



**World Bank Administrative Tribunal**

**2017**

**Decision No. 568**

**EH,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

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

**EH,  
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-Koshi, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.

2. The Application was received on 13 September 2016. The Applicant represented himself. 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 13 October 2017.

3. The Applicant challenges the decision of the Human Resources Vice President (HRVP) of 14 April 2016 to terminate his employment for misconduct.

#### FACTUAL BACKGROUND

4. The Applicant joined the IFC on 1 September 2005 as a Financial Assistant in a Country Office. In 2012, he was promoted to the position of Financial Analyst. His employment was terminated on 29 April 2016 for misconduct.

5. The Applicant is a certified auditor whose functions in the Country Office included: (i) advancing travel-related cash for the Country Office staff members going on mission and receiving residual cash amounts back; (ii) entering amounts of cash disbursed and received into ledgers; (iii) depositing residual cash received from staff members after completion of their missions into the Country Office's safe on a temporary basis; and (iv) depositing cash into the World Bank Group (WBG) bank accounts. The Applicant was also responsible for the management and approval of travel transactions through the Systems, Applications, and Products

(SAP) software of the WBG. Until August 2015, the Applicant was the only person with access to the Country Office's safe.

6. Sometime in early April 2015, the Applicant's supervisor, responsible for the oversight of accounting activities in the region, was alerted by a phone call of irregularities in the handling of travel-related cash in the Country Office.

7. The Applicant's supervisor immediately conducted a preliminary review of the travel cash advances and reimbursements in the Country Office for which the Applicant was responsible. The Applicant's supervisor found delays in the Applicant's registration and deposit of travel cash into the IFC's ledgers and bank account.

8. On 15 April 2015, the Applicant's supervisor emailed the Applicant requesting that he provide proof of deposit of travel-related transactions, amounting to US\$2,591.00, of three staff members that the Applicant's supervisor had not been able to trace in SAP's vendor accounts.

9. On 21 April 2015, the Applicant replied to his supervisor's email and acknowledged delays in the banking of the funds. The Applicant admitted to having kept the funds in his office drawer after receiving cash refunds from the staff members, instead of placing the cash in the office safe as required by normal process. The Applicant stated that he "erroneously omitted this probably due to the workload [he was] experiencing at the time when [a co-worker] was away on leave." The Applicant further stated that he had recently deposited the cash in the IFC account and attached proof thereof. The Applicant apologized for the oversight and gave assurances that he would in the future manage the refunds as per appropriate procedures and that errors would not recur.

10. In the following days, the Applicant's supervisor undertook a broader review of the transactions in SAP for which the Applicant was responsible in the Country Office and discovered a series of irregularities.

11. On 29 April 2015, the Applicant's supervisor emailed the Director and Manager of the Country Office to inform them of the irregularities he had recently discovered regarding the Applicant's handling of travel-related cash in the office. The Applicant's supervisor stated that:

- (i) There is a consisted [sic] delay in banking Travel Refunds received in the IFC [country] office [...].
- (ii) For some reasons [sic] despite the delays in banking, SAP reports showed that that [sic] most of them are current (within 30 days) in SAP. My detailed review established that some transactions were posted in the staff vendor accounts that sort of reversed the transaction monthly so that the receivable remained current (aging of 30 days). This was through use of "transaction 37" which may have been misused by "revolving" the transaction to mask the delay in banking the funds. This in effect affected the system aging that is supposed to trigger exceptions in outstanding receivables (Advances).
- (iii) In one case no Cash Receipt was issued for cash received. Internal controls require that a receipt is issued for all cash received.

12. In the same email, the Applicant's supervisor concluded that the Applicant's actions were inconsistent with internal control procedures and accounting policy, and suggested that the matter be referred to the Office of Ethics and Business Conduct (EBC) for investigation.

#### EBC Investigation and Findings

13. On 30 April 2015, the Manager of the Country Office referred the matter to EBC for investigation.

14. With the assistance of a senior forensics accountant from the Integrity Vice Presidency (INT) EBC conducted an initial review into the allegations against the Applicant.

15. EBC launched a formal investigation and sent a Notice of Alleged Misconduct to the Applicant on 6 November 2015. The Notice contained the following allegations against him:

- (i) Abuse and misuse of the Applicant's access to the Bank's SAP;
- (ii) Misappropriation of Bank funds for the Applicant's financial benefit, including travel-cash advances and reimbursements; and

(iii) Manipulations of SAP in order to dissimulate the Applicant's fraudulent activities over the course of two years.

16. As part of the investigation, EBC interviewed the Applicant on 10 November 2015.

17. On 30 November 2015, the Applicant was placed on administrative leave.

18. On 2 December 2015, the Applicant emailed his response to the Notice. In his response, the Applicant admitted to the allegations against him and noted:

With regard to SAP usage I was managing vendor open items on a monthly basis with a view of achieving a strong scorecard for the office. I aged the open items monthly and subsequently made follow up to ensure they were cleared in the following months.

On the delays of entering trip expenses and refund of excess travel advance, I processed the SOEs [Statement of Expenses] within the stipulated 21 days from trip return date without expenses and later on entered the expenses. This was an omission on my part as I should have been processing the expenses within the allowed time after return from mission.

I also concur that there were delays in the banking of the reimbursed funds [...]. The normal process is receipt of the funds, writing of the receipt and then safe custody of the funds in the safe awaiting depositing at the bank. In these instances, however, after writing of the receipts I kept the funds in the drawer awaiting transfer to the safe but erroneously omitted this probably due to the workload we were experiencing at the time in the office.

19. After completing its investigation, EBC sent its draft investigative report to the Applicant on 7 February 2016. The Applicant's comments were received on 19 February 2016.

20. On 22 February 2016, EBC issued its Final Investigative Report. EBC concluded that:

(i) The Applicant repeatedly entered incorrect transactions in SAP from November 2012 through August 2015 to hide the fact that his handling of WBG funds and assets was in breach of the Staff Rules and Accounting Standards.

- (ii) The Applicant's actions amount to: (i) an abuse and misuse of his access to SAP; (ii) an abuse and misuse of WBG funds related to travel; and (iii) a willful misrepresentation of facts to be relied upon.
- (iii) The Applicant's actions were deliberate and, therefore, he purposefully misrepresented his activities to his supervisors and to the WBG.

*EBC's findings regarding mishandling of WBG funds and assets*

21. EBC concluded that the Applicant mishandled his and other staff members' travel cash reimbursements. EBC found that the Applicant, upon receiving travel reimbursements, did not process them in accordance with procedures, which required him to issue receipts, safe-keep the cash in the Country Office's safe, account for it in a ledger, and bank it into the WBG bank accounts. Instead, the Applicant kept the cash in his office drawer.

22. EBC further found that the total amount withheld by the Applicant in his drawer at any given time averaged approximately US\$2,000.00. The delay between the receiving and the banking of the travel cash averaged three months, although at times it lasted up to six months.

23. EBC noted in its Final Investigative Report that the Applicant denied having used the cash for personal purposes or for making cash advances to staff members.

*EBC's findings regarding the alteration of the Applicant's own travel SAP records*

24. EBC found that that the Applicant's actions with respect to his own travel were as follows:

- A. In March 2013, [the Applicant] went on mission to Chennai for a "COA [Country Office Accountant] Refresher training" (Trip 2). In preparation for Trip 2, [the Applicant] received a cash advance of \$2,300 despite the fact that he still owed the WBG \$458.58 for a prior mission in November 2012 (Trip 1). Instead of reimbursing \$458.58 to the WBG, [the Applicant] "refreshed" the overdue balance of \$458.58 in SAP – i.e. canceled the amount of time by which it was overdue, thereby creating a new, cumulative, balance of \$2,784.54 [...].

- B. Another example is when [the Applicant] received \$2,000.00 for Trip 3 on July 19, 2013, despite the fact that he already owed \$1,587.85 from the combination of Trips 1 and 2; on August 9, 2013, [the Applicant] transferred \$1,587.85 from his IFC account to the IBRD [International Bank for Reconstruction and Development] account. [The Applicant] then submitted Trip 3 in the WBG system on August 14, 2013 without entering his \$2,000 expenses for the third consecutive time since Trip 1. On September 9, 2013, [the Applicant] debited and credited the \$1,587.85 above in his vendor account at IBRD. On September 21, 2013, [the Applicant] entered expenses of \$1,470.64 approximately two months after Trip 2, which resulted in him owing a total of \$2,117.21 to the WBG [...]. On October 10, 2013, [the Applicant] transferred a \$1,587.85 balance from his vendor account in IBRD back to IFC. This balance of \$2,117.21 results from the combination of the balance of Trip 3 with what was left of Trips 1 and 2 [...].
- C. [The Applicant] artificially “refreshed” the amount of \$2,117.21 three times: in November and December 2013 and in January 2014. On January 21, 2014, [the Applicant] repaid all that he owed the WBG, i.e. \$2,107.21 [...]. Nevertheless, with Trip 4 in April 2014, [the Applicant] resumed his prior behavior.
- D. For Trip 5, [the Applicant] received \$1,500 from the WBG in January 2015; the record shows that he discovered before his trip that the trip needed to be cancelled [...]. [The Applicant] canceled the trip in the system only one month later [...].
- E. However, in February 2015, [the Applicant] debited and credited his vendor account balance for \$1,500 corresponding to the cash advance from Trip 5 [...]. When [the Applicant] booked Trip 6, he requested another cash advance, which meant that in March 2015, [the Applicant] now owed US\$3,200 to the WBG [...].

25. In its Final Investigative Report, EBC concluded that the Applicant created false transactions in SAP “by entering a non-existent transaction to offset the outstanding balance and/or recording the same balance in reverse debit or credit.” Through this “refresh” action, SAP would bring his account current, ensuring that his late entries of travel expenses were not discovered and allowing him additional time to retain the travel cash advances. EBC added that the Applicant’s combination of outstanding balances made it “substantially more challenging for any third party to monitor and track how and when the balance was generated.” EBC further concluded that the Applicant “transferred balances back and forth between the account of the IFC and the IBRD” without a business justification.

*EBC's findings regarding the Applicant's alteration of other staff members' travel SAP records*

26. During its investigation, EBC randomly selected the vendor accounts of two staff members in the Country Office and found that the Applicant had omitted to account for cash reimbursements he had received from these staff members upon the completion of their trips. EBC concluded that the Applicant kept the cash reimbursements for several months and, to hide these long delays, the Applicant created false transactions and “refreshed” the staff members’ vendor accounts. Specifically, EBC found that:

- (i) In May 201[5], [Ms. K] went on mission to Accra, Lagos and London. For that mission, she received a travel advance of \$3,200, and she submitted her expenses of \$1,273 on June 21<sup>st</sup>, 2015 upon returning from mission. In an email to EBC, [Ms. K] stated that she had reimbursed the balance in August 2015 and that she received at that time a receipt from another Finance Assistant [...]. However, [the Applicant] refreshed the “aging” on [Ms. K]’s non-existent debt three times: in July, August, and September 2015. In addition, the record includes a duplicate receipt signed by [the Applicant] for \$1,300, dated September 25, 2015, which remains unaccounted for [...]. The record shows that [the Applicant] deposited [Ms. K]’s \$1,300 residual cash balance into a WBG bank account in December 2015 for a trip that she had made in May 2015, despite the fact that she had in fact repaid her residual balance on August 25, 2015, therefore respectively four months and seven months after [Ms. K]’s May 2015 trip [...].
- (ii) [Ms. M]’s records indicate that she apparently still owed \$447.50 and \$1,818.96 for missions she made respectively in August/September and October 2014. When EBC contacted [Ms. M], she wrote that she had reimbursed both balances within twenty-one days after each trip in accordance with Staff Rules, and that she had given the cash to [the Applicant]. [...] Nevertheless, [the Applicant] refreshed this amount of \$1,818 in [Ms. M]’s vendor account in SAP in December 2014 and again in January and February 2015. [The Applicant] acknowledged that he created a receipt of \$1,818 for [her] on November 18, 2015. [The Applicant] also stated that he deposited the above \$1,818 into the WBG’s bank account in April 2015, i.e. six months after [Ms. M] had made the cash reimbursement.

27. EBC did not conduct investigations into other staff members’ vendor accounts but noted that the Applicant’s supervisor had reviewed other accounts and reported that “the same suspicious patterns existed across all accounts.”



## HRVP's Decision of 14 April 2016

28. In his letter to the Applicant of 14 April 2016, the HRVP informed the Applicant that, after review of the EBC Final Investigative Report, he concluded that the Applicant had engaged in misconduct as defined under Staff Rule 3.00:

Paragraph 6.01(a): Abuse or misuse of Bank Group funds related to travel, or benefits.

Paragraph 6.01(b): Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; failure to know, and observe, the legal, policy and administrative standards and restrictions imposed by the Bank Group; and willful misrepresentation of facts to be relied upon.

Paragraph 6.01(c): Acts or omissions in conflict with the general obligations of staff member[s], including the requirements that staff conduct themselves at all times in a manner befitting their status as employees of an international organization, as set forth in Principle 3(c) of the Principles of Staff Employment.

29. The HRVP further noted that:

The record shows that there is clear and convincing evidence, as presented in the Final Report, to support a finding that [the Applicant] repeatedly entered incorrect transactions in SAP from November 2012 through August 2015 to hide the fact that [the Applicant's] handling of WBG funds and assets was in breach of the Staff Rules and Accounting Standards.

30. The HRVP stated in his letter that, while deciding on the appropriate disciplinary measures, he considered "such factors as the seriousness of the matter, the interests of the Bank Group, any extenuating circumstances, the situation of the staff member, and the frequency of the conduct for which disciplinary measures may be imposed."

31. The HRVP considered as mitigating factors the fact that the Applicant had "no prior disciplinary findings," a "record of satisfactory performance," and the "emotional and/or financial stress" the Applicant was experiencing due to his mother's illness and death. The HRVP considered, however, that there were aggravating factors because the Applicant had breached his written promise of April 2015, was not forthcoming during the EBC investigation, and his

misconduct was fraudulent. Consequently, the HRVP imposed the following disciplinary measures against the Applicant:

- a. Termination of employment with effect from 29 April 2016;
- b. Ineligibility for any future employment at the World Bank Group, as a staff member, contractor, or employee of a contractor;
- c. Access to any of the World Bank Group's buildings is restricted to entry for business needs relevant to the World Bank Group, at the determination and discretion of the Vice President, Human Resources, or his delegate; and
- d. [A misconduct letter] to remain in [the Applicant's] personnel record with indefinite duration.

32. The Tribunal received the Application on 13 September 2016. The Applicant seeks: (i) review of the HRVP's final decision to establish whether it gave "humane consideration" to mitigating factors in his case; and (ii) a determination of whether the "dire punishment" should be imposed.

## SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

### *The Applicant's contentions*

33. The Applicant admits that his actions amount to misconduct under the Staff Rules. He contends that he made serious errors of judgment when carrying out his responsibilities as a Financial Analyst in the Country Office, but he submits that he corrected his actions.

34. The Applicant contends that termination is disproportionate to his misconduct, and that the HRVP should have imposed "a lesser disciplinary measure in place of termination." The Applicant contends that the IFC did not give appropriate weight to the fact that this was the "first instance of misconduct in an otherwise unblemished career of over ten years." Specifically, the Applicant contends that the HRVP did not duly consider the following mitigating factors in deciding on the appropriate disciplinary measures: (i) no prior adverse disciplinary findings; (ii) his record of

satisfactory performance; and (iii) experiencing emotional stress related to the Applicant's mother's ill health, which led to her passing in October 2013.

### *The IFC's contentions*

35. The IFC asserts that it has met the standard established by the Tribunal in disciplinary cases. The IFC contends that the material facts of the case are undisputed, the Applicant has admitted to his misconduct, the Applicant's misconduct has violated Staff Rules and General Accepted Accounting Principles (GAAP), termination of the Applicant's employment was lawful and proportionate to the Applicant's misconduct, and EBC conducted a thorough investigation.

36. The IFC contends that it gave appropriate weight to any mitigating and aggravating factors in deciding on the proportionality of the disciplinary measures, and that it imposed termination against the Applicant because his misconduct "was one of the more egregious types of misconduct" in view of his fiduciary position within the IFC, and the fact that it was not a one-time occurrence but a series of repeated actions that extended from November 2012 to August 2015. The IFC further contends that termination was the only viable option for the Applicant's misconduct, and that the Applicant's qualifications as a Financial Analyst made reassigning or demoting him to a different position within the Country Office "impossible." IFC submits that it was also in its interest to terminate the Applicant's employment because the Applicant's misconduct violated the trust required of him in the performance of his tasks within the organization.

### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

37. 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.)

38. The Tribunal has held that its review in such 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; *Planthara*, Decision No. 143 [1995], para. 24.

39. 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 [...] to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.

40. The present case will be reviewed in the light of these standards.

#### THE EXISTENCE OF THE FACTS

41. The material facts of the case are undisputed. The Applicant admitted before EBC and the Tribunal that from November 2012 through August 2015 he mishandled WBG travel cash advances and reimbursements for which he was responsible in the Country Office as a Financial Analyst. The Applicant admitted that he did not safe-keep, account for in a ledger, or deposit into the WBG accounts his own and other staff members’ travel cash reimbursements upon receipt, but that he kept the cash in his office drawer for long periods of time. The Applicant also admitted that he manipulated his own and other staff members’ transactions in SAP during that time, created false transactions to offset the outstanding balance, recorded the same balance in reverse debit or credit, and “refreshed” the aging balances of each transaction with the purpose of keeping his and other staff members’ vendor accounts in SAP current. By so doing, he ensured that his late entries of travel expenses were not discovered.

42. In his decision of 14 April 2016, the HRVP, based on the above undisputed facts, found that the Applicant had engaged in misconduct. The Tribunal therefore finds that the facts of the case are established.

## WHETHER THE FACTS LEGALLY AMOUNT TO MISCONDUCT

43. The HRVP's letter of 14 April 2016 found that the Applicant's actions, as established above, constituted misconduct as defined under:

- (i) Staff Rule 3.00, paragraph 6.01(a): Abuse or misuse of Bank Group funds related to travel, or benefits.
- (ii) Staff Rule 3.00, paragraph 6.01(b): Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; failure to know, and observe, the legal, policy and administrative standards and restrictions imposed by the Bank Group; and willful misrepresentation of facts to be relied upon.
- (iii) Staff Rule 3.00, paragraph 6.01(c): Acts or omissions in conflict with the general obligations of staff member[s], including the requirements that staff conduct themselves at all times in a manner befitting their status as employees of an international organization, as set forth in Principle 3(c) of the Principles of Staff Employment.

44. The Applicant admitted before EBC that it was an "oversight" to keep the travel cash advances and reimbursements in his office drawer for long periods of time, but he denied having used the cash for personal purposes or to make cash advances to other staff members. The Applicant further admitted before EBC that his manipulation of SAP was done with the sole intention to ensure a strong scorecard for the Country Office. Before the Tribunal, the Applicant concedes that his actions amount to misconduct under the Staff Rules.

45. Regarding the first type of misconduct, the Tribunal finds that the obligation imposed by Staff Rule 3.00, paragraph 6.01(a) makes clear that:

6.01 [...] Misconduct does not require malice or guilty purpose, and it includes failure to observe the Principles of Staff Employment, Staff Rules, Administrative Manual, Code of Conduct, other Bank policies, and other duties of employment, including the following acts and omissions:

- a. Failure to observe obligations relating to health and safety, personnel information, disclosure of non-public information, information security, and the unauthorized use of Bank Group offices, equipment, computer resources or staff; abuse of authority; absence from duty without

justifiable cause; or abuse or misuse of Bank Group funds related to travel, benefits, allowances (including tax allowances), P-Card, petty cash, or property.

46. The EBC Final Investigative Report indisputably shows that the Applicant mishandled his own and other staff members' travel cash advances and reimbursements. EBC found that the Applicant did not process travel reimbursements in accordance with procedures, which required him to issue receipts, safe-keep the cash in the Country Office's safe, account for it in a ledger, and bank it into the WBG bank accounts without delay. EBC further found that the total amount withheld by the Applicant in his drawer at any given time averaged approximately US\$2,000.00. The delay between the receiving and the banking of the travel cash averaged three months, although at times it lasted up to six months. The Applicant has admitted that he did not follow procedures in his handling of travel advances and reimbursements.

47. The Tribunal finds that these undisputed facts are sufficient to conclude that the Applicant misused travel-related funds contrary to his obligation under Staff Rule 3.00, paragraph 6.01(a), and that they therefore constitute misconduct.

48. Regarding the second type of misconduct, Staff Rule 3.00, paragraph 6.01(b) states that:

6.01 [...] Misconduct does not require malice or guilty purpose, and it includes failure to observe the Principles of Staff Employment, Staff Rules, Administrative Manual, Code of Conduct, other Bank policies, and other duties of employment, including the following acts and omissions:

[...]

- b. Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; failure to perform assigned duties; gross negligence in the performance of assigned duties; performance of assigned duties in an improper or reckless manner; failure to supervise a staff member; or failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group; undertaking an activity where authority to do so has been denied; or willful misrepresentation of facts intended to be relied upon.

49. At the relevant time, the Applicant was a Financial Analyst in the Country Office and the only person with access to the Country Office's safe. His responsibilities were: (i) advancing

travel-related cash for the Country Office staff members going on mission and receiving residual cash amounts back; (ii) entering amounts of cash disbursed and received into ledgers; (iii) depositing residual cash received from staff members after completion of their missions into the Country Office's safe on a temporary basis; (iv) depositing cash into the WBG bank accounts; and (v) managing and approving through SAP staff members' requests for travel reimbursements. The Applicant was also a certified accountant with the professional undertaking to abide by GAAP.

50. Paragraph 7 of the Administrative Manual Statement (AMS) 3.10 on Operational Travel Expense Reimbursement states that:

Staff in country offices who do not have access to charge cards will receive travel advances through the Travel System. The travel advance should be used solely for official business travel and be within the estimated cost of the trip. Staff are held accountable for all advances received and they should account for the advances on the Statement of Expenses. Any unused portion of the travel advances that exceeds US\$200 or equivalent must be returned immediately in full. In the event that a trip is canceled or postponed, advances are to be returned immediately and in full.

51. Paragraph 19 of AMS 3.10 also provides that staff members are required to "ensure that all Statement of Expenses [SOEs] are approved within 21 calendar days of the return date noted in the trip request." Paragraph 27 requires that staff members who process SOEs must ensure that SOEs are entered and approved within this 21-day time-limit.

52. The record shows that the Applicant received travel cash advances for six trips from March 2013 until March 2015. It is also undisputed that the Applicant manipulated each of his travel transactions in SAP during this period in order to maintain his vendor account current and delay the refund of the cash advances he had received. The record also shows that the Applicant only entered his expenses several months after submitting his SOEs in SAP, and that in one instance, the Applicant failed to immediately return the cash advance of US\$1,500.00 for a cancelled trip.

53. The record further shows that the Applicant had omitted to account for cash reimbursements he had received from two staff members in the Country Office, Ms. K and Ms. M. These staff members had reimbursed their cash advances within the required 21-day time-limit to the Applicant in August 2015 and October 2014, respectively. However, the Applicant only

accounted for this money several months later. In order to mask these long delays, he manipulated Ms. K's and Ms. M's vendor accounts in SAP to keep their accounts current and allow him additional time to withhold the money.

54. The record also supports the conclusion that the Applicant transferred balances back and forth between the IFC and IBRD bank accounts without a business justification.

55. In view of the above, the Tribunal finds that the Applicant's actions constitute misconduct under Staff Rule 3.00, paragraph 6.01(b).

56. In respect of the third type of misconduct, Staff Rule 3.00, paragraph 6.01(c) states that:

6.01 [...] Misconduct does not require malice or guilty purpose, and it includes failure to observe the Principles of Staff Employment, Staff Rules, Administrative Manual, Code of Conduct, other Bank policies, and other duties of employment, including the following acts and omissions:

[...]

- c. Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment and Staff Rules 3.01 through 3.06. Omissions may include failure to file a timely, complete, and accurate financial disclosure form.

57. Principle 3.1 of the Principles of Staff Employment requires of staff members "a high degree of integrity and concern for the interests of the Organizations." Principle 3.1(c) further requires that staff members "conduct themselves at all times in a manner befitting their status as employees of an international organization."

58. Staff Rule 3.01, Standards of Professional Conduct, paragraphs 3.01 and 3.02 state that:

3.01 Staff members must comply with the obligations embodied in the Principles of Staff Employment, the Staff Rules and all other policies and procedures of the Bank Group, as applicable.

3.02 In complying with such obligations, including, as applicable, fiduciary obligations for overseeing the use of internal and external funds, staff members shall carry out their duties with care and honesty. Staff members will be held accountable for failure to do so and will be subject to disciplinary action under



either Staff Rule 3.00 or Staff Rule 8.01, whichever is applicable if they are found to have:

- (i) committed an ethical breach;
- (ii) administered funds for purposes other than those intended (as provided for in written documents addressing the use and administration of the funds) without written authorization from their managers (as defined in Staff Rule 1.01);
- (iii) administered funds with reckless disregard for economy and efficiency; or
- (iv) engaged in fraudulent or corrupt acts.

59. The record shows that the Applicant attributed his actions to “mistakes,” “oversights,” or “omissions.” EBC found, however, that the Applicant’s academic and professional credentials and his long experience could only support a finding that his actions were deliberate. The Tribunal is satisfied with this finding and concludes that the Applicant not only failed to carry out his duties with care and honesty but also failed to adhere to the highest standards of professional conduct in violation of Staff Rule 3.00, paragraph 6.01(c), Staff Rule 3.01, and Principle 3.1 of the Principles of Staff Employment.

WHETHER THE SANCTIONS IMPOSED ARE PROVIDED FOR IN THE LAW OF THE BANK AND ARE  
PROPORTIONATE

60. The Applicant does not dispute that each of the sanctions imposed were provided for in the law of the Bank but claims that termination was disproportionate to the misconduct and imposed on him without due consideration of mitigating factors. The Tribunal notes that, even though four sanctions were imposed on the Applicant, he is only disputing the termination of his employment.

61. In his decision of 14 April 2016, the HRVP imposed the following disciplinary measures against the Applicant:

- a. Termination of employment with effect from 29 April 2016;
- b. Ineligibility for any future employment at the World Bank Group, as a staff member, contractor, or employee of a contractor;

- c. Access to any of the World Bank Group's buildings is restricted to entry for business needs relevant to the World Bank Group, at the determination and discretion of the Vice President, Human Resources, or his delegate; and
- d. [A misconduct letter] to remain in [the Applicant's] personnel record with indefinite duration.

62. The imposition of disciplinary measures is regulated by Staff Rule 3.00, paragraph 10.09, which states 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 [...].

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

Depending on the circumstances of the matter, one or more of the following disciplinary measures may be taken by the Bank Group when misconduct is determined to have occurred [...]:

- a. Oral or written censure;
- b. Suspension from duty with pay, with reduced pay, or without pay;
- c. Restrictions on access to the Bank'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 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, paragraph 3.06.

64. The Applicant contends that termination was disproportionate to his misconduct and that the HRVP should have imposed “a lesser disciplinary measure in place of termination.” The IFC claims that the Applicant’s misconduct “was one of the more egregious types of misconduct” given his fiduciary position within the IFC and the frequency of his actions between November 2012 and August 2015.

65. The authority of the Tribunal to determine whether a sanction is significantly disproportionate to the offense was established in *Gregorio*, Decision No. 14 [1983], para. 47. In *Houdart*, Decision No. 543 [2016], para. 95, the Tribunal reiterated that

in addressing the issue of proportionality, its job is not to decide what sanction the Tribunal would impose or whether the HRVP chose the best penalty, but, rather, whether the HRVP reasonably exercised his discretion in this matter.

66. The Tribunal observes that termination is the most severe of sanctions and is reserved for very serious offenses. In *CT*, Decision No. 512 [2015], para. 45, the Tribunal stated that:

The Tribunal considers the termination of a staff member’s employment a most serious disciplinary sanction, and even in cases of misconduct for which the Staff Rules provide for mandatory termination, the Tribunal will still review such cases to determine whether the imposition of such a sanction was a proper exercise of discretion. *See, e.g., Z*, Decision No. 380 [2008].

67. The Tribunal further noted in *CT*, para. 46, that the Bank had provided a comparative chart on the types of serious conduct for which termination was imposed by the Bank in the years between 2011 and 2014. The Tribunal observed that

in this period termination was imposed as a sanction in approximately twenty cases, excluding the present case and that of Mr. AB. These cases concerned fraud, theft, willful misrepresentation, conflict of interest, misuse of Bank assets, solicitation and receipt of personal loans from Bank clients, and abuse of position in procurement. Those whose sanctions mirrored the Applicant’s (i.e. termination, ineligibility for future employment and letter to remain on HR record) had engaged

in acts involving the falsification of receipts and invoices for financial gain, abuse of authority in a sexual relationship with a subordinate, misrepresentation and theft. In these cases the aggravating factors included: actions which caused serious bodily harm to a third party; lack of remorse; failure to cooperate during the investigations; and repeated willful misrepresentations. *Id.*

68. The Tribunal has stated that to determine whether the disciplinary measures are significantly disproportionate to the misconduct, due account is taken of the seriousness of the matter, any extenuating circumstances, the situation of the staff member, the interests of the Bank Group, and the frequency of the conduct. *See S*, Decision No. 373 [2007], para. 50; *Mustafa*, para. 28. The Tribunal notes that the HRVP's letter of 14 April 2016 shows that he considered the factors stated in Staff Rule 3.00, paragraph 10.09 and also gave due consideration to any mitigating and aggravating factors in deciding on the appropriate disciplinary measures to be imposed on the Applicant. As the Tribunal observed in *Houdart*, para. 95:

[T]here is no mechanical formula on how to weigh these considerations. The selection of the sanction in a given case requires a judgment of balancing the relevant factors by the HRVP. That discretionary judgment is for the HRVP to make, and as long as HRVP's decision was not unreasonable, the Tribunal will not interfere.

69. The record shows that prior to EBC's investigation the Applicant had a good record of conduct and satisfactory performance. The Tribunal, however, held in *D*, Decision No. 304 [2003], para. 53, that good ratings of a staff member's performance "cannot bind the judgment and discretion" of the HRVP, but that good performance and lack of prior disciplinary measures fall under the "situation of the staff member," a factor which was duly considered by the HRVP. Regarding the third mitigating factor pleaded by the Applicant, the Tribunal, while sympathetic to the emotional stress the Applicant went through due to his mother's illness and death in 2013, notes that the Applicant's misconduct continued beyond this period until 2015; this factor cannot therefore weigh in the Applicant's favor. The Tribunal finds that the mitigating factors pleaded by the Applicant are unpersuasive.

70. The Tribunal is satisfied that the Applicant's actions fall into the types of serious misconduct that merit termination. His misconduct is aggravated by the fact that he was not forthcoming during EBC's investigation and by the frequency of his actions for over two years.

The Tribunal finds that the Applicant's actions are further aggravated by the fact that, as an experienced accountant, he must have known that his actions were contrary to Staff Rules and internal accounting procedures. The Tribunal also finds that the Applicant's position as a Financial Analyst required him to conduct himself with honesty and due care in the handling of IFC's funds and that he failed to do so, which inevitably violated the trust vested in him by the IFC.

71. The Tribunal concludes that the sanctions imposed on the Applicant, including termination, were not significantly disproportionate to his misconduct.

#### WHETHER THE REQUIREMENTS OF DUE PROCESS WERE OBSERVED

72. The final issue to be addressed is whether the requirements of due process were observed in this case. The Tribunal notes that the Applicant has not challenged EBC's investigation or findings. The Tribunal observes, however, that it is clear from the record that EBC met the essential requirements of due process as defined by the Tribunal. EBC informed the Applicant of the specific accusations and charges brought against him, provided him ample opportunity to answer the allegations in writing and orally presented him with the relevant evidence, provided him with a copy of the draft investigative report, afforded the Applicant the opportunity to comment, and gave due consideration to the Applicant's comments before transmitting the Final Investigative Report to HRVP for a decision. The HRVP's letter of 14 April 2016 duly informed the Applicant of the misconduct he was found responsible for and the disciplinary measures imposed, including termination.

73. In light of the foregoing considerations, the Tribunal is satisfied that the HRVP reasonably exercised his discretion in deciding on the appropriate sanctions.

#### 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., 25 October 2017