



World Bank Administrative Tribunal

2017

Decision No. 573

**EK,
Applicant**

v.

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

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

**EK,
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.
2. The Application was received on 24 January 2017. The Applicant was represented by Stephen Schott of Schott Johnson, LLP. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 17 October 2017.
3. The Applicant challenges the 3 October 2016 decision of the Vice President, Human Resources (HRVP) and the imposition of disciplinary sanctions.

FACTUAL BACKGROUND

4. From 2009 until 2016, the Applicant was a Bank Short-Term Consultant (STC), Environmental and Social Safeguards Specialist, working in his country of origin and nationality, Country A. Additionally, since 2001 the Applicant held various positions with Company X, a company based in Country A, which offers environmental and health consultancy services. According to the Applicant's Curriculum Vitae, he held the position of "Coordinating Consultant" in Company X. Additionally, the Applicant confirmed that he had held other positions, including Chief Executive Officer and consultant, and that he and his wife were Directors of, and held shares in, Company X during the relevant period.
5. Prior to 2014, the Applicant held a series of brief consultancy contracts with the Bank. His first contract was for a period of 8 days from 5 to 14 October 2009, reporting to Mr. Y, a Senior

Environmental Specialist at the Bank's country office in Country A and a Senior Transport Specialist based in the Bank's Headquarters in Washington, D.C. The Applicant's second contract was for a period of 15 days from 24 February to 30 June 2010. The offer letter noted that "[f]or overall guidance you will report to [Mr. Y] (Snr. Environmental Specialist) of the World Bank Country Office, [Country A] and [...] (Snr. Transport Economist) of the World Bank Office, Washington, USA." In May 2010, the Applicant's contract was extended for an additional 6 days "to allow for the completion of work under the terms and conditions already agreed in the above-mentioned letter of appointment."

6. The Applicant's third STC appointment was for a period of 30 days from 1 July until 13 August 2010. The Applicant was informed that "[f]or overall guidance you will report to [...], Snr. Public Sector Specialist, in the World Bank Country Office, [Country A]." The Applicant's fourth STC appointment was for a period of 15 days from 4 April to 19 May 2012. He reported to "[...], Senior Social Development Specialist and Task Manager."

7. Between April and July 2012, Company X obtained and performed a consultancy contract on a resettlement action plan (RAP) for an electricity and gas project in Country A.

8. On 15 August 2012, the Applicant was offered a fifth STC appointment for a period of 40 days from 15 August to 5 October 2012. The offer letter stated, "[y]our [Task Team Leader (TTL)] for this assignment will be [...], who is responsible for determining your Terms of Reference and for providing guidance, supervising, and confirming the completion of your work." This contract was extended to 15 December 2012 and 30 May 2013.

9. Under all of these STC appointment letters, the Applicant signed and certified that he, and members of his immediate family, were not currently employed by member governments on any World Bank Group-financed projects and would not be during his period of Bank employment. He also certified that he had received, reviewed, and understood the Bank's Principle 3 of the Principles of Staff Employment and Staff Rule 3.01 related to conflicts of interest, and that his Bank employment did not violate those provisions.

10. Sometime in late 2013, the Applicant was considered as part of a list of potential consultants to provide more “capacity in terms of safeguards” on Bank projects in Country A. Mr. AB, a Level GH Lead Environmental Specialist, consulted with Mr. Y and Mr. W, a Bank Senior Environmental Specialist, on the recruitment of a new consultant. The Applicant was competitively recruited. According to Mr. AB, in his interview with investigators of the Integrity Vice Presidency (INT), “we started this assignment informally – assigned him to initiate – to work and to assist the team in [Project P].”

11. Project P is a multi-sectoral project financed by the World Bank Group through the International Development Association (IDA). The project is also financed by other entities including the Government of Country A. Project P is being implemented through both federal project management units (FPMU) and state level project management units (SPMU).

12. Prior to his appointment to this STC contract, the Applicant and Mr. AB discussed the fact that the Applicant held a Director position with Company X, which Mr. AB knew had done work on Bank-financed projects in the past. Mr. AB confirmed to INT that he had cautioned the Applicant against a possible conflict of interest, noting that a conflict of interest applied only if the Applicant worked as a Bank staff member and as a Bank-financed consultant/contractor on the same project.

13. On 30 November 2013, the Applicant sent Mr. AB an email message stating, “[h]oping to hear from you shortly. Meanwhile, just to let you know that I have put the Board of directors of my office at alert on possible resignation depending on the schedule of my activities from your end.”

14. On 11 December 2013, the Applicant was provided with an offer of an STC contract for 50 days commencing 12 December 2013. This offer letter was not signed by the Applicant.

15. On 31 December 2013, the Applicant was provided with an offer of an STC contract for a period of 50 days from 6 January 2014 until 30 June 2014. The offer letter stated: “Your Task Team Lead (TTL) for this assignment will be [Mr. AB], Task Team Leader (TTL) who is

responsible for determining your Terms of Reference and for providing guidance, supervising and confirming the completion of your work.”

16. The attached terms of reference noted that the Applicant was to provide extensive safeguards cross-support to various projects during the preparation and implementation stage. These projects did not include Project P.

17. Paragraph 17 of this offer letter included the following provision:

You are responsible for being familiar with the conflict of interest rules, contained in Staff Rules 3.02 and 3.03, that apply to you and members of your immediate family during your employment with the Bank and for two years after termination of your assignment.

While employed as a Short-Term Consultant you and members of your immediate family may not be employed by member governments or other entities on World Bank Group[-]financed projects during the period of your employment with the World Bank Group, if this work is for the same country. In addition, for a period of two years after termination of this assignment, you should not seek or accept work connected with projects or operations that were of direct concern or make use of material acquired during this assignment, unless the prior consent of the World Bank has been obtained, as per Staff Rule 3.02.

18. On 3 January 2014, the Applicant signed an acceptance letter which included the following certification:

I hereby accept my appointment to the staff of the World Bank Group, under the terms and conditions of employment set forth in my letter of appointment and the policies and procedures of the World Bank presently in effect and as may be amended from time to time. I recognize that in the event of a conflict between this Letter of Appointment and the Staff Rules, the Staff Rules will prevail.

19. Between January and February 2014, the Applicant sought guidance on the conflict of interest rules and policies regarding his position as an STC at the Bank and involvement in other environmental projects in his individual capacity or through Company X. In addition to the guidance received from his HQ-based manager, Mr. AB, the Applicant also spoke with two country office based procurement officers – a Senior Procurement Specialist and a Procurement Analyst. The Applicant was informed, and understood, that as an STC he was prohibited from

undertaking project management unit consultancy work only if it involved Bank projects in which he was directly involved as an STC, i.e., responsible for providing safeguards support.

20. In January 2014, following a competitive process, the Applicant was selected, in his individual capacity, by the Project P SPMU for state one to prepare an environmental and social management plan (ESMP) and a RAP. The corresponding reports were submitted in March and July 2014, respectively.

21. In February 2014, following a competitive process, the Applicant was selected, in his individual capacity, by the Project P SPMU for state two to prepare an ESMP. On 28 February 2014, the Applicant signed the contract. In February, the Applicant also received a consultancy contract from the Project P SPMU in state three to prepare an ESMP and a RAP for an erosion site.

22. In February 2014, following a competitive process, Company X was selected under a federal development project to prepare the RAP for the rehabilitation of three roads in a state. This project was unrelated to any work the Applicant performed as an STC of the Bank. The Applicant participated in this assignment in a review capacity.

23. On 23 March 2014, the Applicant and his wife resigned from their positions as Directors in Company X effective 1 April 2014. However, the Applicant and his wife did not relinquish their shares at that time.

24. In March 2014, following a competitive process, the Applicant was selected, in his individual capacity, by the Project P SPMU for state four for a consultancy contract to prepare the ESMP for a site. The corresponding reports were submitted in June 2014.

25. In March 2014, the Applicant was selected, in his individual capacity, by the Project P SPMU for state five for a consultancy contract to prepare RAPs for three gully erosion sites.

26. In April 2014, the Applicant received a consultancy contract to prepare the RAP for gully erosion sites for the Project P SPMU in state six. That same month, the Applicant also received a consultancy contract from the Project P SPMU in state seven to prepare a RAP for two gully erosion sites.

27. On 11 August 2014, the Applicant received a new STC offer for 150 days, from 15 August 2014 to 30 June 2015. According to the offer letter, the Applicant's TTL was "responsible for determining [his] Terms of Reference and for providing guidance, supervising and confirming the completion of [his] work." The offer letter also included the same text referred to in paragraph 17 above.

28. On 13 August 2014, the Applicant signed the acceptance letter, which had the same provisions as his 1 January 2014 acceptance letter.

29. From September until November 2014, Company X engaged in an assignment for the preparation and implementation of a RAP for an irrigation project. This was a Bank-financed project unrelated to the Applicant's work as an STC. The Applicant was not involved in this assignment.

30. Sometime in September 2014, Mr. W, the Bank's Senior Environmental Specialist in Country A, and an unidentified Country A ministry official raised the possibility that the Applicant's concurrent position as an STC with the Bank and a contractor on Bank-financed projects could be a conflict of interest.

31. On 15 September 2014, the Applicant and his wife submitted notarized letters to the Board of Directors of Company X relinquishing the shares they held in the company.

32. Between 30 June and 1 September 2015, the Applicant did not hold an STC contract with the Bank.

33. On 27 June 2015, an anonymous complaint was filed against the Applicant with INT alleging that the Applicant engaged in conflicts of interest by working concurrently on Project P as an STC for the Bank and as a consultant for Company X. The complaint also alleged that the Applicant paid kickbacks to Mr. Y, the TTL for Project P, in exchange for steering consultancy contracts to the Applicant or Company X.

34. On 1 September 2015, the Applicant received an offer of an STC contract for 120 days, from 1 September 2015 until 30 June 2016. The TTL was Mr. AB, who, according to the offer letter, was “responsible for determining [the Applicant’s] Terms of Reference and for providing guidance, supervising, and confirming the completion of [his] work.” The Applicant was again required to provide extensive environmental safeguards cross-support. The Applicant’s tasks did not involve Project P.

35. On 27 January 2016, INT provided the Applicant with a Notice of Alleged Misconduct and conducted an interview with him. The Notice alleged that the Applicant:

- (a) violated the terms of his STC appointment by concurrently serving as an STC and a Bank-financed contractor, either as an individual or through his company, [Company X] under the following Bank projects:

[...]

and

- (b) paid kickbacks in exchange for repeated consultancy contract awards under [Project P].

36. On 7 and 9 March 2016, the Applicant provided his written response to the Notice of Alleged Misconduct.

37. On 10 May 2016, the Applicant was provided a draft copy of the INT’s Investigation Report for his comments.

38. On 7 June 2016, the Applicant submitted his comments on the Draft Investigation Report.

39. On 13 June 2016, INT submitted its Final Investigation Report (Final Report) to the HRVP. INT concluded that there was “clear and convincing evidence to show that [the Applicant] repeatedly violated the terms of his STC appointments, creating conflicts of interest by serving in the same country as both an STC and a Bank-financed contractor, either as an individual or through his company, [Company X].” However, INT noted that the investigation established that the Applicant’s overlapping STC appointments and Bank-financed consultancy contracts did not involve the same projects, as initially alleged. Furthermore, the investigation “did not disclose sufficient evidence to substantiate that [the Applicant] paid kickbacks in exchange for any [Project P] consultancy contracts awards awarded to himself or [Company X], as initially alleged.”

40. According to INT:

[T]he evidence indicates that [Mr. Y, the TTL for Project P] had no-objection authority only over the consultancy contract TORs and estimated costs, and afterward had no role in these post review selections. The evidence therefore indicates that [Mr. Y] was not in a position to provide any collusive contract steering assistance. Indeed, [Mr. Y] would not have been aware that [the Applicant] was selected (if at all) until such information became available in procurement post review reports or during the RAP/ESMP public disclosure clearance process.

41. INT also noted that:

Multiple SPMU project coordinators also stated that the Bank was not involved in the selection process after providing no-objection to the respective TORs and estimated costs. The project coordinators informed INT that [the Applicant] was competitively selected based on his qualifications, without being recommended or imposed. The SPMUs invited [the Applicant] to compete for the consultancies based on their prior working experience with him or on the guidance of the state and/or federal Ministries of Environment, which maintained databases of registered, qualified environmental specialists.

42. Furthermore, both Mr. Y and the Applicant provided INT with their bank account records for the entire 2014-2015 calendar year, and these did not “indicate any bank transfers from [the Applicant] to [Mr. Y], or to/from any other known Bank or PMU staff.”

43. As mitigating factors, INT noted that the Applicant had sought but received erroneous information regarding the Bank’s conflicts of interest rules from several Bank staff, including his

HQ-based manager, Mr. AB, and two country office procurement staff. This erroneous advice was to the effect that the Applicant was prohibited from undertaking other consultancy work only if it involved Bank projects in which he was directly involved as an STC. INT further noted that the Applicant stated that he first became alerted to the possibility of a conflict of interest between his Bank STC appointment and other engagements “sometime in September 2014” when Mr. W and an unidentified Country A ministry official raised the issue to him. The Applicant stated that this discussion caused him and his spouse to relinquish their shares in Company X. INT also noted that the Applicant provided the investigators with notarized letters dated 15 September 2014 that purported to effect such share relinquishments. The Corporate Affairs Commission of Country A did not recognize the share relinquishments until 21 December 2015. Similarly, the Applicant also provided INT investigators with a notarized letter dated 23 March 2014 which stated that he and his wife had voluntarily relinquished their positions as Company X Directors effective 1 April 2014. However, the Corporate Affairs Commission of Country A did not recognize these resignations until 21 December 2015. By this date, INT had requested its interview with the Applicant.

44. INT further noted the Applicant’s statement that, when he received his STC appointment letter in 2015, it did not include the Staff Rules and other staff policies that should have been enclosed, and that his request to receive them went unanswered. Similarly, the Applicant informed INT that despite signing the STC appointment letters which alluded to the Staff Rules, he never received, accessed, or read the Staff Rules until he specifically requested a Bank email address and intranet access in January 2016, following his receipt of INT’s interview request. Finally, the Applicant also stated that he regarded his earlier STC appointments for ad hoc assignments as truly short-term assignments and did not consider himself a Bank employee. According to the Applicant, he understood that he was not prohibited from seeking work elsewhere as an STC.

45. INT’s Final Report did not note any aggravating factors.

46. On 3 October 2016, after reviewing INT’s Final Report, the HRVP informed the Applicant of his determination that the Applicant had engaged in misconduct as defined in Staff Rule 8.01, namely:

- (a) Paragraph 2.01(a) - Failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment;
- (b) Paragraph 2.01(b) - Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct;
- (c) Paragraph 2.01(b) - Performance of assigned duties in an improper or reckless manner;
- (d) Paragraph 2.01(b) - Failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group; and
- (e) Paragraph 2.01(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 Rule 3.01 (*i.e.*, staff members must comply with obligations embodied in the Principles of Staff Employment, the Staff Rules and all other policies and procedures of the Bank Group, in particular staff members have a special responsibility to avoid situations and activities that might reflect adversely on the Organizations, compromise their operations, or lead to real or apparent conflicts of interest).

47. The HRVP stated:

While working as a Short Term Consultant (STC) you repeatedly violated the terms of your STC appointments, specifically Principle 3 of the Principles of Staff Employment and Staff Rule 3.02, paragraph 3.05, by creating conflicts of interest by serving in the same country as both an STC and a Bank Group-financed contractor, either as an individual or through your company, [Company X] in which you are a principal, on other Bank Group-financed projects.

Specifically, the conflicted consultancy work undertaken during your overlapping STC appointments and Bank Group-financed consultancy contracts involved contracts or assignments totaling approximately US \$754,372. The calculated contract values include approximately US \$416,989 in [Project P] contracts awarded to you in your individual capacity and approximately US \$337,383 in contracts awarded to [Company X].

48. The HRVP stated that, in deciding the appropriate sanction, he took into account the fact that the Applicant had neither prior adverse disciplinary findings nor a poor performance record, and cooperated diligently throughout the investigations with INT. The HRVP noted that the Applicant consulted with multiple Bank staff and received contrary conflict of interest guidance, which the Applicant understood to permit his or Company X's project management unit engagements. The HRVP also noted that the Applicant has stated that he did not read the STC appointment letters fully and thus was unaware of the relevant conflict of interest rules. According to the HRVP, after carefully examining the record, including the multiple statements and

documents provided, he did not find the Applicant's explanations credible. The HRVP viewed the following as aggravating factors:

[T]he evidence indicates that under all of the relevant STC appointment letters, you signed and certified that you and members of your immediate family were not currently employed by member governments on any Bank Group-financed projects and would not be during your period of Bank Group employment. You also signed and certified that you had received, reviewed and understood the Bank Group's Principle 3 of the Principles of Staff Employment and Staff Rules related to conflicts of interest, and that your Bank Group employment did not violate those provisions. With regard to your explanation that you were unaware that a conflict of interest was present, your ignorance of the applicable Bank Group rules does not excuse your failure to comply.

49. The HRVP imposed the following sanctions:

- i. loss of future employment and contractual opportunities with the Bank Group, as a staff member, contractor, or employee of a contractor for a period of three years, effective from the date of this letter; and
- ii. the sanction letter to remain on [the Applicant's] staff record for a period of three years, effective from the date of this letter.

50. On 24 January 2017, the Applicant filed an Application contesting the HRVP's finding of misconduct and the imposition of disciplinary sanctions. As compensation, the Applicant seeks: a) lost income including unpaid fees for completed work in the amount of \$7,696.35; b) damages for lost career opportunities, reputational damage, lost work opportunities, and physical/mental/emotional stress assessed at two years' compensation (\$88,935.60 based on daily STC compensation rate); c) rescission of all decisions affecting his employment by the Bank/IFC; and d) legal fees and costs in the amount of \$20,737.50.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

There was no real conflict or unprofessional conduct

51. The Applicant makes four main submissions in this regard. First, the Applicant contends that this case concerns an unintentional technical violation of a contractual term, and not conflict

of interest or unprofessional conduct for which the Applicant should be subjected to disciplinary sanctions. Second, the Applicant maintains that there was no real conflict of interest, nor did the Bank suffer any injury. Third, the Applicant asserts that he properly sought guidance from Bank staff who were responsible for the projects he worked on and who had the authority to provide guidance on his contractual obligations. Finally, the Applicant contends that the rule on conflict of interest is vague and was reasonably misunderstood by multiple staff members. In particular, he maintains that the Bank unfairly applied a strict interpretation of the word “concurrent” which is unduly burdensome on STCs.

The Bank’s Response

The established facts legally amount to misconduct

52. The Bank asserts that the Applicant’s conduct was a violation of the terms of his appointment. The record establishes that contracts were awarded to the Applicant individually or to Company X in Country A while the Applicant held STC appointments with the Bank in Country A. The Bank argues that the rules and policies are clear, and even if the Applicant’s misunderstanding or ignorance of the conflict of interest rule is credited, it is incontrovertible that he had a conflict of interest by concurrently serving in the same country as both an STC and as a contractor on a Bank-financed project in violation of the Staff Rules and the terms of his STC employment. To the Bank, the Applicant’s ignorance or misunderstanding must be “weighed against the several false certifications he made in his STC letters of appointment.” In addition, though the Applicant asserts that he sought guidance from his supervisors, the Bank maintains that the Applicant did not seek guidance or advice regarding conflict of interest from a “senior manager or [the Office of Ethics and Business Conduct (EBC)] as required by the rules and policy.”

53. With respect to its interpretation of the word “concurrent,” the Bank contends that the prohibition against conflicts of interest does not revolve around whether a staff member finds it burdensome to comply with the Staff Rules. To the Bank, it is not the Applicant’s place to question the fairness of the rule he violated. The Bank further argues that an STC appointment is effective for the entire duration of the contract and not only for the actual days worked under the contract. Thus, to assess whether the Applicant undertook prohibited work concurrently with the STC

contract, one must look at the duration of the entire contract and not only the days the Applicant worked under the contract.

54. Finally, the Bank remains unconvinced by the Applicant's assertions that he relinquished his financial interests in Company X. According to the Bank, if at all he did, the effective date should be when the Corporate Affairs Commission of Country A recognized the relinquishments on 21 December 2015, not in March and September 2014 when the Applicant's letters of resignation and relinquishment are dated. To the Bank, it is "convenient for [the] Applicant to blame the effective date on what he termed as 'bureaucratic inconsistencies outside the control of [the] Applicant.'" The Bank is also unconvinced by the Applicant's assertion that subsequent payments he received from Company X were for prior work he had performed which are unrelated to this case. The Bank argues that "[t]he bottom-line is that he received emoluments from [Company X] beyond when he purportedly disengaged from the entity."

The Applicant's Contention No. 2

The sanctions were significantly disproportionate

55. According to the Applicant, the sanctions imposed were significantly disproportionate and have already had a grave effect on his career and livelihood. To the Applicant, INT and the HRVP failed to consider the Applicant's situation as required by Staff Rule 3.00, paragraph 10.09 and Tribunal precedent. The Applicant contends that the Bank failed to take into account the fact that, as soon as he discovered a potential conflict, he recused himself from consultancy work with Company X and discontinued individual consultancies outside of Bank STC appointments entirely. The Applicant maintains that the Bank unfairly attributed to him the delays of Country A's authorities in responding to the paperwork sent by Company X pertaining to the share relinquishments and resignations. In the Applicant's view, for all intents and purposes, he was no longer involved with Company X or consultancy work after he sent the letters of 23 March 2014 and 15 September 2014. In addition, the Applicant asserts that the fact that Company X still owes him payment for past work does not depict a pecuniary interest in Company X.

56. The Applicant further contends that the mitigating factors in his case were not adequately considered. He asserts that the impact on his career has been immense. The sanctions imposed have also had a cumulative effect on his subsequent work, contradicting the Tribunal's jurisprudence (citing *O'Humay*, Decision No. 140 [1994]). The Applicant maintains that he has struggled to find work because he was forced to relinquish his connections in his native country out of fear of any conflict of interest. The Applicant asserts that the disciplinary sanctions have prevented him from working in the country he is from, in a profession in which he specializes, and have prohibited him from future employment with the Bank for a period of three years. The Applicant asserts that besides receiving remuneration for "speaking at programs in [Country A]," he "has not been gainfully employed" since the end of his last STC contract on 30 June 2016. He asserts that he is now an independent consultant searching for work, and though he has registered another company, he is still trying to certify it "with the necessary governing entities."

57. The Applicant asserts that he: a) never acted in a way that was against the interests of the Bank; b) actively avoided situations which he feared would be in conflict with the Bank's interests; and c) always acted in the Bank's interest, such as by working more days than contractually obligated without additional billable hours.

58. Finally, the Applicant maintains that he never made false certifications and that it is wrong for the Bank to claim that he was not genuine, was intentionally untrue, or sought to deceive any party in his letter of appointment. This assertion by the Bank, in the Applicant's view, imputes an intention to the Applicant which the Bank itself has acknowledged did not exist. The Applicant asserts that he genuinely understood the provision on conflict of interest to mean that he was not allowed to work on the same projects. He asserts that he turned down a situation which he thought would have been a conflict in light of the Bank's interests.

The Bank's Response

The imposed sanctions are not significantly disproportionate

59. The Bank contends that the seriousness of the Applicant's misconduct centers on the false certifications he made in his letters of appointment, as well as the Bank's sensitivity to matters of

conflict of interest, which can adversely impact the World Bank Group's activities as even potential or perceived conflicts can undermine stakeholder relationships and damage the organization's reputation. With respect to the Applicant's contention that the sanctions prevent him from working in Country A, the Bank contends that "[t]his is not and cannot be the case as the Bank is not the employer in the country and does not exist to guarantee employment to particular individuals."

The Applicant's Contention No. 3

The Bank owes him \$7,696.35 in unpaid fees

60. The Applicant maintains that, as of 30 June 2016, he had completed 120 days of his STC appointment, however, he still had 45 days unpaid in Fiscal Year (FY) 2016. He seeks full payment for completed days of work in FY2016.

61. The Tribunal notes that the Bank has not addressed this contention or disputed the statement that the Applicant is owed remuneration for completed work.

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 such cases "encompasses a fuller examination of the issues and 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. In addition, as stated in *Dambita*, Decision No. 243 [2001], para. 21:

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.

65. Given that the Applicant only challenges the finding of misconduct and the proportionality of the imposed sanctions, the Tribunal will limit its analysis to these elements.

EXISTENCE OF THE FACTS AND WHETHER THEY LEGALLY AMOUNT TO MISCONDUCT

66. In accordance with *Dambita*, the Tribunal must consider whether the established facts support the HRVP's findings to a standard higher than a mere balance of probabilities. It is not in dispute that the Applicant was a Director of, and held shares in, Company X concurrently with his STC appointment with the Bank until March and September 2014, respectively. He made no secret of it. In fact, the record shows that all the STC offer letters which the Applicant received from 5 October 2009 until 1 September 2015 were addressed to the Applicant using Company X's physical address. Most importantly, Mr. AB, the Applicant's recruiter and manager, was aware of the Applicant's employment with Company X and gave the Applicant conflict of interest guidance in relation to his STC employment at the Bank at the time of negotiating the terms of the Applicant's January 2014 STC contract.

67. The evidence further indicates, and the Applicant has acknowledged, that he and Company X engaged in Bank-financed projects in Country A which overlapped with his STC appointments, including his 15-day contract from 4 April to 19 May 2012. Although the Applicant is not synonymous with Company X, as a Director and shareholder the Applicant held a financial interest in Company X at the relevant time.

68. Having thus established the facts, the Tribunal will now consider whether they legally amount to the misconduct found. The Tribunal recalls that the HRVP found that the Applicant had committed misconduct under Staff Rule 8.01:

- (a) Paragraph 2.01(a) - Failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment;
- (b) Paragraph 2.01(b) - Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct;
- (c) Paragraph 2.01(b) - Performance of assigned duties in an improper or reckless manner;
- (d) Paragraph 2.01(b) - Failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group; and
- (e) Paragraph 2.01(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 Rule 3.01 (*i.e.*, staff members must comply with obligations embodied in the Principles of Staff Employment, the Staff Rules and all other policies and procedures of the Bank Group, in particular staff members have a special responsibility to avoid situations and activities that might reflect adversely on the Organizations, compromise their operations, or lead to real or apparent conflicts of interest).

69. To substantiate its contention that the Applicant's concurrent employment amounted to misconduct, the Bank refers to the Applicant's STC contracts, which state:

You are responsible for being familiar with the conflict of interest rules, contained in Staff Rules 3.02 and 3.03, that apply to you and members of your immediate family during your employment with the Bank and for two years after termination of your assignment.

While employed as a Short-Term Consultant you and members of your immediate family may not be employed by member governments or other entities on World Bank Group[-]financed projects during the period of your employment with the World Bank Group, if this work is for the same country. In addition, for a period of two years after termination of this assignment, you should not seek or accept work connected with projects or operations that were of direct concern or make use of material acquired during this assignment, unless the prior consent of the World Bank has been obtained, as per Staff Rule 3.02.

70. The Bank cites Principle 3 of the Principles of Staff Employment, which provides that staff members "have a special responsibility to avoid situations and activities that might reflect adversely on the Organizations, compromise their operations, or lead to real or apparent conflicts of interest." The Bank further refers to Staff Rule 3.02, paragraph 3.05, which provides that:

Staff members holding a Short-Term Consultant or Short-Term Temporary ("STC/STT") appointment may hold concurrent assignments from other public and private employers, subject to the following:

- a. They may not be employed by member governments or other entities to work on Bank Group-financed projects during their period of Bank Group employment if the Bank Group-financed project and the concurrent work involve the same country. [...]

71. For his part, the Applicant contends that “[t]here may be an unintentional technical violation of a contractual term, however, there is no actual conflict of interest and there was no injury to the Bank.” To the Applicant, the Bank’s determination of misconduct under Staff Rule 8.01 is not factually supported.

72. The Tribunal observes that the location of the Applicant’s STC appointment, and the individual contracts he or Company X obtained, is the determining factor which transforms the conduct to a violation of the Staff Rules and the terms of his STC appointment at the Bank. There would have been no misconduct if, simultaneously as an STC, the Applicant was employed by a member country or other entity to work on a Bank-financed project in a different country, either in his individual capacity or through Company X. It is the fact that the Applicant’s employment opportunities occurred in the same country with a Bank-funded contract that has resulted in a violation of the terms of his appointment and relevant Staff Rules. The Applicant’s concurrent employment activities created a real or apparent conflict of interest which is prohibited by Principle 3 of the Principles of Staff Employment and Staff Rule 3.02, paragraph 3.05. This constitutes misconduct under Staff Rule 8.01, paragraph 2.01(a) and (c), namely, a failure to “observe Principles of Staff Employment, Staff Rules, and other duties of employment” and “[a]cts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment and Staff Rule 3.01 [...].”

73. The Applicant also acknowledges that he was unaware of the restrictions, and while this fact may be relevant as a mitigating factor, ignorance of the law and failure to observe it is misconduct pursuant to Staff Rule 8.01, paragraph 2.01(b): “Failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group.” *See, e.g., Koudogbo*, Decision No. 246 [2001], para. 31. In failing to comply with the provisions of the Staff Rules governing concurrent employment activities, the Applicant at the

very least failed to observe “generally applicable norms of prudent professional conduct,” a ground for misconduct under Staff Rule 8.01, paragraph 2.01(b).

74. The Tribunal is therefore satisfied that the misconduct of conflict of interest is substantiated.

WHETHER THE DISCIPLINARY MEASURES IMPOSED WERE SIGNIFICANTLY DISPROPORTIONATE TO
THE MISCONDUCT

75. 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.

76. Staff Rule 8.01, paragraph 3.01 further 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 may be imposed.

77. The Tribunal observes that the obligation to avoid even the perception of a conflict of interest is an important one, particularly for staff members of international organizations. The observations made in *AJ*, Decision No. 389 [2009], para. 46, are applicable in this case:

Principle 3 of the Principles of Staff Employment requires staff members to serve the Bank with a high degree of integrity and loyalty. Every staff member has a special obligation to avoid situations and activities that might (i) reflect adversely on the Bank; (ii) compromise operations of the Bank; and (iii) lead to real or apparent conflicts of interest. The obligation is broad; its objectives are prohibitive as well as preventive. The Applicant had an obligation not to engage in real or

apparent conflicts; he also had an obligation to avoid situations and activities that might “lead to real or apparent conflicts of interest.” Principle 3 obligates staff members to “discharge their duties solely with the interest and objectives of the [Bank] in view.” This singleness of purpose should not be compromised by other considerations, such as a staff member’s personal interest in a business relationship of the Bank. This is why the scope of Principle 3 is very broad. It prohibits not only conduct that is clearly wrongful but also conduct that leads to a possible appearance of impropriety.

78. Considering this, the Tribunal is fully cognizant of the Bank’s interest in preserving its integrity as an institution and upholding its objectivity – goals which may be undermined if staff members, regardless of their contract type, engage in activities which create a real or apparent conflict of interest. It is therefore understandable that the HRVP may wish to severely sanction such conduct. At the same time, each case merits consideration of all relevant factors, including any extenuating circumstances and the situation of the staff member. *See Carew*, Decision No. 142 [1995], para. 43.

79. The Tribunal notes that the HRVP found that aggravating factors existed in the Applicant’s case, namely, that “under all of the relevant STC appointment letters, [the Applicant] signed and certified that [he] and members of [his] immediate family were not currently employed by member governments on any Bank Group-financed projects and would not be during [his] period of Bank Group employment.” The Tribunal makes an observation in this regard: This statement by the HRVP is not an accurate reflection of the certifications the Applicant made in his acceptance letters under all of the relevant STC appointments. The Tribunal notes an important change in the language of the STC contracts which the Applicant received and signed between 2009 and 2015. The record shows that the Applicant’s STC acceptance letters of 2 October 2009, 24 February 2010, 14 May 2010, 28 June 2010, and 4 April 2012 included the certifications referenced by the HRVP. However, only one of these contracts, the 4 April 2012 contract, was included in the total value of overlapping contracts (\$754,372). Nevertheless, the second aggravating factor, found by the HRVP in the acceptance letter of 3 January 2013, is that the Applicant signed that he had received, reviewed, and understood Staff Rules 3.01, 3.02, and 3.03 and certified that his employment with the World Bank Group under the terms of this letter of appointment and the terms of reference did not violate the provisions of this Principle and these Rules.

80. Pursuant to the Tribunal's order to produce documents, the Bank submitted a comparison chart over the last 5 years depicting the sanctions imposed on 11 staff members, excluding the Applicant, who were found to have engaged in a conflict of interest characterized as misconduct under Staff Rule 3.00 or Staff Rule 8.01 which contain similar provisions. The Tribunal notes that of those cases which concerned a breach of Staff Rule 8.01, paragraph 2.01 in addition to the conflict of interest, the aggravating factors that were considered included the fact that the staff members in question had engaged in one or more of the following acts: misuse of Bank funds; abuse of authority/position; solicitation of personal payments on multiple occasions from one or more subordinate consultants; solicitation and receipt of personal loans from a government counterpart and clients; and that the misconduct was carried out over a period of 18 months.

81. Of those cases which concerned a breach of Staff Rule 3.00 in addition to the conflict of interest, the staff members had engaged in one or more of the following acts: failure to disclose to the Bank management the conflict of interest situation; involvement in a sexual relationship with a subordinate or direct report; compromising the integrity and fairness of a recruitment process; failure to resolve the conflict of interest over a long period of time; intervention in a selection process without appropriate procurement consultation and approval; and solicitation and receipt of a personal loan from a government counterpart on three Bank projects while being the co-TTL on the same projects.

82. Collectively, these staff members were disciplined with sanctions ranging from a written censure on file for three years to termination, removal of future employment opportunities, and access restriction to the World Bank Group premises.

83. The Tribunal further observes that of the 11 cases submitted, 3 concerned staff members who held STC appointments like the Applicant. In addition to the underlying conflict of interest, one of these staff members abused his authority for personal gain. The second solicited and received personal loans from potential clients and failed to recuse himself from involvement in the procurement process for a single-source vendor. Both were denied future employment and contractual opportunities at the World Bank Group in any capacity, had their access to World Bank Group premises restricted, and had written censures placed on their personnel files indefinitely. In

the case of the third STC, an aggravating factor noted was the failure to disclose to management the conflict of interest. As a disciplinary measure the staff member was sanctioned with a written censure on file for three years.

84. The Tribunal notes that on the spectrum of sanctions for conflict of interest, the sanctions imposed upon the Applicant were relatively severe. The misconduct found in the Applicant's case is solely that he violated the terms of his STC contract by concurrently holding an employment contract with the Bank as an STC and serving as a contractor, either in his individual capacity or through Company X, on Bank-financed projects in the same country, thereby creating a conflict of interest. The investigation established that the Applicant's overlapping STC appointments and Bank-financed consultancy contracts did not involve the same projects, as initially alleged. Furthermore, the investigation did not "disclose sufficient evidence to substantiate that [the Applicant] paid kickbacks in exchange for any [Project P] consultancy contracts" awarded to either the Applicant or Company X, as initially alleged. The misconduct therefore did not involve abuse of position. The question remains: What is significantly disproportionate?

85. The fact that multiple Bank staff members ill-advised the Applicant, including the Level GH Lead Environmental Specialist, staff specialized in procurement and, later, a Director-level staff member is significant. Staff members in a position to know the Bank's conflict of interest rules and policies consistently, yet inaccurately, informed the Applicant that he was allowed to undertake project consultancy work, in his individual capacity, with Project P SPMUs, as the Applicant was not directly involved in Project P through his Bank work. While this fact does not absolve the Applicant of the misconduct he committed in contravening the terms of his STC employment and Staff Rules, it is relevant information which has a substantial weight in the assessment of the sanctions to impose upon the Applicant. Heeding the advice he was given, the Applicant declined, in July 2014, a consultancy offer from the Ministry of Agriculture in Country A because he believed he might, in the future, be involved in reviewing the ministry's safeguard documents as part of his STC cross-support portfolio work with the Bank.

86. However, for the strict purposes of the Staff Rules, the Applicant's disclosures to his senior manager and country office procurement officers were insufficient because he did not contact EBC

or a Director-level staff member prior to engaging in the activities. INT's Final Report refers to the fact that the Applicant did not seek a written conflict of interest waiver, which, if he had obtained it, would have resolved the conflict and made his conduct permissible.

87. In addition, the conditions of the Applicant as an STC staff member working in a country office are relevant. The Applicant contends, and the Bank does not deny, that he never availed himself of access to the Bank intranet in order to review the Staff Rules, nor did he have a Bank email address until January 2016 when he was first contacted by INT. The Applicant provided INT with an email message that showed that when he received the STC appointment letter for his last appointment in September 2015, he was not provided with the Staff Rules and other staff policies that should have been enclosed. The Applicant sent an email message to request those documents but did not receive a response. INT was unable to establish whether the Applicant received staff policy enclosures for prior STC appointments. Nevertheless, the Applicant signed each appointment letter without awaiting those documents, agreeing that he became a Bank staff member subject to the Bank's conditions of employment, including those regarding conflicts of interest.

88. According to Staff Rule 8.01, paragraph 3.01, to evaluate the proportionality of sanctions it is necessary to take into account not only the gravity of the wrongdoing, and any extenuating circumstances, but also the interest of the Bank. In this specific case, the last criterion is of utmost importance. The aim of the rule regarding conflict of interest is also to prevent possible damage, that is to say, to avoid any situation in which damage is possible, not only to sanction actual damage to the interest of the World Bank Group. According to EBC's guidance, a conflict of interest arises when a person or an institution in a position to exercise judgment on a matter has a divergent interest, as for instance, when a staff member's personal interests are different from those of the organization. Staff members have a special responsibility to avoid situations and activities that may reflect adversely on the organization, compromise its operations, or lead to real, potential or even apparent conflicts of interest.

89. In this case, it is possible that the Applicant was conscious of such a risk but decided to interpret the Staff Rules as it suited him. Contrary to his contentions, the rule on conflict of interest

is not vague or ambiguous, and thus not open to interpretation. It can only be distorted or disregarded, and the consequence in that hypothesis is that the Applicant did ignore the clear rule. It is also possible that the Applicant was not completely conscious of the seriousness of such a risk, and that – taking into account the erroneous guidance he received – he recklessly ignored the importance of the specific demand of the conflict of interest rules at the Bank, which were included in the contracts he signed. Nevertheless, such unintentional disregard of those rules may have heavy consequences for the interest and the image of the Bank, such as lack of credibility and a deterioration of trust. The creation of doubt about the integrity of the institution and its members through the conduct of a staff member is not permissible.

90. Finally, the Tribunal notes the Bank's reference to continued payments that the Applicant received from Company X. According to the Bank, this is evidence that the Applicant continued to have an interest in Company X after his purported disengagement. However, the Applicant has provided evidence which includes copies of contracts unrelated to Bank projects pertaining to the payments, and a certified legal opinion on the procedure and effect of the resignation/change of a director from a company under the Companies and Allied Matters Act of Country A. The Bank has not convincingly discharged its burden of demonstrating that these payments violated the terms of the Applicant's employment with the Bank, and in this situation the Applicant is afforded the benefit of the doubt.

91. The Tribunal is aware that protecting against even the appearance of a conflict of interest is an objective that serves the interests of both management and staff in upholding the integrity of the organization. While the Tribunal considers that the HRVP could have otherwise weighed the circumstances of this particularly complex case, in light of the importance of the prohibition of conflict of interest situations, the Tribunal declines to set aside the disciplinary sanctions. As was held in *Houdart*, Decision No. 543 [2016], para. 95, "there 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." Moreover, as in *CH*, Decision No. 489 [2014], para. 66, "[t]he Tribunal will not disturb the exercise of this discretion unless it can be shown that the penalty imposed is so disproportionate that the Tribunal

must conclude that discretion was abused.” In this case, the Tribunal is not of the opinion that discretion was abused.

92. The Bank is called upon to consider providing staff with adequate training and information on circumstances which could give rise to a conflict of interest, and to provide them with guidance on obtaining waivers if applicable. Such training should be particularly provided to staff members who hold STC appointments in country offices, as well as those who appoint STCs.

PAYMENT FOR WORK PERFORMED

93. It is the Applicant’s contention that he is owed the sum of \$7,696.35 in compensation for work he has already performed as an STC. The Bank does not address this contention in its pleadings. The Bank is ordered to pay the Applicant any sums owed to him for work already performed.

94. Given that the Applicant was ill-advised in relation to the Bank’s conflict of interest rules, and that his Application is not entirely without some merit, the Bank is ordered to make a contribution to the Applicant’s legal fees and costs.

DECISION

- 1) The HRVP’s decision is upheld;
- 2) The Bank is ordered to pay the Applicant any unpaid compensation for work already completed;
- 3) The Bank is ordered to contribute to the Applicant’s legal fees and costs in the amount of \$7,581.25; and
- 4) All other claims are dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 25 October 2017