



World Bank Administrative Tribunal

2011

No. 447

**Yang-Ro Yoon (No. 13, No. 14, No. 16, No. 17 and No. 18),
Applicant**

v.

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

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

**Yang-Ro Yoon (No. 13, No. 14, No. 16, No. 17 and No. 18),
Applicant**

v.

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

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, composed of Florentino P. Feliciano (a Vice-President of the Tribunal) as President, Mónica Pinto (a Vice-President of the Tribunal) and Ahmed El-Kosheri, Judges.
2. The judgment deals with five Applications received on 30 November 2009, 3 May 2010, 29 July 2010, and 7 September 2010. The Applicant was represented by George Pieler, Attorney at Law. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. In 1998 the Bank declared the Applicant's employment redundant. The Tribunal agreed with the Applicant that she had "been in several respects treated unfairly," in abuse of the Bank's discretion, and ordered the Bank to reinstate her. Under the version of the Tribunal's Statute then in force, the Bank was entitled to determine that reinstatement was not in the institution's best interest, in which case it would have been required to pay the Applicant a significant lump sum in lieu of reinstatement. Prior to *Yoon (No. 2)*, the Bank had invariably chosen this option whenever the Tribunal had rescinded a redundancy decision. The Applicant became the first staff member to be reinstated, in accordance with her petition. The Bank assigned her to the World Bank Institute ("WBI"). The Applicant subsequently challenged the manner in which she was

reinstated. The Tribunal rejected her new application in this respect because she had not exhausted internal remedies. *Yoon (No. 3)*, Decision No. 267 [2002]. She then took her case to the Appeals Committee. Following the Appeals Committee's rejection of her claims, she returned to the Tribunal which dismissed her claims on the merits. *Yoon (No. 4)*, Decision No. 317 [2004].

4. The following year, she raised claims relating to her work program, performance evaluation ("OPE") and salary merit increases ("SRI") in 2002 and 2003, her attempts to secure various alternative positions within the Bank and allegations of stigmatization and discrimination. In *Yoon (No. 5)*, Decision No. 329 [2004], the Tribunal dismissed a majority of her claims as untimely or barred as *res judicata*. In *Yoon (No. 5)*, Decision No. 332 [2005], the Tribunal examined the remaining claims on the merits and found that the Bank's treatment of the Applicant and the management of her case was problematic in a number of ways and ordered it to pay her \$40,000 as compensation. The Applicant declined this payment. (See *Yoon (No. 6 and No. 7)*, Decision No. 390 [2009] paras. 15-18.) The Applicant then challenged, *inter alia*, her 2005 and 2006 OPEs. In *Yoon (No. 6 and No. 7)* the Tribunal dismissed her claims. Convinced that she had not been given a fair performance evaluation and a proper work program for a long period of time, and concluded that "little hope" existed for reviving her career at the Bank, she sought to explore the possibility of pursuing External Service in another institution to facilitate her career transition. The Tribunal reviewed the Applicant's complaints concerning her request to pursue External Service and the basis for her 2007 OPE and SRI and, in *Yoon (No. 8)*, Decision No. 404 [2009], dismissed her claims. With respect to her 2007 OPE and SRI, the Tribunal found that, while her managers made efforts to find a work

program for her, the Applicant herself failed to show any interest. The Applicant took to sending a series of mass e-mail messages to staff members in the Bank, which prompted the Bank to exclude her from its e-mail system. She challenged this decision, and the Tribunal held, in *Yoon (No. 9)*, Decision No. 429 [2010], that the Bank had a reasonable and observable basis for its decision to revoke her access to the Bank's e-mail system. The Applicant continued to decline to meet with her supervisor and other WBI officials and to carry out the work assigned to her. On 14 January 2008, the Bank placed her on a Performance Improvement Plan ("PIP") and her employment was terminated for unsatisfactory performance with effect from 9 March 2008. In *Yoon (No. 10)*, Decision No. 432 [2010], the Tribunal found that the record demonstrated that the Applicant's performance was plainly unsatisfactory, that she had been properly placed on a PIP to improve her performance, and that she paid no regard to the requirements of the PIP; it concluded that her employment with the Bank was not terminated unreasonably. The Applicant also brought a series of Applications concerning actions taken by the Appeals Committee in reviewing her various grievances. The Tribunal dismissed these claims in *Yoon (No. 11)*, Decision No. 433 [2010] and *Yoon (No. 12)*, Decision No. 436 [2010].

5. This judgment deals with five applications in which she challenges actions taken by the Bank relating to the decision to place her on administrative leave pending the termination of her employment, to carry out a weapons check and monitor her private e-mail account and to impose restrictions on her access to its premises in connection with and following the termination of her employment.

FACTUAL BACKGROUND

6. In July 2006, the Applicant had a meeting with Bruno Laporte, who was to be her supervisor at the WBI. The Applicant claims that she expressed her desire to maintain a good relationship with Mr. Laporte, but advised him that she was exploring an external assignment with the Vice President, Human Resources (“HRSVP”), and that she expected to leave the Bank soon. Mr. Laporte and the Applicant have different recollections of the tenor of this meeting. Mr. Laporte believed that two comments made by the Applicant during the meeting raised security concerns. She claims that he misunderstood her comments. Since that meeting, Mr. Laporte and the Applicant did not meet privately again until August 2007.

7. Around September or October 2007, Mr. Laporte contacted Peter Gallant, Manager of the Bank’s Security Office (“Security”), “to discuss the Bank’s workplace violence program,” and said that he (Mr. Laporte) was concerned about one of his employees. The record is unclear as to whether Mr. Laporte had specifically identified the Applicant by name at this initial meeting. The possible solutions Mr. Gallant discussed with Mr. Laporte included requiring the staff member to undergo counseling, and “that people be put on administrative leave until we find out more about it from a purely security perspective.”

8. On 10 January 2008, the Applicant was placed on a PIP and was advised that failure to improve could result in termination of her employment. On 29 January 2008, Mr. Laporte convened a meeting between himself, Mr. Gallant, a Security Specialist, and a Senior Human Resources (“HR”) Officer, Networks Team, Human Resources Services (“HRSNW”), at which the possibility of placing the Applicant on administrative leave was discussed. At this meeting, Mr. Laporte identified the Applicant as the individual

who had been mentioned at the meeting of September/October 2007 regarding “workplace violence.” Mr. Laporte explains that he convened this meeting “on the basis of my conversation with [the Applicant] and my observation of what was happening in the unit and the interaction - some of the meetings we had had before Christmas. I could tell she was increasingly under stress because of this whole situation and the possibility of her doing harm to herself or to other staff.” The then Director, Sector and Thematic Programs, WBI, who also attended one of these “pre-Christmas meetings” with the Applicant, later described it as a “very good conversation.”

9. In an e-mail message dated 14 March 2008, the Security Specialist summarized the meeting of 29 January 2008. The summary included the following statement:

Gallant had her email checked in the last few months and there was nothing that indicated any threat. Gallant suggested that when she is told that she will be put on administrative leave that she be instructed to pack her belongings and leave ASAP. (We did not recommend that she be given unhindered access after that communication). Gallant also was going to check with DC Police about any potential weapons purchases. This came up negative. (Emphasis added.)

10. The possibility of placing the Applicant on administrative leave was also discussed at a follow-up meeting between representatives of HR, the Director of Thematic Programs, WBI, and Mr. Laporte.

The decision to place the Applicant on administrative leave

11. Mr. Laporte and the Director of Thematic Programs, WBI, found the Applicant’s performance under the PIP to be unsatisfactory. In an e-mail message dated 21 February 2008 to the Acting Vice President, WBI, the Director recommended that the Applicant’s employment be terminated for unsatisfactory performance.

12. On 3 March 2008, the Acting Vice President, WBI, met with the Acting Director of Human Resources Operations, and the Manager, HRSNW, to discuss the recommendation that the Applicant's employment be terminated. At this meeting, certain concerns about the Applicant's continued presence in the office and the possibility of disruptive workplace behavior were discussed. The Acting Vice President, WBI, recounted that "the feeling from [the Applicant's manager] was that [the Applicant's] coming in with no work program and so on could lead to morale issues and others for the colleagues." The Acting Director of Human Resources Operations stated that "there could be some form of disruption."

13. In an e-mail message dated 4 March 2008, the Acting Vice President, WBI, sought approval from HRSVP to place the Applicant on administrative leave, stating:

I intend to inform [the Applicant] tomorrow of her termination of employment effective May 9, 08 for unsatisfactory performance. *Given that her services are no longer necessary, and some concerns about her continued presence in the office have been raised,* I request that she be placed on Administrative leave from March 7, 2008 - May 9, 2008. I am requesting Administrative leave as of March 7, 2008 to allow her some time to gather her personal belongings. Upon receipt of your approval, and in accordance with Staff Rule 6.06, *section 9.07*, I will inform [the Applicant] about these arrangements in the termination memo. (Emphasis added.)

14. That same day, the Acting HRSVP approved the recommendation to place the Applicant on administrative leave. In a memorandum dated 6 March 2008 and entitled "Notice of: (a) Ending of Performance Improvement Period (PIP); (b) Termination of employment for unsatisfactory performance; and (c) Administrative Leave" (hereinafter the "administrative leave memorandum"), the Acting Vice President, WBI, informed the

Applicant that her employment would be terminated and that she would be placed on administrative leave. The memorandum stated, among other things:

This notification serves to inform you that your notice period begins today, March 6, 2008, and that your last day of employment with the World Bank Group will be May 9, 2008. With the approval of ... the Acting Vice-President of HR, *in accordance with Staff Rule 6.06 (Leave) paragraph 9.09*, you will be placed on Administrative Leave effective Saturday March 8, 2008, up to the end of your employment with the Bank, *since there is no requirement for your daily presence in the office. While on Administrative Leave, you will need the approval of the Vice-President of HR to enter Bank premises.* Therefore, should you need to come to the Bank while on Administrative Leave, please contact your manager, Bruno Laporte ... or your HR Officer ... who will request the needed approval and make any necessary arrangements.

Since you will be on Administrative Leave as of this Saturday, March 8, 2008, please make sure to take your personal belongings from the office by close of business Friday, March 7, 2008, or, if you need more time to do so, please let Mr. Laporte or [your HR Officer] know. (Emphasis added.)

15. On 6 March 2008, the Applicant met with the Acting Vice President, WBI, and Mr. Laporte, and was informed of the termination of her employment with the Bank. It appears that the Applicant went to shake the hand of the Acting Vice President, WBI, and said “see I’m not armed, I can shake your hand.” Mr. Laporte considered this event to be “alarming,” but the Acting Vice President, WBI, described this meeting as “very civil.” The Applicant was provided with the administrative leave memorandum as well as a document entitled “Checkout procedures when leaving the Bank.” This document is made available to all staff separating from the Bank, and it addresses a range of matters including the return of the staff member’s Bank identification card, and, where applicable, the issuance of a retiree identification card.

Placement of initial “no access” and “no hire” flags

16. On the same day – 6 March 2008 – the Lead Specialist, HR Corporate Operations (“HRSCO”), sent an e-mail message to HR staff members requesting that the Applicant’s access to Bank buildings be blocked effective “cob (5:30 PM) tomorrow,” while she was on administrative leave “during the period of March 8 through May 9, 2008.” He requested that a “no hire flag” be placed on her record with indefinite duration given the termination of her employment for unsatisfactory performance, in accordance with Staff Rule 4.01, paragraph 8.05. He stated that he had been informed that the Applicant would be advised of these conditions in the notice of termination of her employment. Such flags were placed on the Applicant’s PeopleSoft record.

17. On 7 March 2008, the Senior HR Officer, HRSNW, instructed a member of Security that the Applicant’s access to Bank buildings should be blocked at 5:30 PM on 7 March 2008. At 4:24 PM, the Applicant wrote an e-mail message to Mr. Laporte, with a copy to the Senior HR Officer, among others, requesting to be allowed until 16 March 2008 to collect her personal belongings.

18. At 4:43 PM, the Senior HR Officer sent a further e-mail message to Security, asking that appropriate security actions be taken against the Applicant should she fail to leave Bank premises by 5:30 PM on 7 March 2008. Shortly thereafter, the Applicant left Bank premises for a late lunch, and the Senior HR Officer was immediately notified by Security.

19. The Applicant returned to Bank premises at 5:40 PM, by which time her Bank identification card had been cancelled electronically pursuant to the instruction of the Senior HR Officer’s instruction, and the Applicant was not permitted to enter the Bank.

The Applicant spoke with Mr. Laporte requesting that she be allowed to enter the building. Mr. Laporte, after speaking with HR, met with the Applicant in the lobby of the building to address her concerns. There appears to have been an altercation between the Applicant and Mr. Laporte. The Applicant claims that she reached out to touch Mr. Laporte's crossed arms "in an attempt to gently plead to his common sense." The Security supervisor in the J building described the Applicant's touch as a "physical assault" and threatened her with arrest.

20. At 5:59 PM, Mr. Laporte replied to the Applicant's earlier request for an extension of time as follows:

Per [the administrative leave memorandum], please let [the Senior HR Officer] know what day and block of time you need to finish collecting your personal belongings from your office. Similarly, if you need access to meet with Bank offices in connection with your separation, including the Staff Association, please provide [the Senior HR Officer] with at least one day's advance notice giving the proposed times, so that she can get the necessary approvals and make the arrangements.

21. The Applicant was later permitted to enter the building. She was escorted by a Security officer from 7:50 PM until she left at around midnight. According to a Bank document entitled "Security Operations Journal" of 7 March 2008 which describes, among other things, the events of that date, the Applicant was in a very agitated state, screaming insults into the telephone. She addressed the person on the phone as "Bruno" and ended the conversation using expletives ("you are nothing but [...]") and slammed the telephone receiver on its base. According to this Journal, the Applicant challenged the authority of the Security officer to remove her from the building, and Security officers "witness[ed] [the Applicant] verbally and physically assault Mr. Bruno Laporte as he came to the ... lobby to talk with her."

22. The Senior Project Manager, Security, similarly described this event in his testimony before the Appeals Committee:

The report that was made to me at the time was that security supervisors on scene felt strongly enough that whatever behavior [the Applicant] were exhibiting towards Mr. Laporte posed a threat to him ... what's in the record ... is that it was a physical contact and that they had to step in to prevent any further contact.

23. An e-mail message dated 14 March 2008 from the Security Specialist to the Senior Project Manager contains a record of a meeting of 13 March 2008 between Mr. Laporte, the Senior HR Officer, HRSNW, and the Senior Project Manager. The message notes that the meeting had been called by Mr. Laporte "because he has been afraid of potential workplace violence around [the Applicant's] termination on [6 March 2008]." Security explained in that meeting that there would be "triggers" in the future that could cause the Applicant to become agitated and desperate (such as the loss of G4 visa status), and the Security Specialist's message noted that Security needed to be kept abreast of these events so they could plan accordingly and take extra precautions. The message also notes that Security stated that it did not recommend the issuance of a retiree badge in view of the recent "attack" on her manager.

Corporate Security went on record to state that during the times that she is required to come to our facilities, that the person receiving her will take the responsibility to escort her at all times (receive her and walk her out). Given the fact that she verbally and physically attacked her manager on March 7, 2008 we do not want her to have unhindered access.

[Mr. Laporte] summarized three incidents he found to be alarming:

1. First meeting he had with her she said that when you have an idea you have to fight until the end (he felt this meant she was associating herself with terrorists).
2. She made a reference to the French collaborating with Nazis ([Mr. Laporte] is French).

3. During her termination meeting she went to shake Acting WBI VP's hand and said "see I'm not armed I can shake your hand."
24. The message also noted the meeting of 29 January 2008.

Restrictions on Applicant's access during her administrative leave

25. On 18 March 2008, the Applicant wrote to Mr. Laporte and the Senior HR Officer, HRSNW, requesting access for herself and her niece to the Bank's buildings on 20 March 2008. The Applicant indicated that she wished to attend to financial matters at the Credit Union, to clarify her visa and pension issues and also to "visit a couple of colleagues." By e-mail message dated 19 March 2008, the Senior HR Officer replied to the Applicant agreeing to make the necessary arrangements for her and her niece to conduct their financial transactions and to clarify her visa and pension issues. The Senior HR Officer stated, however, that she did not think that "a visit to a couple of colleagues is a legitimate justification to enter the Bank premises while on administrative leave under Staff Rule 6.06, para. 9.09."

26. The Senior HR Officer added that since the Applicant did not finish removing all her personal belongings from her office on 7 March 2008, a visit would be arranged at a later date for that purpose. On 20 March 2008, at 8:58 AM, she wrote to the Applicant:

I need to ask you to use Credit Union facilities which do not require Bank or Fund ID for access. The following services are located at the locations indicated The usual "teller services" and other services are available at the Credit Union facilities in [the International Monetary Fund] IMF HQ2 and at the F Building [International Finance Corporation] (IFC) If you need to conduct any Credit Union business which is not available at these locations you can let me know, including day, time and which office and person you need to visit, so we can make arrangements as necessary.

27. The Applicant and her niece visited the Bank on 20 March 2008 as arranged.

28. The Applicant and the Bank's Security Office also made arrangements for the Applicant to visit the pension office on 27 March 2008. That same day, at 12:02 PM, the Applicant wrote to the Manager, HRSNW, to request permission to attend a seminar to be held in the Bank's auditorium at 2:00 PM that afternoon. The Applicant understood the event to be open to members of the public. She was, however, informed by the Manager, by telephone, that the seminar was not open to the public and was not a "legitimate justification" for her to enter the premises. The Manager also sent the Applicant an e-mail message to the same effect:

I have learned that today's presentation in the Preston Auditorium is not open to public and that attending events of this nature would not be considered a legitimate justification to enter the Bank premises while on Administrative Leave under Staff Rule 6.06, para. 9.09.

29. On the same day, the Applicant sent the Manager another e-mail message in which she stated:

[I] would like to point out that the organizer(s) of the seminar was willing to allow my friend, who was with me but is not affiliated with the Bank and did not ask for prior approval, to attend it. I don't understand on the basis of what justification I was not allowed to attend the seminar and treated even worse than outsiders. You promised that you would provide me with specific qualifications. I am curious what they are and please send them to me.

30. On 4 April 2008, the Senior HR Officer wrote to the Applicant stating:

Further to your email, *this is to confirm that your access to Bank premises is limited for security considerations and in order to avoid disruption in the workplace.* While you do not have general and unhindered right to enter Bank premises, we will continue to accommodate your meetings with Bank officers in connection with your separation, for example meeting with offices of the [Conflict Resolution System] or [Human Resources] or Pension. We still need at least one day's advance notice of your proposed visits, so that the necessary approvals could be sought and arrangements made. (Emphasis added.)

31. The Applicant states that this was the first time that she became aware that the Bank considered her to be a possible source of disruption or a security concern. Thereafter, the Applicant was permitted to enter Bank premises for the purposes of attending Appeals Committee hearings or to go to the Credit Union.

Restrictions on Applicant's access after the termination of her employment

32. The Applicant's administrative leave ended on 9 May 2008, after which her employment with the Bank terminated. On 9 May 2008, the Applicant sent an e-mail message to HRSVP requesting his permission to enter Bank premises on 9, 10 and 12 May 2008. The Applicant sent a series of e-mail messages requesting clarification as to whether she would be allowed access to Bank premises as a retiree upon her separation from the Bank. In one of these messages, addressed to HRSVP, the Applicant stated:

Neither you nor [the Senior HR Officer, HRSNW] answered my urgent question as to whether I would have normal access to the Bank's premises following my termination, i.e. from tomorrow, Saturday, May 10, 2008. Upon carefully rereading [the administrative leave memorandum] once again, it became clear to me that my question was superfluous since it is already answered there.

In particular, the memorandum states that "While on Administrative Leave you will need the approval of the Vice-President of HR to enter Bank premises." Since the Administrative Leave is ending with my employment, i.e. today, this unambiguously means that from tomorrow on, I can enter Bank premises without your prior approval and on the same basis as any other World Bank retiree.

As a courtesy, and to preempt any logistical glitches, I would like to let you know my plan on Monday, May 12 2008....

33. The Senior HR Officer responded to the Applicant on 11 May 2008 advising her that her appointments for the following day could be accommodated. She continued:

Please be advised that *the decision to restrict your access to the Bank Group premises for security considerations and in order to avoid disruption in the workplace as communicated to you in my e-mail on April*

4 2008 remains in effect. This means that you still must give at least one working day's advance notice when you need to come to the Bank so that a security escort can be arranged. (Emphasis added.)

Denial of retiree identification card and additional security concerns

34. In her e-mail message to HRSVP of 9 May 2008, the Applicant had stated that she would be coming to the Bank on 12 May 2008 to collect her retiree identification card. She presented herself at the Bank on 12 May 2008, and was informed that HR had not made a request in the system for her to be granted a retiree identification card. The Applicant went to HRSVP's office in order to clarify any difficulties relating to her retiree identification card. While this meeting had not been scheduled previously, the Security guard who escorted her did not object to her visit and led the way to that office.

35. The Lead Specialist, HRSCO, met with the Applicant to respond to her query. The Applicant states that he first claimed that the retiree identification card was not ready because she had not completed the submission of her pension claim. She claims that, when corrected, he then informed her that HR could not process the identification card in a timely manner since her pension claim was submitted late. In the end, he stated that HR would still have to decide on her right of access to the premises by assessing security concerns and potential for disturbance in the workplace on the basis of her "behavior."

36. The Applicant described the Lead Specialist's manner as "rough and quite intimidating: he was indeed so agitated – or at least acted as if agitated – that he could not even complete his sentences." The Lead Specialist, HRSCO, prepared a note for himself describing this encounter. He described the encounter as follows:

She came across to me as very intense, hostile and intimidating, not so much in gestures, but standing uncomfortably close, staring directly and intensely at me, not letting me speak, but speaking loudly, telling me I

should let her speak as she was the one being mistreated and that she had been continually mistreated. For a brief moment I actually expected her to slap me and I felt my heart racing and reacting physically as if I was being threatened.

37. He further pointed out that when he mentioned the security concerns and the interruptions in the workplace:

Her attitude changed and she started smiling and stood up and was ready to walk out. I stood up as well, and mentioned that given these concerns about security and interruptions in the workplace access would be restricted and there would be a review of the situation before a decision would be made with respect to access. She asked – or rather told – me that I should send her an e-mail. As she was walking out I did not manage to explain that she would be provided with an opportunity to comment and that the final decision on access would be made upon the Bank receiving her comments.

At the time of writing this, at 11.38, I still feel agitated and profoundly disturbed by her behavior with difficulty concentrating on other matters.

Imposition of a temporary restriction on the Applicant's access to Bank premises

38. On 12 May 2008, the Lead Specialist, HRSCO, sent the Applicant an e-mail message stating that a temporary “flag” had been placed on her record which would restrict her access to Bank Group facilities:

Following-up on our brief conversation of this morning, please note that *a temporary flag has been placed in your PeopleSoft record restricting your access to Bank Group facilities pending a full review as to whether there is an on-going need for the restriction and, if so, what the duration and conditions of the restriction should be.* Meanwhile, you may have access only with pre-approval from HR VP ... giving at least one working day's advance notice, so that a security escort can be arranged. Please note that such access may only be provided when there is a legitimate business reason that requires your presence on the Bank Group's premises and during normal business hours....

The temporary flag is being placed in your record in light of your behavior and statements that have raised concerns about security and disruption in the workplace. Following the full review, you will be provided an opportunity to respond to the information gathered and to the

recommendation. The review and any comments you submit will then be sent to the Vice President, Human Resources, for a decision.

39. The Applicant's PeopleSoft file was updated by an HR Officer on 12:45 PM on 12 May 2008, and read as follows:

1) block access to Bank Group buildings effective cob (5:30 p.m.) tomorrow, Friday, March 7, 2008 through May 9, 2008, administrative leave March 8 through May 9, 2008. 2) no-hire flag with indefinite duration, in accordance with her termination for unsatisfactory performance, and with SR 4.01, para. 8.05.

HR Front Office has informed us that [the Applicant] will be advised of the above in her termination notice.

5/12/08: Pre-cautionary flag: Ms. Yoon advised verbally by [the Lead Specialist] of continued access blocked temporarily pending a full review.... (Emphasis added.)

40. On 26 May 2008, the Applicant complained about the basis for the decision to impose a temporary restriction on her access to the Bank. She also protested "independently and just as importantly" against the non-issuance of her retiree ID on fabricated grounds. In response, on 30 May 2008, the Lead Specialist, HRSCO, merely reiterated the decision to restrict her access temporarily pending a full review. The Applicant continued to request further clarifications from the Bank about the basis for the imposition of this restriction. She also sought clarification as to whether she would be granted a retiree identification card. On 9 June 2008, the Lead Specialist, HRSCO, responded that HRSVP was aware of their correspondence, and that he would take a decision on these issues following the outcome of a review and once she had an opportunity to comment, and she would be notified accordingly.

41. *Requests to visit the 1818 Society and attend seminars.* On 4 August 2008, the Applicant wrote to HRSVP requesting permission to visit the 1818 Society, an

organization of Bank retirees, which has an office on Bank premises. The Applicant apparently had become a dues-paying member after termination of her employment. The Applicant sought to meet with the 1818 Society to learn about new developments at the Bank, including the changes to the Bank's Conflict Resolution System and the Staff Rules.

42. On 5 August 2008, the Lead Specialist, HRSCO, informed the Applicant that she was not allowed access to the offices of the 1818 Society since she was not a member. She responded that she was a fee-paying member of the 1818 Society, and he stated that he had been informed by the Society that it could not provide a Security escort for the Applicant.

43. In December 2008 and January 2009, the Applicant requested permission from HRSVP to attend three events which were being held on Bank premises: (i) a seminar concerning the changes to the Bank's Conflict Resolution System; (ii) a reception co-hosted by the IMF Korean Executive Director's Office, World Bank Korean Executive Director's Office, the World Bank Group-IMF Staff Korea Association and the Korean Economic Society to which she had been invited; and (iii) the Annual Winter Luncheon of the 1818 Society. She was informed that, as these events were not considered to be "compelling business reasons", she was not allowed access to the Bank for those purposes.

44. *Request to use Joint Bank-Fund Library.* In the meantime, in her e-mail message of 4 August 2008, the Applicant also stated that she needed to visit the IMF "on a regular basis particularly the Joint [Bank-Fund] Library for [her] future career development" stating that this was "a basic right of every Bank retiree", and requested that HRSVP

enable her to obtain such access. In response, the Lead Specialist, HRSCO, sent the following message on 5 August 2008:

Please arrange with the IMF. Our understanding is that the Library is open to the public on Thursday from 10AM to 5.30PM. Visitors are expected to be present at 10AM. You need to call before Thursday to request admittance

45. The Applicant states that thereafter she used the Joint Library located on IMF premises on a regular basis on Thursdays (during its hours of public access) and occasionally at other times as a guest of various staff members of the IMF.

46. On 17 February 2009, the Applicant used the Joint Library as a guest of a staff member of the IMF. To gain access to the Joint Library, she passed through the IMF's security procedures. Four hours into her visit at the IMF, the Applicant was approached by an IMF security guard IMF and a member of the Library staff, and was asked to leave the premises. According to the Applicant, the IMF security guard told her that the "World Bank notified the IMF that Applicant should not be allowed on IMF premises." The Applicant was escorted out of the building by the Security guard, and asked to leave the premises of the IMF.

47. On 18 February 2009, the Applicant wrote to HRSVP advising him of the incident and requesting that he ensure that she is allowed to use the IMF library the following day, during the Thursday public access hours as a member of the "public at large." Responding for HRSVP, an HR Officer advised the Applicant that her request had been denied. The HR Officer stated:

The Bank is not in a position to accede to your request that you be granted access to the Joint IMF/Bank Library as "public at large." Since your access to Bank premises is still restricted, any access may only be granted when there is a legitimate business reason for your presence on Bank

premises. A visit to the Joint IMF/Bank Library does not qualify as a legitimate business reason.

Facility Access Review and indefinite restriction of the Applicant's access

48. On 29 December 2008, the Acting Director of Employment and Compensation Policy in Human Resources ("HRSEC") sent the Applicant a document entitled "Facility Access Review", from the Bank's Security Office, dated 17 November 2008. The Applicant was also provided copies of the e-mail message from the Security Specialist recording the 13 March 2008 meeting, the Security Operations Journal entry recording the incident of 7 March 2008, the note of the Lead Specialist, HRSCO, to himself describing their meeting of 12 May 2008 and the e-mail message from the Lead Specialist of 12 May 2008 by which the Applicant was informed of the imposition of a temporary restriction on her access to the Bank. The Applicant was requested to provide comments on the Facility Access Review to HRSVP. After review of the Facility Access Review and of her comments, HRSVP would decide whether to accept the recommendations in the Facility Access Review.

49. As part of the Facility Access Review, the Senior Project Manager, Security, had been asked to review the record with regard to the suspension of access by the Applicant to the Bank and to prepare a memorandum thereon. In this memorandum, he indicated that the Applicant's unrestricted access had been suspended in response to complaints from staff members who were concerned about her disruptive behavior in the workplace. He referred to his meeting with Mr. Laporte on 13 March 2008 in which the latter expressed fear of "potential workplace disruption or violence involving [the Applicant]."

He also gave three examples of “inappropriate, intimidating and violent behavior” on the part of the Applicant. He referred to the incident of 7 March 2008 (*see* paragraphs 17 to 22 above); the incident of 12 May 2008 (*see* paragraphs 36 and 37 above); and the three incidents recorded in the Security Specialist’s e-mail message of 14 March 2008 (*see* paragraph 23 above). The Senior Project Manager stated:

The institution has a duty to provide a safe and secure work environment. Staff should expect that steps will be taken to deal with inappropriate behavior in the workplace to prevent it from affecting their physical and emotional wellbeing. [The Applicant] has a record of inappropriate behaviors that disrupt the workplace and sow fear for personal safety in many staff with whom she has dealings. Facility access to the Bank is based on the principle of business need or, in the case of spouses and retirees, a specially granted privilege. Denying [the Applicant] facility access is a prudent step to provide staff with the safeguards they expect in the work place.

Based on the incidents cited above, there is no indication that [the Applicant’s] pattern of inappropriate behavior has improved to the point where her interactions with staff will not cause disruptions in the workplace, distractions, unnecessary stress or concerns for personal safety. In consideration that there is no presumption of a right to access for former staff members ... it is therefore recommended that [the Applicant’s] access to Bank facilities be restricted to only that which is necessary to attend hearings related to any pending appeals or tribunal cases; that all access be pre-arranged with the office having jurisdiction over the case; that portal-to-portal escort be provided; and that access is contingent upon [the Applicant’s] consistent demonstration of civil behavior appropriate in the workplace. It is further recommended that a World Bank photographic retiree access credential not be provided to [the Applicant].

50. The Applicant submitted comments on the Facility Access Review on 20 January 2009. She challenged the factual basis of the findings and recommendations and the process followed in the review as well as the delay in making it available to her for comment.

51. On 18 February 2009 HRSVP rendered his decision, in which he accepted the findings of the Facility Access Review. He stated:

In the review, Corporate Security did not find that your pattern of inappropriate behavior has improved to the point where your interactions with staff will not cause disruptions in the workplace, distractions, unnecessary stress or concerns for personal safety. Corporate security therefore recommended that your access to Bank facilities be restricted and that a “World Bank photographic retiree access credential” should not be provided to you.

...

I have now reviewed both the Facility Access Review and your comments. I do not accept your characterization of Bank staff or their actions as ill motivated or retaliatory and I am not persuaded by your argument that you should be permitted unrestricted access to Bank premises. In particular, I do not see in your comments any indication that you appreciate your effect on persons you confront, or that you would refrain from the confrontational behavior described in the reports attached to the Facility Access Review.

Accordingly, I have accepted the recommendation in the Facility Access Review. You may continue to have access to Bank premises necessary for you to conduct your ongoing official business with the Bank, in accordance with the procedure outlined in our e-mail dated May 12, 2008, which states:

You may have access only with pre-approval of HRVP, which you may obtain by sending a request by e-mail to [an HR Officer] ... giving at least one working day’s advance notice, so that a security escort can be arranged. Please note that such access may only be provided when there is a legitimate business reason that requires your presence on the Bank Group’s premises and during normal business hours

Restrictions on the Applicant’s access to Bank premises following HRSVP’s decision of 18 February 2009

52. On 5 May 2009, the Applicant sought to enter one of the Credit Union facilities that the Senior HR Officer, HRSNW, had recommended in her message of 20 March 2008, i.e. the Credit Union facilities attached to the IMF building, which did not require a

Bank or IMF identification card (*see* paragraph 26 above). The Applicant was initially permitted to enter the building upon verification of her driver's license as a form of identification. The security officer subsequently consulted with another security officer and requested that the Applicant present her Bank identification card. The security officer seized the Applicant's Bank identification card, but this was retrieved by the Applicant's companion. The Applicant states that she was told by the security officers that she was not allowed to enter IMF premises.

53. On 6 May 2009, the Applicant wrote to HRSVP to inform him of this incident, and to point out that that this was contrary to the instructions she had been given by HR as to the appropriate Credit Union facilities she should use. On 8 May 2009, the Lead Specialist, HRSCO, wrote to the Applicant requesting that she return her Bank identification card, as follows:

This is to inform you that it has come to the Bank's attention that you have not returned your Bank Group ID to the Security's ID Office as requested under the Checkout Procedures when Leaving the Bank. This is to request that you return your Bank Group ID immediately to the Bank. ... *Until and unless you return your Bank Group ID your access will remain denied in all Bank buildings regardless of the reasons you might need to access the Bank buildings. Once you return your Bank Group ID prior access arrangements (as indicated in the letter of HR VP of February 18, 2009) will resume....* Please be advised that as your employment with the Bank has terminated on May 9, 2008, your Bank Group ID is no longer valid. Thus, access to the IMF is no longer possible by using an invalid Bank Group ID. (Emphasis added.)

54. On 12 May 2009, the Applicant responded stating that she was ready to exchange her old Bank Group identification card for a proper retiree identification card, in line with the checkout procedures attached to the administrative leave memorandum of 6 March 2008. The Applicant also requested clarification of the scope of the bar on her access to

Bank premises, and in particular, the meaning of the phrase “all Bank buildings regardless of reasons.”

55. On 29 May 2009, the Applicant again sought access to the Credit Union facilities at the IFC building, another facility that had been identified by the Senior HR Officer, HRSNW, in her message of 20 March 2008. The Applicant entered the building upon presentation of her driver’s license to the Bank Security officer at the door. The Security officer subsequently requested that the Applicant present her Bank identification card, but she did not have this card with her. Another Security officer then approached the Applicant and advised her that his instructions were to bar her from any Bank premises, including the Credit Union, until she surrendered her Bank identification card.

56. On 31 May 2009, the Applicant wrote to the Lead Specialist, HRSCO, informing him of the incident of 29 May 2009, and advising him that she still had yet to receive clarifications on the terms of the restrictions on her access to the Bank’s buildings as set out in his e-mail message of 8 May 2009. On 3 June 2009, the Lead Specialist, HRSCO, advised the Applicant that:

Since the restriction of your access to Bank premises is still in effect, you cannot gain access without prior authorization. I would like to use this opportunity to reiterate the request for you to return your Bank ID as you are required to do pursuant to Paragraphs 27 and 36 of AMS 6.50. ... I would also like to remind you that the return of a Bank ID is not conditioned on the issuance of a retiree ID as you keep insisting.

57. On 4 June 2009, the Applicant replied to the Lead Specialist, HRSCO, reiterating her willingness to “surrender [her] old Bank ID (despite the very questionable legality of the Bank’s attempts to force [her] to do so), provided [she] received proper and satisfactory clarifications of the terms of such surrender.”

58. In October 2009, the Applicant's request to attend the 31st Annual Meeting of the 1818 Society was denied by the Bank.

The relief sought by the Applicant

59. On 11 April 2008, 22 April 2008, 28 May 2008, 17 June 2008, 7 July 2008, 31 March 2009, 29 April 2009, 26 June 2009 and 27 July 2009, the Applicant filed a number of appeals with the Appeals Committee contesting decisions concerning, *inter alia*, the restrictions on her ability to access the Bank prior to the termination of her employment; the decision to place her on administrative leave; the decision to continue to restrict her access to Bank premises following the termination of her employment; the decision by Mr. Gallant, to "monitor, check and interfere with [the Applicant's] personal email in search of alleged security concerns"; the decision of Mr. Gallant "to contact the Washington, D.C. police force and run a check of possible weapon purchases" by the Applicant; the "trumped-up, slanderous allegations" of Mr. Bruno Laporte, "of [the Applicant] as potential 'security threat' associated with 'terrorists and other related decisions taken by the Bank.'" By letters dated 26 June 2009 and 8 March 2010, the Bank's Managing Director accepted the recommendation of the Appeals Committee and denied the Applicant's requests for relief.

60. The Applicant filed applications with the Tribunal on 30 November 2009, 3 May 2010, 29 July 2010 and 7 September 2010. As relief, the Applicant requests a total of \$3,400,000 as compensation. The Applicant also requests, *inter alia*:

- (i) "elimination of [the] March 7, 2008 Security Operations Journal from the record";

- (ii) “quashing of any ‘security findings’ based on the alleged March 7, 2008 incident”;
- (iii) “quashing of Applicant’s ongoing access restriction to Bank premises with immediate effect”;
- (iv) “formal reprimand and further appropriate disciplinary sanction of Mr. Bruno Laporte and [the Senior HR Officer, HRSNW] for dereliction of duty on March 7, 2008”;
- (v) “quashing and destruction of any circular or circulars, including but not limited to any and all documents, and any and all copies thereof, hard copy or electronic, provided by the Bank to the IMF on or before February 17, 2009, reflecting on Applicant in any negative manner whatever”;
- (vi) “quashing of Applicant’s ongoing access restriction to IMF premises with immediate effect; full restoration of Applicant’s right, unencumbered, to access the IMF-World Bank Joint Library during normal public access hours”;
- (vii) “immediate production of all files, records, memoranda, and other documentation, written or otherwise, recording or pertaining to the weapons-check in [the Applicant’s] name made by the District of Columbia police force in response to Mr. Gallant’s inquiry as referenced by [the Security Specialist] in her March 14, 2008 recording of a meeting held on January 29, 2008; and recording or pertaining to any other such

exchanges, within the past five years, between the World Bank and the District of Columbia police in which [the Applicant's] name or title is referenced in any manner”;

- (viii) “immediate expunging of all such files, records, memoranda and other documentation as described above, from the records of the District of Columbia, the World Bank, the United States Government, and from any other public body in which they or copies thereof may exist or be referenced”;
- (ix) “immediate disclosure to [the Applicant] of any and all email checks into my Bank email, or personal AOL email, by Mr. Gallant, by [the Bank's Security office], by any other agent or person representing or consulting with World Bank security, and by the District of Columbia government, the US government, or any other public authority or contractor, at any time within the past five years”;
- (x) initiation of “misconduct proceedings against Mr. Peter Gallant pursuant to Staff Rule 8.01 for his ‘willful misrepresentation of facts intended to be relied upon’ in testimony and pleadings before the Appeals Committee”;
- (xi) initiation of “misconduct proceedings against Mr. Peter Gallant pursuant to Staff Rule 8.01 for ‘reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct’ for his reckless disregard of Applicant's safety and honorable reputation, in violation of the Bank's obligations under Principle of Staff Employment

2.1, by publishing unfounded allegations that Applicant posed a potential security threat or offered a risk of workplace violence”;

- (xii) “promulgation of detailed rules, procedures, protocols, and protections to govern all interactions between the World Bank and any and all law enforcement agencies wherever existing, involving the release of questionable, and potentially damaging to the individual staff member, information regarding Bank staff to such law enforcement agencies for any purpose whatsoever; such rules to provide strict requirements of notice to such affected staff, opportunity for such staff to respond within the Bank Group prior to any inquiry to outside law enforcement agencies, and to provide specific penalties and sanctions against Bank staff, managerial or otherwise, who violate said rules, procedures and protocols”;
- (xiii) “executive action to quash the Bank’s ‘Facility Access Review’ of Applicant and [HRSVP’s] February 18, 2009 decision to accept that Review”;
- (xiv) “immediate restoration of Applicant’s free and unrestricted access to the premises of the World Bank, and to the premises of the IMF, including all research facilities and service offices, on the same basis as any other retired or separated Bank staff”;

- (xv) “immediate and permanent removal of any and all flags from Applicant’s PeopleSoft files at the World Bank, and from any other records of the World Bank which contain such flags”;
- (xvi) “preemptive bar of the Bank to interfere with the right of any non-Bank entity (including but not limited to the IMF, the KES, the 1818 Society) to have Applicant participate in their events or activities, wherever occurring, based on alleged security concerns arising from or relating to Applicant’s behavior prior to February 18, 2009”;
- (xvii) “issuance by the Bank President, on behalf of the Bank Group, of a detailed apology, to be circulated Bankwide and releasable to the public, for the Bank’s abuse of Applicant in painting her as a security risk without proper process and proper evidence, barring her from access to Bank premises, and for interfering with her rights of free association”;
- (xviii) “ethical investigation of [HRSVP] for deliberate, reckless and improperly motivated abdication of basic principles of legality and fairness, including repeated violation of the Principles of Staff Employment including Principles 2, 8 and 9”;
- (xix) “ethical investigation of [the Lead Specialist, HRSCO,] for his defamatory communication with the 1818 Society, and for providing a not properly authenticated and potentially clandestinely redacted document as evidence to improperly paint Applicant as a security risk”;

- (xx) “immediate access to all Bank-Fund Staff Credit Union facilities with no restriction or precondition”;
- (xxi) “immediate lifting of total access ban, with detailed and comprehensive clarification of conditions of future access”; and
- (xxii) “establishment of formal protocol governing any interactions between IMF security, signed and endorsed by both the Bank and IMF, with proper respect for the legal distinctions between the Bank and IMF and special attention to ensuring transparency, due regard for staff rights, and genuine security concerns.”

61. The Applicant claims attorney’s costs in the amount of \$44,364.

62. By order dated 15 September 2010, the Tribunal decided to consolidate the Applicant’s five Applications.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

63. In her five Applications, the Applicant challenges a total of thirty-seven decisions. The Tribunal will address the gravamen of her complaints.

Decision to place the Applicant on administrative leave

64. Staff Rule 6.06, paragraph 9.07, in force at the relevant time, prescribed:

A staff member who has been given notice of separation under section 6 or section 11 of Rule 7.01, “Ending Employment” or notice that employment is redundant and may be terminated under section 8 of Rule 7.01, “Ending Employment” may be placed on administrative leave to assist in providing time for a job search *or when the staff member’s Vice President, in consultation with the Manager, Human Resources Service Center, determines that there is no requirement for the staff member’s daily presence in the office.* (Emphasis added.)

65. Staff Rule 6.06, paragraph 9.09, in force at the relevant time, provided regarding “Administrative Leave ... at the Direction of the Vice President, Human Resources” as follows:

The Vice President, Human Resources may place a staff member on administrative leave for up to 6 months *for reasons which he or she determines are sufficient after consulting with the staff member’s manager*. When a staff member has been placed on administrative leave under this paragraph, if the staff member wishes to enter Bank Group premises, he or she must first obtain the approval of the Vice President, Human Resources. (Emphasis added.)

66. The Applicant contends that the Bank’s decision to place her on administrative leave was based on the wrong paragraph of Staff Rule 6.06; it should have been based on paragraph 9.07, but paragraph 9.09 was invoked instead. She contends that the decision to place her on administrative leave under paragraph 9.09 lacked a proper basis. She argues that Mr. Laporte’s purpose was to generate a narrative to be used to frame her as a “security risk”, and that the events of 7 March 2008 were the result of the Bank’s effort to provoke the Applicant by setting up a security confrontation.

67. The Applicant also contends that all the restrictions on her access became known to her *post facto* - she was given no advance notice, no reasons, and no right to respond or comment. She claims that (i) the invocation of security concerns against her was not disclosed to her until she received the e-mail message from the Senior HR Officer, HRSNW, of 4 April 2008, (ii) she had not been given notice that a “no hire” flag had been placed in her PeopleSoft file on 6 March, in addition to the “no access” flag, (iii) she was not informed of either flag at any time before 9 March 2009, when she found out in the context of separate Appeals Committee proceedings, and (iv) the Lead Specialist,

HRSCO, concedes that notice of flag placement is always required, and that the “no-access” flag is separate from a “no hire” flag, and that both require separate notification.

68. In response, the Bank argues that the administrative leave decision was based on a reasonable application of paragraph 9.09. The Bank adds that paragraph 9.09 had been used in two other similar situations of staff members whose employment was terminated for performance issues and who were placed on administrative leave based on paragraph 9.09, because there were concerns about their presence in the office.

69. The Bank refers to Mr. Laporte’s testimony before the Appeals Committee, where he had stated that: (a) the Applicant conveyed to him that she had a number of problems with the Bank, that she had several grievances against the Bank and was distressed about those grievances; (b) the Applicant made a clear reference to people standing on principle and drew an analogy with terrorists; (c) once he tried to engage the Applicant in WBI’s work program as of July 2007 she resisted, and their friendly and positive relationship became adversarial; (d) the Applicant made a reference to people who had collaborated with the Nazis; (e) the Applicant continued to refuse to meet with him; and (f) the interaction with the Applicant “shifted from what was a friendly relationship to something that was much more difficult.” In addition, the Bank argues that other staff members had questioned the Applicant’s presence in the office while she did not have a work program. Mr. Laporte’s concerns about the Applicant’s behavior reasonably led him to consult with his managers, Security and the Health Services Department on a number of occasions as part of his due diligence of managing the Applicant. The Bank argues that the Applicant’s verbal and physical attack against Mr. Laporte on 7 March 2008 aggravated the growing concerns regarding her behavior and warranted the

additional measure of requiring the Applicant to be accompanied when visiting Bank premises in order to prevent similar incidents, especially against Mr. Laporte.

70. The Bank states that the restrictions imposed were provided for in Staff Rule 6.06, paragraph 9.09, and that it reasonably accommodated the Applicant's requests for access; it was only because of the incident of 7 March 2008 that Security made the decision to have the Applicant escorted whenever she was on the Bank's premises.

71. The Bank argues that the administrative leave memorandum was sufficient to inform the Applicant of the reasons for placing her on administrative leave. It contends that, after giving notice of placement on administrative leave, it has no obligation to inform staff members specifically and additionally that it implements the terms of the administrative leave by placing a flag in their PeopleSoft records. The Bank also argues that the "no hire" flag was imposed pursuant to Staff Rule 4.01, paragraph 8.05.

72. *The basis of the administrative leave decision.* The Tribunal has consistently recognized that the decision to place a staff member on administrative leave is a matter of managerial discretion. With particular regard to the placement of a staff member on administrative leave pursuant to Staff Rule 6.06, paragraph 9.09, the Tribunal held in *AE*, Decision No. 392 [2009], paras. 24-25 that:

A decision to place a staff member on administrative leave under paragraph 9.08 or 9.09 is always a matter of managerial discretion. Thus, when an administrative leave decision is challenged, the Tribunal will not exercise its broader review power as it does in cases of disciplinary measures, but will undertake a more limited review of whether the Bank has abused its discretion in placing the staff member on administrative leave. ... Here, HRSVP's decision would be an abuse of discretion if it lacked a reasonable basis, or was arbitrary or carried out in violation of a fair and reasonable procedure. *Desthuis-Francis*, Decision No. 315 [2004], paras. 19, 23.

73. In examining whether the Bank properly exercised its discretion in deciding to place the Applicant on administrative leave, the Tribunal will first examine the arguments of the parties regarding the application of the correct provision of Staff Rule 6.06 to the Applicant. The Bank has maintained in its pleadings before the Tribunal and also before the Appeals Committee that it intended to invoke paragraph 9.09, and sought the approval from HRSVP accordingly. Testimony provided by the HRSVP at the time indicated that the reference to Staff Rule 6.06, paragraph 9.07 in the administrative leave memorandum was a typographical error which went uncorrected.

74. The Tribunal notes, however, that while the Bank invoked Staff Rule 6.06, paragraph 9.09 in the administrative leave memorandum, the basis for its decision mimicked the language of Staff Rule 6.06, paragraph 9.07. This would have caused understandable confusion on the part of the Applicant. This could easily have been avoided had the Bank informed the Applicant in that memorandum of the full basis for its decision to place her on administrative leave; but it did not.

75. As the record clearly shows, the decision to place the Applicant on administrative leave was indeed based on more than one reason. The Acting Vice President, WBI, had proposed to HRSVP in his e-mail message of 4 March 2008 that the Applicant be placed on administrative leave on the grounds that: (i) her services were no longer necessary; and (ii) there were some concerns about her continued presence in the office. The Applicant was not informed about the latter reason in the administrative leave memorandum of 6 March 2008. The record does not indicate a reason for the Bank's failure to inform her of the second reason. Furthermore, the Tribunal notes that there had clearly been security concerns about the Applicant, and administrative leave had been

suggested also at the meeting of Mr Laporte with Security on 29 January 2008 as a way to address those concerns (*see* paragraphs 7-9 above). The evidence before the Tribunal does not support the Bank's argument that security concerns did not play a role in the Bank's decision in the administrative leave memorandum to place the Applicant on administrative leave pursuant to paragraph 9.09 as distinct from 9.07. This failure constituted violation of a fair and reasonable procedure; it resulted in the Applicant's inability to respond to such concerns so that HRSVP or her managers could review their decision with the benefit of her explanations.

76. *Imposition of "no access" and "no hire" flags.* With respect to the Applicant's claims that she was not given notice that "no access" and "no hire" flags were to be placed in her record, the Tribunal recalls its decision in *Dambita*, Decision No. 243 [2001], para. 26 in which it emphasized that:

The placement of any flags, for whatever purpose, must follow the basic elements of due process, including, specifically, written notification and the right to reply. This applies to present and former staff.

77. Furthermore, in *Q*, Decision No. 370 [2007], para. 41, the Tribunal reinforced its judgment in *Dambita* by holding:

In the specific context of a flag placement, the requirements of written notification and facilitation of the staff member's right to reply were clearly laid down by the Tribunal in *Dambita*, Decision No. 243 [2001], at para. 26. This obligation extends to each flag placed, no matter the flag's purpose. (*Id.*) The Bank does not have discretion to withhold information concerning flags from a current or former staff member, as doing so denies the staff member the right to contest the flag placement.

78. On 6 March 2008 the Bank imposed restrictions on the Applicant's access to the Bank's premises and on her ability to be re-hired by the Bank through the imposition of "flags" in her Peoplesoft record. The Tribunal finds that a direct consequence of the

Bank's failure to inform the Applicant of the full basis for its decision to place her on administrative leave was that the Applicant was also not aware of the basis for the restrictions on her access to Bank premises and not provided the opportunity to respond thereto.

79. Furthermore, it is clear from the record that a meeting was held on 13 March 2008, following the incident of 7 March, in which the security concerns relating to the Applicant's presence on Bank premises were reconfirmed. As a result of these concerns, it was recommended that the Applicant's access be restricted and that she be escorted at all times when visiting the Bank. The Applicant was not informed of these security concerns, or these additional restrictions, at the time. The record shows that it was only on 4 April 2008 that the Applicant first became aware that there were reasons, additional to those originally communicated to her, for the restriction of her access to Bank premises. On 4 April 2008, the Senior HR Officer advised the Applicant that her access to Bank premises was being limited "for security considerations and in order to avoid disruption in the workplace." This, however, did not cure the violation of the Applicant's due process rights, since it did not inform her of the basis for these security concerns nor give her a meaningful opportunity to respond to the restrictions imposed in the context of her administrative leave.

80. The Tribunal recognized, in *Q*, Decision No. 370 [2007], para. 50, that:

the Bank is not precluded from entering and maintaining flags as a preliminary safeguard pending due process ... the Bank need only engage in a good-faith effort to garner the staff member's informed response to the allegations made against him or her, for the purpose of providing an objective decision-maker with sufficient evidence to be able to determine the true nature of the facts and reach a well-founded decision as to

whether the flags are to be maintained or removed pursuant to Bank rules and policy.

81. A staff member should be informed, at the point at which any preliminary safeguards are imposed, that a full review will be undertaken and that he or she will have the opportunity to respond at a later stage. In this case the record shows that the Applicant was never informed throughout the duration of her administrative leave that the restriction to her access had been introduced as a preliminary safeguard pending due process. The Applicant was only informed of the reasons for the restrictions on her access during her administrative leave, and accorded the opportunity to respond thereto, in the context of the Facility Access Review, which was conducted nearly 10 months later. In any event, the Facility Access Review pertained to the placement of a permanent restriction on her access to Bank premises, rather than the restrictions imposed in the context of her administrative leave. The denial of a meaningful opportunity to respond to the access restrictions imposed during her administrative leave violated the Applicant's due process rights as she was unable at any point to contest the placement of the flag.

82. With regard to the "no hire" flag, the Tribunal notes that it was placed on the Applicant's record pursuant to the decision to terminate her employment for unsatisfactory performance. Staff Rule 4.01, paragraph 8.05, provides that "a former staff member whose employment terminated ... for unsatisfactory performance under Rule 7.01, section 11, may not be reappointed." The "no hire" flag merely gave effect to the terms of the Applicant's separation from the Bank. As was seen above when the "no hire" flag was placed in the Applicant's PeopleSoft record, it had been stated that the Applicant would be informed:

2) no-hire flag with indefinite duration, in accordance with her termination for unsatisfactory performance, and with SR 4.01, para. 8.05.

HR Front Office has informed us that [the Applicant] will be advised of the above in her termination notice.

83. Even though the Applicant had been aware that her employment was being terminated for unsatisfactory performance, she was not given specific notice that one of the consequences of this decision was that she could not be rehired by the Bank and that a “no hire flag” would be placed on her personnel record. While staff members are expected to be aware of the provisions of the Staff Rules, it is a matter of good practice that staff members be informed of the consequences of such a decision which are contemplated by the Staff Rules. Nevertheless, the Applicant has not shown that she suffered any prejudice as a result of the Bank’s failure to inform her specifically that a “no hire” flag would be placed on her personnel record.

84. *The incident of 7 March 2008.* The Tribunal finds that the parties’ descriptions of the events differ, and that there is not enough evidence before it to enable it to determine whether the Applicant’s actions constituted physical assault or not. Suffice it to say that Security found the incident serious enough to warrant imposing additional restrictions on the Applicant’s access to the Bank, including the requirement that she be escorted at all times. As the Tribunal has found in *Q*, Decision No. 370 [2007], para. 39, it “will not substitute its assessment of the situation for that of the Bank, nor overturn the exclusion decision absent an abuse of discretion, meaning where the decision is ‘arbitrary or unreasonable, or is in violation of the staff rules.’ (*Mwake*, Decision No. 318 [2004], para. 35.) In matters involving Bank security, this discretion is broad indeed.”

Monitoring of the Applicant’s e-mail messages and weapons check

85. The Applicant claims that, following Mr. Laporte's meeting with Mr. Gallant in September or October 2007 (*see* paragraph 7 above), the Bank improperly checked her e-mail messages and contacted the D.C. police to check "about any potential weapons purchases", in the course of arriving at its decision to place her on administrative leave. The Applicant refers, in this regard, to the Facility Access Review, which included an e-mail message prepared by the Security Specialist on 14 March 2008, in which she stated that "Gallant had her email checked in the last few months and there was nothing that indicated any threat. ... Gallant also was going to check with DC Police about any potential weapons purchases. This came up negative."

86. *Monitoring of the Applicant's e-mail messages.* In the context of Appeals Committee hearings, Mr. Gallant stated "What I did was review the public e-mails that she had mass-circulated to see if there was any indication in there that she would be making any threat. Those are the only e-mails I ever looked at." It appears that these e-mail messages were those of (i) 30 October 2006: "Making the CRS reform work"; (ii) 29 April 2007: "The Rule of Law at the World Bank: A message to the Board, President and GAC (Governance and Anti-Corruption)"; (iii) 30 May 2007: "Governance as Culture: Some lessons taught by 'Rizagate'"; (iv) 19 June 2007: "Governance for real: A message to Mr. Zoellick"; (v) 24 June 2007: "Friday's CRS announcement: Slap in the face of all whistleblowers"; (vi) 24 July 2007: "Some inconvenient truths." In one of the Appeals hearings, Mr. Gallant stated that "when her supervisor came to me the first time, he brought me some – some of the things that she had written and distributed, her e-mails. And then I had looked at those at that point."

87. The Applicant claims that the Bank had no basis to monitor her e-mail messages and had failed to follow the procedures set forth in AMS 6.20A by checking her e-mail messages without authorization to do so. She argues that Mr. Gallant was not aware of any specific security concerns when he took steps to monitor her e-mail messages. She further questions the credibility of Mr. Gallant's statements that he only monitored her "public, open emails", suggesting that he checked other personal e-mail messages.

88. In response, the Bank submits that Mr. Gallant "merely reviewed the mass e-mails that Applicant had disseminated in the Bank – which was already in the public domain – to see if there were threats directed against Bank staff or facilities." The Bank maintains that Mr. Gallant did not "go into Applicant's e-mail account", and thus did not require special authorization pursuant to AMS 6.20A. The Bank claims that the "review of Applicant's mass emails in the public domain was not done on a whim, but was necessitated by the concern that Applicant had aroused."

89. The Tribunal notes that Mr. Gallant has consistently maintained that he only reviewed the numerous e-mail messages which the Applicant, herself, had widely distributed within the Bank. There is no evidence that the Applicant's e-mail account and the messages contained therein were monitored or searched by the Bank.

90. *Weapons check.* The Applicant further claims that the Bank's decision to contact members of the D.C. police was improper. She claims that there is no basis under national law for the Bank to undertake "exchanges of information, searches for information in law enforcement databases concerning any of its staff, or formal or informal referrals of its staff for law enforcement purposes absent an existing written agreement or protocol that governs such relationships."

91. The Applicant points out that the Bank has provided several different descriptions of the enquiries undertaken by Mr. Gallant following Mr. Laporte's accusations against her, including: "a check... about possible weapons purchases;" "a low level security check with the police to know if [the Applicant] had legally purchased a weapon;" and a "check to see whether a weapons permit had been issued to [the Applicant], not whether she purchased a weapon." Mr. Gallant had testified before the Appeals Committee as follows:

I can go back to the law enforcement authorities and find out, are there other issues that are not associated with the Bank that they may be aware of....

I was pretty sure that she had not purchased a weapon legally. But I did check with a contact of mine in the Police Department. It was more a personal records check just to see if anything had ... happened with her involvement, a weapon, or if she had purchased a weapon.

...

All I asked was there any indication of any violation of law with weapons in D.C.

The Applicant, on her own initiative, communicated with the Gun Control Section of the Metropolitan Police Department, and was informed, among other things, that no requests for a weapons check regarding her had been received from the World Bank or any of its contractors or employees.

92. The Bank argues that Mr. Gallant's decision to avail himself of his contacts in the District of Columbia Police Department and to check whether the Applicant had been issued a weapons permit was "a reasonably precautionary initiative undertaken ... out of concern for potential workplace difficulties." The Bank claims that this check returned a negative response, and "most important, and as confirmed by Mr. Gallant during the

proceedings before the Appeals Committee, such an inquiry would not be retained in the police records or files.” In its Rejoinder, however, the Bank submits that it did not conduct a weapons check on the Applicant. The Bank claims that, in any event, the question of a weapons check conducted by Mr. Gallant had no bearing on the administrative decision to restrict the Applicant’s access to its premises.

93. It is notable that the Bank has not been able to provide a clear or consistent explanation as to whether it had contacted the District of Columbia Police Department to make enquiries about the Applicant and, if so, what information it had sought. By his own admission, Mr. Gallant conducted an informal check about any possible weapons purchases made by the Applicant; but it is also possible that the scope of his enquiry was broader – “I can go back to the law enforcement authorities and find out, are there other issues that are not associated with the Bank that they may be aware of.”

94. Principle 2.1, paragraph (a), of the Bank’s Principles of Staff Employment provides that the Bank shall “establish and maintain appropriate safeguards to respect the personal privacy of staff members and protect the confidentiality of personal information about them.” Staff Rule 2.01, paragraph 5.01, identifies certain types of personnel information that may be released to persons outside the Bank Group without the authorization of the staff member concerned, and states in relevant part:

The Bank Group will not release other personnel information to outside parties, including member governments and their representatives, without the staff member’s authorization, except in cases of emergency situations or upon advice from the Legal Vice Presidency of the Bank to release information for legal proceedings or law enforcement efforts. In such cases, the staff member will be notified as soon as reasonably possible of what information is released and to whom.

95. In *AG*, Decision No. 397 [2009], para. 33, the Tribunal held that:

because the due process rights of an applicant are directly affected by failure to provide notification of any disclosure of confidential personnel information to outside parties, the prohibition in Staff Rule 2.01, paragraph 5.01, must be construed narrowly and any exceptions must be strictly circumscribed, consistently with the Tribunal's examples of "legitimate risk of flight, evidence tampering, or witness intimidation."

96. The Applicant only became aware of Mr. Gallant's "informal" enquiries upon her receipt of the Bank's Facility Access Review in 3 January 2009, almost one year after the date of the Security Specialist's entry indicating that a weapons check had been conducted. The Tribunal does not seek to micromanage the actions that may be taken by Bank Security in pursuance of its duties, but, in the present circumstances, the Bank's failure to observe the requirements of due process reflected in its Staff Rules is troubling. Due process requires that staff members be informed when enquiries of the kind suggested in Mr. Gallant's testimony are being conducted. Due process also requires that any enquiries made regarding a staff member's record with the police should be formal and documented. Informal checks with personal contacts in the police department do not meet the requirements of due process. A formalized, documented inquiry would have provided a clear understanding of the exact nature and remit of Mr. Gallant's request for information, in contrast to the unhappily opaque explanations provided by the Bank.

Restrictions on the Applicant's access to Bank premises after the termination of her employment

97. *The imposition of a "temporary flag"*. The Applicant claims that there was no basis for the Bank to extend the access restrictions in place during her administrative leave upon the termination of her employment. She was informed only on 11 May 2008, two days after the termination of her employment took effect, that these restrictions would remain in place "for security considerations and in order to avoid disruption in the

workplace.” She questions the basis for this decision, and argues that the Bank has not identified a decision-making process underlying the extension of these restrictions.

98. The Applicant claims that the decision to impose the temporary restrictions on her access to Bank premises caused her significant harm; her retiree status was jeopardized as a result of the Bank’s decision to withhold her retiree identification card; she was humiliated by having an escort whenever she was on Bank premises; and she was excluded from participation in the 1818 Society, of which she is a dues-paying member, and from attending events of the Korea Economics Society held on Bank premises.

99. The Applicant also claims that the Bank failed to accord her due process in introducing the “temporary flag.” She contends that she was not notified properly of the decision to impose the “temporary flag”; the only notice she received was contained in the e-mail message from the Lead Specialist, HRSCO, dated 12 May 2008, but she argues that this did not identify a reasoned decision-making process or the authority on which the new restriction was based.

100. In response, the Bank argues that the restriction of the Applicant’s access to its premises after her separation from service was necessitated by security concerns to avoid disruption in the workplace. The Bank argues that the “Applicant’s belligerence over the years and particularly her aggression towards her managers were a cause for concern, which was aggravated by the incident of 7 March 2008 when she verbally and physically assaulted her then supervisor....” While the Applicant may not have appreciated the seriousness of the security considerations that informed the decision to restrict her access, Security, with which the institutional responsibility for making a determination of what constitutes a security threat rests, took her “threats” seriously.

101. In *Q*, Decision No. 370 [2007], para. 34 the Tribunal stressed that due process rights extend to former members of the Bank:

The Applicant did not lose these rights when he left the Bank, even though he committed certain of the acts in question thereafter. If such rights were lost upon termination, this could leave a staff member vulnerable and without recourse in the face of arbitrary exclusion actions having a severe impact on his or her career.

102. In *Q*, at para. 50, the Tribunal also held that “the Bank is not precluded from entering and maintaining flags as a preliminary safeguard pending due process.” The Lead Specialist, HRSCO, informed the Applicant on 12 May 2008 of the temporary restriction of her access to Bank Group facilities pending a full review as to whether there is an on-going need for the restriction and, if so, what the duration and conditions of the restriction should be. The Tribunal finds that the Bank did not act unreasonably by placing a temporary restriction on the Applicant’s access to its premises pending the outcome of a Facility Access Review. The purpose of the full review was to determine and assess the basis for the security concerns and the workplace disruption, and to provide an opportunity for the Applicant to respond before a decision would be made in her case. Due process, however, requires that the staff member be informed promptly of the basis of the restrictions. A long delay in informing the staff member of the specific incidents that gave rise to the security concerns could, depending on the circumstances, be prejudicial to the staff member’s ability to respond effectively. The timing and conduct of the full review undertaken in the present case is considered below.

103. *Restrictions on the use of the Joint Bank-Fund Library.* The Applicant claims that, despite initially advising her that she could use the Joint Library as an ordinary member of the public, the Bank directed the IMF to exclude her from its premises. She

argues that, in so doing, the Bank exceeded its competence by exercising power over a separate legal entity such as the IMF.

104. The Applicant claims that the IMF was not acting on its own initiative in removing her from the Joint Library; she states that she was advised by a member of IMF Security that they were acting upon instruction from the Bank to exclude her. She points out that she had been admitted to IMF premises on a regular basis both before and after her termination from employment with the Bank. The Applicant also contends that, by directing the IMF to exclude her from its premises, the Bank improperly disclosed confidential information to an external entity. She argues that, even if there were a legitimate reason for the Bank to send a directive concerning the Applicant to the IMF, it failed to notify the Applicant “as soon as reasonably possible of what information [was] released and to whom”, contrary to Staff Rule 2.01, paragraph 5.04, as in effect at the time.

105. The Bank raises a jurisdictional objection to this portion of the Applicant’s claims. It argues that the contested decision was not a decision of the Bank but of the IMF, which is why the Appeals Committee declined jurisdiction. The Bank states that the IMF is an autonomous international organization, and, despite the culture of collaboration between the two institutions, it does not need authority from the Bank to regulate access to its premises. It argues that, even if there were a nexus between the action of IMF and an administrative decision by the Bank, a review of the action of the IMF would be outside the jurisdiction of the Tribunal.

106. The Bank also urges that this portion of the Applicant’s claims is time-barred as she had received notice that the Appeals Committee did not have jurisdiction over the

claim on 27 May 2009. It contends that the Applicant should have challenged this decision within 120 days of receipt of this notice, rather than wait for her consolidated appeals to be disposed of by the Appeals Committee and the consequent decision of the Bank regarding those appeals.

107. The Bank then argues, on the merits, that it shares with the IMF a number of common facilities, such as the Credit Union, Health Services Department, Joint Library; the Bank indeed has offices in the IMF building. The Bank submits that someone with a Bank security pass can gain access to IMF buildings, just as an IMF security pass can gain someone access to Bank buildings. The Bank states that “more pertinent to this Application, there is a passageway that connects the IMF buildings with the MC building of the Bank (which is also connected by a subterranean passageway with the J building of the Bank where Applicant used to work). Thus, if Applicant has access to the IMF buildings, she could gain access to Bank buildings and thereby circumvent her access restriction.”

108. The Tribunal will address first the Respondent’s preliminary objection to this portion of the Applicant’s claims. While the Joint Library may be located within the IMF, the Tribunal must presume – in the absence of any information from the Bank to the contrary - that the Bank had some control over this facility. This conclusion is supported by the HR Officer’s message to the Applicant on 18 February 2009, which clearly indicates that the Bank exercises at least some control over her access to the library:

The Bank is not in a position to accede to your request that you be granted access to the Joint IMF/Bank Library as “public at large.” Since your access to Bank premises is still restricted, any access may only be granted when there is a legitimate business reason for your presence on Bank

premises. A visit to the Joint IMF/Bank Library does not qualify as a legitimate business reason.

109. The Tribunal is not persuaded that the decision was entirely a decision of the IMF, and the Bank's preliminary objection in this regard therefore fails.

110. With respect to the Bank's objection as to the timeliness of this portion of the Applicant's claims, the Tribunal finds that it was not unreasonable for the Applicant to decide, in a rare expression of appreciation of judicial economy, to await the full disposal of her consolidated appeals by the Appeals Committee before filing this claim. Indeed, the "Information for Applicants" provided on the Tribunal's website states that "a claim that is included in an appeal previously filed with the Appeals Committee shall not ordinarily be admissible until the Appeals Committee has completed its consideration of all issues raised in the appeal as originally filed by the staff member." This part of the Bank's preliminary objection, therefore, also fails.

111. Turning to the merits of this portion of the Applicant's claims, the Tribunal finds that the Bank has demonstrated puzzling inconsistency as to its position on its ability to control access to the Joint Library. On the one hand, the Applicant was informed by the Bank that it is the IMF that has the prerogative to admit visitors but, on the other hand, the Bank states that it will grant the Applicant access to the library only when it is satisfied that there is a legitimate business reason for doing so. This lack of certainty resulted in a failure to articulate clearly the extent of the restrictions on the Applicant's access to Bank premises. The Tribunal finds that the manner in which the Applicant was removed from the Joint Library by Security was inappropriate and heavy-handed.

Facility Access Review and permanent bar on access to the Bank

112. The Applicant claims that the Bank should have commenced the Facility Access Review prior to the termination of her employment - i.e. in March 2008, when the basis for the security concerns about her were said to have arisen - rather than in May 2008. She contends that if the security concerns arising out of the meeting in March 2008 were genuine, it would have been unreasonable for the Bank to wait a period of two months to commence the security review. The Applicant further claims that, despite repeated requests, she was not provided information about the procedures and timeline for the Facility Access Review. She states that the Bank took an inordinately long period of time to undertake the review; she only received the Report of the review in early January 2009, nearly eight months after she was initially informed that a Facility Access Review would be carried out.

113. The Applicant submits that: (i) the review was undertaken without specific authorization or defined a purpose, timeline and parameters for the review; (ii) the author of the Facility Access Review failed to take efforts to collect evidence or to corroborate any evidence on which he relied; (iii) the incidents relied upon in the Review as evidence of her “disruptive behavior” were misconceived and incorrect. She also claims that HRSVP failed to take into account her comments responding to the findings in the Facility Access Review. She challenges the assessment of her behavior in the period following her termination of employment, since she did not have access to the premises and there was no specific evidence or allegation of inappropriate behavior by the Applicant. She claims that the Bank’s restrictions on her access to its premises have unduly hampered her rights.

114. In response, the Bank submits that, in consonance with the Tribunal's jurisprudence in *Mwake*, Decision No. 318 [2004], para. 35, and *Q*, Decision No. 370 [2007], para. 37, staff members do not enjoy an absolute right of access to Bank premises. The Bank claims that the Applicant's access to Bank premises was restricted during her administrative leave to avoid disruption in the workplace. It submits that her access restriction was maintained after termination due to security considerations and as she had less need then to access Bank premises. The Bank claims that the Applicant was denied access only when she did not have a legitimate or compelling business reason to visit Bank premises.

115. The Bank further submits that the Applicant's due process rights were respected, and that it complied with the requirements set out in the Tribunal's jurisprudence in *Dambita* and *Q*. The Applicant was informed on 12 May 2008 that a temporary flag had been placed in her record restricting her access to Bank premises pending a full review, and that she would be given an opportunity to respond after the review. The Bank states that it had provided the Applicant with a copy of the Facility Access Review so as to solicit her response to the allegations, but the Applicant did not offer any substantive rebuttal of the security considerations which necessitated the restriction of her access.

116. In *Mwake*, Decision No. 318 [2004], para. 35, the Tribunal held:

Unlike a present staff member who seeks to come onto Bank premises in order to pursue his official assignments, a former member is not presumed to have the same access rights, but must rather have a legitimate justification to enter upon the Bank's premises. Consultation with offices within the CRS may, under appropriate circumstances, constitute such a justification. But even when a former staff member can assert a convincing justification, the Bank in turn has the discretion to exclude him or her, and the Tribunal will not overturn such an exercise of discretion except when that exercise of discretion is arbitrary or unreasonable, or is a

violation of the staff rules. The Tribunal has held that even a current staff member has no absolute right to access Bank premises, and the Bank's interests are even more compelling with respect to a former staff member.

117. In *Q*, Decision No. 370 [2007], para. 37, the Tribunal also stated:

common sense dictates that the Bank may take reasonable efforts to control or condition access to its premises, particularly by persons who are not currently members of the staff, and even where a ground may exist for a person's entry. ... Maintaining security is a fundamental duty of the Bank to its staff, and to the integrity of the institution, and access to Bank premises is necessarily influenced by security considerations.

118. The Tribunal has stressed, at the same time, that the principles of due process must also be respected when introducing restrictions upon an individual's access to Bank premises. In *Q* the Tribunal stated:

The Bank is not precluded from entering and maintaining flags as a preliminary safeguard pending due process, nor must it condition its decisions and actions on the responses of a potentially aggrieved, aggressive or unstable current or former staff member who has been excluded. To avoid an abuse of discretion, the Bank need only engage in a good-faith effort to garner the staff member's informed response to the allegations made against him or her, for the purpose of providing an objective decision-maker with sufficient evidence to be able to determine the true nature of the facts and reach a well-founded decision as to whether the flags are to be maintained or removed pursuant to Bank rules and policy. (para. 50)

119. The Applicant was advised, on 12 May 2008, that the Bank would be conducting a Facility Access Review to determine "whether there is an on-going need for the [access] restriction and, if so, what the duration and conditions of the restriction should be." A member of Bank Security provided an assessment of the Applicant's case on 17 November 2008. The Applicant was not provided the report of the Facility Access Review until 3 January 2009, nearly eight months after she was informed that the review would take place. The record does not show that the Bank had to undertake an especially

onerous investigation, nor that the conclusions drawn in the Facility Access Review were premised on information that was not available to the Bank in May 2008. The Bank provides no explanation as to why the Facility Access Review took so long to complete. The exercise of the Bank's power to impose a temporary flag restricting a staff member's access to Bank premises pending due process, as contemplated in *Q*, presupposes that the Bank will proceed expeditiously to the full review and decide upon the need to put in place a permanent restriction. The requirement of a prompt review safeguards the ability for a staff member to provide a meaningful rebuttal, particularly when the incidents in question occurred several months earlier. The Tribunal finds that this inexplicably long delay violated due process.

120. The decision by HRSVP of 18 February 2009 to accept the recommendation that the Applicant's access be restricted states:

In the review, Corporate Security did not find that your pattern of inappropriate behavior has improved to the point where your interactions with staff will not cause disruptions in the workplace, distractions, unnecessary stress or concerns for personal safety. Corporate security therefore recommended that your access to Bank facilities be restricted and that a "World Bank photographic retiree access credential" should not be provided to you.

I have now reviewed both the Facility Access Review and your comments. I do not accept your characterization of Bank staff or their actions as ill motivated or retaliatory and I am not persuaded by your argument that you should be permitted unrestricted access to Bank premises. In particular, I do not see in your comments any indication that you appreciate your effect on persons you confront, or that you would refrain from the confrontational behavior described in the reports attached to the Facility Access Review.

121. As noted earlier, under the Tribunal's jurisprudence (*Mwake*, para. 35, and *Q*, para. 37) a former staff member is not presumed to have the same access rights as a

current staff member, and must rather have a legitimate justification to enter the Bank's premises. Even when a former staff member can assert a convincing justification, the Bank has the discretion to exclude him or her, and the Tribunal will not overturn such an exercise of discretion absent arbitrariness or evidence of violation of procedure. While the Applicant casts significant doubt on the plausibility of the Bank's characterization of her behavior as a security risk, the Tribunal notes that HRSVP's decision was not based merely on security concerns. While the decision mentions "concerns for personal safety", it is also based more generally on a "pattern of inappropriate behavior", "disruptions in the workplace", "distractions" and "unnecessary stress." Based on the entirety of the record before it, the Tribunal is not persuaded that HRSVP's decision to restrict the Applicant's access to the Bank permanently and not to issue her a retiree ID was arbitrary.

122. The Tribunal notes, however, that HRSVP based his decision to restrict permanently the Applicant's access to the Bank's premises and not to issue her a retiree ID partly on the fact that "Corporate Security did not find that your pattern of inappropriate behavior has improved to the point where your interactions with staff will not cause disruptions to the workplace, distractions, unnecessary stress or concerns for personal safety." A review of the Facility Access Review shows that apart from the two incidents of 7 March involving Mr. Laporte and of 12 May involving the Lead Specialist, HRSCO, and some comments that the Applicant had made to Mr. Laporte which allegedly caused security concerns, the Facility Access Review does not refer to any other incidents of alleged inappropriate behavior as to which the Applicant would be expected to show improvement. Neither the Facility Access Review nor the Vice

President's letter explain how the Applicant could have been expected to improve her behavior when she was never informed before receiving the Facility Access Review of the specific incidents that had formed the basis of the restriction on her access and was not given the opportunity to demonstrate actual change in her behavior. While the Tribunal will not overturn the HRSVP's decision, it is bound to take note of this violation of due process.

Restrictions on the Applicant's access to Bank premises following HRSVP's decision

123. The Applicant claims that the Bank's decision to restrict her access to Credit Union facilities located in the IMF and in the IFC amounted to a new restriction which lacked justification and was taken without appropriate authority. The Applicant submits that she was specifically advised to use the Credit Union facilities at the IMF and the IFC, which were outside the security perimeter of the Bank. She also claims that the Bank's attempt to condition her access to these Credit Union facilities on the return of her expired Bank identification card was unreasonable, as the expired identification card did not provide any access to the Bank's premises.

124. In response, the Bank submits that, pursuant to AMS 6.50, paragraphs 27 and 36, the Applicant was required to return her identification card under the "Checkout Procedures" applicable upon separating from the Bank. It requested the Applicant to return her identification card to the Security Office, but she refused to do so. The Bank argues that a retiree identification card is not an entitlement of a former staff member upon separation from the Bank; it is a privilege that the Bank may grant to ease access to Bank Group premises. It submits that, if the Applicant were truly a retiree within the

intendment of the Bank's policy on retiree identification cards, she may have been eligible to receive this card. But the Applicant was not eligible for a retiree identification card as her employment was terminated for unsatisfactory performance. The Bank believes that the status of a retiree does not negate its prerogative to control access to its own premises.

125. Paragraph 33 of AMS 6.50 (Identification Cards) provides that:

Expired ID cards or passes, or passes no longer needed for access to Bank facilities are turned in to the ID Office or to the security force at the visitor entrances in the lobbies of Bank buildings. Expired passes discovered by the security force while performing access control procedures at Bank buildings [are] confiscated.

126. The Tribunal notes that paragraph 36 of AMS 6.50, deals with the situation where a staff member does not return their identification card. Paragraph 36 provides that:

ID cards may not be kept by cardholders beyond the end of their affiliation with the Bank. Cardholders who terminate employment or contractual arrangements with the Bank prior to the expiration of their Full Access ID Cards are to turn them in to the ID Office not later than three working days prior to the termination of their affiliation with the Bank. ... Failure to turn in ID cards under this provision may delay the processing and receipt of benefits due the cardholder concerned. There is a \$20.00 fee for ID cards that have not been returned to the Bank.

127. It is clear that the Applicant was not entitled to retain her expired identification card; it was a condition of its issuance to her that she return it at the end of her employment with the Bank. The Bank had made several unheeded demands for its return. The Tribunal has upheld HRSVP's decision of 18 February 2008 not to grant her a retiree identification card. The Applicant's suggestion that she was entitled to retain the expired identification card and would return it only in exchange for a retiree identification card is unsustainable.

128. However, there is no evidence that she was trying to gain access to the Bank with her expired identification card. It appears that she was only trying to use the Credit Union facilities which, as she was informed by Bank officials, did not require special leave from HRSVP or the presentation of a Bank identification card. The Tribunal again emphasizes the Bank's obligation to inform the Applicant of the scope of the restrictions on her access and give prior notice of any revisions thereof.

129. The purpose of requiring the Bank to give such prior notice is to ensure that staff members are aware of the decisions taken by the Bank about them, and to avoid unnecessary surprises. In cases such as this, where the Bank has decided that certain restrictions will be imposed should a staff member fail to comply with the provisions of the Staff Rules, the purpose of such prior notice is to allow the staff member a reasonable opportunity to correct the situation and thereby avoid the imposition of the restrictions. In the circumstances on the present case, however, it appears that, once the Applicant was informed of this decision, albeit belatedly, she did not avail herself of the opportunity to correct the situation. It would be reasonable to assume that the Applicant would not have gone to the Credit Union at the IMF building had she been notified beforehand. But, even after the Applicant was notified of the new restriction, she still proceeded to attempt to enter the Credit Union facility in the IFC building without having complied with the Bank's demands for the return of her expired Bank identification card. Just as the Bank is required to respect the due process rights of its staff members, staff members are similarly required to behave reasonably so as to avoid needless confrontation. The Applicant's conduct in these circumstances does not suggest that due process would have tempered her actions.

CONCLUDING OBSERVATIONS

130. The facts and issues in this case demonstrate a regrettable lack of balance in the relations between the Applicant and some officials of the Bank, and this has contributed to the unfortunate and unacceptable waste of time and energy demonstrated by the record before the Tribunal. The Applicant, for her part, has now filed 18 applications with this Tribunal, and has continued to keep a number of Bank offices preoccupied. At the same time, the Bank's treatment of the Applicant has fallen short of appropriate standards in specific respects. While the Bank enjoys a discretion regarding control of access to its premises, it is responsible for a number of missteps in relation to the Applicant. It has not always acted promptly, it has not always provided her the information that she should have, it has not always been clear in the information it has provided to her nor has it always given her the opportunity to respond to such information.

131. Any future relations between the Applicant and the Bank shall be governed by the principles set out in this judgment. The Bank must be consistent in its dealings with the Applicant, and must inform her of any changes to the restrictions imposed on her access to the Bank before such changes are implemented. As for the Applicant, she must now come to terms with the fact that she has ceased to be a staff member. She must accept that she does not have a right of access to Bank premises, and that any access granted by the Bank is a privilege. There is no basis for the kind of relations that the Applicant would like to maintain with the Bank, and the Bank cannot be compelled to accommodate the Applicant's preferences. The Tribunal expects that this judgment will put an end to the pursuance of litigation by the Applicant which approaches an abuse of the Tribunal's processes.

DECISION

132. The Tribunal decides that:

- (i) the terms of this judgment, in so far as they acknowledge missteps of certain officials in the Bank in relation to the Applicant, constitutes a measure of satisfaction for the Applicant and is the extent of compensation which, in the judgment of the Tribunal, is appropriate;
- (ii) the Applicant's claims for costs are rejected; and
- (iii) all other pleas are dismissed.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, DC, 25 May 2011