



World Bank Administrative Tribunal

2017

Decision No. 562

**EA,
Applicant**

v.

**International Finance Corporation,
Respondent**

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

**EA,
Applicant**

v.

**International Finance Corporation,
Respondent**

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

2. The Application was received on 2 August 2016. The Applicant was represented by Stephen C. Schott of Schott Johnson, LLP. The International Finance Corporation (IFC) was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 11 April 2017.

3. The Applicant challenges the 14 April 2016 decision of the Vice President, Human Resources (HRVP) and the imposition of disciplinary sanctions. The Applicant contends that the disciplinary sanctions were "extremely harsh" and significantly disproportionate to the act, which she admits she committed.

FACTUAL BACKGROUND

4. The Applicant was appointed by the IFC on a term appointment on 16 July 2010. Between 2010 and 2014, the Applicant resided in Nairobi, Kenya, and worked from the IFC Nairobi office. In August 2014, the Applicant moved her residence to a different country although her work continued to be concentrated on East Africa facilitated by the IFC Nairobi office.

5. By agreement between the IFC and the Applicant, she transitioned from a term staff to a short-term consultant (STC). Her term appointment terminated in September 2014 and she was given an STC contract for 150 days from 24 September 2014 to 30 June 2015. She was again given

another STC contract for 150 days from 1 July 2015 to 30 June 2016. It was agreed that the Applicant would work out of her new residence and travel to East Africa as needed.

The Applicant's Permit to Enter or Remain in Kenya

6. Under the Kenya Citizenship and Immigration Act of 2011, any person who is not a Kenyan citizen is required to obtain a valid permit to enter or remain in Kenya. Staff of the IFC were entitled to an exemption from this requirement under Section 34(3)(c) of the Act which provides:

Entry and removal of immigrants.

[...]

(3) This section shall not apply to

[...]

(c) a person upon whom the immunities and privileges set in the laws relating to Privileges and Immunities have been conferred under these laws, and the spouses and any children or other dependents of that person[.]

7. The Nairobi office assists non-Kenyan IFC staff in securing the work permit exemption by submitting the application, duly completed by the staff member, to the Ministry of Foreign Affairs and International Trade which then facilitates the approval of the exemption to the relevant government agency, the Directorate of Immigration and Registration of Persons.

8. Between 2010 and 2014 the Applicant was issued the work permit exemption, also referred to as a re-entry permit, based on her term appointment and residence in Nairobi, Kenya.

9. On 17 July 2014, the IFC submitted a request for extension of the re-entry permit for the Applicant. The record shows that this request was made while the Applicant was still on a term contract with the IFC. The request noted that the Applicant's term contract was extended until 15 September 2015.

10. On 2 September 2015, the Protocol Assistant in the IFC Nairobi office contacted the Applicant about her re-entry permit, which was due to expire on 28 September 2015. The Protocol Assistant asked her for the instructions for renewal, and the Applicant responded affirmatively.

The Protocol Assistant provided the Applicant with the appropriate form, Form 25, which applies for new and renewal work permits or work permit exemptions.

11. On 2 September 2015, the Applicant, who at that time was in the Nairobi office, completed the form and left the form on the Protocol Assistant's desk.

12. On 10 September 2015, the Applicant sent the Protocol Assistant an email message stating:

Last Friday I laid on your desk the application forms for the Residency permit, for my kids and I. Is this all in order and can you get a residency permit on basis of this? Can you already have it signed off by [the Country Manager]?

Reason for me asking is that I am at the point of sending all passports to you, however, I need to be sure I get it returned within 10 days, as I need to travel soon again!

13. On the same day, the Protocol Assistant responded: "Yes [...] all the documents are in order."

14. On 15 September 2015, the Applicant sent the Protocol Assistant an email message enquiring whether he had received her passport and those of her children which she had couriered to him from her new residence. She indicated that she would urgently require the passports back and enquired whether there was "an accelerated procedure" for acquiring the re-entry permits which would enable her to receive the passports back by 21 September 2015.

15. The Protocol Assistant responded informing the Applicant that there was no "express service" to process the permit applications and "at least 10 working days" were needed. He also observed that he had not yet received the passports.

16. The same day, the Applicant sent the Protocol Assistant a reply informing him that according to the courier service the passports should arrive at the IFC Nairobi office the following day. While she was able to partially address her urgent need to have all the passports returned by 21 September 2015, the Applicant noted that she was scheduled to travel "in the week of 27

September [2015],” and enquired whether it would be possible to receive the passports by 2 October 2015. She then asked: “So are my application forms already signed internally IFC?”

17. On 17 September 2015, the Applicant sent a message to the Protocol Assistant stating:

I need to know the state of affairs of my passport. There are some very important meetings that I have to go to in both Tanzania and Kenya, so I start to be worried! Can you just indicate how I can reach you to know the latest state of affairs?

18. The Protocol Assistant responded with a telephone number. There is no record of the conversation which the Applicant had with the Protocol Assistant.

19. On 21 September 2015, the Applicant sent the Protocol Assistant a message noting that the passports were delivered to the Nairobi office by the courier service on 18 September 2015.

20. On the same day, the Protocol Assistant sent the Applicant an email message stating: “Could you kindly assist me with a copy of your contract?”

21. According to the Applicant, she called the Protocol Assistant who informed her that “the rules had changed and that [she] may not qualify anymore with an STC contract.” The Protocol Assistant informed the Applicant that “he needed an employment contract with [her] name on it, and a recent date covering the application period.”

22. A few hours later, the Applicant sent the Protocol Assistant an email message with a copy of her contract attached. She stated, “just check and let me know if this suffices for the visa.”

23. During her interview with investigators of the World Bank Group’s Office of Ethics and Business Conduct (EBC), the Applicant admitted to altering the date on the contract which she sent to the Protocol Assistant. In a telephone conversation with one of the EBC investigators, the Applicant recounted the circumstances in which she did so, and elaborated as follows:

Then, on 21 September, [the Protocol Assistant] comes back to me all of a sudden, “[the Applicant], can you kindly assist me with a contract.” [...] And at that

moment in time, I am desperate, because I called him already, “[...], please hurry up this resident permit because I have to travel again and this is my only passport. I need to be at the opening of my own project by the Vice President of Tanzania the week of” [...] the first week of October, sorry.

So, 21 December [sic] he comes with very important additional information that he needs, and I don’t have it because I am an STC. I don’t have the contract that he asks for, and I don’t have a contract at all because it is processed in eProcurement, my contract. So, I can’t provide him with this, but now I am put on the pressure because I know if I don’t provide him with a contract, my passport will stay in Kenya and I cannot travel for my work. So I cannot attend the opening of my own project. You see that I start to really panic.

Under that pressure, I have changed the date. So, and I have sent it to [the Protocol Assistant] and [the Protocol Assistant], only at that point in time attaches that contract to the application and he gets for me my – the resident permit, or the reentry permit, as it is called officially.

24. On 22 September 2015, a Note Verbale prepared by the Protocol Assistant with the application form completed by the Applicant and the contract she provided were submitted to the Kenyan Ministry of Foreign Affairs.
25. On 28 September 2015, the renewal application was approved and the Applicant’s passport was stamped with the re-entry permit for two years.
26. On 8 October 2015, the Applicant’s passport was returned to her.
27. On 16 October 2015, the Head of Human Resources Client Services sent an email message to the East Africa Regional Director informing him that it had been brought to her attention that “an STC with the team in Kenya and Tanzania fraudulently presented employment papers to the mobility team in Nairobi in an effort to get visa papers.” Recounting the background, the Head of Human Resources Client Services stated:

Following the new requirement by the Ministry of Foreign Affairs (MoFA) to attach a copy of the employment contract document, the mobility team requested a current contract letter from the ex-staff which they submitted via email on 21st September 2015. A valid Note Verbale was prepared and officially signed and the documents were presented to the Ministry of Foreign Affairs on September 22nd 2015. An endorsement on the ex-staff member’s passport was effected by MoFA

and our protocol staff picked the passport on September 28th. He then couriered the passport to the ex-staff on October 8th, 2015.

This week, while reviewing the documents we picked up anomalies on the contract (old logo) which then made us suspicious about the employment contract which turned out to be fictitious.

28. The Head of Human Resources Client Services informed the East Africa Regional Director that she had spoken with EBC which advised the following: “1) investigate; 2) enter an MOU with the staff who is currently an STC, stopping the STC work and stopping any further engagement with the World Bank.” The Head of Human Resources Client Services stated that her recommendation would be to “present these statements to the Manager and the ex-staff member with the aim of proceeding to option 2. Since the evidence is very compelling, we may not need to enter a formal investigation. We would also have to have the endorsement on the passport withdrawn without creating adverse scrutiny on all other applications to the MoFA.”

29. On the same day, the East Africa Regional Director responded stating: “Sure, let’s proceed that way if we are sure we have enough evidence.”

30. On 23 October 2015, the Head of Human Resources Client Services forwarded her email correspondence with the East Africa Regional Director to the Country Manager.

31. On 5 November 2015, the Head of Human Resources Client Services forwarded the email correspondence to the EBC Manager of Investigations.

32. On 9 November 2015, the Head of Human Resources Client Services and the Country Manager held a conference call with the Applicant to discuss the allegations. There is no transcript of this conversation.

33. Following the conversation, the Applicant sent the above-mentioned individuals and her Manager an email message explaining the course of events from her perspective. She noted:

My residency visa in Kenya was expired by 15 October 2015 and was therefore up for renewal. When I left Kenya as a resident in September 2014, IFC still arranged

a residency visa for me for 1 year, up to October 2015 even though I had a consultancy contract. This of course served me well, as it saves a lot of time at customs and I have to frequently travel in and out of Kenya for the project I am carrying out. My factual situation is that I live in [...], even though I still stay a lot in Kenya on my old address, not only professionally but also as part of the summer holiday.

I had sent my passport to [the Protocol Assistant] for renewal in September 2015 per courier. A few weeks later he told me that IFC could only get me a residency visa on basis of a labor contract, and not on basis of a consultancy contract like last year. I was waiting for my passport since 3 weeks already and needed it back urgently as I had to travel for work. I was panicking as it had taken far too long and I was stuck in [...]. I then changed the date of my old labor contract with IFC so that a new Kenya visa could be produced in my passport. Even though I know this is falsification of a document, I did not spend much thought on that at the time I sent the contract to [the Protocol Assistant], all that mattered to me was that I could get my passport back fast to travel for work. I want to state clearly here that the [Protocol Assistant] did not suggest this solution, he is not to blame.

I do not intend to be a resident in Kenya, I just wanted to have a visa that gets me in and out of the country fast, avoiding the long lines of visa applicants. The rules in Kenya were recently made more stringent, one has to apply for a visa beforehand, which is burdensome with all the last-minute travel I have to do.

34. The Applicant expressed her sincere apology “for putting IFC in this problematic situation.” She acknowledged that she “should have never done this,” and stated that she would “do anything you propose to correct this situation.”

35. On 10 November 2015, the Applicant’s Manager sent the Applicant’s 9 November 2015 email message to the EBC Manager of Investigations requesting a conversation to address the Applicant’s case.

EBC’s Investigation

36. On 16 November 2015, EBC interviewed the Applicant’s Manager.

37. On 19 November 2015, EBC issued a Notice of Alleged Misconduct to the Applicant which stated that EBC was conducting an investigation into allegations that she may have committed misconduct, specifically that she “knowingly and willfully misrepresented the effective date of

[her] World Bank Group appointment letter.” It was also alleged that the Applicant “subsequently presented this forged letter to [the Protocol Assistant] to obtain a residency visa from the Ministry of Foreign Affairs, Kenya.”

38. On 23 November 2015, EBC conducted an interview with the Applicant. The same day the Applicant provided the investigators with evidence of her correspondence with the Protocol Assistant, a copy of the altered appointment letter and other documents. On 26 December 2015, the Applicant sent EBC an email providing additional responses to the allegations contained in the Notice of Alleged Misconduct.

39. On 1 December 2015, EBC conducted an interview with the Protocol Assistant. A subsequent interview was conducted on 16 December 2015.

40. On 11 December 2015, after receiving a copy of the Draft Report, the Applicant called EBC and later provided written comments on the Draft Report.

41. On 22 December 2015, the Applicant provided additional comments on the Draft Report.

42. On 29 January 2016, EBC submitted the Final Report to the HRVP. EBC concluded that “the [Applicant] knowingly and willfully altered the effective date of her original World Bank Group appointment letter.” EBC noted that it reviewed the copy of the altered contract and observed that it was changed from 16 July 2010 to 16 July 2015. EBC noted as mitigating factors the fact that the Applicant was remorseful, apologized for her actions, admitted to altering the effective date of her appointment letter, and was cooperative with EBC. EBC also noted that the Applicant stated that her motive was “purely for the benefit of IFC and not for any personal or pecuniary purpose,” and that she “reasonably believed that IFC supported her application for the residency permit as she inquired from [the Protocol Assistant] whether IFC management approved her application.”

The HRVP's Decision

43. On 15 February 2016, the Applicant sent an email message to a Lead HR Specialist expressing two concerns with the Final Report which she wanted to be taken into account in the HRVP's final decision. First, the Applicant wanted it to be clarified that she did not fill out section fifteen of the application form, which requested information on the "period of employment offered." She asserted that she left that section blank, and it was later completed by the Protocol Assistant, who wrote "2 years." She sought to stress that she did not complete the application intending to defraud as she relied on her STC contract when completing the form. For instance, she noted her total earnings in the application as \$127,950 rather than \$135,270, which was the sum in her expired term contract, while the former sum reflects her actual earnings as an STC. Furthermore, she indicated that she had no benefits such as housing benefits, which is true for the STC contract but not for the term contract.

44. Second, the Applicant emphasized that when she submitted the contract she truly believed the IFC wanted her to get the re-entry permit.

45. On 14 April 2016, the HRVP informed the Applicant that there was sufficient evidence to support a finding that she engaged in misconduct, specifically:

Staff Rule 3.00, paragraph 6.0[1](b) Reckless failure to observe generally applicable norms of prudent professional conduct; willful misrepresentation of facts intended to be relied upon; and

Staff Rule 3.00, paragraph 6.0[1](c) Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment.

46. Noting the fact that she had no prior adverse disciplinary findings and that "the re-entry pass application was not for personal gain and [she was] under time pressure to get [her] passport back so [she] could travel for IFC," the HRVP nevertheless observed that "altering an official WBG document and submitting it to a foreign government is a serious violation of the Staff Rules." The following disciplinary measures were imposed:

- (i) A 3 year prohibition of future employment with the WBG; and
- (ii) A written reprimand in the form of this letter will remain in your staff records for a period of 3 years. The 3 year period will commence upon the termination of your current STC contract.

47. On 2 August 2016, the Applicant submitted this Application contesting the decision to terminate her services under her FY2016 STC contract and the disciplinary sanctions imposed by the HRVP. The Applicant contends that the disciplinary sanctions were “extremely harsh” and significantly disproportionate to the act, which she admits she committed. The Applicant further seeks assurances that the IFC has not done anything to blacklist her in Kenya, which would prevent her from going in and out of the country. She also seeks legal costs and fees in the amount of \$57,572 for legal assistance in these proceedings before the Tribunal and during the investigation phase.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant’s Contention No. 1

The Applicant’s actions did not amount to misconduct

48. The Applicant contends that her “alleged misconduct” was “in sum and substance a good faith effort to respond to IFC Nairobi’s request for a document to support Respondent IFC’s application for an entry visa in support of IFC’s business interests by facilitating Applicant’s access to Kenya.”

49. The Applicant argues that her actions were understandable in the circumstances and had a “reasonable rationale in supporting IFC’s business interests.” In addition, she asserts that her actions were “in accord with HR’s established practice the previous year,” and the “failures of HR and IFC’s staff in Kenya substantially outweighed anything the Applicant did.” Finally, the Applicant claims she was entrapped into tendering the altered contract.

The IFC's Response***The established facts legally amounted to misconduct***

50. The IFC contends that the Applicant admitted that she knowingly and willfully altered an official document, her 16 July 2010 term Letter of Appointment (LOA), by changing the date to 16 July 2015 and provided this to the IFC Nairobi office to support the application for a renewal of her work permit exemption. The IFC argues that there was sufficient evidence to support the HRVP's conclusion that this conduct amounted to misconduct of "reckless failure to observe generally applicable norms of prudent, professional conduct, willful misrepresentation of facts intended to be relied upon as specified in Staff Rule 3.00, paragraph 6.0[1]."

51. The IFC maintains that despite the Applicant's contentions that she was "entrapped," the fact is that she "acted alone when she tampered with the official letter of appointment and changed the issue date." According to the IFC, the Nairobi office followed its internal procedures in processing the Applicant's renewal. These procedures included "reliance on the authenticity of IFC documents provided by staff members intended to be relied upon by the Respondent."

The Applicant's Contention No. 2***The sanctions imposed were neither reasonable nor proportionate to the Applicant's conduct***

52. The Applicant contends that, given the "extreme consequences on her reputation and career prospects," the sanctions imposed by the HRVP were unfair and disproportionate. She avers that the HRVP failed to assess the sanctions in accordance with the Staff Rule which mandates the consideration of mitigating and extenuating circumstances. While the Applicant acknowledges that "[u]ltimately the proportionality of a sanction is a matter of judgment," she contends that "[i]t is obvious in this case that there is no element in the case that even starts to weigh up against termination of employment, disbarment for several years and a direct attack on a person's professional reputation through a letter placed in the World Bank's personnel file."

53. The Applicant maintains that there were numerous mitigating and extenuating circumstances in the case namely: 1) her admission that she altered the date on the only contract

in her possession to meet a “demand by IFC Nairobi”; 2) in doing so she was responding to a request by the IFC and was facilitating IFC business; and 3) there was in fact a legitimate contract, but the Nairobi office failed to produce it, and the Applicant did not have access to it. The Applicant maintains that this was a failure of the Bank’s systems and she should never have been asked to forward a contract that was in HR’s possession. She further claims that she should not have been “misinformed about the availability of a resident re-entry permit for an STC.”

54. The Applicant further argues that IFC management should not have approved and submitted an application form that they knew was incorrect under the changed regulations. Furthermore, she argues that the IFC was also at fault because the Nairobi office did not make the Kenyan authorities aware that a resident re-entry permit was processed for an STC, and this was against the rules of the Kenyan government.

The IFC’s Response

The sanctions imposed were reasonable and proportionate to the Applicant’s conduct

55. The IFC argues that the record shows that the HRVP considered factors such as “the seriousness of [the] Applicant’s misconduct, the interests of the Bank Group, any extenuating circumstances, the situation of [the] Applicant, and the frequency of the conduct for which the disciplinary measure[s] were imposed.” Furthermore, at the institutional level, the IFC discovered the Applicant’s altered document only after it had relied on the authenticity of the document provided by the Applicant and submitted the document to the Kenyan authorities in support of her work permit exemption renewal. The IFC notes that this matter came to light at an especially sensitive time in October 2015 when the International Bank for Reconstruction and Development (IBRD) was communicating with the Kenyan Ministry of Foreign Affairs to discuss the establishment of a Host Country Agreement. The IFC argues that the Applicant’s act could have potentially damaged country relations and she failed in her “special responsibility to avoid situations and activities that might reflect adversely on the Organizations, [and] compromise their operations” under Principle 3.1 of the Principles of Staff Employment.

56. To the IFC, given the seriousness of the Applicant's misconduct and the risk of its impact on the IFC's operations and member relations, the sanctions imposed were not the most severe disciplinary measures legally available to be imposed by the HRVP. The IFC contends that the termination of services under the Applicant's STC contract was not a sanction by the HRVP. It argues that the Applicant confused management's prerogative not to assign her additional work during the remainder of the term of her STC contract as a termination of her STC contract. This is a legitimate exercise of managerial discretion and did not alter or violate the conditions of employment under her STC contract.

The Applicant's Contention No. 3

There were procedural irregularities with the EBC investigation and the HRVP's decision

57. The Applicant alleges that the following were procedural irregularities committed by EBC which she asserts were a violation of Staff Rule 3.00:

1. EBC "unreasonably" denied the Applicant's request for an extension of time to comment on the EBC report;
2. EBC failed to ask for the Applicant's comments on the revised draft;
3. EBC failed to make recommendations on an appropriate sanction and did not inform the Applicant on which sanction it would recommend;
4. In weighing the mitigating circumstances, EBC failed to confirm the Applicant's record of honesty and integrity, her performance under difficult conditions and her loyalty to the IFC. She asserts that EBC should have included her CV in its exhibits; and
5. EBC failed in a duty owed to the Applicant which was to investigate the failures in the Nairobi office that "occasioned the incident and to assess whether the Nairobi office met the ethical standards of the Bank" in dealing with the Applicant.

58. The Applicant alleges that the following were procedural irregularities committed by the HRVP which she asserts were a violation of Staff Rule 3.00:

1. The HRVP's delay in issuing his decision caused the Applicant undue stress and loss of employment opportunities. The Applicant notes that EBC's Final

Report was issued on 16 January 2016 but the decision was communicated to the Applicant on 14 April 2016; and

2. There is no evidence that the IFC conferred with her manager as is required by Staff Rule 3.00, Section 10.11, nor did the HRVP inform the IFC HRVP of the sanction.

The IFC's Response

There were no procedural irregularities or due process violations

59. The IFC argues that the EBC investigation was fair, unbiased and followed proper procedures, contending that the Applicant has not shown that her due process rights were violated in any way. In particular, the IFC argues that: a) EBC did not unreasonably deny her request for an extension of time to comment in that the Applicant was granted twelve additional days to provide her comments and had previously provided comments; b) there is no indication that her comments were ignored by the HRVP – it is EBC that determines whether or not the Final Report needs to be revised, not the staff member; c) there is no evidence that the Applicant's Manager was not consulted, rather the record shows that he expressed his views on the situation; d) contrary to the Applicant's assertions there is only one HRVP for the World Bank Group; thus there was no IFC HRVP to consult; e) under the Staff Rules EBC's role is to investigate and it is not required to provide recommendations on sanctions; and f) the Applicant's allegation that the HRVP failed to act within 60 days on the EBC Final Report is not a procedural violation.

The Applicant's Contention No. 4

The investigation was unnecessary and management failed to properly resolve the matter

60. The Applicant states that she attempted to invoke informal procedures, in the interest of both parties, to resolve the matter and as necessary have the re-entry permit cancelled. According to the Applicant, despite her attempts at mediation, she was informed by the HRVP's delegate there was nothing to mediate. The Applicant argues that the record shows that an investigation was unnecessary.

The IFC's Response

The decision to involve EBC was a proper exercise of managerial discretion

61. The IFC notes that the Applicant complains that management should have taken a course of action which would normally have led to an oral or written reprimand without a record in her personnel file. However, the IFC notes that such action where management may issue an oral or written censure does not extend to cases where there is an allegation of misconduct. The IFC contends that the fact that the course of action did not lead to a sanction the Applicant thought she deserved does not make the IFC's actions procedurally incorrect.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

62. The scope of the Tribunal's review in disciplinary cases is well established. In *Koudogbo*, Decision No. 246 [2001], para. 18, the Tribunal stated that this review

is not limited to determining whether there has been an abuse of discretion. When the Tribunal reviews disciplinary cases, it "examines (i) the existence of the facts, (ii) whether they legally amount to misconduct, (iii) whether the sanction imposed is provided for in the law of the Bank, (iv) whether the sanction is not significantly disproportionate to the offence, and (v) whether the requirements of due process were observed." (*Carew*, Decision No. 142 [1995], para. 32.)

63. Similarly, the Tribunal has held that its review in misconduct cases "encompasses a fuller examination of the issues and the circumstances." *Cissé*, Decision No. 242 [2001], para. 26, citing *Mustafa*, Decision No. 207 [1999], para. 17, and *Planthara*, Decision No. 143 [1995], para. 24.

64. It is also well established, as stated in *Dambita*, Decision No. 243 [2001], para. 21, that:

In disciplinary matters, strict adherence to the Staff Rules is imperative and a conclusion of misconduct has to be proven. The burden of proof of misconduct is on the Respondent. The standard of evidence in disciplinary decisions leading, as here, to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities. In this connection, the Respondent has failed to establish the existence of facts substantiating misconduct by the Applicant.

65. The present case will be reviewed in accordance with these standards. The Applicant does not deny the occurrence of the facts on which the disciplinary measures were based (i.e. her falsification of the date on an old IFC LOA and tendering said document to assist in the procurement of a renewed re-entry permit in Kenya). Nor does she assert that the sanction imposed was not provided for in the law of the Bank. Therefore, the Tribunal will consider only issues (ii), (iv), and (v) noted in para. 62 above.

WHETHER THE FACTS LEGALLY AMOUNT TO MISCONDUCT

66. In his decision letter, the HRVP stated that there was sufficient evidence to support a finding that the Applicant engaged in misconduct. The letter identified the following types of misconduct:

Staff Rule 3.00, paragraph 6.0[1](b) Reckless failure to observe generally applicable norms of prudent professional conduct; willful misrepresentation of facts intended to be relied upon; and

Staff Rule 3.00, paragraph 6.0[1](c) Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment.

67. The Applicant's response to this charge has been varied. On the one hand, during the EBC investigation phase, she acknowledged that her conduct was "imprudent." However, in the pleadings before the Tribunal she asserts that her actions were "understandable in the circumstances," and she had a "reasonable rationale in supporting IFC's business interests." The Applicant maintains that her actions were "in sum and substance a good faith effort to respond to IFC Nairobi's request for a document to support Respondent IFC's application for an entry visa in support of IFC's business interests by facilitating Applicant's access to Kenya." She further claims that she was entrapped into tendering the altered document by the IFC Protocol Assistant in Nairobi.

68. The record does not support the Applicant's contentions. First, there is no evidence that the Applicant was entrapped into retrieving an old and expired LOA, falsifying the date and tendering it as a current contract in support of her re-entry permit application. What the record unequivocally

demonstrates is that the initiative to change the date on the LOA was the Applicant's alone. During her first interview with EBC and in her email to her managers, the Applicant exonerates the Protocol Assistant by stating that he did not suggest that she change the date on the LOA. The Applicant reinforced this point by stating that she "panicked" when asked for a copy of her contract and when she could not find her current contract, she altered the only contract that she had. The evidence shows that all the Applicant was asked for was a copy of her current contract. A suggestion that she falsify the date on an old contract cannot be reasonably inferred from the request that she provide a copy of her contract.

69. Second, the Applicant herself acknowledges to having felt uncomfortable taking the action she took, but did so due to the time pressure. This demonstrates that the Applicant knew that she was doing something wrong absent the pressure she faced. Yet, the pressure she claims she faced cannot change the character of her conduct nor can it justify it. As was held in *Z*, Decision No. 380 [2008], para. 42, an unusually heavy workload and a stressful environment are "certainly not an excuse for not following the rules of the Bank. No matter how busy he or she may be, a staff member cannot be 'exempted from the inconvenience of obeying applicable rules.'"

70. The Tribunal held in *CJ*, Decision No. 497 [2014], para. 96 that the categories of misconduct under Staff Rule 3.00, paragraph 6.01(b) and (c) "refer to conduct that diminishes the trust and confidence the public place in the Bank and its staff. In other words, they are intended to sanction conduct that could reasonably be seen by the public to seriously undermine a staff member's honesty and integrity and/or to be seriously discreditable or offensive."

71. The question is whether the Applicant's conduct could "reasonably be seen by the public to seriously undermine a staff member's honesty and integrity and/or to be seriously discreditable or offensive." In this case, the Applicant altered the date of an official LOA which was issued by the IFC on the IFC letterhead to give the impression that it was a recent contract. In reliance on the altered contract, the Kenyan Ministry of Foreign Affairs believed that: a) the IFC had provided the Applicant with a Letter of Appointment dated 16 July 2015; b) the Applicant was engaged on a term contract; and c) the duration of the term contract was for two years.

72. Furthermore, the record shows that the altered document was relied upon and achieved its objective. It was submitted to support the application for a re-entry permit and on 8 October 2015, the Applicant was sent her passport with the re-entry permit stamped in it. Based on the facts above, the Tribunal is convinced that the Applicant's action amounts to conduct which could diminish the trust and confidence that the public, and certainly the Kenyan Government, place in the World Bank Group and its staff. Her conduct goes to the center of honesty and integrity and this is the type of conduct that falls within the categories of misconduct anticipated in Staff Rule 3.00, paragraph 6.01(b) and (c).

73. The Applicant has argued that her case is similar to *CJ*, Decision No. 497 [2014] and the Tribunal should similarly find that she did not commit misconduct. However, this case is markedly different from *CJ*. In that case, in support of his application for an apartment in New York, the applicant submitted to a real estate agent an Employment Verification Letter which required his manager's signature. However, the applicant did not obtain his manager's signature. Instead the applicant affixed his initials at a corner of the document. The applicant claimed that this was consistent with other documents he had sent to the real estate agent to prove the authenticity of the documents. At issue was the misleading nature of the initials affixed to the letter, not the employment information in the letter. In that case the employment information was accurate, whereas in the present case the employment information was inaccurate. The Applicant held an STC contract with the IFC, not a term appointment. Furthermore, there was evidence in *CJ* to support the finding that the real estate agent did not believe that the initials appended were those of his manager since she sent the manager an email message and requested that he sign the document. Finally, in that case the Tribunal noted that the Bank had not discharged its burden to demonstrate, to the "more than a mere balance of probabilities" standard, that the applicant sought to mislead the real estate agent as alleged.

74. In the present case, there is overwhelming evidence to support the finding that the Applicant intended to mislead the authorities to believe that she had the type of valid contract at the IFC which would entitle her to receive a renewal of her re-entry permit. The record shows that at the time the Applicant submitted this altered document she was aware that the Ministry of Foreign Affairs no longer processed such re-entry permits for IFC staff on STC contracts.

75. The Applicant appears to confuse intent to mislead with motive. On the assumption that her motives were purely to assist the IFC to obtain a re-entry permit for her and facilitate only IFC-related travel with no personal gain, the intention nevertheless was that the document be relied upon, knowing that it was a false document. The falsification of information on an official document, regardless of motive, is conduct which “could reasonably be seen by the public to seriously undermine a staff member’s honesty and integrity.” As the Tribunal held in *O’Humay*, Decision No. 140 [1994], para. 32, “[r]egardless of whether there was a malicious intention, a given result was sought and obtained by means of this representation.”

76. The record nonetheless shows that the Applicant would have personally benefited from the re-entry permit. In the email message to her managers dated 9 November 2015, the Applicant stated the following: “My factual situation is that I live in [...], even though I still stay a lot in Kenya on my old address, not only professionally but also as part of the summer holiday.” Thus, in addition to facilitating work travel, having the re-entry permit would also have benefited the Applicant personally, as she and her children would have been able to enter Kenya on holiday without delays or other administrative concerns.

77. The Tribunal observes that the Applicant has spent a substantial portion of her Application and Reply addressing the issue of fraud and whether her conduct amounted to fraud. While the term was referred to by the IFC in its Answer, fraud was not mentioned in the Notice of Alleged Misconduct as the basis of the investigation, nor did the HRVP find that the Applicant committed fraud. The pleadings in this regard are therefore irrelevant to the matter at hand.

PROPORTIONALITY OF THE SANCTIONS

78. The Tribunal will now consider the Applicant’s contention that the sanctions imposed were significantly disproportionate to the misconduct found.

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

- (i) A 3 year prohibition of future employment with the WBG; and

- (ii) A written reprimand in the form of this letter will remain in your staff records for a period of 3 years. The 3 year period will commence upon the termination of your current STC contract.

80. In addition, though not a sanction listed in the disciplinary letter, the Applicant's Manager decided not to assign project tasks to her for the remainder of her contract, and her STC contract was allowed to lapse. The Applicant contends that this lapse amounted to the termination of her contract. To the Applicant, collectively these were sanctions which were disproportionate to her conduct and the HRVP failed to assess the sanctions in accordance with the Staff Rule which mandates the consideration of mitigating and extenuating circumstances.

81. In *Gregorio*, Decision No. 14 [1983], para. 47, the Tribunal held that in order for a sanction to be proportionate:

[T]here must be some reasonable relationship between the staff member's delinquency and the severity of the discipline imposed by the Bank. The Tribunal has the authority to determine whether a sanction imposed by the Bank upon a staff member is significantly disproportionate to the staff member's offense, for if the Bank were so to act, its action would properly be deemed arbitrary or discriminatory.

82. Staff Rule 3.00, paragraph 10.09 requires that:

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

83. Staff Rule 3.00 paragraph 10.06 provides for the following disciplinary measures:

- a. Oral or written censure;
- b. Suspension from duty with pay, with reduced pay, or without pay;
- c. Restrictions on access to the Bank Group's premises;
- d. Restitution, compensation or forfeiture payable to the Bank Group from a staff member's pay or benefits, or through a reduction or elimination of a salary increase in respect of a prior year in which it is later determined

- misconduct occurred, either to penalize a staff member or to pay the Bank Group for losses attributable to misconduct;
- e. Removal of privileges or benefits, whether permanently or for a specified period of time;
 - f. Reassignment;
 - g. Assignment to a lower level position;
 - h. Demotion without assignment to a lower level position;
 - i. Reduction in future pay, including the withholding of future pay increases;
 - j. Ineligibility for promotion, whether permanently or for a specified period;
 - k. Termination of appointment;
 - l. Loss of future employment and contractual opportunities with the Bank Group; and
 - m. When the financial disclosure form that is submitted pursuant to the requirements set forth in Staff Rule 3.03, "Financial Interest and Disclosure," is not timely, complete or accurate, in addition to the disciplines described above, a fine to the staff member in accordance with Staff Rule 3.03, "Financial Interest and Disclosure," paragraph 3.06.

84. It is observed that many of the sanctions enumerated in Staff Rule 3.00, paragraph 10.06 do not seem applicable to staff on STC contracts. The main issue is whether the sanctions imposed were significantly disproportionate to the finding of misconduct. In this case, neither a permanent employment ban nor termination was imposed as a sanction. The evidence shows that the Applicant's misconduct was relatively serious since it not only raises questions about honesty, but could also have affected relations between the organization and a State. It involved providing a document which the Applicant knew was false to a ministry of the Government of Kenya to obtain an entry permit in violation of immigration laws such as The Kenya Citizenship and Immigration Act which provides that:

Any entry permit, pass, certification or other authority, whether issued under this Act or under the repealed Acts which has been obtained by or was issued in consequence of fraud or misrepresentation, or the concealment or nondisclosure, whether intentional or inadvertent, of any material fact or circumstance, shall be and be deemed always to have been void and of no effect and shall be surrendered to the service for cancellation.

85. The Applicant acknowledges this as she states that "[u]nder the Kenyan Act the change of a date may have been a misrepresentation[.]" The Applicant nevertheless stresses that she "had a valid contract." However, the Applicant's then existing contract was of a different type from that noted in the amended LOA. The Applicant proceeds to fault the IFC Nairobi office for "validating"

the contract submitted since it forwarded it with an application requesting a re-entry permit for two years. This statement is no defense of the Applicant's actions and instead suggests that she does not appreciate the gravity of her misrepresentation.

86. In addition, "2 years" was written in response to section fifteen of the application form which requested information on the "period of employment offered." The Applicant claims that she did not write "2 years" on the form, but the Protocol Assistant also asserts that he did not write it and instead that the Applicant did. If this is indeed true, it is an additional falsehood included by the Applicant on an official document where she declared that "the foregoing particulars are correct in every detail."

87. The Applicant argues, relying on the Tribunal's jurisprudence, that the existence of a pattern of misconduct is an important factor in cases of misconduct and in determining disciplinary measures. She asserts that a higher standard should be applied to those in managerial positions. She states that she was not a manager, nor did she have a pattern of misconduct. The Applicant further states that under the applicable staff rules, the "situation of the staff member" is another factor to be considered in determining disciplinary measures. She contends, relying on *O'Humay*, that the Tribunal has determined that "once a staff member accused of misconduct had taken all the necessary steps to restore order, the record of misconduct on his personnel file only served to negatively affect the Applicant's career, and disciplinary measures should not have any cumulative effect over the Applicant's subsequent service." The Applicant then concludes that it is "easy to see how the Respondent's sanction will have a cumulative effect over the Applicant's subsequent professional life."

88. The Tribunal does not find these contentions convincing. First, the cases the Applicant relies upon concerning the pattern of misconduct are fraud cases where the Tribunal observed that a pattern of misconduct may illustrate the intent to defraud. As noted above, this case does not concern a finding that the Applicant committed fraud. Second, the Applicant's situation is different from the staff member in *O'Humay*. That case concerned a dispute over a private debt owed by a Bank staff member to his employee. The Tribunal concluded that there was no "evidence that this debt in any way reflected adversely upon the reputation and integrity of the Bank." In the present

case, the Applicant's misconduct was not a private affair and could have reflected adversely upon the reputation and integrity of the World Bank Group.

89. Furthermore, *O'Humay* concerned the applicant making a misrepresentation to the U.S. Consul for which the sanction of withholding his salary increase was imposed. The Tribunal found in para. 41 of that judgment that "the loss of salary increase is proportionate to the misconduct only insofar as its effects are strictly confined to 1992, but not to the extent that this measure will have any cumulative effect over subsequent years." The Tribunal held that the sanction may have consequences going beyond that year in relation to the determination of the applicant's level of salary for the purposes of calculating his entitlement to salary increases in any subsequent year or his pension or other benefits. The Tribunal therefore held that the sanction of loss of salary increase be limited to the single year; the Tribunal did not rescind the entire sanction, just limited its effect.

90. In the present case, the sanction of withholding the Applicant's salary increase was not imposed most likely because such a sanction is inapplicable to STCs since they do not receive the yearly salary review increase. The Applicant has not shown, in a convincing manner, how the sanction imposed – a temporary employment ban for three years and written reprimand in her record for three years – would have a cumulative effect on the future. The IFC made clear that communication with future employers who contact the World Bank Group about the Applicant's employment is limited to confirmation of her employment and disclosure of the start and end dates of employment. The circumstances in which her employment at the World Bank Group ended would not be disclosed, neither would the disciplinary letter.

91. Finally, as was held in *BP*, Decision No. 455 [2011], para. 53, the Tribunal believes in the "appraisal of the materiality of the falsehood in light of broader circumstances, and a sense of proportionality consonant with the Bank's own precedents." Pursuant to the Tribunal's order to produce documents, the IFC submitted a comparison chart depicting the sanctions imposed on staff members, over the last five years, who were similarly found to have falsified documentation in breach of Staff Rule 3.00, paragraph 6.01(b) and (c). The Tribunal notes that all four cases submitted concerned the provision of either false medical documents or falsified receipts and invoices to make false insurance claims. The staff members' actions were categorized as fraud and

the staff members were sanctioned with termination, ineligibility for future employment with the World Bank Group, and a written censure to remain in their files indefinitely. In two cases the staff members were further sanctioned with restricted access to the World Bank Group premises and mandated to make restitution to the Bank.

92. The Tribunal observes that these cases concerned falsification of documentation for personal financial gain. While the present case did not involve financial gain, as noted above the Applicant's actions were for both professional and personal advantage. Further, the Tribunal notes that a staff member who was remorseful, with a long tenure of satisfactory performance at the Bank, without prior adverse disciplinary findings, and experiencing significant financial difficulties was nevertheless sanctioned similarly to the others due to the gravity of his/her conduct. The Tribunal therefore finds that, on balance, the sanctions imposed on the Applicant are not significantly disproportionate to the Applicant's misconduct.

93. The Applicant's claims that the mitigating circumstances listed in the EBC Final Report should have reduced the sanctions are unpersuasive. The Applicant persists in blaming the Nairobi office for her own misconduct. She claims that she should not have been "misinformed about the availability of a resident re-entry permit for an STC." Yet, the Applicant herself admitted that she spoke with the Protocol Assistant and was informed that she may no longer qualify for a re-entry permit with an STC contract and that he needed an employment contract with her name on it, and a recent date covering the application period. She was provided with sufficient information which could have reasonably led to the conclusion that her STC contract would not assist her in obtaining the type of re-entry permit for which she submitted an application. While the record reveals some questionable practices by the Nairobi office, such as requesting an official contract letter from the staff member rather than Human Resources and failing to verify the documents before submitting them to the Kenyan Ministry of Foreign Affairs, these practices do not eliminate the fact that the Applicant alone falsified the date on an expired LOA and tendered it to support the application for a re-entry permit.

WHETHER THE REQUIREMENTS OF DUE PROCESS WERE OBSERVED

94. The Tribunal will now address the Applicant's assertion that there were procedural irregularities with the EBC investigation and the HRVP's decision. She further challenges the IFC's decision to refer the matter to EBC for investigation rather than adopt an alternative route to resolve the matter.

95. In *Kwakwa*, Decision No. 300 [2003], para. 29, the Tribunal held that

[t]he due process requirements for framing investigations of misconduct in the context of the World Bank Group's relations with its staff members are specific and may be summarized as follows: affected staff members must be [apprised] of the charges being investigated with reasonable clarity; they must be given a reasonably full account of the allegations and evidence brought against them; and they must be given a reasonable opportunity to respond and explain.

96. In *King*, Decision No. 131 [1993], para. 53, the Tribunal summarized the essential elements of due process as being "the precise formulation of an accusation, the communication of the precise accusation to the Applicant, the giving to the Applicant of an opportunity to rebut in detail the specifics of the charge and the opportunity to invoke all pertinent factors."

97. The Tribunal has also held that an investigation into a disciplinary matter is administrative and not adjudicatory in nature (*see e.g., Rendall-Speranza*, Decision No. 197 [1998], para. 57, and *Arefeen*, Decision No. 244 [2001], para. 45), and reiterated that "compliance with all technicalities of a judicial process is not necessary, if it is conducted fairly and impartially." *CB*, Decision No. 476 [2013], para. 43.

Allegations of procedural irregularities

98. With respect to EBC, the Applicant's first contention is that EBC unreasonably denied her request for an extension of time to comment on the EBC Draft Report. The record shows that the Applicant was granted the extension of time she requested to confer with her lawyer. In addition,

the Applicant provided several comments on the Draft Report, and EBC conducted a second interview with her, taking note of her complaints that portions of the Draft Report were inaccurate.

99. Her second argument is that EBC failed to include her comments in the revised draft; however, this is not a procedural irregularity. EBC included the Applicant's comments as an annex. EBC is not obliged to revise its report in a manner which is pleasing to the Applicant.

100. The Applicant's third contention is that EBC failed to make recommendations on an appropriate sanction and did not inform her which sanction it would recommend. As above, this is not a procedural irregularity. EBC, as an impartial factfinder, does not make recommendations on sanctions.

101. Her fourth contention is that EBC failed to confirm her record of honesty and integrity, her performance under difficult conditions and her loyalty to the IFC. The Applicant maintains that EBC should have included her CV as an exhibit. The Tribunal holds once again that this is not a procedural irregularity. In addition, the non-inclusion of these documents did not violate the Applicant's right to due process. The case concerns the Applicant's falsification of the date on an old LOA, which she readily admitted to doing. Her CV, performance under difficult conditions and loyalty to the IFC are inconsequential to the fact that she falsified the date on an old contract and tendered it as a current contract to obtain a re-entry permit.

102. The Applicant's final contention with respect to EBC is that EBC failed in a duty owed to her which was to "investigate the failures in the Nairobi office that occasioned the incident and to assess whether the Nairobi office met the ethical standards of the Bank." This case is about the Applicant's conduct, and allegations of procedural irregularities should concern EBC's treatment of the Applicant. If the Applicant held the view that someone in the Nairobi office committed misconduct she should have reported that individual to EBC for EBC to determine whether an investigation is warranted, rather than raising the matter before the Tribunal as a procedural irregularity in her own case.

103. With respect to the HRVP, the Applicant asserts that the following are examples of procedural irregularities which violated Staff Rule 3.00:

1. The HRVP's delay in issuing his decision caused the Applicant undue stress and loss of employment opportunities. The Applicant notes that EBC's Final Report was issued on 16 January 2016 but the decision was communicated to the Applicant on 14 April 2016; and
2. There is no evidence that the IFC conferred with her manager, as is required by Staff Rule 3.00, paragraph 10.11, nor did the HRVP inform the IFC HRVP of the sanction.

104. As with the allegations of procedural irregularity against EBC, the Tribunal finds that these allegations against the HRVP also lack merit. A time lapse of three months between the conclusion of the investigation and the communication of the HRVP's decision does not constitute a procedural irregularity in this case as the Applicant was expressly informed that, although the decision by the HRVP was typically made within 60 days, there were "times when the decision might take longer than 60 days." Furthermore, as the IFC noted, there is no separate IFC HRVP; there is only one HRVP for the World Bank Group. Finally, the record already contains the views of the Applicant's Manager, expressed prior to the sanctions decision, thereby fulfilling the requirements of Staff Rule 3.00, paragraph 10.11. The Applicant does not provide any evidence to contradict the IFC's assertion that the Applicant's Manager was consulted. In addition, the Applicant has not demonstrated what harm she has suffered by these alleged procedural irregularities.

105. The Tribunal therefore finds that the Applicant's claims of procedural irregularities against EBC and the HRVP lack merit.

Whether the decision to involve EBC was a proper exercise of managerial discretion

106. The Applicant's final contention is that the decision to involve EBC was not a proper exercise of managerial discretion. She contends that she attempted to invoke informal procedures to resolve the matter, having already admitted that she falsified the date on an expired LOA. In the Applicant's view an investigation was unnecessary and harmful to her reputation.

107. The record shows that there was some inclination within management to proceed without an EBC investigation and to terminate the Applicant's employment, particularly as she was an STC. For instance, on 16 October 2015, within days of the discovery of the altered LOA, the Head of Human Resources Client Services sent an email message to the East Africa Regional Director. The Head of Human Resources Client Services noted the factual background and stated:

I have spoken to Ethics and they have advised of the following 1) investigate 2) enter an MOU with the staff who is currently an STC, stopping the STC work and stopping any further engagement with the World Bank.

My recommendation would be [to] present these statements to the Manager and the ex-staff member with the aim of proceeding to option 2. Since the evidence is very compelling, we may not need to enter a formal investigation.

108. Later in an email from the East Africa Regional Director on 8 December 2015 to the Applicant's Manager, the East Africa Regional Director stated:

Indeed, my advice is to terminate [the Applicant's] contract as soon as [the Head of Human Resources Client Services] is able to reconnect with EBC. [...]

Please note that EBC only investigates cases but does not have any prerogative to take any staff action. That is the prerogative of Management often materialized by a decision made by the HRVP, after consultation with Management. So, if EBC were to pursue this case, they are likely to start their investigation only after the validity of [the Applicant's] visa and that will expose all of us for not taking action on a matter for which the result of the investigation is [sic] would be no mystery since [the Applicant] never denied that she altered her contract and does not seem to be convinced that this is a serious matter. As you know, she could have even enter[ed] Kenya without an IFC sponsored visa. Given her nationality all she needed to do is enter thru the tourist line and pay a USD 50 entry fee.

I'd welcome your views on whether you think that an immediate termination is not justified in this case.

109. The record does not contain information as to why an EBC investigation was ultimately conducted. The Tribunal observes that the choice of which option to follow was the management's and not the Applicant's. In addition, the Applicant appears to have benefited from an investigation. Had management refused to refer the case to EBC for a comprehensive investigation and instead immediately terminated her contract as proposed, the Applicant may have had a potential claim of denial of due process and improper exercise of managerial discretion. It is for this reason that her

claim that the referral to EBC was unjustified is unpersuasive. The Applicant benefited from the EBC investigation which resulted in a reduced sanction imposed by the HRVP as opposed to the immediate termination of her contract and what appears would have been a lifetime ban from working with the World Bank Group.

DECISION

The Application is dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 21 April 2017