8.01 is, in itself, not a disciplinary measure. If a decision to impose administrative leave is challenged, the Tribunal will consider whether the decision was an abuse of discretion – while still acknowledging that it is indeed a matter of discretion. (*Ismail*, Decision No. 305 [2003], para. 54.)

64. The IFC explains the basis for the administrative leave in the context of the present case as follows:

Throughout this unsettling and uncertain time, IFC consulted with HR on whether Administrative Leave would be an appropriate course of action pending the outcome of the investigation and decision by HR. Upon finding (i) the staff member's position required him to be on the trading floor and have access to critical information, (ii) the alleged actions relate directly to business-information, so it would not be desirable for him to continue having access to trading information and systems, (iii) there was no way to mitigate the potential risks of his continued access

to information, and (iv) the nature of the allegations could expose IFC to reputational risk if they were to be confirmed and IFC permitted him to continue trading, HR determined there was a reasonable basis for placing Applicant on Administrative Leave.

65. The Tribunal finds that the reasons stated above are supported by the record before the Tribunal and are consistent with the notice of administrative leave dated 17 November 2014. The Tribunal finds no abuse in this regard and finds no evidence that the IFC management and HR conspired together to improperly place the Applicant on administrative leave. It is not unusual in the practice of the Bank Group's disciplinary proceedings to place a staff member on paid administrative leave until the proceedings are completed.

66. In this regard, the Applicant complains that his administrative leave was extended several times. The IFC explains that once the Applicant was placed on paid administrative leave, it was both necessary and prudent to keep him on administrative leave until EBC completed its investigation and the HRVP made his decision because the underlying risks and concerns did not disappear over time. The IFC also explains that the Applicant contributed to delays in the EBC investigatory process by rescheduling meetings and requesting extensions for providing his comments. Given these considerations, the Tribunal finds that the administrative leave was not improperly prolonged.

67. As for the Applicant's complaint that Mr. B (a former supervisor) improperly told the Wall Street banks that the Applicant was no longer with the IFC, Mr. B, in a written declaration filed with the Tribunal, provides the following explanation:

Following Applicant's placement on Administrative Leave, in order to fulfill my fiduciary obligation to protect IFC from potential improper trading, I contacted our external Wall Street trading counterparts to inform them that Applicant was on leave and should not be trading for IFC at the time. I did not specify the type of leave or provide any specific explanation for Applicant's absence from the trading desk. Applicant had trading authority to trade securities on behalf of IFC until he was placed on Administrative Leave, at which time he was no longer so authorized. To protect IFC, it was critical to notify our trading counterparts not to conduct trades with Applicant while he was on leave. We would have provided this notification regarding any other staff member whose IFC trading authority was temporarily or permanently revoked.

68. Given this explanation, the Tribunal is satisfied that Mr. B had a proper reason for contacting the traders and there was nothing abusive in this respect.

69. Finally, the Applicant complains that the EBC investigation, the administrative leave and the ultimate decision not to renew his contract were a result of a retaliatory scheme by his managers and he was punished even though he committed no misconduct. The Tribunal notes that the initial decision to refer the Applicant to EBC was made by Mr. D (the new supervisor), Mr. C (the Director of the unit) and an HR Officer. The decision to commence an investigation was made by two investigators of EBC. The decision to place the Applicant on paid administrative leave was made by another HR Officer, the Lead Specialist and Head, HRD Corporate Operations. The ultimate decision not to renew the Applicant's contract was made by his managers. The Tribunal has reviewed the record and remains unconvinced that such a retaliatory scheme existed in which the Applicant's managers, HR officials and EBC investigators participated as a coalition of conspirators. The Tribunal is not convinced that the Applicant was disciplined even though he was found not to have engaged in misconduct.

DECISION

The Application is dismissed.

/S/ Mónica Pinto
Mónica Pinto
Vice-President

/S/Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, D.C., 4 November 2016