



**World Bank Administrative Tribunal**

**2018**

**Decision No. 581**

**EP,  
Applicant**

**v.**

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

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

**EP,  
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 Mónica Pinto (President), Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Ahmed El-Kosheri, Abdul G. Koroma, and Marielle Cohen-Branche.
2. The Application was received on 30 May 2017. The Applicant represented herself. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 4 May 2018.
3. The Applicant is contesting the decision of the Human Resources Vice President (HRVP) of 4 November 2016 to impose on her disciplinary measures for misconduct.

#### FACTUAL BACKGROUND

4. The Applicant worked at a country office as a Short-Term Consultant (STC) from September 2012 until December 2014. Under her last STC contract, the Applicant's assignments comprised the development of a web-based map (the map project).
5. Upon taking up duties in the country office, the Applicant was issued an access card to enter the country office after working hours. The access card is a "door entry card and is not an identification card."
6. As of May 2014, because of a full-time job with another international organization, the Applicant only occasionally visited the country office and rarely used her access card after working hours.

7. In August 2014, the Applicant was offered an STC contract for 15 days from August 2014 to March 2015.

8. At the end of August 2014, the Applicant moved to Washington, D.C., to pursue doctoral studies. She states that the night before her departure she gave her access card to a friend and asked him to return it on her behalf.

9. Between the end of August 2014 and 23 November 2014, the Applicant's friend used the access card to make multiple unauthorized entries into the country office's building after working hours.

10. On 23 November 2014, the Applicant submitted a claim for payment for 14.5 days out of her 15-day STC contract. On the same date, her Task Team Leader (TTL) approved the payment and noted in an email that it was "good to keep ½ [day] of your contract, so we don't need to close it quite yet."

11. On 24 November 2014, the security guards of the country office's building contacted the country office's administrative staff to inform them that a stranger had made 20 entries into the building late at night using the Applicant's access card and had also used the Bank's computers in the country office's public computer room to access the internet.

12. On 25 November 2014, the country office's Administrative Officer emailed the Applicant to inquire whether she was still in possession of her access card and to request her to return it had she not done so. The Applicant replied the following day stating that she had left her access card with someone called "TG" before her departure to the United States with instructions that he return it on her behalf.

13. On the same date, a country office's Program Assistant emailed the Applicant inquiring whether she had given her access card to someone called "Hung." This time, the Applicant responded that she had left her access card with a colleague to facilitate the entrance of other map project team members to the building to run IT tests on the map project.

14. On 26 November 2014, the Administrative Officer contacted the Applicant to inform her that the country office's administrative staff were aware that her access card had been used by a stranger to access and make use of the Bank's premises and facilities for several months. In her response, the Applicant reiterated that she had left the access card with her colleague. The Applicant claims that she was under the impression that the access card could be legitimately used by other map project members.

15. On two separate occasions, on 27 and 28 November 2014, the Applicant's friend made two statements before the country office's administrative staff investigating the security breach. The Applicant's friend claimed that he had used the Applicant's access card to enter the country office to do work on the map project. He also claimed that he had accessed the office because he found it a comfortable place to study.

16. On 28 November 2014, the Applicant wrote to her supervisor insisting that she had handed the access card to her colleague.

17. On the same date, the Administrative Officer emailed the Applicant to confront her with her friend's statements and warn her that, should she not confess to having handed the access card to her friend, the country office would hand the matter over to the local police. On 30 November 2014, the Applicant replied to the Administrative Officer's email to admit that she had given her access card to her friend but insisted that she did so to allow her friend to enter the building to carry out IT tests on the map project.

18. On 1 December 2014, the Applicant admitted that her friend was not connected to the map project.

19. On the same date, the Administrative Officer emailed the Applicant's manager to provide a full account of the facts, including the Applicant's role in the security incident, noting in particular "her violation[s] of the World Bank Group information security regulation[s]." Later that day, the Applicant's manager emailed the Administrative Officer to inform her that the

Applicant's "work under her contract is already all but complete, so we will close her contract soon."

20. On 3 December 2014, the Applicant's STC contract was closed.

21. On 4 December 2014, the Administrative Officer contacted the Office of Ethics and Business Conduct (EBC) seeking advice on the adequacy of the following measures that the country office had taken in response to the security breach: (i) deactivation of the Applicant's access card; (ii) decision not to report the incident to the local police; (iii) closure of the Applicant's STC contract; (iv) "enhancing [the country office's] guarding and security system"; (v) updating [the country office's] staff on [the] enhanced security measures and reminding them to obey WBG security rules"; and (vi) training the country office's staff "to raise awareness on office safety and security."

22. On 6 January 2015, EBC replied to the Administrative Officer to state that the measures were adequate. Thereafter, EBC closed the matter.

23. In May 2015, the Applicant and a TTL in the country office discussed the possibility of offering her a three-month STC contract in the country office. By an email dated 11 June 2015, the Applicant was informed that although the terms of reference had been submitted for "econsult processing [...] your case has been flagged to the TTL regarding some incident that happened before." Thereafter, the TTL did not approve the STC contract.

#### EBC INVESTIGATION AND FINDINGS

24. On 20 February 2016, the Applicant was rehired as an STC by the Social Protection and Labor Global Practice, MENA (Middle East and North Africa) Region for 150 days in Washington, D.C. This contract was extended for 10 days from 10 July to the end of December 2016.

25. On 15 March 2016, upon learning of the Applicant's STC contract in Washington, D.C., the country office's Human Resources (HR) Business Partner contacted HR in headquarters to inquire whether the Applicant's security breach in the country office should have rendered her ineligible for reemployment with the Bank. Human Resources Corporate Case Management (HRDCO) responded that there was not any flag against hiring the Applicant.
26. On 21 March 2016, noting that the Applicant had not been a subject of a formal investigation, HRDCO contacted EBC to refer the country office's emails regarding the Applicant. EBC decided to treat such communications as a report of alleged staff misconduct.
27. On 5 April 2016, EBC interviewed the country office's Administrative Officer.
28. On 12 May 2016, EBC sent a Notice of Alleged Misconduct to the Applicant.
29. On 27 May 2016, EBC interviewed the Applicant. The interview transcripts were communicated to the Applicant on 22 July 2016. On 8 August 2016, the Applicant provided comments.
30. On 18 August 2016, EBC sent its draft investigative report to the Applicant. The Applicant's response was received on 1 September 2016.
31. On 6 September 2016, EBC issued its Final Investigative Report in which it concluded that the Applicant's "actions and/or omissions amount to an abuse or misuse of WBG [World Bank Group] property, including offices, equipment and computer resources." EBC found that:
- (i) [The Applicant] [...] essentially completed her assignment with [the country office] before August 2014, and left for the United States of America (U.S.) to pursue her doctorate studies in August 2014.
  - (ii) Prior to her departure from [the country office], [the Applicant] gave her access card to [her friend] to return [it] to [the country office] on her behalf.

- (iii) [The Applicant's friend] used the access card to make several unauthorized entries into [the country office], and during such entries, made unauthorized use of [the country office] and Wi-Fi internet facilities.
- (iv) [The Applicant] admitted that she had given [her friend] her access card and that she had made several false misrepresentations to her supervisor and to administrative staff of [the country office] about how [her friend] obtained possession of her access card, but that she did so to protect [her friend] from criminal prosecution.
- (v) [The country office] did not find any damage to the property of the office as a result of [the Applicant's friend's] unauthorized access and use of the WBG property. [The country office] management [...] concluded that both [the Applicant and her friend] acted carelessly and exercised poor judgment without realizing the consequences of their actions. They noted that [the country office] did not suffer any reported damages. Given the foregoing, they decided not to bring the matter to the attention of local law enforcement authorities and did not seek criminal measures as set forth in Staff Rule 3.00, paragraph 10.06.

#### HRVP'S LETTER OF 4 NOVEMBER 2016

32. On 4 November 2016, the HRVP informed the Applicant of his decision that "there is sufficient evidence to support a finding that [the Applicant] ha[s] engaged in misconduct" as defined under the following Staff Rules:

- (i) Staff Rule 3.00, paragraph 6.0l(a): Unauthorized use of Bank Group offices, equipment, computer resources;
- (ii) Staff Rule 3.00, paragraph 6.0l(a): Abuse or misuse of Bank Group property;
- (iii) Staff Rule 3.00, paragraph 6.0l(b): Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; gross negligence in the performance of assigned duties; performance of assigned duties in an improper or reckless manner;
- (iv) Staff Rule 3.00, paragraph 6.0l(b): Failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group;
- (v) Staff Rule 3.00, paragraph 6.0l(b): Willful misrepresentation of facts intended to be relied upon; and

- (vi) Staff Rule 3.00, paragraph 6.01(c): Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment including the requirements that staff avoid situations and activities that might reflect adversely on the Organizations (Principle 3.1) and conduct themselves at all times in a manner befitting their status as employees of an international organization (Principle 3.1 (c)).

33. In deciding on the proportionality of the disciplinary measures, the HRVP considered as mitigating factors the following:

- (i) [The Applicant] ha[s] no prior adverse disciplinary findings;
- (ii) [The Applicant] ha[s] acknowledged [her] wrongdoing and apologized for [her] actions;
- (iii) [The Applicant] admitted [she] did not carefully consider the act of delivering possession of the access card to [her friend]; and
- (iv) [The Applicant] acknowledge[s] the seriousness of [her] actions and ha[s] apologized for the disturbance and the very real risk posed by [her] inappropriate actions.

34. As aggravating factors, the HRVP noted the fact that, “when confronted in 2014, [the Applicant] initially [was] not forthcoming and made several false representations [...] in explaining the circumstances by which [her friend] came into possession of [her] access card.” The HRVP further noted that the Applicant only admitted to her actions when informed that the incident would be reported to the local law enforcement authorities unless she confessed.

35. The HRVP imposed the following disciplinary sanctions on the Applicant:

- (i) Termination of her STC contract by 31 December 2016;
- (ii) Ineligibility for any future employment at the WBG for a period of five (5) years from 31 December 2016;
- (iii) Access to any of the Bank Group’s buildings is restricted to entry for business needs relevant to the Bank Group, at the determination and discretion of the Vice President, HR or his delegate, for a period of five (5) years from 31 December 2016; and



- (iv) Misconduct letter to remain in her staff record for a period of five (5) years from 31 December 2016.

36. The Tribunal received the Application on 30 May 2017. The Applicant seeks the following: (i) the rescission of the disciplinary measures imposed by the HRVP in his letter of 4 November 2016; (ii) in the alternative, a reduction in the duration of her ineligibility for any future employment, restricted access, and written censure on her staff file; and (iii) compensation for lost income in the amount of \$16,140.00.

## SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

### *The Applicant's Contention No. 1*

*The disciplinary sanctions are disproportionate to the offense; the HRVP did not consider all the circumstances and mitigating factors in imposing the appropriate disciplinary sanctions*

37. The Applicant has admitted to her misconduct before EBC and the Tribunal. Nonetheless, she submits that the disciplinary sanctions imposed by the HRVP are disproportionate to the offense for two reasons: (i) the HRVP disregarded some of the mitigating factors identified in EBC's Final Investigative Report; and (ii) the HRVP did not give weight to the fact that she was punished for the security breach of 2014.

38. First, the Applicant argues that the HRVP, in deciding on the disciplinary sanctions, took into consideration only two out of the six mitigating factors identified by EBC in its Final Investigative Report. The Applicant contends that the HRVP ignored the fact that, as an STC, she received little training on the Bank's security policies when she took up her STC position in the country office. In this respect, she notes that the access card was a "plain white card" and had no identification on it. She also notes that the stress she was experiencing at the time of the security incident had "hampered [her] sense of mental clarity and prevented [her] from treating the access card with the same amount of attention that [she] had given to any other Bank objects." The Applicant further contends that the HRVP did not accord any weight to the fact that she was going through "a lot of pressure and stress from the transitions across work places and continents and from the intense academic rigors of the first year of [her] doctoral studies."

39. Second, the Applicant claims that the HRVP failed to consider the fact that she was punished for the security breach of 2014 with the termination of her STC contract and the imposition of a bar-to-hire in the country office. She disputes the Bank's assertion that her contract was administratively closed and argues that her contract was terminated to sanction her for her involvement in the security incident. In supporting this argument, she relies on the facts that (i) she had half a day left in her STC contract and (ii) she received numerous requests from her colleagues to update and improve the map project after the alleged closure of her contract. Regarding her claim that there was a bar-to-hire against her in the country office, she alleges that the country office's HR department flagged a proposal to offer her a three-month STC contract in 2015. She contends that such action amounts to "punishment in the form of ineligibility" for future employment, which she has served "for at least a year."

40. Third, the Applicant submits that the HRVP in assessing the proportionality of the disciplinary sanctions did not take into consideration her "valuable contributions" to the country office's map project and the fact that her knowledge and skills could be "beneficial to your organization" if given the chance to "re-engage with the WBG." To this effect, she notes that her doctoral research focuses on matters relevant to the Bank.

41. Fourth, the Applicant disputes the termination of her STC contract in 2016. She states that, pursuant to the Staff Rules, termination is the most serious sanction for misconduct at the Bank and it is only imposed as a mandatory sanction for specific types of misconduct such as misuse of Bank funds, abuse of position for personal gain, conviction of a felony charge, or refusal to file a financial disclosure. She claims that Staff Rule 3.00, paragraph 10.10, and Staff Rule 8.01, paragraph 3.02, require "a thorough review on the need to impose such severe punishment as a mandatory measure." She asserts that her misconduct does not fall into any of the scenarios justifying termination. According to the Applicant, while she and her friend exercised poor judgment, no damage or loss was caused to the Bank's property, a factor which should have been taken into consideration in determining the sanctions.

42. Fifth, the Applicant also objects to the imposition of a five-year hire ban and restricted access for her misconduct as "an incredibly long and harsh measure of punishment given the

isolated nature of the incident.” She relies on the Tribunal’s decision in *CT*, Decision No. 512 [2015] and requests the Tribunal to give her the opportunity to “rehabilitate herself” by rescinding all the sanctions against her. The Applicant claims that she will no longer be eligible for the Bank’s Young Professional Program when the sanctions expire. She also claims that the restricted access imposed on her has prevented her from attending seminars and any other learning opportunities and from presenting her research at the Bank.

### ***The Bank’s Response***

*The Applicant’s actions constitute misconduct; the disciplinary sanctions imposed on the Applicant are provided in the law of the Bank, are reasonable, and are proportionate to the Applicant’s misconduct*

43. The Bank asserts that the facts of the case are undisputed and that the Applicant has admitted to her misconduct before EBC and the Tribunal. The Bank submits that the Applicant’s actions constitute misconduct because (i) she has “exposed her seriously deficient if not absent regard for World Bank security” by giving her access card to her friend; (ii) she has shown a lack of information security awareness by asking her friend, a non-Bank staff, to test the functionality of a Bank work product; (iii) she showed a serious lack of integrity in “colluding” with her friend to give the same misrepresentations of the facts; (iv) her disregard for the Bank’s policies and procedures and multiple misrepresentations do not meet the standards of professional conduct; (v) she lacks the “maturity” to conduct herself in a manner befitting of the status of an employee of an international organization; and (vi) given the Applicant’s academic credentials, she should have known that the use of access cards was limited to Bank staff.

44. The Bank disputes the Applicant’s defenses of ignorance of the Bank’s security policies and the fact that she was experiencing stress at the time of the security incident. According to the Bank, in deciding on the appropriate disciplinary measures, the HRVP considered the factors prescribed in Staff Rule 3.00, paragraph 10.09. The HRVP gave proper weight to the fact that the Applicant had no prior adverse disciplinary findings and the Applicant’s admission of guilt and apologies, but the HRVP could not disregard the fact that the Applicant “knowingly and willfully” misrepresented multiple times the circumstances by which her friend came into

possession of her access card and that she only admitted the truth because the country office stated that it would refer the matter to the local police unless she confessed. The Bank claims that the sanctions imposed by the HRVP are justified by the serious nature of the Applicant's actions, the fact that her actions posed a security threat to the Bank's offices and fell short of the standards of integrity and professional conduct demanded of Bank staff.

45. The Bank claims that the Applicant had completed her assignments and was fully paid before her contract was administratively closed on 3 December 2014. In this respect, the Bank disputes the Applicant's assertion that her contract could not be closed because she still had half a day left in her contract, noting that, under the Applicant's contract, it was her supervisor's responsibility to determine when assignments were completed even if all her contract's days had not been used up. The Bank asserts that the Applicant's supervisor acted reasonably in closing the Applicant's contract and notes that it had no obligation to notify the Applicant. Regarding the Applicant's allegation that she was "blacklisted" from re-hiring, the Bank submits that it was HR's duty to alert the hiring team that the Applicant had been responsible for a security breach, especially given the fact that STCs are not subject to mandatory pre-employment screenings. The Bank denies that HR's actions amount to a sanction and claims instead that the hiring manager exercised his discretion in deciding not to hire the Applicant.

### ***The Applicant's Contention No. 2***

#### *The country office's security breach inquiry of 2014 did not follow due process*

46. The Applicant claims that the country office did not follow due process during the 2014 security breach inquiry for the following reasons: (i) she was never informed of the outcome of the inquiry; (ii) she was not given the opportunity to defend herself; (iii) sanctions were imposed on her without formal disciplinary proceedings; and (iv) the country office took two years to report the alleged misconduct to EBC for investigation. On this issue, the Applicant claims that the country office did not fully meet its obligations to timely report the incident to EBC, thus showing lack of consistency and professionalism in the handling of their work and disregard for her as an STC whose employment "is precarious and seasonal in nature." The Applicant argues

that the Bank has not convincingly explained the proper grounds for the delay in reporting the security incident to EBC.

### ***The Bank's Response***

*Both the 2016 EBC investigation and the 2014 security breach inquiry followed due process*

47. The Bank submits that the HRVP's determination of the Applicant's misconduct was made on 4 November 2016, within the three-year time limit from the date that is required by Staff Rule 3.00, paragraph 10.06. The Bank notes that the country office's HR Business Partner acted responsibly when he brought to the attention of HR in headquarters the Applicant's involvement in the 2014 security breach. According to the Bank, EBC acted reasonably in treating the HR Business Partner's communication as a report of alleged misconduct, thus allowing the Applicant "the right to due process" before any determination of misconduct.

48. The Bank denies that the country office's inquiry was disciplinary in nature. The Bank states that the inquiry of 2014 had the sole objective of taking administrative measures to immediately address the security risks posed by the incident. The Bank asserts that, when the country office contacted EBC on 4 December 2014, it was to seek advice on the adequacy of those administrative measures.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

### TRIBUNAL'S SCOPE OF REVIEW IN DISCIPLINARY CASES

49. 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 its 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.)

50. 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.

51. 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.

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

#### EXISTENCE OF THE FACTS

53. The following essential facts are established by EBC in its Final Investigative Report: as an STC, the Applicant was issued a WBG access card to facilitate her entry into the country office after office hours. Some time toward the end of August 2014, before moving to Washington, D.C., the Applicant gave her friend the WBG access card. The Applicant’s friend used the access card to make multiple unauthorized entries into the country office and unauthorized use of offices, computers, and internet facilities of the WBG between August and November 2014. The Applicant’s friend had no justification to enter the country office as he was neither an employee of the WBG nor authorized to access the country office in any capacity.

54. The Applicant has admitted that she made several false representations to her supervisor and to the administrative staff of the country office regarding the circumstances by which her access card was in her friend’s possession. She first stated that she had left her access card with someone called “TG” before her departure to the United States with instructions that he return it on her behalf. Her second account was that she had left the card with another person, one of her map project colleagues. Only when she was faced with the threat of referring the matter to the local police did she admit that she had given her access card to her friend but insisted that she did

it so her friend could enter the building to carry out IT tests on the map project. She subsequently admitted that her friend was in no way connected to the map project.

55. In its Final Investigative Report, EBC found that there was insufficient evidence to conclude that the Applicant knew of her friend's unauthorized entries into the country office prior to being contacted by the Administrative Officer at the end of November 2014.

56. On the basis of the above undisputed facts, the HRVP found in his decision of 4 November 2016 that the Applicant had engaged in misconduct. The essential facts of the case are therefore established.

#### WHETHER THE FACTS LEGALLY AMOUNT TO MISCONDUCT

57. Having thus established the facts, the Tribunal will now consider whether they legally amount to the misconduct found. The HRVP's letter of 4 November 2016 determined that the Applicant's actions constituted misconduct under the following:

- (i) Staff Rule 3.00, paragraph 6.01(a): Unauthorized use of Bank Group offices, equipment, computer resources;
- (ii) Staff Rule 3.00, paragraph 6.01(a): Abuse or misuse of Bank Group property;
- (iii) Staff Rule 3.00, paragraph 6.01(b): Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; gross negligence in the performance of assigned duties; performance of assigned duties in an improper or reckless manner;
- (iv) Staff Rule 3.00, paragraph 6.01(b): Failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group;
- (v) Staff Rule 3.00, paragraph 6.01(b): Willful misrepresentation of facts intended to be relied upon; and
- (vi) Staff Rule 3.00, paragraph 6.01(c): Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment including the requirements that staff avoid

situations and activities that might reflect adversely on the Organizations (Principle 3.1) and conduct themselves at all times in a manner befitting their status as employees of an international organization (Principle 3.1 (c)).

58. In its Final Investigative Report, EBC found sufficient evidence to conclude that the Applicant (i) handed her access card to her friend, who used the card to make unauthorized entries into the Bank's premises and use the Bank's computer and internet facilities, and (ii) made false representations of the circumstances by which her friend came into possession of her access card. Before the Tribunal, the Applicant does not dispute that her actions amount to misconduct under Staff Rule 3.00, paragraph 6.01, as determined by the HRVP in his letter of 4 November 2016.

59. At the outset, the Tribunal notes that the Bank's country office occupies four out of eight floors of a leased building. The International Finance Corporation (IFC) occupies an additional floor. There is a security guard on the main floor of the building during business and after office hours, and there is also a security guard on each floor of the Bank and IFC during business hours. The Bank has explained that there is no security check-in process during office hours for Bank staff members. After office hours, staff members must sign in with the security guard on the main floor at both arrival and departure and use their access cards to enter the Bank's offices. These access cards differ from the Full Access ID cards issued to headquarters' staff members in that they do not contain any identifying information about the cardholder. They are proximity cards, which means that they are machine-read by the entry doors to allow the holder of the card to enter the Bank's offices. All staff members, including STCs, are automatically issued access cards in the country office.

60. The EBC Final Investigative Report found that the Applicant handed her access card to her friend, who was not an employee of the Bank, who used the card to access the country office's premises after office hours 20 times, from August to November 2014. The access card was issued by the country office and therefore was the property of the Bank. Under AMS (Administrative Manual Statement) 6.50, paragraph 27 of the Bank's Administrative Manual, Bank-issued access cards must be returned to the Bank upon expiration or separation from



service. AMS 6.53, paragraph 4, further provides that staff members have indeed a responsibility for “the careful use, safekeeping, and prompt return of all property assigned or available to them, and for reporting to their managers any property loss or damage.”

61. Security concerns also influence the Bank’s decision to issue access cards to its staff members. As AMS 6.50, paragraph 1 recognizes, access cards are important “to protect staff, facilities and programs from criminal mischief.” It is therefore only reasonable that their misuse may constitute misconduct. According to AMS 6.50, paragraph 37, the following actions constitute misuse of an access card: (i) loaning an ID card to another individual; (ii) failure to report a lost or stolen card; (iii) altering an ID card; and (iv) possession of more than one Bank ID card. The Tribunal finds that, by the mere act of loaning her access card, an item of Bank property, to another individual, without proper authorization, the Applicant misused her access card and committed misconduct in the form of “abuse and misuse of Bank Group property,” as provided in Staff Rule 3.00, paragraph 6.01(a).

62. The record further shows that the Applicant’s friend used the access card to make unauthorized uses of the Bank Group’s offices, equipment, and computer resources. According to his statements of 27 and 28 November 2014, the Applicant’s friend acknowledged that he used the access card to enter the country office’s public computer room, make use of the Bank’s computers to access the map project on the Bank’s computer browser, and to do personal work.

63. AMS 6.20 and 6.21 lay down the policies and procedures regarding information security at the Bank. AMS 6.20, paragraphs 4 and 8, provide that they apply to all information users, including staff members, at all locations throughout the world, during and after their terms of employment, and it therefore requires them “to be familiar with Bank Group policies and follow them consistently.” This provision further states that, “Noncompliance with these provisions, either willfully or through neglect, could be found to be misconduct under Staff Rule 8.01 for Bank Group Information Users.” For its part, AMS 6.20A, paragraph 17, provides, in its relevant part, that staff members, as information users, “are responsible for security matters related to the protection of Bank Group information assets.” AMS 6.21 provides for rules governing personnel,

physical, and environmental security and proscribes the misuse of facilities as well as unauthorized physical access, damage, and interference to business premises and information.

64. As the record shows, the Applicant's friend made use of the Bank's computer and internet resources to test the functionality of the map project, a Bank work product, without being authorized by the Bank to do so. By handing her access card to her friend, which allowed him to engage in the above-described actions, the Applicant infringed upon the Bank's policies and procedures regarding information security. As provided for in Staff Rule 3.00, paragraph 6.01(a), they amount to misconduct in the form of "unauthorized use of Bank Group offices, equipment, [and] computer resources."

65. The Applicant contends that she received little training on the Bank's security policies and no information regarding the use of access cards. Under the Staff Rules, however, staff members are required to observe the Principles of Staff Employment, Staff Rules, Administrative Manual, Code of Conduct, other Bank Group policies, and other duties of employment. The Tribunal observes that the Applicant agreed to comply with the Bank's Staff Rules when she signed her letter of appointment. It should be reasonably expected, therefore, that she make every effort to get familiar with her obligations as a staff member and with the Bank's relevant policies and procedures, including the security standards applicable to the use of her access card. As the Tribunal held in *Koudogbo*, Decision No. 246 [2001], para. 31, "ignorance of the law is no excuse" and, while it may be relevant as a mitigating factor, the "failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group" constitutes misconduct in accordance with Staff Rule 3.00, paragraph 6.01(b). In the Tribunal's view, the Applicant should have known that it was not acceptable for her, a staff member who has been working at the Bank since 2012, to give her Bank-issued access card to her friend, an outsider who had no connection with the Bank.

66. The other grounds of misconduct determined by the HRVP relate, namely, to "reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; gross negligence in the performance of assigned duties; performance of assigned duties in an improper or reckless manner." The Tribunal observes that the Applicant showed a lack of

security awareness and disregard for the respective Bank policies and procedures when she gave her access card to her friend, which he used to make use of Bank resources. By not complying with her obligations regarding the use of Bank Group property, the Tribunal finds that the Applicant failed to abide by the norms of prudent professional conduct, which also constitutes misconduct pursuant to Staff Rule 3.00, paragraph 6.01(b).

67. As evidenced in the record, the Applicant gave multiple conflicting accounts to her supervisor and the country office's administrative staff of the circumstances by which her friend came into possession of her access card. The Applicant's first account was that she had left her access card with someone called "TG" with instructions that he return it on her behalf. She later claimed in two instances that she had left her access card with her map project colleague. Only when she was faced with the threat of referring the matter to the local police did she admit that she had given her access card to her friend, although she insisted that her friend needed the access card to enter the building to carry out IT tests on the map project. The Applicant finally admitted that her friend was not connected to the map project.

68. The Applicant tries to justify her actions by claiming that "she was under pressure to protect [her friend] from the adverse consequences of becoming the subject of [a] criminal investigation or prosecution." For its part, the Bank asserts that the Applicant colluded with her friend in misrepresenting the facts. For the Tribunal, however, it is immaterial to determine the Applicant's true intentions behind her multiple misrepresentations. As stated in *O'Humay*, Decision No. 140 [1994], para. 32, "[r]egardless of whether there was a malicious intention, a given result was sought and obtained by means of this misrepresentation." Suffice it to say, the Applicant deliberately distorted the facts in an attempt to conceal the truth about the circumstances by which her friend came into possession of her access card. The Tribunal concludes that the Applicant's actions constitute misconduct under Staff Rule 3.00, paragraph 6.01(b), namely, "willful misrepresentation of facts intended to be relied upon."

69. The HRVP finally determined that the Applicant's actions constituted misconduct under Staff Rule 3.00, paragraph 6.01(c): "Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment including the

requirements that staff avoid situations and activities that might reflect adversely on the Organization (Principle 3.1) and conduct themselves at all times in a manner befitting their status as employees of an international organization (Principle 3.1(c)).”

70. Principle 3.1(c) of the Principles of Staff Employment provides that:

The sensitive and confidential nature of much of their work requires of staff a high degree of integrity and concern for the interests of the Organizations. Moreover, as employees of international organizations, 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. Therefore, staff members shall:

[...]

- c. conduct themselves at all times in a manner befitting their status as employees of an international organization. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the Organizations. They shall avoid any action and, in particular, any public pronouncement or personal gainful activity that would adversely or unfavorably reflect on their status or on the integrity, independence and impartiality that are required by that status [...].

71. In explaining the scope of obligations under Principle 3, the Tribunal observed in *AJ*, Decision No. 389 [2009], para. 46, that:

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 [...]. 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.

72. The Tribunal finds that the record supports the conclusion that the Applicant did not conduct herself in a manner befitting her status as an employee of the Bank, and that this constitutes misconduct under Staff Rule 3.00, paragraph 6.01(c).

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

73. In his decision of 4 November 2016, the HRVP imposed the following disciplinary measures against the Applicant:

- (i) Termination of her STC contract by 31 December 2016;
- (ii) Ineligibility for any future employment at the WBG for a period of five (5) years from 31 December 2016;
- (iii) Access to any of the Bank Group's buildings is restricted to entry for business needs relevant to the Bank Group, at the determination and discretion of the Vice President, HR or his delegate, for a period of five (5) years from 31 December 2016; and
- (iv) Misconduct letter to remain in your staff record for a period of five (5) years from 31 December 2016.

74. 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.

75. Staff Rule 3.00, paragraph 10.09, provides that mandatory termination applies to the following misconduct:

- a. Misuse of Bank Group funds or other public funds for the personal gain of oneself or another in connection with Bank Group activities or employment, or abuse of position in the Bank Group for the personal gain of oneself or another;
- b. Conviction of a felonious criminal offense; or
- c. Refusal by the staff member to file a timely, complete and accurate financial disclosure form without reasonable justification acceptable to EBC.

76. The Tribunal observes that the Applicant does not challenge whether the sanctions imposed are provided for in the law of the Bank, but she asserts that the sanctions imposed on her on 4 November 2016 were disproportionate to her misconduct for two reasons: (i) the HRVP disregarded some of the mitigating factors identified in EBC's Final Investigative Report; and (ii) the HRVP did not give weight to the fact that she was punished for the security breach of 2014.

77. 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.

78. In *Houdart*, Decision No. 543 [2016], para. 95, the Tribunal observed:

The Tribunal is mindful 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.

79. In deciding on the appropriate disciplinary measures, Staff Rule 3.00, paragraph 10.09, requires that the HRVP “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.”

80. The Tribunal has acknowledged the importance of these factors in guiding the HRVP’s exercise of discretion. In *S*, Decision No. 373 [2007], para. 50, the Tribunal observed:

Consistently with *Mustafa*, paragraph 3.01 states that “[a]ny 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.” It appears these factors were intended to guide the HRSVP in the exercise of his discretion concerning what disciplinary measures to impose. Thus, if paragraph 3 is read in its full context, it is reasonable to conclude that in exercising his discretion under paragraph 3.02, the HRSVP should consider the factors listed in paragraph 3.01.

81. In *Houdart*, para. 95, the Tribunal further held:

[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 [the] HRVP’s decision was not unreasonable, the Tribunal will not interfere.

82. The Tribunal observes that it is an essential duty of the Bank under Principle 2.1 of the Principles of Staff Employment “to make all reasonable efforts to ensure appropriate protection and safety for staff members in the performance of their duties.” There is also a corresponding duty for staff members to observe the security measures implemented by the Bank and avoid any situation that may undermine the safety of the Bank’s premises and its staff members. Mindful of

the risks that unauthorized entries into the Bank's premises pose not only to the physical integrity of staff members but also to the Bank's property and information, it is therefore reasonable that the HRVP may wish to severely sanction such conduct. In his letter of 4 November 2016, the HRVP in fact considered the "very real risk [the Applicant's] actions posed [to] the WBG" in deciding on the disciplinary sanctions.

83. The Applicant disputes the termination of her STC contract in 2016 noting that, according to Staff Rule 3.00, paragraph 10.09, her misconduct does not fall into any of the scenarios justifying mandatory termination. The Tribunal considers that there are flaws in the Applicant's argument. While mandatory termination applies to the acts described in the rule, namely, misuse of Bank Group funds for personal gain, abuse of position, conviction of a felonious criminal offense, and refusal to file a financial disclosure, Staff Rule 3.00, paragraph 10.06 confers upon the HRVP the discretion to impose termination for other types of misconduct if the circumstances of the matter so justify. As held in *Houdart*, para. 95, the Tribunal will not interfere with the HRVP's discretion as long as the HRVP's decision is not unreasonable.

84. The Tribunal will therefore address the question of whether the termination of the Applicant's STC contract was disproportionate to her misconduct. The Tribunal has observed that "termination of a staff member's appointment is the most serious disciplinary measure." *See CH*, Decision No. 489 [2014], para. 64. In *CT*, Decision No. 512 [2015], para. 45, the Tribunal reiterated 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].

85. The Tribunal notes that, while no damage was caused to the Bank's property or the physical integrity of the country office's staff, the Applicant's actions were not trivial but were, in fact, of a very serious nature. The Applicant breached several obligations regarding the Bank's property, safety, and information security; and her actions posed a security risk to the country office and its staff. Her misconduct was aggravated by the fact that she did not admit to her



misconduct when she was initially contacted by the country office's administrative staff in November 2014. She made multiple false representations to the country office's administrative staff and her manager, thus interfering with the proper conduct of the security breach inquiry. Only when she was faced with the threat of referring the matter to the local police did the Applicant admit to her misconduct. Considering this, the Tribunal concludes that termination is not disproportionate to the Applicant's misconduct.

86. In considering whether the other sanctions imposed on the Applicant, namely, ineligibility for any future employment, restricted access to the Bank's premises, and written censure on file, for five years, are disproportionate, it is important to bear in mind all relevant factors, including any extenuating circumstances and the situation of the staff member. *See Carew*, Decision No. 142 [1995], para. 43.

87. The Applicant argues that the HRVP ignored the fact that, as an STC, she received little training on the Bank's security policies and the proper use of access cards when she took up her STC position in the country office. The Tribunal considers, however, that the absence of training in this matter does not weigh in the Applicant's favor. For the Tribunal, any person in the Applicant's position should have at the very least known that her access card was for her exclusive use and not transferable to other individuals, let alone non-Bank employees. The Tribunal concludes that the mitigating factor pleaded by the Applicant is unpersuasive.

88. The Applicant also asserts that, because she was going through "a lot of pressure and stress" during and after the security incident, she made bad decisions and showed poor judgment. In *Z*, Decision No. 380 [2008], para. 42, the Tribunal observed that the applicant's unusually heavy workload and stressful environment were "certainly not an excuse for not following the rules of the Bank. No matter how busy he or she may be, a staff member cannot be 'exempted from the inconvenience of obeying applicable rules.'"

89. In *CJ*, Decision No. 497 [2014], para. 65, the Tribunal observed that:

[A] breach of the rules by a staff member under unusual stress is still a breach of the rules, although the stress may be an extenuating circumstance relevant to the

proportionality of the disciplinary measure. This having been said, the Tribunal considers it may sometimes be relevant to take into account unusual work or other pressures when the misconduct alleged is a violation of generally applicable norms of prudent professional conduct or conduct not befitting an employee of an international organization. These categories of misconduct are, to a limited extent, dependent on context.

90. The record supports the conclusion that the Applicant did not conduct herself in a manner befitting her status as an employee of the Bank. Given the high standards of professional conduct the Bank requires from its staff members, this factor cannot weigh in the Applicant's favor.

91. The Applicant claims that the HRVP also failed to consider the fact that she was punished for the security breach with the termination of her 2014 STC contract and the imposition of a bar-to-hire against her in the country office. In supporting this argument, she relies on the facts that (i) her contract could not be closed, as the Bank asserts, because she had half a day left in her contract and (ii) she received numerous requests from her colleagues to update and improve the map project after the alleged closure of her contract.

92. The Tribunal is not convinced by the Applicant's contention. The record shows that the Applicant's STC contract was administratively closed on 3 December 2014 on the basis of completed work. The fact that the Applicant had half a day left in her contract is immaterial because, as clearly stated in the Applicant's letter of appointment, it was for the Applicant's manager to determine when assignments were completed. As evidenced in the email of 1 December 2014, the Applicant's manager acknowledged that the Applicant's "work under her contract is already all but complete [...]." The Tribunal finds, therefore, that the Applicant's STC contract was not terminated.

93. The Applicant also contends that she was sanctioned with the imposition of a hire ban in the country office at punishment for her actions in the security breach incident. She argues that the country office's HR department flagged a proposal to offer her a three-month STC contract in the country office in 2015. She claims that this action amounts to "punishment in the form of ineligibility" for future employment, which she has served "for at least a year." The Bank denies

this allegation and argues that due procedures were followed before and during the TTL's final decision not to hire the Applicant in the country office in 2015.

94. As shown by the record, no formal bar-to-hire was placed on the Applicant's personnel file in the country office as a result of the 2014 security breach. The Bank however acknowledges that, immediately after the Applicant's 2015 STC contract proposal was submitted to the hiring system for review and further approval, the HR Business Partner decided to contact the TTL to alert him of the Applicant's role in the 2014 security breach. The Bank qualifies the HR Business Partner's action as diligent and asserts that the TTL's subsequent decision not to hire the Applicant was within his discretion.

95. In the present case, the Tribunal does not question the country office's discretion on hiring matters and observes that, although the TTL's decision not to hire the Applicant in 2015 appears to have been influenced by the role the Applicant played in the 2014 security breach, the record does not support a conclusion that the TTL's decision was motivated by the desire to punish the Applicant. To this effect, the Tribunal observes that the Applicant was hired as an STC by the Social Protection and Labor Unit (MENA Region) in Washington, D.C., for a period of 150 days from 23 February to 30 June 2016 and had her contract subsequently extended for 10 days from July to December 2016. The Tribunal finds that the TTL's decision of 2015 does not amount to "punishment in the form of ineligibility."

96. The Applicant's final submission is that her "valuable contributions" to the country office's map project together with her knowledge and skills, acquired as the result of her doctoral studies, should be given weight in assessing the proportionality of the sanctions. The Tribunal stated in *D*, Decision No. 304 [2003], para. 53, that good performance and lack of prior disciplinary measures fall under the "situation of the staff member." In the present case, the factor pleaded by the Applicant would fall under the "situation of the staff member." The record shows that the Applicant's lack of prior disciplinary measures, in addition to the fact that the Applicant admitted to her misconduct and apologized for her actions, were duly considered by the HRVP in deciding on the disciplinary sanctions. The Tribunal observes that the factor

invoked by the Applicant that she has made and will continue to make “valuable contributions” to the Bank if given the opportunity to “re-engage with the WBG” is unpersuasive.

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

#### WHETHER DUE PROCESS WAS FOLLOWED

98. The Applicant submits that the country office did not inform her of the outcome of the 2014 security breach inquiry. She also claims that sanctions were imposed on her without proper disciplinary proceedings and without having the opportunity to defend herself. For its part, the Bank disputes the Applicant’s claims and asserts that the security breach inquiry was not disciplinary but administrative in nature and was conducted with the sole purpose of identifying the perpetrator of the unauthorized entries.

99. The record supports the Bank’s arguments. Under the Staff Rules, only EBC and the Integrity Vice Presidency (INT) have been entrusted with the responsibility to investigate allegations of misconduct of staff members. As shown by the record, the measures taken by the country office at the time of the security incident were not disciplinary in nature but were limited to remedy the security risks posed by the Applicant’s friend’s unauthorized entries and use of equipment. This is further corroborated by the security measures adopted by the country office’s Administrative Officer on 26 November 2014 by which, among others, she alerted the country office’s staff of the security incident and instructed them to follow Bank’s security policies and keep their access cards secured.

100. The record reveals that the country office’s Administrative Officer emailed the Applicant’s manager on 1 December 2014 to provide a full account of the facts, including the Applicant’s role in the security incident, noting in particular “her violation[s] of the World Bank Group information security regulation[s].” She stated that “[u]pon the Country’s Director’s decision, you or HR responsible person may send [the Applicant] an official note to inform her of the ethic issue which she committed not to violate when she signed up the STC contract with

the WBG and keep it as a record.” The manager’s reply of the same date was that “[he] will discuss with [the Country Director] the possibility of an official letter.” But as the record shows, while the Applicant’s manager expressed his disappointment with the Applicant’s actions, he treated the matter as one of immaturity and poor judgment on the Applicant’s part, did not report the Applicant’s misconduct to EBC, and did not issue any official letter to the Applicant.

101. The Applicant claims that the country office took two years after the security incident to officially report the alleged misconduct to EBC for investigation. On this issue, she adds that the country office did not fully meet its obligations to timely report the incident to EBC. The Bank claims that the country office reported the Applicant’s misconduct within the time limits prescribed in the Staff Rules. The Tribunal observes that, while the reporting of the Applicant’s alleged misconduct to EBC was done only two years after the security incident took place, the HRVP’s determination of the Applicant’s misconduct was made on 4 November 2016, well within the three-year time limit prescribed in Staff Rule 3.00, paragraph 10.06.

102. The Bank contends that the delay in reporting the Applicant’s misconduct to EBC has not caused the Applicant any harm. The Tribunal observes that the Applicant has not convincingly shown that she was negatively affected by the delay in the reporting of her misconduct to EBC. The record shows that the Applicant secured an STC contract in headquarters from 23 February until 31 December 2016, the date on which the disciplinary sanctions imposed by the HRVP took effect. Considering this, the Tribunal finds that no reduction of the duration of the Applicant’s ineligibility for future employment, restricted access, and written censure on file is warranted in the present case.

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

## DECISION

The Application is dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 May 2018