



World Bank Administrative Tribunal

2017

Decision No. 557

**DX,
Applicant**

v.

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

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

**DX,
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), Ahmed El-Koshi, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.
2. The Application was received on 8 June 2016. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 18 April 2017. Oral proceedings were held on 18 April 2017.
3. The Applicant challenges the disciplinary decision of 16 February 2016, excluding him from any future employment and contractual opportunities with the World Bank Group (WBG) for one year, effective 1 July 2016.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in November 1996 as a consultant. In October 2007, he obtained an Extended Term Contract (ETC). Since November 2009, when his ETC ended, the Applicant was employed by the Bank as a Short Term Consultant (STC) until he was suspended from future employment with the WBG for one year, effective 1 July 2016.
5. The Applicant has four children: three daughters with his ex-wife who lives in France, and one son with Ms. A, a Bank staff member.
6. On 23 November 2008, the Applicant filed a case with the D.C. Family Court to establish his parental rights regarding his son.

7. The court held a hearing to establish custody rights on 9 December 2009, but the Applicant was unable to attend the hearing because he was on mission. By order dated 11 December 2009, the court ordered the Applicant to pay USD 1633 per month, beginning on 1 January 2010, and to make retroactive payments of USD 300 per month, for the period 1 December 2008 to 11 December 2009 (for a total of USD 21, 229) (2009 Order). The Bank received the 2009 Order on 11 December 2009.

8. When the Applicant returned from mission, he sought modification of the support order. In response, Ms. A submitted to the court a letter dated 28 January 2010 from the Bank's Human Resources Service Center, verifying that the Applicant "is currently an active staff member in the World Bank Institute. His title is Consultant, and his contract runs from October 7, 2009 through June 30, 2010." The court did not accept the Applicant's explanation that, as a consultant, he was only permitted to work at the Bank for 150 days per year and had no guarantee that he would work the maximum number of days. The 2009 Order was re-confirmed.

First suspension

9. By email dated 13 May 2010, the Office of Ethics and Business Conduct (EBC) reminded the Applicant of the obligation of staff members to pay their personal legal obligations, including child support. EBC also requested of the Applicant proof of compliance with the 2009 Order.

10. Since the Applicant did not furnish the required proof of compliance, on 18 February 2011, the Vice President of Human Resources (HRVP) sent a disciplinary letter, informing the Applicant that his failure to comply with personal legal obligations constituted misconduct and that "although you may complete your current Short-Term Consultant appointment, you will not be eligible for any Short Term Consultant or other appointment by the Bank Group until you furnish proof establishing full compliance with the Order."

11. In response to the Applicant's letter dated 25 February 2011, requesting reconsideration of the disciplinary decision, the HRVP acknowledged that he was aware of the scheduled hearings to

challenge the calculation of the Applicant's child support obligations. However, the HRVP reconfirmed his decision, explaining that

the Bank Group seeks to ensure the compliance of its staff members with their personal legal obligations. Further, I note that with regard to challenged court orders regarding personal legal obligations, Staff Rule 3.06, paragraph 5.01, provides that the Bank Group may honor a court order establishing child support until a staff member furnishes a superseding court order.

12. The Applicant claims that as a result of this suspension he could not make any payments towards his support obligations because he no longer had any income at all.

13. In the meantime, the Applicant's wife in France was pursuing a divorce action. Under the terms of the decision dated 16 May 2011 from the Cour d'Appel de Lyon, the Applicant was required to pay EUR 1500 per month in child support for his daughters. The Applicant's ex-wife sent a copy of the French decision to the Bank on 8 June 2011.

14. In accordance with the HRVP's decision of 18 February 2011, on 1 July 2011, the Applicant was suspended from employment and contractual opportunities with the WBG, until such time as he could demonstrate full compliance with the 2009 Order.

15. By letter dated 11 July 2011, the Head of HR Corporate Operations wrote to the Applicant on behalf of the HRVP, advising him of the Bank's receipt of the French decision. The Applicant was informed that:

At this time, a temporary flag has been placed in your Bank Group records noting an additional conditional restriction on your future employment until proof of compliance has been shown with the judgment from the Cour d'Appel de Lyon. Please provide us with your comments, including any reasons why this second conditional restriction on your employment should not be imposed. If we do not receive a response from you within 30 days of this letter, or your response does not provide a sufficient basis for removal of the temporary restriction, a permanent flag will be placed in your records restricting your future employment until such time as you have provided sufficient proof of your compliance with your legal obligations.

I encourage you to demonstrate your full compliance with this judgment as well as the Order, or any superseding judgments or orders, to EBC so that the conditional hiring restriction may be removed from your Bank Group PeopleSoft record.

16. On 11 July 2011, the Applicant met with EBC and produced a receipt that he had paid his support obligation for his son for the month of July 2011, and explained that the court had not taken into account his lower STC earnings when it made the 2009 Order.

17. By email dated 13 July 2011 to the Applicant, EBC confirmed their discussion two days before, when the Applicant was informed that his receipt evidencing payment of his July 2011 child support obligation “is not proof of compliance with your personal legal obligations [...] as required by the decision of the World Bank Human Resource Vice President (HRSVP) dated February 18, 2011.” According to EBC, the Applicant promised to provide EBC with proof of additional child support payments made thus far, and EBC reiterated that the Applicant had to prove that he had made child support payments from 1 January 2010 to date.

18. By email dated 14 July 2011, the Applicant advised EBC that he had been making regular child support payments to the best of his ability and that on 1 July 2011, he paid USD 2041 to the D.C. Child Support Clearinghouse. Consequently, he was issued a certificate of compliance with child support obligations.

19. By email dated 19 July 2011, the Head of HR Corporate Operations responded to the Applicant, on behalf of the HRVP, and reiterated that the Applicant must provide evidence of his payment of the amounts owed from 1 January 2010.

20. By email dated 25 July 2011, the Applicant asked the HRVP to reconsider the disciplinary decision. He explained that “preventing me from working will only worsen my capability of complying with the Court Order and what the World Bank Group is trying to help to achieve. This decision is contrary to the decision of the DC Child Support Clearinghouse which issued me a certificate of compliance of child support obligation.” The Applicant disputed EBC’s interpretation that full compliance with the 2009 Order meant that he would have to demonstrate that he had paid USD 1933 (USD 1633 plus USD 300) each month from 1 January 2010 to date.

He also offered to discuss “the modalities of a certain percentage of my income that could be docked at an escrow Bank Account for payment of the child support.”

21. The HRVP responded by letter dated 29 July 2011 and noted the previous attempts to bring the Applicant’s attention to his noncompliance with his legal obligations. The HRVP stated that the Applicant had “been provided sufficient time to resolve this matter before the conditional hiring restriction was imposed effective July 1, 2011.”

22. By email dated 29 July 2011, a Human Resources Officer, Corporate Operations wrote to the Applicant on behalf of the HRVP, regarding the French decision. She stated that the Bank was unable to garnish wages of staff holding STC/ETC appointments because such appointments were not paid through the payroll system. She also asked the Applicant for evidence of his compliance with the French decision for child support.

23. On 12 August 2011, the D.C. Superior Court issued a Memorandum of Understanding (MOU), establishing custody and support arrangements for the Applicant’s son. The MOU also provided in relevant part:

10. The Father’s child support obligations from November 1, 2009 going forward shall be determined pursuant to the Washington, DC child support guidelines and a consent order shall be submitted to the Court.

11. The Father’s child support arrears for the period of time ending on November 1, 2009 have been fully satisfied. [...]

13. The Mother shall withdraw her support complaint at the World Bank.

24. Further to the MOU, Ms. A withdrew her complaint. The Head of HR Corporate Operations informed the Applicant that “this seems to resolve the situation on the US side” and asked for an update regarding the Applicant’s compliance with the French decision.

25. The Applicant provided proof of payment of EUR 3000 to his ex-wife, transacted on 17 August 2011, in compliance with the French decision. Consequently, on 18 August 2011, Human

Resources informed the Applicant's manager that "the conditional hiring restriction has been lifted."

26. The Applicant resumed working at the Bank under a new STC contract on 24 August 2011.

Second suspension

27. On 10 September 2014, the D.C. Child Support Enforcement Agency issued an Income Withholding Order (IWO), directing the Bank to withhold USD 2041.25 per month from the Applicant's earnings for child support payments.

28. On 10 October 2014, the Bank received the IWO and responded by letter on the same day to the Enforcement Administrator, asserting the Bank's privileges and immunities and returning the order "as inapplicable to the Bank." The Bank also indicated that it would bring the matter to the Applicant's attention. The same day, the Bank's Legal Department informed the Applicant by email that it had received the IWO, reminded him of the staff obligation to comply with personal legal obligations, and advised him that EBC might follow up with him on this matter.

29. By email dated 15 October 2014 to a paralegal in the Legal Department, the Applicant provided a copy of the 2009 Order and the MOU. He indicated his availability to discuss with EBC. EBC responded on 16 October 2014, advising that the IWO was the basis for assessing the Applicant's personal obligations, unless the Applicant were to provide another document superseding it. According to EBC, should the Applicant fail to submit proof of compliance to EBC by close of business on 21 October 2014, EBC would refer the matter to the HRVP.

30. On 16 October 2014, the Applicant requested EBC to provide him with a copy of the IWO and any other documents that he was not aware of. The same day, EBC sent a copy of the IWO to the Applicant.

31. On 17 October 2014, the Applicant filed a Notice of Motion Hearing to modify the 2009 Order. The hearing was scheduled for 25 November 2014.

32. By email dated 21 October 2014, EBC reminded the Applicant of the need to comply with its request for proof of compliance by close of business that day. The Applicant responded on the same day that he did not have proof of compliance but was contesting the IWO, and requested a copy of the judgment associated with the IWO. EBC replied that the Applicant had still not submitted proof of compliance with the IWO and that there were no other court orders superseding the IWO.

33. On 27 October 2014, EBC informed the Applicant that it would submit a final Investigative Report to the HRVP for a decision on whether he had engaged in misconduct. EBC provided the Applicant with a draft copy of the Investigative Report and gave him five days to submit any documents or statements that he would like to be considered with the final Investigative Report.

34. On 11 November 2014, EBC sent its Investigative Report dated 24 October 2014 to the HRVP. EBC listed its failed attempts to obtain from the Applicant proof of his child support payments. EBC “found that [the Applicant] had not presented evidence that he had complied, or to suggest that the Order had been revoked or superseded as requested by Staff Rule 3.06, paragraph 5.01.” EBC noted that the Bank had been notified on three previous occasions between 2010 and 2011 that the Applicant had failed to comply with his child support obligations, and the Applicant only complied, after EBC had drafted an Investigative Report and referred the matter to the HRVP.

35. In the meantime, the Applicant’s driver’s license had been revoked due to arrears in his child support payments. However, by 9 January 2015, the Applicant made sufficient payments to satisfy the conditions needed to reinstate his driver’s license.

36. By letter dated 4 March 2015, the HRVP issued another disciplinary letter, suspending the Applicant from all further employment with the WBG until he showed he was in full compliance with the IWO, although he was allowed to complete his current STC contract.

37. On 16 March 2015, the Applicant made a payment of USD 12,247.05 to the D.C. Child Support Clearinghouse. This sum amounted to six months’ payment of the monthly amount

payable under the IWO, so the Applicant claimed that he was up to date under the terms of the IWO. The Applicant provided the HRVP with the cashier's check as proof of this payment, and in an email of the same date, explained the following regarding his child support arrangements:

For your information, the other party and myself entered in an arrangement that resulted from a MOU signed in August 12, 2012 [sic]. [...] I have initiated four requests for the other party to appear at the court, but she never appeared to the Court and neither accepted to be served. [...] Suspending me from work will constrain me from providing child support and the legal fees associated with this case. [...]

You know my limited working conditions as [an] STC as well as the erratic frequency of my income. Since July 1st to date, I have been paid \$29,300 which is the monthly equivalent of \$4186. The Court is asking me to pay \$2041.25 per month which is more than 50% of my 'monthly' income.

The Applicant also explained that the 2009 Order had been imposed in his absence and alleged that it resulted from Ms. A deliberately misleading the court about his income.

38. The Applicant emailed the HRVP again on 31 March 2015, requesting a review of the disciplinary decision.

39. On 1 April 2015, EBC acknowledged receipt of a copy of a cashier's check from the Applicant, but stated that that it required "a receipt, invoice, or document from the Child Support Clearinghouse showing that you have paid the child support obligations in full, or that you have reached a payment plan. Also, please clarify if this check is for past child support payments or for future monthly payments." The Applicant responded by email on the same day that the IWO was dated 10 September 2014, that he did not have any prior arrears, that he did not have a payment plan and was not given any receipt or invoice, and that he believed he was in full compliance with the IWO, having paid what was required of him. EBC then asked for a breakdown of the USD 12,247.05 paid by the Applicant and advised that "for EBC to say you are in compliance, we need some documentation that establishes a personal legal obligation is either satisfied in full or a written statement/agreement from the creditor that the obligation is in the process of being met."

40. By email dated 7 April 2015 to the HRVP, the Applicant stated that the D.C. Child Support Clearinghouse told him that it could not give him receipts or any documentation to verify his payment. The Applicant stated that the payment “demonstrate[s] my full compliance with my obligations in accordance with the income withholding order and this amount fully satisfies the amounts owing.” The Applicant was advised by the D.C. Child Support Clearinghouse that a payment plan would not be possible because of the Bank’s decision to suspend his employment. The Applicant also informed the Bank that a hearing was scheduled for 12 May 2015 regarding modification of the child support payments “to reflect [his] real income” so that he would be able to make the payments.

41. Pursuant to the HRVP’s disciplinary letter of 4 March 2015, the Applicant was suspended from employment with the WBG, effective on 1 July 2015.

42. In July 2015, the Applicant sent EBC a copy of a “Child Support Compliance Notice” dated 9 January 2015, issued by the Child Support Services Division of the Office of the Attorney General for the District of Columbia, and informed EBC that the hearing on his Motion to Modify Child Support was rescheduled for 27 October 2015. By email dated 29 July 2015, EBC informed the Applicant that the documents he had provided were insufficient to establish his compliance with the IWO. According to EBC, the Child Support Compliance Notice “does not state whether or not you have satisfied your legal obligations, only that you have met the unnamed requirements for reinstating your driver license. In addition, the letter states that its effectiveness expires 90 days after its date of issue, which was January 9, 2015.”

43. By letter dated 31 July 2015 to the HRVP, the Applicant’s counsel wrote:

[The Applicant] has no advance notice of the IWO and when he did receive notice, he was completely taken by surprise, and in his defense, I can understand why. [...]

In 2011, there was a court proceeding involving child support, which the parties settled in August 2011. There should have been a new child support order entered based on the income of the parties at that time, but a new order was not entered. Since there was no new order entered, nor was the old order terminated (although the arrears were deemed to be satisfied), by law, the 2009 child support order remained in effect. However, [the Applicant] did not believe there was an ongoing

child support order and he made no child support payments after February 2012. [...] [The Applicant] heard nothing from the CSSD [Child Support Services Division] regarding child support until September 2014 and quite honestly, [CSSD] has no idea why the IWO was not issued sooner. Nor did [Ms. A] take any legal action to collect child support from [the Applicant]. Again, it is easy to see why [the Applicant] did not believe he had an ongoing obligation. [...]

[Ms. A] will not enter into settlement discussions with us but the matter will not be heard by the Court until late October. It is imperative that the Bank reconsider its position and re-instate him.

[The Applicant] has made his child support payment for August (see my letter to CSSD) and will continue making monthly payments in that same amount.

44. On 7 August 2015, EBC reiterated that the Bank would not lift the suspension until it received proof that the Applicant was in complete compliance with the IWO.

45. By email dated 11 August 2015, the Applicant's counsel explained that the 2009 Order was out of date and did not reflect the appropriate amount of child support. The Applicant's counsel stated that the Applicant was not obliged to pay off all of the arrearages in full. She further advised that the child support amount could not be modified until a court hearing, so the Applicant was making the payments required under the 2009 Order. Finally, the Applicant's counsel pointed out that "there is no order from any court finding him in contempt of a Court Order and [...] it has made no finding that [the Applicant's] non-compliance with a 2009 child support order is subject to any kind of penalty or punishment."

46. On 13 August 2015, EBC responded by email stating that it would accept, as proof of the Applicant's compliance, cancelled checks for each monthly payment and bank statements, reflecting that each check was cashed or deposited into the appropriate bank account. EBC added that the Applicant "would need to show us proof of payment every month for the next three months, unless there is a superseding court order that states otherwise." The Applicant's counsel noted that "there is no 2014 Child Support Order. The Income Withholding Order is simply an order issued by Child Support and Enforcement to an employer to seek to garnish wages on an unpaid obligation. It is an order directed at the Bank, not at [the Applicant]."

47. The Applicant's counsel presented proof of payment of the required monthly amount for August 2015, which was acknowledged by EBC. In an email dated 28 August 2015, EBC stated that "we expect [the Applicant] to continue to show us proof of payment for the next two months. If he fails to do so EBC and HR will take appropriate action."

48. On 28 August 2015, the Bank lifted the restriction on the Applicant's employment. The Applicant then started working at the Bank under a new STC contract on 8 September 2015.

Third suspension

49. By email dated 1 September 2015 to EBC, the Applicant expressed his concern about EBC's requirement that he provide proof of ongoing compliance. He inquired whether this requirement was based on a Bank rule and stated: "This is my private matter. As long as I comply with what I was asked initially, I don't think it is appropriate to ask me to continue showing you proof of what I do for my son. If there is a problem, you will be contacted again. But, I don't believe that you should monitor what I do."

50. EBC responded to the Applicant's counsel on 15 September 2015, stating that "EBC reserves the right to demand proof of payment for three months in order to determine compliance." EBC insisted on receiving proof of payment for September and October.

51. By email dated 19 October 2015, EBC reminded the Applicant of the need to provide proof of compliance. EBC quoted Staff Rule 3.06 as the basis for its request to provide such proof to EBC within three business days of the email. EBC also reserved the right to ask the Applicant to present proof of compliance for the next three months. The Applicant did not reply to this email.

52. On 17 November 2015, EBC emailed the Applicant a copy of the draft Investigative Report and all exhibits and gave him five business days to provide comments. Since EBC was unsure whether the Applicant had received the Draft Report, it emailed him again on 1 December 2015 and mailed a copy of the Draft Report to his personal residence. The Applicant opened the email on 3 December 2015, but did not respond or submit any comments to the Draft Report.

53. On 15 December 2015, EBC sent the final Investigative Report dated 10 December 2015 to the HRVP. EBC reported its failed attempts to obtain proof of compliance with the Applicant's child support obligations and the Applicant's failure to provide a justification for his noncompliance with his obligations. EBC stated that "as a matter of internal policy, [it] maintains the right to require staff members to show three months of payment in order to determine whether the staff member is in 'full compliance' as required by the HRDVP's decision letter." EBC claimed the Applicant had not provided proof of compliance for October 2015.

54. Following a hearing, the D.C. Superior Court issued a Consent Interim Order dated 1 December 2015. The Interim Order reduced the Applicant's obligation to pay child support, including arrearages, to USD 750 per month for the period 1 November 2015 through 31 March 2016. The Applicant maintains that he provided a copy of the Consent Interim Order to the Bank "right away," after he received it on 1 December 2015. However, the Bank states the order was received for the first time in May 2016.

55. By email dated 8 January 2016 to EBC, the Applicant provided copies of cashier's checks as proof that he had made the child support payments for August and September 2015 and for November and December 2015 under the new Consent Interim Order.

56. On 29 January 2016, the Applicant emailed the Vice President and Chief Ethics Officer, stating that the EBC Investigative Report omitted certain elements and that he never had the chance to be heard "due to the investigator/s predetermined conclusion." He alleged that some staff in EBC and Human Resources have "exasperated the situation and may in fact colluded to influence the outcome of the both investigations," that the investigating officer declined to meet with him for an oral interview, and that EBC breached confidentiality by forwarding private email exchanges between him, Ms. A, and HR directly to his lawyer. He also attached a chronological history of EBC's involvement in his custody case.

57. By email dated 1 February 2016, EBC's Chief Counsel, responding on behalf of the Chief Ethics Officer, invited the Applicant to a meeting on 4 February 2016. The Applicant responded on the same day that he was not comfortable meeting with EBC's Chief Counsel, as he considered

him to have a conflict of interest and be biased in the Applicant's case. He considered EBC's Chief Counsel and the EBC investigator currently assigned to his case to be "the two individuals most responsible for the long history of harassing him over his support payments."

58. On 16 February 2016, the HRVP issued a disciplinary letter to the Applicant. He found

your nonpayment of court-ordered child support, constitutes misconduct as defined under Staff Rule 3.00, paragraph 6.01(f). I also note that, during the course of this investigation, EBC requested you to provide proof of compliance with your personal legal obligations and you have failed to do so.

The HRVP noted, as aggravating circumstances, that the Applicant had been found to have engaged in the same misconduct three times before (February 2011, July 2011, and March 2015). The HRVP barred the Applicant from future employment and contractual opportunities with the WBG for one year, effective 1 July 2016. The Applicant was allowed to complete his current STC contract.

59. Although this letter was marked "Strictly Confidential," it was produced by Ms. A on 9 March 2016 at a court hearing, where she testified that she had received it from a contact in EBC.

60. By letter dated 16 March 2016 to the HRVP and the Chief Ethics Officer, the Applicant's counsel alleged "serious breaches of confidentiality and abuse of discretion by staff within your Vice Presidencies." She stated that since 2009, staff in their respective Vice Presidencies had provided the Applicant's confidential staff records to third parties for the purpose of supporting Ms. A in the custody case. She also alleged that these staff colluded, breached confidentiality, and engaged in bias towards the Applicant, which were an abuse of position and breached the Applicant's due process rights. She requested the HRVP to reconsider the one-year suspension.

61. The HRVP and the Chief Ethics Officer responded by letter dated 23 March 2016, stating that the Applicant had been urged to comply with his private legal obligations, pursuant to the Bank's regulatory framework. They denied the breach of confidentiality allegation, and stated that the Applicant's confidential information was shared within the Bank in accordance with Staff Rule 2.01 and was shared with the Applicant's counsel to avoid potential misunderstandings.

62. As of 1 July 2016, the Applicant is barred from employment with the WBG for one year.

63. On 8 July 2016, the Applicant submitted his Application to the Tribunal, challenging the disciplinary decision of 16 February 2016, excluding him from any future employment and contractual opportunities with the WBG for one year. The Applicant seeks the following relief: (i) rescission of the decision, (ii) “recognition of the mistake made by the WBG in enforcing an out-of-date court order,” and (iii) removal of all records relating to his support payments from his personnel files. Additionally, he seeks the following compensation: (i) replacement income for the period that he was unable to perform contractual work for the Bank because of the challenged disciplinary sanction, (ii) an amount at the Tribunal’s discretion “for the terrible stress and suffering caused by the Bank’s improper interference with the court process” in the custody case and “for the damage to his professional reputation caused by his repeated suspensions and interruption of his employment,” and (iii) legal fees and costs in the amount of \$39,893.77.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant’s Contention No. 1

The Applicant did not engage in misconduct, or the disciplinary measure was grossly disproportionate to the offense, failed to take into account mitigating factors, and was contrary to the purpose of the Bank’s policy

64. The Applicant characterizes the disciplinary measure as “the equivalent of termination which will result in [the Applicant]’s deportation from the United States and the severance of all relationship with his son.” The Applicant argues that such measure is disproportionate to the offense and cannot be avoided even if the Applicant were able to fulfill his support obligations.

65. The Applicant claims that there were a number of reasons for his failure to keep up with the court-ordered child support payments, and some of these were the direct result of the Bank’s actions. For example, the Bank’s letter dated 28 January 2010, which was provided to the court by Ms. A and was used to calculate his child support obligation, failed to reflect that, as an STC, the Applicant was limited to working up to 150 days without any guarantee that he would actually be

employed for the maximum number of days and that the payments would be irregular, depending on when he was actually employed.

66. The Applicant alleges that the MOU superseded the 2009 Order, which was the basis for the IWO, but EBC ignored the MOU. According to the Applicant, EBC also rejected, as proof of his full compliance, the lifting of the restriction on his driver's license.

67. The Applicant asserts that there is no evidence that the HRVP took into account the Applicant's long service of twenty years in the Bank. Nor did the HRVP take into account the impact of the disciplinary measure on the Applicant, namely that it would deprive him of income and his G4 visa and force him to leave the U.S. and sever ties with his son.

68. In light of the foregoing mitigating factors and explanations, the Applicant submits that the HRVP should not have found him to have engaged misconduct. Rather, the Applicant did not have the financial resources to make the monthly payments. The Applicant argues that the HRVP should not have imposed any penalty.

69. The Applicant also states that the HRVP's decision was out of date since the Interim Consent Order of 1 December 2015 significantly reduced the Applicant's support obligations. The Applicant submits that he was in compliance with the Interim Consent Order while it remained in force. The Applicant claims in his Application that he also complied with the 20 April 2016 Permanent Order of Support.

70. Finally, the Applicant submits that the disciplinary measure "was completely contrary to the underlying purpose of the Bank's policy on enforcing support payments." The Applicant argues that by excluding him from employment for a year, the Bank deprived him of any income and so he would not be able to pay child support.

The Bank's Response

The established facts legally amounted to misconduct and the sanction was not significantly disproportionate to the offense

71. The Bank argues that the established facts legally amounted to misconduct. The Bank recalls that the Applicant's second suspension for failure to pay child support was lifted on 28 August 2015, after the Applicant provided a copy of a cancelled check as proof of payment of his child support obligation for August 2015. EBC required the Applicant to submit proof of child support payments for the following two months. The Bank justifies this requirement on the basis that a single check is "no evidence of the ongoing periodic payment made by a parent for the financial benefit of a child that constitutes child support." According to the Bank, the Applicant expressed concerns with this requirement and did not produce any evidence that he was complying with the court order for the months of September and October 2015.

72. In finding that the Applicant engaged in misconduct, the Bank relies on Staff Rule 3.00, paragraph 6.01(f), which recognizes a "failure to meet personal legal obligations as required by Bank Group policies, including payment of court-ordered spousal and child support" as a form of misconduct. It submits that "not only was the Bank within its right to impose discipline, it was under an obligation to address the matter forcefully."

73. The Bank also submits that the sanctions imposed are provided for in the law of the Bank, since barring a staff member from future employment is among the sanctions set out in Staff Rule 3.00, paragraph 10.06. It also notes that there are few options for other forms of appropriate discipline in the circumstances of a staff member holding an STC appointment.

74. The Bank argues that a one-year suspension from employment is appropriate, fair and warranted by the circumstances. It submits that because the Applicant, as an STC, has no right of continuous employment with the WBG, a temporary suspension of eligibility from employment does not amount to termination. The Bank also recalls that the Applicant was notified on three prior occasions (twice in 2011 and once in 2015) about his noncompliance regarding payment of child support, which resulted in findings of misconduct against him; he was also barred from

employment twice in the past (2011 and 2015) for the same misconduct. The Applicant was also warned in the 4 March 2015 disciplinary letter that his past noncompliance would be considered as aggravating circumstances, should he subsequently fail to pay his child support obligations. The Bank considers that a more severe sanction was necessary in light of the Applicant's history of misconduct.

The Applicant's Contention No. 2

The Bank unfairly discriminated against the Applicant

75. The Applicant alleges that he was discriminated against because of his STC status. He states that STCs are in a more vulnerable position as compared to staff in terms of being able to make regular support payments. This vulnerability was aggravated in the Applicant's case because the Bank would not deduct support payments from his earnings, rather it imposed a disciplinary measure. The Applicant submits that "there is no principled reason why the Bank could not simply have withheld a proportion of [his] payments for his consultant work just as it does for full-time staff members." The Applicant underscores that STCs are the only staff who can be disciplined for not keeping up with their child support payments. He submits that there is no justification for the Bank not to establish a system for garnishing consultant payments.

76. The Applicant claims, as further evidence of discrimination and bias against him, that there was collusion between Bank officials and Ms. A through actions taken in her favor and against him. Specifically, he points to the 28 January 2010 letter confirming his employment with the Bank, which he claims did not meet the Bank's guidelines and misled the court about his real income. He submits that the letter omitted crucial information regarding the maximum number of days per year that the Applicant could work and that such days were not guaranteed. Such information is included in a standard letter, which states "Short Term Consultant appointments are limited to 150 days per fiscal year." The Applicant further claims that Human Resources and EBC worked together to investigate and punish him, and that someone from Human Resources or EBC gave Ms. A a copy of the strictly confidential disciplinary letter of 16 February 2016, which she tried to use against him in the custody proceedings.

The Bank's Response***The Bank did not discriminate against the Applicant***

77. The Bank submits that it is not able to garnish STC fees because STCs' requests for payments are not made through the payroll system, but rather, through the Short Term payment request system. The Bank states that Staff Rule 3.06 does not discriminate against STCs, because all staff members, including STCs, are required to comply with their personal legal obligations.

78. The Bank rejects the allegation that its officials colluded with Ms. A. Specifically, the Bank submits that the employment letter dated 28 January 2010, supplied by the Bank to Ms. A, is a standard letter that does not contain any false or misleading information regarding the Applicant's income or consultant status. The Bank submits that "it is very likely that the template letter may have changed between 2011 and 2015" and that the Applicant himself should have produced to the court a verification of employment letter that mentioned the 150 days' employment limit.

79. The Bank denies taking any action to assist Ms. A in the custody proceedings.

The Applicant's Contention No. 3***The actions of the HRVP violated U.S. and D.C. law***

80. The Applicant argues that "the Bank itself hides behind its immunities by denying staff members the legal protections provided to employees who are subject to wage garnishment in order to make support payments." U.S. and D.C. law limits the amount that can be garnished for a particular pay period, prohibits discharging an employee because of garnishment, and prohibits the application of garnishment serially to satisfy more than one court order. These provisions are intended to protect both the employee/garnishee as well as the recipients of support payments "because they help to ensure that the employee is in fact able to afford the payments."

81. The Applicant submits that the Bank's demands of and actions towards him violated these protections. First, the Bank refused to accept anything less than full payment of child support every month, regardless of how much the Applicant was being paid as an STC and without regard to the

limit on his number of working days and his irregular payment schedule. U.S. and D.C. law require employers to garnish no more than 50% of the disposable income paid by that employer. Therefore, it is no answer for the Bank to say that it could not determine whether the garnishment orders exceeded 50% of the Applicant's disposable income because it did not know if and how much the Applicant earned from other employers.

82. Second, the Bank barred the Applicant from further employment with the Bank for a specified period, effectively terminating him, contrary to U.S. and D.C. law. The Applicant submits that a year's suspension has the same effect as discharge for the period of suspension. This is contrary to the policy behind the law, which seeks "to ensure that the debtor in question continues to be employed and is therefore able to make support payments."

83. Finally, the Bank ordered the Applicant to comply simultaneously with the French decision and D.C. support order, contrary to the D.C. Code. The Applicant submits that the Bank "simply ignores the protection provided by the law for precisely this situation" and places the responsibility for the situation on the Applicant.

84. The Applicant accepts that the Bank considers itself immune from national laws, but submits that "to the extent it has determined to enforce court orders requiring the garnishment of wages, it should also respect the protections afforded to employees and not take actions way beyond that permitted by an employer under the law." The Applicant argues that "when the Respondent chooses to enforce the payment of court ordered support, it should not be permitted to do so without providing the counter-balancing protections built into the law. To do this is a gross violation of Staff Principle 2.1."

The Bank's Response

The Bank is not bound by national laws; nevertheless, it has not violated U.S. or D.C. law

85. The Bank argues that it is not bound by national laws that limit the maximum amount of wage garnishment for support payments to 50% of disposable income for any particular pay period. Nevertheless, because the Applicant could have earnings from employment other than at the Bank,

it was impossible for the Bank to know whether the 2009 Order or the IWO required the Applicant to pay more than 50% of his disposable income.

86. The Bank disagrees that the Applicant was “discharged” for the IWO. Rather, once the Applicant’s current STC contract expired, he was barred from employment with the WBG for a specified period. The Bank also points out that the Applicant was not sanctioned for the 2009 Order or the IWO per se, but because of his failure to comply with them.

87. The Bank also argues that the Applicant cannot complain that, in 2011, the Bank requested him to comply with the 2009 Order and the French decision. It states that the “Applicant’s circumstance is not of the Bank’s making. It derives from Applicant’s own actions and the judgments of competent courts.”

The Applicant’s Contention No. 4

EBC and the HRVP denied the Applicant due process

88. The Applicant claims that, except for an interview in July 2011, no one from EBC, the Legal Department, or Human Resources interviewed him to understand what was happening in his court case or why he was unable to fully pay his support obligations. He argues that he would have been able to defend himself effectively, had he been interviewed.

89. The Applicant states that EBC was inflexible and refused to consider the Applicant’s circumstances, such as the MOU which he claims superseded the 2009 Order, that it was the Applicant who had been forced into court to claim his parental rights, and that the support order was not a result of any impropriety on his part nor was it initiated by Ms. A.

The Bank’s Response

The requirements of due process have been observed

90. The Bank submits that, absent a superseding court order, it was reasonable for the Bank to require the Applicant to comply with the 2009 Order. It argues that the Bank does not interpret

court orders and so could not determine whether the quantum of the obligation in the 2009 Order or the IWO was excessive in light of the Applicant's income.

91. The Bank submits that for the past eight years, EBC and the HRVP have tried to help the Applicant comply with his personal legal obligations, as evidenced by the large number of emails exchanged between the Applicant, Human Resources, and EBC. The Bank submits that EBC investigators and the HRVP gave the Applicant "ample opportunity to present his side of the story" and that the HRVP has been patient with the Applicant.

92. The Bank states that the Applicant has admitted his failure to make child support payments even while he was working for the Bank. Therefore, the Bank reasons that the Applicant's ability to pay child support is not inextricably linked to his employment with the Bank, and "he is free to gain employment anywhere else."

The Applicant's Contention No. 5

The Bank refused to recognize the MOU's validity

93. The Applicant submits that the Bank having accepted the MOU as stating that future child support payments "shall be determined pursuant to the Washington D.C. child support guidelines and a consent order shall be submitted to the Court," in the absence of a consent order, "it follows logically that [the Applicant] did not have child support obligations and cannot have been in violation of a court order."

94. The Applicant also noted that the Interim Consent Order and Permanent Order of Support modified the Applicant's child support obligations, but the Bank still suspended the Applicant "regardless of whether he complied with his support obligations or not." The Applicant claims that these modified court orders support his claim that the original child support amounts were incorrect because the court had mistakenly assumed that he worked full time.

The Bank's Response

The Bank did not refuse to recognize the MOU's validity

95. The Bank submits that “it was Applicant’s duty to take the necessary actions after the signature of the 2011 MOU to submit a consent order to the court.” Absent the necessary actions from the Applicant, the IWO was issued to the Bank, which then asked the Applicant to demonstrate his compliance with the IWO. The Applicant’s failure to demonstrate compliance was misconduct and merited disciplinary sanctions.

The Applicant's Contention No. 6

The Bank had no justification for punishing the Applicant regarding the French decision

96. The Applicant argues that the “temporary flag” that was placed in his personnel record, restricting his future employment until he showed proof of compliance with the decision of the Cour d’Appel de Lyon, lacked due process. The Applicant submits that there was no investigation to ascertain the validity of the decision or whether the Applicant was in default. Indeed, there was no evidence that the Applicant was in default.

97. The Bank did not respond to this contention.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

98. The scope of the Tribunal’s review in disciplinary cases extends to an examination of (i) the existence of the facts; (ii) whether they legally amount to misconduct; (iii) whether the sanction imposed is provided for in the law of the Bank; (iv) whether the sanction is not significantly disproportionate to the offence; and (v) whether the requirements of due process were observed.

99. The burden of proving misconduct is on the Bank, and the standard of evidence “in disciplinary decisions leading [...] to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.” *Dambita*, Decision No. 243 [2001], para. 21. There must be

substantial evidence to support the finding of facts which amount to misconduct. *See, e.g., Arefeen*, Decision No. 244 [2001], para. 42; and *P*, Decision No. 366 [2007], paras. 33-34.

100. The Tribunal has also stated that it is required to “ensure that a disciplinary measure falls within the legal powers of the Bank.” *M*, Decision No. 369 [2007], para. 54. This however

does not mean that the Tribunal is an investigative agency. The Tribunal simply takes the record as it finds it and evaluates the fact-finding methodology, the probative weight of legitimately obtained evidence, and the inherent rationale of the findings in the light of that evidence. The judicial function cannot be reduced to a mechanical formula. Decisions will perforce be fact-specific; the ideal of perfect and general predictability must give way, to some degree, to the individual discernment of those called upon to judge a given case. *Id.*

EXISTENCE OF THE FACTS AND WHETHER THEY LEGALLY AMOUNT TO MISCONDUCT

101. The Applicant submits that he “was not guilty of misconduct; instead he was trapped in an impossible situation in which he simply did not have the financial resources to make the monthly payments.” He also submits that he satisfied the Bank’s request for proof of compliance when he presented the “Child Support Compliance Notice” dated 9 January 2015.

102. On 4 March 2015, the HRVP sent a disciplinary letter to the Applicant, stating that the Applicant’s nonpayment of child support constituted misconduct. The Applicant was barred from future employment with the WBG until he demonstrated “full compliance” with his personal legal obligations. When the Applicant provided proof that he had made the requisite child support payment for August 2015, the Bank lifted the restriction on the Applicant’s employment on 28 August 2015. Additionally, EBC required the Applicant to show proof of payment of child support for the next two or three months. The Applicant disputed EBC’s right to demand such proof from him, and so he did not respond to EBC’s subsequent communications, which included reminders about providing proof of compliance and the draft Investigative Report to the HRVP for the Applicant’s comments.

103. On 8 January 2016, the Applicant provided to EBC proof that he had paid child support for August and September 2015 and November and December 2015. The checks for August and

September 2015 are in the amount of USD 2041, consistent with the IWO, and the check for USD 1500 appears to be for November and December 2015, when the Applicant was required to pay USD 750 per month pursuant to the Consent Interim Order. The Tribunal notes that, as the Consent Interim Order was not provided to the Bank until May 2016, as claimed by the Bank, it would not have been possible for the Bank to understand, at the time the disciplinary decision was imposed, that the Applicant had complied with his support obligations for November and December 2015. Nevertheless, EBC's finding of noncompliance, which was relied upon by the HRVP when making his decision, relates to the Applicant's failure to provide proof of compliance for the month of October 2015.

104. The misconduct that is the subject of the impugned disciplinary decision of 16 February 2016 is specifically related to the Applicant's failure to comply with his child support obligations and to show proof of compliance for the month of October. The HRVP stated:

Again, pursuant to Staff Rule 3.00, paragraph 12.02, I am writing to notify you that after consideration of the record submitted by EBC, I have determined that your noncompliance with your personal legal obligations, namely, nonpayment of court-ordered child support, constitutes misconduct as defined under Staff Rule 3.00, paragraph 6.01(f). I also note that, during the course of this investigation, EBC requested you to provide proof of compliance with your personal legal obligations and you have failed to do so.

105. In paragraph 4 of its Investigative Report of 10 December 2015 to the HRVP, EBC stated:

In accordance with Staff Rule 3.00, paragraph 12.02, this memorandum and its attachments serve as the basis for a determination by the Vice President, Human Resources whether [the Applicant's] failure to demonstrate compliance for the month of October constitutes misconduct, and if so, what disciplinary measures to impose.

106. Although the record contains proof of the Applicant's payment of child support obligations for the months of August and September 2015 and November and December 2015, the record is silent as to whether the Applicant paid child support for the month of October 2015. To EBC, the Applicant objected to the requirement that he had to provide such proof of ongoing compliance, since it was premature for the Bank to determine that he had failed to satisfy his child support obligations. EBC asserted in its communications to the Applicant and in its Investigative Report

to the HRVP that “as a matter of internal policy, [it] maintains the right to require staff members to show three months of payment in order to determine whether the staff member is in ‘full compliance’.”

107. The Tribunal notes that the Applicant’s arguments regarding the MOU allegedly superseding the 2009 Order and the Child Support Compliance Notice as proof of compliance are not appropriate responses to the question of whether he provided proof of payment of his child support obligations for October 2015, as required by EBC.

108. Staff Rule 3.06, paragraph 2.02 sets out the criteria that must be satisfied in order for the Bank to commence deductions from a staff member’s salary for spouse and/or child support. The second criterion, stated in subparagraph (b), is that “the staff member fails to furnish to the Bank Group, through its Office of Ethics and Business Conduct (EBC), evidence that he/she has complied with his/her personal legal obligations as set forth in that court order or request after being contacted by EBC in accordance with this Rule.” The staff member’s obligation to furnish proof of compliance to EBC is also reflected in paragraphs 2.04 and 2.05 of the same rule, which oblige the staff member to “furnish [...] EBC with evidence establishing compliance with the court order or request” and “to demonstrate to the satisfaction of EBC that he/she has made satisfactory electronic payment arrangements for the amounts due.”

109. During the oral proceedings, the Senior Counsel from EBC stated that the Bank required proof of ongoing payment in this case because the Applicant was a “repeat offender” and he had a pattern of complying with the court order for only a limited period after being allowed to work again. EBC claims to have exercised its discretion to request proof of compliance for more than one month, and relies on its “internal manuals” which give it such discretion. EBC acknowledged that this discretion is not “quantified.” Therefore, it falls to the Tribunal to determine whether the exercise of this discretion was reasonable in this case.

110. The Tribunal finds that, in the circumstances, it was not unreasonable for EBC to require the Applicant to show proof of ongoing compliance, and that such requirement is consistent with Staff Rule 3.06 and the Bank’s interest in ensuring that staff members comply with support orders.

The Tribunal concludes that the Applicant's refusal to provide EBC with proof of ongoing compliance, when requested, fell short of his obligations under Staff Rule 3.06. The existence of the facts, as referred to in paragraph 98 above, has been established.

111. It is clear from Staff Rule 3.00, paragraph 3.01(f) that failure to pay court-ordered child support constitutes misconduct. Moreover, Staff Rule 3.06, paragraph 2.04 provides that:

If, within five (5) business days of such contact with the staff member, the staff member has not furnished EBC with evidence establishing compliance with the court order or request, EBC: [...]

b. if, however, the staff member's salary is not processed through payroll (i.e., STCs and STTs) EBC (i) shall notify the staff member in writing of his/her failure to demonstrate that compliance and (ii) will submit to the Vice President, Human Resources, the record of EBC's communications with a staff member pursuant to Staff Rule 3.00 Office of Ethics and Business Conduct, Section 12. The Vice President, Human Resources, will decide, based on the record, whether the staff member's noncompliance constitutes misconduct and, if so, what disciplinary measures from Staff Rule 3.00 Section 10 to impose.

112. The Applicant claims that there were extenuating circumstances, some of them attributable to the Bank, which explain his failure to keep up with the court-ordered support payments. However, the Tribunal finds that these are better considered as mitigating factors, rather than as excusing misconduct. While there may have been good reasons as to the Applicant's inability to fully meet his child support obligations, they do not preclude the wrongfulness of his conduct.

113. The Tribunal concludes that the Bank was justified in finding that the Applicant engaged in misconduct and in sanctioning the Applicant.

WHETHER THE SANCTION IMPOSED IS PROVIDED FOR IN THE LAW OF THE BANK

114. It is undisputed that the sanction of loss of future employment and contractual opportunities with the WBG is provided for in Staff Rule 3.00, paragraph 10.06(1).

PROPORTIONALITY OF THE SANCTION

115. Disciplinary sanctions are reviewed on a case by case basis depending on the gravity of the case. The principle of proportionality deems that “there must be some reasonable relationship between the staff member’s delinquency and the severity of the discipline imposed by the Bank.” *Gregorio*, Decision No. 14 [1983], para. 47.

116. Staff Rule 3.00, paragraph 10.09 sets out the following factors to take into account when making a decision on disciplinary measures: “the seriousness of the matter, any extenuating circumstances, the situation of the staff member, the interests of the Bank, and the frequency of conduct for which disciplinary measures may be imposed.”

117. As aggravating factors, the Bank points to the seriousness of the misconduct and the Applicant’s history of misconduct for the same offense, thus warranting a more severe sanction.

118. The Applicant submits the following as mitigating factors:

- His long service of twenty years with the Bank;
- His inability to pay the amount originally ordered by the court in 2009 due to his changed employment circumstances and the “misleading information supplied by the Bank and [Ms. A]”;
- The Bank refused to take into account the MOU, which he claims superseded the 2009 Order on which the IWO was based;
- The Bank refused to consider the Child Support Compliance Notice as proof of his compliance with his support obligations;
- The Applicant initiated custody proceedings, which resulted in the order for him to pay child support, because he wanted his paternity rights to be recognized and he wanted to be involved in his son’s life;
- The severe consequences of the disciplinary measure, namely, the loss of his G4 visa which would force him to leave the United States, rendering him without an income and causing him to sever his ties with his son; and

- The HRVP's disciplinary letter of February 2016 was out of date since the Consent Interim Order had reduced his monthly support payments substantially, and he was in compliance with both the Consent Interim Order and the Permanent Order of Support.

119. During the oral proceedings, a Senior Human Resources Specialist testified that the Bank considered the Applicant's long service with the Bank as a mitigating factor. However, the HRVP's letter of 16 February 2016 does not refer to any mitigating factors, but only refers to the aggravating factors.

120. The Tribunal finds that the Bank erred in failing to consider, as a mitigating factor, that the 2009 Order was based on incomplete and misleading information regarding the Applicant's financial situation. In two letters in 2015, the Applicant's counsel brought to the Bank's attention the deficiencies in the 2009 Order, including the impact of the Bank's omission of material information in its letter to the court of 28 January 2010. As the basis for the disciplinary sanctions in this case was the Applicant's failure to comply with his personal legal obligations, the Bank should have ascertained the true extent of those personal legal obligations. It did not.

121. The Tribunal agrees that the failure to meet personal legal obligations in relation to child support payments is serious misconduct.

122. With respect to the Applicant's history of misconduct, the Tribunal observes that only two of the three instances cited by the HRVP as instances of misconduct are supported by the record. The Tribunal agrees with the Bank that the Applicant was notified of his noncompliance regarding payment of child support on 8 February 2011 and 4 March 2015, in respect of the 2009 Order. However, the HRVP's finding of noncompliance on 11 July 2011 in respect of the decision of the Cour d'Appel de Lyon is not supported by the record. The decision sets out the Applicant's support obligations, but there is no evidence that the Applicant was in default. In fact, when requested by the Bank for proof of compliance, the Applicant provided proof of payment the following month.

123. In *Smith*, Decision No. 158 [1997], the staff member's appointment was terminated because he had failed to pay taxes as due and had certified to the Bank that his taxes were up to

date when they were not. When considering the Bank's decision to terminate the staff member's appointment, the Tribunal found that the Bank did not give sufficient weight to the following factors: the staff member's seventeen years of service with the Bank, the staff member's "genuine effort to cope with his tax payments" as evidenced by his agreements with the tax authorities for a schedule of deferred tax payments, and that if the Bank had adopted any other sanction than dismissal, due to staffing reductions in the staff member's unit, the staff member would have obtained a separation package that could have helped him to meet his outstanding tax obligations.

124. The Tribunal finds that the restriction on the Applicant's employment for one year, in the circumstances, is excessively harsh and is contrary to the Bank's policy to ensure that spouses and children receive the support to which they are entitled. While it is not within the Bank's discretion to determine whether court-ordered child support payments are too high, the Bank does not appear to have given any consideration to the Applicant's pleas that the 2009 Order was based on incomplete and misleading employment information, that he did not have the financial means to pay the full amount, and that he was seeking to modify the support order to an amount that he could afford. In his letter of 16 March 2015 to the HRVP, where the Applicant also demonstrated his payment of the equivalent of six months' of child support, the Applicant conveyed to the Bank how onerous the obligations were, in light of his income:

You know my limited working conditions as [an] STC as well as the erratic frequency of my income. Since July 1st to date, I have been paid \$29,300 which is the monthly equivalent of \$4186. The Court is asking me to pay \$2041.24 per month which is more than 50% of my 'monthly' income.

125. The personal impact of the disciplinary sanction on the Applicant is severe. The Applicant testified that because his employment with the Bank ceased as of 1 July 2016, he lost his G4 visa and cannot live in the United States full-time. In order to see his son, he must enter the U.S. as a tourist every couple of months. Thus, he is unable to fully exercise his parental and visitation rights.

126. The Tribunal also accepts that the one-year hiring restriction has a professional impact on the Applicant. Prior to July 2016, the Applicant had worked for the Bank in the Africa region for almost twenty years. Then, he is absent for one year, and he claims there are rumors about the

reasons for his absence. According to the Applicant, he will need to rebuild the trust that has been lost.

127. For the reasons set out below, the Tribunal takes the view that the Applicant's actions since 2009 do not support the picture of a father trying to evade his child support obligations. Rather, he tried to comply but did not have the financial means to do so.

128. First, as the Applicant has pointed out, he was the one who initiated the custody proceedings to assert his parental rights and obligations. Had he wanted to avoid paying child support, he could simply have ignored the existence of his son.

129. Second, the Applicant offered to "work out [...] the modalities of a certain percentage of my income that could be docked at an escrow Bank Account for payment of the child support." This shows a willingness by the Applicant to satisfy his support obligations. The Bank did not respond to this offer, other than to indicate that it could not deduct support obligations of STCs because they were not paid through payroll. During the oral proceedings, the Bank referred to the general difficulties of implementing such a deduction scheme in respect of staff who are not paid through payroll because they are paid irregularly or because there is so much variation in STC contracts. Moreover, the Bank pointed out that the Applicant's case is unique; he is the only STC who has been suspended for noncompliance with child support obligations. It is the understanding of the Tribunal that other employers are able to deduct from wages of employees who are paid irregularly. There is room to consider that the Bank could have come to some such sort of arrangement with the Applicant.

130. Third, the Applicant has always acknowledged his obligation to pay child support. He reiterated at the oral proceedings that he went to court because he wanted to pay child support. But he actively disputed the quantum because he claims the amount ordered was based on incomplete and misleading information about his income and terms of employment at the Bank.

131. Fourth, on 14 July 2011, the Applicant advised the Bank that he had made child support payments to the best of his ability and that on 1 July 2011, he paid USD 2041. The Applicant also

paid USD 12,247.05 on 16 March 2015, which amounted to six months' payment of the monthly amount payable under the IWO. The Applicant testified that although he has not had any income since July 2016, he pays USD 200 per month for his son's maintenance so that he can be present in his son's life. These are not the actions of a man who is ignoring his son.

132. Fifth, in response to the Bank's contention that the Applicant should have taken action to submit a consent order to the court, as contemplated by the MOU, the Tribunal takes note of the Applicant's explanation, which is supported by his counsel's letter to the Bank, that: "I have initiated four requests for the other party [i.e. Ms. A] to appear at the court, but she never appeared [...] and neither accepted to be served." It appears, therefore, that the Applicant was trying to follow up and ensure that his support obligations would be set at a level that he could afford.

133. When considering the principle of proportionality, and the appropriate disciplinary measure to impose, it is important to look at the underlying rationale for the rule requiring staff members to comply with spouse or child support obligations. According to Staff Rule 3.06, paragraph 1.02:

The purpose of this Rule is to ensure that the Bank Group's privileges and immunities are not used to shield staff members from their personal legal obligations or from the due observance of the law for those obligations involving financial support to family members through spouse and/or child support.

134. During the oral proceedings, a Lead Human Resources Specialist testified that the primary purpose of Staff Rule 3.06 is to prevent the use of the Bank's privileges and immunities to shield staff members from their personal legal obligations. According to him, Staff Rule 3.06 is intended "to protect the bank from the reputational risk of having its immunities used as a shield in the area of child support." Staff Rule 3.06, paragraph 2.05(a) sets out the process of deductions from an open-ended or regular staff member's salary to comply with a court order. Such a process accords with the Bank's purported purpose because it encourages staff members to meet their personal legal obligations. In this case, the Bank claims that its action protected the Bank's reputation because it disassociated the Bank from a staff member who was failing to comply with his personal legal obligations.

135. The Lead Human Resources Specialist testified that the Bank's policy was borne out of a sense that staff members were avoiding their support obligations because their income stream could not be reached by creditors, due to the Bank's immunity. The Tribunal distinguishes between cases where a staff member can pay support obligations but refuses to pay and where a staff member is unable to pay support obligations. In the present case, the Applicant has consistently maintained to the Bank that he is willing to pay his support obligations, but he could not pay the full amount because the court set the amount too high, based on incomplete and misleading information about his income and terms of employment at the Bank.

136. As noted in *E*, Decision No. 325 [2004], para. 24, the Bank explained its position on deducting support obligations as follows:

The procedures under the 1998 Bank Policy [i.e. the Bank Policy on Spousal and Child Support, which was the predecessor to Staff Rule 3.06] were more streamlined [...] to avoid delays in resolving spousal and child support disputes, and because the deduction of court-ordered support payments.

137. The Bank has manifested an interest in ensuring that spouses and children receive the payments due to them. However, the imposition of a disciplinary measure that prevents a staff member from working, such as the one-year hiring restriction in this case, runs counter to this rationale. Although the Bank argues that the Applicant is free to seek employment elsewhere, the reality is that, as a G4 visa-holder, the Applicant has limited options for working in Washington, D.C. The Tribunal understands that while on a G4 visa for the World Bank, such staff member can only work for the World Bank, and the Applicant's G4 visa would have expired shortly after the end of his appointment with the Bank. Nor is it practical to suggest that the Applicant return to France or work elsewhere other than Washington, D.C., since the Applicant had expressed his desire to live close to his son and enjoy his parental rights. The Applicant testified that, since his suspension, he has sought employment in Washington, D.C. with other international organizations as well as employment in France. He has not been successful. As a result, the Applicant is not able to pay the full amount of his support obligations.

138. The Tribunal finds that, in the circumstances of this case, a disciplinary measure that has the practical effect of eliminating a staff member's source of income detracts from the Bank's

policy and stated interest in ensuring that spouses and children of staff members receive the support payments to which they are entitled. In the case of staff members who are paid through payroll, failure to comply with support obligations is not addressed immediately through disciplinary measures, but through the mechanism of deductions, which ensures that spouses and children receive the financial support due to them.

139. In this case, the Applicant expressed several times to the Bank that he was trying to pay child support, but that the court had set it at a level that was too high, given his income and irregular payment schedule as an STC. The Tribunal finds that the Bank should have responded constructively to the Applicant's offer to work out a means by which payment could be deducted from his remuneration and placed in escrow so as to avoid a finding of noncompliance. Various witnesses for the Bank testified that it would be difficult logistically and administratively for the Bank to modify the system to deduct a percentage from payments made to STCs. The Lead Human Resources Specialist called by the Bank to testify about the process for implementing Staff Rule 3.06 himself said that it may be possible for the Bank to modify the system for STCs, although he did not know.

140. The Tribunal finds that the Bank did not give consideration to practical ways in which the Applicant could comply with his obligations. Instead, the Bank was inflexible in its response to the Applicant. The result, depriving the Applicant of income that he could have used to meet his support obligations, was not sensible in the circumstances. By restricting the Applicant's ability to be employed by the WBG for one year, the Bank failed to give effect to the essential purpose of Staff Rule 3.06.

141. The Tribunal encourages the Bank to put in place a better mechanism to facilitate the compliance of STCs with support orders. The mechanism currently in place for staff paid through payroll, i.e. payroll deductions pursuant to a court order, ensures that spouses and children receive the benefits to which they are entitled.

142. Finally, the HRVP disciplined the Applicant for not complying with his support obligations for October 2015, and not showing proof of such compliance when EBC requested it. The reason

for the Applicant's failure fully to respond to EBC's request was his denial that EBC was entitled to require him to provide proof of ongoing compliance. EBC cites "internal policy" as its authority for making that request. The Tribunal finds that it was reasonable for EBC to make the request. However, EBC only refers to this policy in its draft Investigative Report to the HRVP and not in communications with the Applicant.

143. On 8 January 2016, the Applicant provided EBC with proof of payment for August and September 2015 and November and December 2015. At most, the Applicant failed to meet his child support obligation for one month rather than multiple months.

144. In addition, the Consent Interim Order and the Permanent Order reduced the quantum of the Applicant's obligation. They support the Applicant's consistent assertion that the original child support payments were too high given his actual level of income.

145. The Tribunal finds that the suspension of one year was not proportionate to the misconduct. The Bank failed to give sufficient weight to the mitigating factors in the present case, as well as the disproportionate impact of the disciplinary measure imposed.

DUE PROCESS

146. Staff Rule 3.06, paragraph 2.04 sets out the applicable procedure, when the Bank receives "a court order or request from a judicial or administrative authority regarding spouse and/or child support obligations(s), of a staff member" as follows:

EBC will contact the staff member concerned and advise him/her of the need to comply with his/her personal legal obligations as set forth in the court order or request. If, within five (5) business days of such contact with the staff member, the staff member has not furnished EBC with evidence establishing compliance with the court order or request, EBC: [...]

b. if, however, the staff member's salary is not processed through payroll (i.e., STCs and STTs) EBC (i) shall notify the staff member in writing of his/her failure to demonstrate that compliance and (ii) will submit to the Vice President, Human Resources, the record of EBC's communications with a staff member pursuant to Staff Rule 3.00 Office of Ethics and Business Conduct, Section 12. The Vice

President, Human Resources, will decide, based on the record, whether the staff member's noncompliance constitutes misconduct and, if so, what disciplinary measures from Staff Rule 3.00 Section 10 to impose.

147. Staff Rule 3.00, paragraph 12.02 sets out the "Special Provision for Disciplinary and Decision Making Process in Matters Involving Failure to Meet Personal Legal Obligations as Required by Bank Group Policies" as follows:

EBC shall notify a staff member in writing if the staff member fails to demonstrate compliance with his/her personal legal obligations as required by Bank Group Policies and as set forth in paragraph 12.01 of this Rule. After EBC notifies the staff member in writing of his/her failure to demonstrate that compliance, EBC will submit to the World Bank Group Human Resources Vice President, the record of EBC's communications with a staff member whenever, without a justification acceptable to EBC, a staff member failed to demonstrate compliance with his/her personal legal obligations as set forth in paragraph 12.01 of this Rule. The World Bank Group Human Resource Vice President, will decide, based on the record, whether the staff member's noncompliance constitutes misconduct and, if so, what disciplinary measures, from Section 10 of this Rule, to impose.

148. The record shows that in July and August 2015, the Applicant and EBC exchanged emails regarding the Applicant's suspension, effective 1 July 2015, the reasons why the Applicant did not make child support payments after the MOU was issued (the IWO was not issued until September 2014, Ms. A refused to enter into settlement discussions for a consent order, and the court hearing was scheduled for October 2014), and EBC's need for proof of compliance. Once the Applicant had presented acceptable proof of compliance for the month of August 2015, the Bank lifted the restriction on his employment.

149. The record further shows that, at the time the Applicant submitted proof of compliance for the month of August, EBC put him on notice of its requirement that he submit proof of compliance for the next two months. The Applicant was notified of this requirement by email on 13 August, 28 August, and 15 September 2015. In an email dated 19 October 2015, the Applicant was requested to provide proof of compliance within three business days of the email. Despite these four requests, the Applicant did not comply because he did not think the requests were appropriate. The Tribunal finds that the Applicant was afforded due process, in that he was given sufficient notice and sufficient opportunity to present his case and comply with EBC's requirements.

150. In the present case, the Applicant asserts that except for an interview in July 2011, no one from EBC, the Legal Department, or Human Resources interviewed him to understand what was happening in his court case. He also states that EBC refused to consider the circumstances of his case. For its part, the Bank submits that, for years, EBC and the HRVP have tried to help the Applicant comply with his personal legal obligations.

151. The email record between the Applicant and the Bank, primarily EBC and Human Resources, is extensive. The Bank repeatedly reminded the Applicant of his duty to comply with his personal legal obligations and requested proof of compliance. The record shows that the Applicant responded to these requests by explaining his difficult financial circumstances and his attempts to modify the support order. Although the Applicant may disagree with the weight given by the Bank to his explanations, the Tribunal finds that the Applicant was afforded due process.

DISCRIMINATION

152. The Tribunal must invalidate decisions which are discriminatory on the basis of prohibited grounds, including race, gender, and age. *See AI*, Decision No. 402 [2010], para. 39; *Bodo*, Decision No. 514 [2015], para. 71.

153. The Applicant does not rely on one of the enumerated grounds. Rather, he argues that he was discriminated against because he was an STC and therefore, he was disciplined rather than having the support payments deducted from his earnings, which would have been an option available to staff members paid through payroll.

154. The Bank states that Staff Rule 3.06 does not discriminate against STCs because the requirement to comply with personal legal obligations applies to all staff, not only STCs. However, the question is not whether the obligation applies to all staff or only certain categories of staff. The question is whether the application of the provision is discriminatory.

155. In this case, Staff Rule 3.06, paragraph 2.04 clearly contemplates two different enforcement regimes, depending on whether a staff member's salary is processed through payroll

or not. For staff members who are paid through payroll, subparagraph (a) provides for the deduction of child support from salary. Such deductions are not considered a disciplinary measure. In addition to these deductions, it is open to the Bank to impose disciplinary measures (see Staff Rule 3.06, paragraph 3.01). In contrast, the possibility of deductions for staff members who are not paid through payroll, such as STCs, does not exist, and the Bank may determine whether noncompliance constitutes misconduct or should be subject to disciplinary measures.

156. Principle 2.1 of the Principles of Staff Employment provides:

The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members. They shall not differentiate in an unjustifiable manner between individuals or groups within the staff and shall encourage diversity in staffing consistent with the nature and objectives of the Organizations.

157. The Bank is entitled to establish different terms of employment for different categories of staff members. In this case, the Bank submits that it does not allow for salary deductions to satisfy support obligations in the case of STCs because they do not have regular earnings and request payment from the Bank at their discretion.

158. The Bank's refusal to make deductions from the Applicant's earnings as an STC was not discriminatory, when considering the Applicant within the general category of staff members who are not paid through payroll. The Tribunal recognizes that the Bank is not obliged to set up a system for deductions from earnings paid to STCs, and such a decision is not discriminatory.

159. Creating two different mechanisms for addressing noncompliance with support obligations, depending on the method of payment (payroll or otherwise), is not incompatible with the non-differentiation principle established under Principle 2.1. In *Crevier*, Decision No. 2015 [1999], para. 25, the Tribunal stated that "because staff members in different situations will normally be governed by different rules or provisions [...] discrimination takes place where staff who are in basically similar situations are treated differently." In the present case, the Applicant was treated in the same way as any other staff member not paid through payroll would have been treated.

160. The Tribunal concludes that the Bank's decision to discipline the Applicant rather than make deductions from his salary was not discriminatory. However, as the Tribunal has discussed above, the Bank is encouraged to develop a process by which deductions can be made from the earnings of staff members who are not paid through payroll, to ensure compliance with support obligations. Otherwise, these staff members and their family may be in a disadvantaged position in the application of Rule 3.06. Moreover, Rule 3.06 also means that staff members not paid through payroll are more likely to be disciplined as compared to regular staff members whose salaries are deducted. This is confirmed by the Senior Human Resources Specialist who testified that she was not aware of any regular staff members who have been disciplined for noncompliance with support obligations.

161. The Applicant also alleges that there was discrimination and bias against him, as evidenced by collusion between Bank officials and Ms. A. He cites two specific instances of actions or omission by the Bank that were to his detriment, namely the 28 January 2010 letter verifying his employment and the disclosure of the 16 February 2016 disciplinary letter to Ms. A, which she tried to present to the D.C. Court.

162. The information contained in the letter of 28 January 2010 is factually correct as far as it goes, but the Applicant takes issue with the omission of information regarding the maximum number of days per year that he could work as an STC and that such days were not guaranteed. Neither party has produced a copy of what a standard verification of employment letter would have looked like in 2010. The Applicant relies on a sample letter for verification of employment of staff, not STCs, from 2014. The Bank states that "it is very likely that the template letter may have changed between 2011 and 2015." The Tribunal finds that the Bank was in a position to give the court crucial information that the Applicant could not work more than 150 days per fiscal year. But the letter did not contain this information.

163. The Applicant acknowledged that when he tried to explain the limitations of an STC contract to the court, the court did not accept his explanation and instead, reconfirmed its support order. The court may have considered and, in any event, rejected the Applicant's arguments about his financial position as an STC.

164. The Tribunal finds that the Applicant's disciplinary letter of 16 February 2016 was improperly provided to Ms. A. The letter is marked "strictly confidential," yet during the court hearing on 8 March 2016, Ms. A testified that she "received it from the World Bank [...]" Neither representatives from EBC nor Human Resources had any knowledge about how Ms. A obtained this letter.

165. When the Applicant's counsel brought this disclosure and other allegedly improper disclosures to the attention of the HRVP and the Chief Ethics Officer on 16 March 2016, both denied that the Applicant's confidentiality had been breached. In their letter of 23 March 2016, the HRVP and the Chief Ethics Officer addressed the sharing of the Applicant's confidential information within the Bank and with the Applicant's counsel, but failed to address the allegation that Ms. A obtained the confidential disciplinary letter of 16 February 2016 from a contact in the Bank. There is no indication that this improper disclosure was investigated by the Bank.

PROTECTIONS UNDER LOCAL LAWS REGARDING GARNISHMENT

166. It is undisputed that the Bank enjoys privileges and immunities and is not bound by U.S. or D.C. law. However, the Tribunal notes that the protections afforded to an employee under U.S. and D.C. law reflect a reasonable and practical approach to ensuring that support obligations can be paid by the employee. When the Bank gives effect to a judgment of a domestic court that finds that a staff member is required to make child support payments, it should, at that time, take into account the domestic law provisions designed to ensure that the staff member is in a position to meet the support obligations.

167. According to the Applicant, the three important and relevant protections for employees under U.S. and D.C. law are (i) that wage garnishment for support payments shall not be at a rate higher than 50% of disposable income, from any one employer, for any particular pay period; (ii) that employees may not be discharged because of garnishment; and (iii) that garnishment must be applied serially, one at a time, to satisfy more than one court order.

168. The Tribunal finds that the purpose of the limits on an employer's actions relating to garnishment, namely, to protect the employee/garnishee and the recipients of support payments "because they help to ensure that the employee is in fact able to afford the payments" is consistent with the Bank's interest in ensuring that its staff members comply with their personal legal obligations in respect of spousal and child support.

169. As discussed above in the Tribunal's consideration of proportionality, the object of ensuring that the child receives support from the parent may be defeated where the parent's source of income is stopped. The Bank's severe response in this case contributed to the problem by making it more difficult for the Applicant to comply with his personal legal obligations. The Bank also aggravated the situation by refusing the Applicant's offer to work out a payment method by which he could at least partially satisfy his obligation so that the Bank would not consider him to be noncompliant.

VALIDITY OF THE MOU

170. The Applicant submits that, pending a consent order, it was reasonable for him to believe and he did believe that, according to the MOU, he did not have child support obligations.

171. The Bank submits that it was reasonable for the Bank to require the Applicant to comply with the 2009 Order, absent a superseding court order, and pay the monthly amounts set out therein.

172. With respect to ongoing, monthly child support payments, the 2009 Order required the Applicant to pay "\$1633/month beginning 1/1/10. This order must be complied with until the child emancipates or this order is modified by a court with continuing, exclusive jurisdiction to modify the order." The MOU stated that the Applicant's child support obligation from 1 November 2009 going forward "shall be determined pursuant to the Washington D.C. child support guidelines and a consent order shall be submitted to the Court."

173. In *Mills*, Decision No. 383 [2008], para. 33, the Tribunal noted:

It is well-established that while the Bank has the power or discretion to interpret its own rules and procedures, the interpretation of disputed court orders is to be addressed by the court of competent jurisdiction.

The Tribunal went on to note, at para. 35, that

the situation is different where the court order is plainly clear and valid, and where its meaning and scope is apparent to the institution entrusted with its application notwithstanding a dispute as to its interpretation by the interested parties.

174. Notwithstanding the Applicant's mistaken belief, whether or not in good faith, that he did not have any support obligations after the MOU was concluded and pending a consent order, his counsel has admitted that "since there was no new order entered, nor was the old order terminated (although the arrears were deemed to be satisfied), by law, the 2009 child support order remained in effect."

175. The Applicant also noted that the Interim Consent Order and Permanent Order of Support modified the Applicant's child support obligations and supported his claim that the child support amounts set by the court had been incorrect. He claims that the Bank still suspended him "regardless of whether he complied with his support obligations or not."

176. While the Applicant was ultimately vindicated in his assertion that he should pay less for child support than what had been ordered in 2009, it is not the Bank's role to determine the proper amount of child support to be paid by the Applicant. The Applicant should and did contest the quantum of his obligation in court. The Bank's role is to ensure that its staff members comply with their personal legal obligations as determined by the court.

177. The Tribunal finds that the Bank's interpretation that the language of the MOU does not supersede the 2009 Order and that the monthly amount payable according to the 2009 Order remained in effect is reasonable. Therefore, the Bank did not err in requiring the Applicant to comply with the 2009 Order and the IWO, which was based on the 2009 Order.

CONSEQUENCES OF THE FRENCH COURT'S DECISION

178. The Applicant argues that the “temporary flag” that was placed in his personnel record, restricting his future employment until he showed proof of compliance with the decision of the Cour d’Appel de Lyon, lacked due process as there was no evidence that the Applicant was in default. The Bank did not address this issue in its written pleadings. During the oral proceedings, the Senior Human Resources Specialist testified that she had no knowledge of whether the Applicant was in compliance with the French decision nor did she know whether EBC had conducted an investigation into the matter.

179. This temporary hiring restriction was effected on 11 July 2011, and the Applicant was given thirty days to respond, otherwise a permanent hiring restriction would be placed until he provided proof of compliance. The Applicant complains of this action in this Application of 8 June 2016, which is well beyond the one hundred and twenty days required by Article II(2)(ii)(b) for filing an application. The Tribunal does not have jurisdiction to consider this issue as it is out of time. However, as discussed in the proportionality section above, the claim of noncompliance with the French decision should not be considered as a part of the Applicant’s history of misconduct since there is no evidence that he failed to comply with the French decision.

DECISION

- (1) The decision of the HRVP dated 16 February 2016 is rescinded;
- (2) The Bank shall pay the Applicant compensation equivalent to the remuneration due for 150 days’ employment (the maximum number of days an STC is allowed to work in a fiscal year) at his most recent STC rate;
- (3) The Bank shall take appropriate action, consistent with the terms of this judgment, should the occasion arise, that conduces towards the Applicant’s discharge of any future child support obligations under Staff Rule 3.06;
- (4) The Bank shall pay the Applicant the amount of \$39,893.77 in legal fees and costs; and
- (5) 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