



World Bank Administrative Tribunal

2018

Decision No. 593

**EU,
Applicant**

v.

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

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

**EU,
Applicant**

v.

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

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

2. The Application was received on 5 February 2018. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 9 October 2018.

3. The Applicant challenges the following decisions: (i) the performance rating of 3 for Fiscal Year 2016 (FY16); (ii) the revocation of trading authorization; (iii) the removal as Team Leader; (iv) the public announcements of the Applicant's reassignment due to failure to follow procedures in a trading transaction and refusal to provide information about the transaction; (v) the reassignment to "special projects" under the Director of a Department (Director); (vi) placement on leave; (vii) the restriction of access to the Bank during the leave and the failure to provide notice of or justification for this restriction; (viii) the relocation of the Applicant's work station away from others in the Department; and (ix) the restriction of access to the Bank outside of work hours, after the Applicant's return from leave, and the failure to provide notice of or justification for this restriction.

FACTUAL BACKGROUND

4. The Applicant joined the World Bank Treasury (TRE) as a consultant and then worked under term contracts until July 2001, when he was appointed as a Senior Investment Officer, Level

GG, on an open-ended appointment. In 2003, he was promoted to Principal Portfolio Manager, Level GH, in a Department of TRE. In 2009, he became a Team Leader.

5. In 2016, the Applicant's team managed between \$50 billion and \$60 billion in assets. In addition to managing these assets, the team under the Applicant's leadership introduced new markets and fostered technological innovations. As an example, the team was responsible for reaching an agreement with a country's central bank, enabling the Bank to access that country's bond market for the first time and to be the first multinational development bank to do so. The team also played a central role in the historic rebalancing of the International Development Association's (IDA) and International Monetary Fund's (IMF) investments or reserves portfolios to align with the new inclusion of the Chinese Renminbi in the IMF's Special Drawing Rights currency basket.

6. The Applicant's management of the team was recognized as excellent in his performance evaluations. For example, in the Applicant's 2012–2013 Overall Performance Evaluation, his supervisor commented:

[The Applicant] and the team, working in a very collegia[1] fashion have shown excellent judgment, based on sound analysis and opportunism, in investing the [...] portfolios. The resulting performance over the last year has been excellent.

7. Again, in the Applicant's 2013–2014 Overall Performance Evaluation, his supervisor wrote:

[The Applicant] has been very successful in expanding and diversifying the investments in the [...] portfolios. In the last year he and the team have introduced a broad range of relative value strategies [...]. [The Applicant] has championed the development of data extraction tools [...]. The IT department is so impressed by the simplicity and effectiveness of the tools that they are looking to develop them for broader use across the WBG [World Bank Group].

8. Finally, in the Applicant's Fiscal Year 2015 (FY15) Annual Review, his supervisor commented:

[The Applicant] is a highly experienced portfolio manager, I respect and value his judgment on all investment matters. In particular, he has world-class expertise in derivatives, and an excellent understanding of how changes in regulations or market structure open up opportunities for IBRD to generate additional streams of income. Often [the Applicant] has unconventional or contrarian views, and he challenges his colleagues with thought-provoking opinions. He can encourage a healthy debate with his views, which is a very valuable asset for the team.

9. It is noteworthy that the success of the team in 2016 was recognized by a Finance Partners Performance Award for “excellent portfolio performance.”

FY16 Annual Review

10. There were major changes in TRE during FY16, such as the departure of the Treasurer and Vice President in July 2015 and the appointment of a new one in September 2015. At the same time, the Applicant’s immediate supervisor left to join another organization. The Department did not have a Director between July 2015 and July 2016. During this period, the new Treasurer was also the Acting Director.

11. As Acting Director, the Treasurer did not have any mid-year discussions with any of her direct reports, including the Applicant. As she explained to the Performance Management Reviewer, this was because “she felt that she was too new to the Department to hold meaningful discussions.”

12. In August 2016 after the end of FY16, a new Director was appointed.

13. On 11 August 2016, the Treasurer had a performance discussion with the Applicant. The Treasurer acknowledged that the Applicant was a good and successful Team Leader, but she noted the concerns she had received from other staff about his behavior and emphasized to him the importance of a respectful workplace environment.

14. Following the meeting, on the same day, the Applicant emailed the Treasurer, stating:

You mentioned during the meeting that it might be advisable to have someone from HR etc., review the several complaints you have received about me. I think it is a sensible argument, and I would wish you make it a template not just for me but all the glorious directors and you. So bring it on, I am so ready!

15. By email dated 6 September 2016 to the Vice President of Human Resources (HRVP), the Treasurer raised the issue of the Applicant's behavior and asked

if an urgent review can be undertaken of [the Applicant's] behavior as I believe that, if not addressed, it could have far reaching consequences on the work of the [the Department] which manages a variety of asset portfolios totaling USD 150 billion.

[...]

I am very concerned about the possible impact of this situation on our Investment Management activities and the financial performance and integrity of the World Bank and would appreciate any recommendations on any additional actions that we need to take.

16. The Treasury Leadership Team (TLT) met in late September 2016 to review the Applicant's performance for FY16. The TLT endorsed a performance rating of 3 for the Applicant. The TLT acknowledged the successful performance of the Applicant and his team "especially considering a difficult market environment." At the same time, the TLT noted the need for the Applicant to "focus on the fostering of a respectful workplace" and that the Applicant as Team Leader and role model for team members "needs to address significant concerns about his behavior raised by various colleagues."

17. Upon learning that he had been assigned a performance rating of 3 for FY16, the Applicant sent an email dated 25 September 2016 to the Director. In that email, the Applicant noted that he received a performance rating of 3 for FY16 and stated that this was "slightly less than last year when the performance of the portfolios was a fraction of this year's."

18. The Director responded to the Applicant by email the following day, explaining that, while the "level of excess return is one of the most important" parts of the performance evaluation, teamwork, behavior, and contribution to TRE are also important criteria. He offered to have a further discussion with the Applicant.

19. On 16 October 2016, the Director informed the Applicant that he had been given a performance rating of 3 and in the Applicant's Annual Review, under the heading "Overall Supervisor Comments," the Director wrote:

I started my role as the Director [...] in August 2016. I therefore did not directly observe [the Applicant's] performance during the FY16 performance period. Given this, the evaluation below is based on the feedback regarding [the Applicant's] performance provided via ePerformance system, inputs by TRE VP and my review of available indications of his FY16 contributions, including email communication during the evaluation period.

Based on the above, I acknowledge the successful performance year the [...] team led by [the Applicant] had, especially considering a very difficult market environment. The [...] team contributed significantly to the successful Chinese Renminbi/SDR rebalancing for IDA and the IMF. They also played an important role in developing a model portfolio for the new IMF mandate. [The Applicant] demonstrated solid quantitative expertise as a portfolio manager in working on these tasks.

I also encourage [the Applicant] to focus on [...] fostering a respectful work place. As professional behavior and team work are key to the work of [the Department], especially for the team leader, who is a role-model for team members, [the Applicant] needs to address significant concerns about his behavior raised by various colleagues. [The Applicant's] feedback report clearly shows that his behavior needs improvement. For example, the tone and language in several of his emails to colleagues are disrespectful. Most importantly [the Applicant's] behavior could be [...] detrimental to portfolio management activities, because other colleagues feel unable to hold different views.

As a Team leader he is also expected to take a leadership role on Treasury-wide initiatives. I therefore encourage [the Applicant] to participate in department-wide and TRE-wide initiatives.

20. The feedback mentioned in the Director's comments reflects the comments of three of the Applicant's seven feedback providers who wrote, under the heading "Areas of Development (skills or behaviors to change)," as follows:

He has a tendency to be sarcastic on some managerial issues such as HR-related and business matter[s] itself with his peers. His remarks or [writings] in email could be seen as offensive rather than professional.

[...]

Smoother delivery of negative feedback to team members where appropriate.

[...]

[The Applicant] continues to create a hostile working environment through his aggressive behavior and harassment. The staff who are targeted are across Treasury who have different opinions to him and those who he perceives as a challenge to his authority and views. This means staff are hesitant to provide different views for fear of reprisal and harassment. He is disrespectful and offensive, verbally and in writing, to staff across departments [...].

21. On 14 December 2016, the Applicant submitted a request for Administrative Review of his FY16 Annual Review, objecting to his performance rating of 3.
22. On 13 January 2017, the Administrative Reviewer concluded that the performance rating of 3 did not require correction because, “while [the Applicant’s] excellent quantitative expertise as portfolio manager ha[s] been appreciated by many people, the feedback confirmed that [the Applicant] could better develop soft skills such as team work and communications.”
23. By email dated 25 January 2017, the Managing Director accepted the Administrative Reviewer’s conclusions.
24. Subsequently, the Applicant submitted a request for Performance Management Review.
25. On 21 March 2017, the Performance Management Reviewer issued his report, upholding the performance rating of 3.
26. On 30 March 2017, the Chief Executive Officer accepted the Performance Management Reviewer’s recommendation and declined to change the Applicant’s FY16 performance rating.
27. On 11 July 2017, the Tribunal granted the Applicant’s request for an extension of time to appeal his FY16 Annual Review until such time as he received the decision in his Request for Review No. 376, filed with Peer Review Services (PRS), discussed below.

The Bond Swap Transaction

28. In 2006, the Bank bought EUR 150 million in bonds issued by a wind-down company owned by a country. In March 2015, that country's government defaulted on the interest payments due on the bonds by imposing a moratorium on interest payments.

29. In September 2016, the Bank and other creditors received a tender offer from the government either to dispose of the bonds at 75% of face value, plus interest, or to swap the bonds for a new zero-coupon bond (ZCB) guaranteed by the government. According to the latter option, the Bank would take a ZCB with a fifteen-year maturity and market value at the time of issuance of 45% of the face value, with the offeror of the tender promising to repurchase the bond for a period of 180 days based on a market derived price, starting on 1 December 2016.

30. The Chief Financial Officer (CFO) and the Treasurer requested recommendations on the best way to proceed. Accordingly, at a meeting of the Asset and Liability Committee (ALCO) on 30 September 2016, which the Applicant attended, the ALCO recommended the acceptance of "the exchange offer for the zero-coupon bonds with the view of exiting from the position on or around December 1st."

31. By email dated 30 September 2016 to the CFO, the Treasurer recommended the acceptance of the ZCB. Regarding the ZCB option, she stated that it

[...] includes an offer to be repurchased by the Offeror during the Repurchase Period (for 180 days after December 1st, 2016) at a value based on EUR swap rates. It is highly unlikely that the repurchase value will be lower than the 30% Cash Offer value.

[...] can be sold in the secondary market, although there is risk of illiquidity in the secondary market for this new debt instrument.

32. By email dated 30 September 2016 to the ALCO secretaries, who were responsible for drafting the minutes of the ALCO meeting, the Applicant confirmed that the consensus was to accept the ZCB offer and projected that the offeror would repurchase for "45 cents," when the repurchase commitment would begin on 1 December 2016. The Applicant anticipated that the

secondary market would be uncertain but added that “[s]till, we are not [...] obliged to go to the offeror and we can go secondary any time we want.”

33. By 12 October 2016, the Applicant had completed the necessary steps to prepare for the delivery of the ZCB.

34. By email dated 14 October 2016, the Treasurer informed the Director of Treasury Operations that the ZCB had been delivered to the Bank’s account.

35. On the same day, an email was prepared to go from the Director of Treasury Operations to the CFO, informing him that the ZCB had been delivered. At the Applicant’s request, the email was amended to add that “TRE intends to sell the zero coupon bond and unwind the hedging swap on or around December 5, 2016, at close to the issuing value of the bond.”

36. Unexpectedly, the ZCB developed a secondary market and, on 21 October 2016, the Applicant sold the bond with a value of almost 45% and considerably lower transaction costs because of the early liquidation.

37. By email dated 21 October 2016 to the Director of Treasury Operations, with copies to, among others, the Director and the Chief Counsel, Corporate Finance, the Applicant immediately notified them that the bond was sold and the swap was unwound

for net proceeds of EUR 71.31 Mil, or EUR 152k short of the issue value, due to hedging costs. We decided to sell the bond today rather than wait for the buyback starting in December because we were actually able to reduce the transaction costs.

38. The Chief Counsel, Corporate Finance responded “[t]hat’s good news” and suggested that the Applicant notify the CFO in advance of an Audit Committee meeting scheduled for 24 October 2016. The same day, the Director asked the Applicant to draft an email for senior management about the bond sale. The Applicant responded by email a few hours later, setting out the plans for the ZCB, the development of a secondary market, and the benefits of disposing of it earlier than expected.

39. On the same day, the Treasurer also wrote to the Director and other TRE Directors about the agenda items for an extraordinary meeting of TRE leadership that day. In addition to the existing agenda items, the Treasurer wanted to discuss the ZCB sale, noting that, “[g]iven the representation to the MD/CFO that the bond will be sold on or around 5th December, should the[re] not have been a review of the analysis guiding the decision to sell ahead of when you planned as well as consultation with TRE Leadership at the minimum ahead of selling the bond[?]”

40. Following the extraordinary meeting of the TRE leadership, on the same day, the Director informed the Applicant by email that they had decided to prepare an urgent and detailed report of the bond sale for the CFO and asked the Applicant to provide the “[t]erms of trading and [e]conomic analysis” and the “[r]easons for executing today.” The Director of Treasury Operations also asked the Applicant for an analysis and rationale for the sale, which could be communicated to more senior personnel.

41. By email dated 22 October 2016 to the Director of Treasury Operations, the Applicant referred her to his original email informing her of the sale and the reasons for it. He stated that the intended date of sale “on or around December 5” was scheduled because “that’s when the official buyback starts and we did not know what kind of secondary market would exist,” that “[w]hat was agreed to is that we should try to sell the bond sooner rather than later,” and that he took advantage of the fact that they “could sell the bond and unwind the swap immediately at no worse terms.”

42. Shortly thereafter, by email, the Director of Treasury Operations acknowledged the Applicant’s explanation, but asked him for “a well-written, easy to follow, explanation of why we sold earlier than expected” that could be sent to senior management. As an example of the need to clarify, she asked the Applicant to explain the benefit of getting out of the position at \$150,000 less than the bond’s issue value. The Applicant provided an explanation half an hour later and promised to draft a note shortly. The Director of Treasury Operations subsequently shared drafts of an email to the Treasurer and the CFO with the Applicant and the Director for comments and requested information from the Applicant.

43. The Applicant relied on his previous emails explaining the reasons for the sale, and wrote to the Director, as follows:

Everything the universe needs to know is contained in my initial one paragraph email: issue value of the bond was €71.4 MM, we entered into a hedging swap until the official buyback period accepting to incur hedging cost. We then were able to immediately sell the bond in the secondary market, and unwind the swap at a net value of €71.4 MM - €152,090.

44. Throughout the afternoon of 22 October 2016, the Applicant and the Director of Treasury Operations continued to exchange emails regarding her request for information about the sale and his insistence that he had provided all the necessary information. Finally, the Director of Treasury Operations and the Director sent an email about the sale to the Treasurer and the CFO.

45. On 24 October 2016, the Director emailed the Applicant, “officially requesting you provide the details, cob today, for the final time [regarding the sale].” The Applicant responded to the questions posed in the Director’s email and noted that “[a]ll the necessary information you need have already been conveyed to you as indicated below. We have done what is best for the Bank. Up to you to prove us wrong.” The Director and the Applicant proceeded to exchange emails, in which the Director asked the Applicant to provide the information in an acceptable format for submission to the Treasurer, whereas the Applicant insisted that he had provided all the necessary information. Ultimately, the Director wrote to the Applicant that “[a]s you could not do any further I will ask [another colleague] to finish this for me.”

46. By email dated 27 October 2016, the Director sought advice from the Treasurer about managing the Applicant. According to the Director, because of the Applicant’s “disregard for investment decision making process, refusal to [respond to] my request of transaction related information and continuous disrespectful professional behavior,” he did “not believe that [the Applicant] can continue successfully to perform his Team Leader role.” The Director suggested that the Applicant’s access rights to trading systems be suspended immediately and that they discuss with the Applicant the possibility of assuming a technical GH position within the Department. The Treasurer agreed with the Director’s recommendations.

47. On 28 October 2016, the Director met with the Applicant in the presence of two Human Resources (HR) Officers. The Director informed the Applicant that he was immediately removing him as Team Leader and from all portfolio management functions, revoking his trading authorization, and reassigning him to special projects under the Director's immediate supervision. The Director also suggested that the Applicant take two weeks leave before assuming his new position, although he told the Applicant the leave did not need to be recorded in the Bank's leave request system.

48. After meeting with the Applicant, the Director appointed a Principal Portfolio Manager as the Team Leader, effective immediately. The team was informed of the changes and then, at a Department meeting, the Director announced the removal of the Applicant as Team Leader due to his "failure to follow procedures in executing the trade and failing to cooperate by not providing details regarding the transaction."

49. On 31 October 2016, at a regular morning market meeting, which included a country office, the Director announced the Applicant's reassignment, due to the Applicant's "failure to follow procedures."

50. By email dated 3 November 2016, the Applicant asked the Director for a "written statement of the charges you leveled against me, including all the relevant incidents and evidence, documents, emails, witnesses, etc."

51. By email dated 5 November 2016 to the Applicant, the Director responded that the reason for the reassignment had been conveyed at their meeting with HR and was summarized in his email of 30 October 2016. The email set out a description of the Applicant's "poor judgement and disrespect of the investment decision making procedures," "refusal to cooperate and provide transaction details post-transaction," and "repetition of misbehavior after warning from HR and Director."

52. On 8 November 2016, while the Applicant was on leave, he went to the office to collect some documents and spoke with a colleague who was the Acting Director at the time. The

Director's assistant informed the Acting Director that the Applicant was not permitted to be in the office, and the Acting Director asked the Applicant to leave.

53. By email dated 8 November 2016 to the Applicant, the Director confirmed that, "for purposes of administration, [the Applicant] will be excused from reporting to duty at WBG Offices to conduct any WBG business." The Applicant was informed that he did not need to submit a formal leave request for administrative leave in the Bank's leave request system.

54. On the same day, the Applicant was informed in an email from the Director's assistant that his work station would be moved close to the office of the Director and his personal assistant. The Applicant claims that, during his leave, his name was removed from the team list and his access to various TRE systems was blocked.

55. By email dated 11 November 2016, the Director's assistant informed the Applicant that his work station had been moved. The Applicant responded: "I find [the Director's] actions to be sadistic. I don't think this man is fit to be working with us. We need to do something about him. Best."

56. On 15 November 2016, the Director's assistant requested Information Technology to remove the Applicant from the team distribution list.

57. By email dated 15 November 2016 to the Director, the Applicant disagreed with the relocation of his work station and wrote "unless [the Treasurer] chooses to agree with you, when I go back to the office tomorrow I should at least occupy my old seat until there is a reason otherwise."

58. On 16 November 2016, the Applicant returned to the office and assumed his new role. The Director shared with him the Terms of Reference (TOR) for his new position as the special advisor to the Director. The TOR state that they were "prepared by [...] director on Oct. 14, 2016."

59. On Sunday, 20 November 2016, the Applicant tried to go to the office and found that his access was blocked. Accordingly, he emailed the Director's assistant to inquire whether the Director had blocked his access.

60. By email dated 21 November 2016, the Director's assistant confirmed that, "[w]hen your system access was changed, the physical access was also changed to business hours." She apologized that he had not been informed of the restriction and volunteered to "find out what business hours are."

61. This access restriction remained in force until 5 October 2017.

Opportunity to Improve Plan

62. On 22 November 2016, the Director placed the Applicant on an Opportunity to Improve Plan (OTI) for three months. The purpose of the OTI was to give the Applicant an opportunity to address his behavioral deficiencies, specifically, his "disrespectful and unprofessional behavior by sending insulting or disrespectful messages to [his] colleagues and superiors."

63. The OTI was extended in March 2017.

64. On 22 May 2017, the Director confirmed the Applicant's successful completion of the OTI.

65. In the Applicant's FY2017 Annual Review, the Director noted that "[...] during the year [the Applicant] successfully completed the OTI and improved his work behavior in line with Bank's policy of the respectful work environment."

Request for Review and Application

66. On 23 February 2017, the Applicant filed Request for Review No. 376 with PRS, claiming that the Director's actions on 28 October 2016 and subsequently "were arbitrary, grossly

disproportionate to the alleged infractions, discriminatory, unprecedented, ruinous to his reputation and denied him due process.”

67. The PRS Panel conducted a hearing on 14 July 2017. In its report dated 30 August 2017, the PRS Panel found that

management did not act consistently with [the Applicant's] contract of employment and terms of appointment in making the reassignment decision, the paid leave decision, and the access restriction decision. Specifically, the Panel noted the inconsistency in management's explanations for the decisions and found that management did not make its decisions on a reasonable and observable basis. In addition, the Panel found that management did not follow applicable Bank Group policies and procedures.

68. The PRS Panel recommended either that the Applicant be reassigned to his previous managerial duties with full trading authorization and compensation equivalent to three months' salary or that the Applicant receive compensation equivalent to nine months' salary without reassignment.

69. On 10 November 2017, the CFO decided not to accept the PRS Panel's recommendations because he “determined that the recommendations would not be in the best interests of the Bank Group.”

70. On 5 February 2018, the Applicant filed this Application with the Tribunal. The Applicant challenges the following decisions: (i) the performance rating of 3 for FY16; (ii) the revocation of trading authorization; (iii) the removal as Team Leader; (iv) the public announcements of the Applicant's reassignment due to failure to follow procedures in a trading transaction and refusal to provide information about the transaction; (v) the reassignment to “special projects” under the Director; (vi) placement on leave; (vii) the restriction of access to the Bank during the leave and the failure to provide notice of or justification for this restriction; (viii) the relocation of the Applicant's work station away from others in the Department; and (ix) the restriction of access to the Bank outside of work hours, after the Applicant's return from leave, and the failure to provide notice of or justification for this restriction.

71. The Applicant seeks the following relief: (i) “reinstatement of full trading authorization, and access to all appropriate and necessary World Bank systems”; (ii) reinstatement as Team Leader “or an equivalent position with equal authority”; (iii) “return of [his] work station to its former position with other members of the [Department’s] trading teams”; (iv) “removal of all reference(s) to any and all actions taken against [the Applicant] on and after October 28, 2016, from his personnel files”; and (v) “the award of a performance rating of at least a ‘4’” for FY16. The Applicant also seeks a “retroactive salary increase for an increased performance rating for” FY16, additional compensation for the damage to his reputation, the negative impact on his career, and pain and suffering “in an amount that this Tribunal deems to be just and appropriate but not less than two years’ salary,” and legal fees and costs in the amount of \$20,663.60.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant’s Contention No. 1

The FY16 Annual Review was unfair, was unbalanced, and did not follow fair procedures

72. The Applicant alleges that the FY16 Annual Review was unbalanced. He recalls that FY16 was a particularly successful year for his team and its successes “were so remarkable that it was awarded a Finance Partners Performance Award for ‘excellent portfolio performance.’” The Applicant claims that the Treasurer focused disproportionately on the occasional concerns raised about his behavior, which he claims originated from a single feedback provider.

73. The Applicant argues that he was not accorded due process during the FY16 performance review process. He claims that he did not have any warning or advance notice of any performance issues, nor did he have a mid-year discussion. The Applicant states that, when he met with the Treasurer after the end of the fiscal year, there was no formal discussion of his Annual Review and he never saw the evaluation until the process was over. Instead, he claims, the Treasurer focused exclusively on complaints that she had heard about his behavior. He also disputes the Bank’s statement that, after the end of the performance evaluation period, he could have changed his behavior and improved his performance evaluation.

The Bank's Response

The FY16 Annual Review was reasonable and justifiable

74. The Bank recalls that the Tribunal's review of a performance rating of 3, which means fully meets expectations, "is even more deferential to Respondent's judgment."

75. The Bank submits that the Applicant's performance evaluation was well balanced, setting out both the Applicant's strengths and areas for improvement. The Bank acknowledges the Applicant's "commendable management of the [...] portfolio," but also points to the "evidence of Applicant's inappropriate behavior towards his peers and supervisors, confirmation of which was reflected in the comments provided by the feedback providers." Thus, the Bank submits that it balanced the "Applicant's technical contribution against his workplace behaviors" when it gave him the performance rating of 3.

76. Regarding the absence of a mid-year discussion, the Bank states that such a discussion is considered good practice, but it is not mandatory. According to the Bank, in the circumstances where the Treasurer was relatively new in her role, it was reasonable for her to forgo the mid-year discussions with her direct reports. The Bank submits that it complied with Staff Rule 5.03 when the Treasurer had a year-end discussion about the Applicant's behavior and gave him "a comprehensive and balanced written assessment of his performance." It also refers to the subsequent "detailed explanation for the rating of 3" that the Director provided to the Applicant. Moreover, the Bank argues that the absence of a mid-year discussion could have only prejudiced the Applicant if he had been given a performance rating of 2, whereas the performance rating of 3 that the Applicant received "is not adverse or negative."

The Applicant's Contention No. 2

The reassignment lacked a reasonable and observable basis, was punitive and excessive, was contrary to the Bank's interests, and lacked fair procedures

77. One of the reasons for the Applicant's reassignment was his alleged failure to follow procedures when he sold the ZCB. However, the Applicant argues that this reason was false and

without foundation as the Bank has been unable to produce any procedures that the Applicant violated. The Applicant asserts that there are “no written procedures or practice requiring prior approval” for the sale in question.

78. The Applicant also disputes the assertion that the sale violated an instruction from management to liquidate the bond in early December. Rather, he claims that he proposed the December date, which he himself unilaterally modified on 3 October 2016, as his estimate of the best time to sell. Moreover, the Applicant claims that the ALCO statement on 30 September 2016 was not an instruction to sell in December, but a recommendation.

79. The Applicant rejects, as a reason for the reassignment, “his animosity towards his peers.” Rather, he claims that it was due solely to the bond sale and his alleged lack of forthrightness in answering the Director’s requests for an explanation for the sale. He also describes “an atmosphere of disrespect in TRE” and argues against being held to a higher standard of behavior than his supervisors.

80. Another justification for the Applicant’s reassignment was the Applicant’s alleged “refusal to share detailed transaction related information.” In response, the Applicant avers that he gave all the necessary information about the transaction, responding to all of the requests for information and explanations in a timely manner.

81. In the alternative, the Applicant argues that, even if the bases for the reassignment were true, the reassignment was disproportionate to his conduct. The Applicant claims that the Bank failed to take into account all relevant factors, extenuating circumstances, the situation of the staff member, the interests of the Bank Group, and the frequency of the conduct. According to the Applicant, there is no evidence that the Bank “considered the success of the transaction or the fact that this was a single event in [the Applicant’s] 20 years of exemplary employment at the Bank.” The Applicant also notes that he was allowed to continue in his position and trade for another week after the trade in question and disputes the Bank’s claim that it had to act urgently to reassign the Applicant.

82. The Applicant argues that the reassignment did not follow Bank procedures and did not provide the Applicant with any due process. The Applicant claims that he was not consulted prior to the reassignment, and the lack of notice prevented him from defending himself, having any input into, or obtaining clarity about his new assignment. The Applicant notes that he was not provided with the TOR for the new position until 17 November 2016, and he did not have any discussion about or input into them.

83. The Applicant alleges that the public announcements of his reassignment, the removal of his trading rights, and the relocation of his work station caused him irreparable reputational harm. He asserts that, “as a result of these communications and the rushed nature of [the Director’s] decisions, staff in the Department were left with the understanding that [the Applicant] had seriously breached procedures and had placed the World Bank at financial risk. That kind of allegation meant that his reputation was not only seriously damaged but that his future as a trader was compromised.” He characterizes these actions as disciplinary, but without giving him the due process protections under the applicable Staff Rules.

The Bank’s Response

The reassignment was reasonable and prudent

84. The Bank states that the reassignment decision was discussed by the Director with the Treasurer and with the involvement of HR. According to the Bank, the Applicant was informed of the reason for the reassignment – his behavior – at the meeting on 28 October 2016 and given further details about the reassignment after the meeting.

85. The Bank alleges that a swift reassignment was necessary to protect the Bank. It contends that “Treasury could not accept the risk of keeping a trader in charge of \$50 billion of the Bank’s assets, whose judgment and discipline to follow instructions were doubtful. It would not have been appropriate for management to ignore this threat.” The Bank also refers to the reputational risk of maintaining the Applicant in a trading position, namely, that the Bank “cannot afford the perception that it cannot control its traders, or that traders can unilaterally override Senior Management’s decision on when and how to execute sales.”

86. The Bank avers that the Applicant was compromised in his fitness to continue in the position of team leader. According to the Bank, the Applicant exhibited “extremely poor judgment” in executing the sale without consulting the Director, and the Applicant failed to cooperate with the Director and the Director of Treasury Operations when they requested his help in explaining the benefits of the early sale. As well, the Bank states that the “[r]eassignment followed Applicant’s erratic behavior and increasing level of animosity directed at his peers [...]”

87. The Bank admits that there is no policy or procedure that addresses the sale of the bond. However, the Bank relies on the ALCO resolution regarding the ZCB to support its contention that the trade was unauthorized because “it behooves of Applicant to seek approval for any trade before December 1, 2016.” The Bank contends that the Applicant should have notified his management team before making the trade. To support these contentions, the Bank relies on a memorandum dated 20 September 2018 from the Director to the Bank’s counsel, where the Director claims that “[i]t was well understood among all Treasury leadership team and ALCO members that the zero-coupon bond was not an ordinary trading position to which a portfolio manager could exercise a trading discretion.”

88. Regarding the announcements of the Applicant’s reassignment and his replacement, the Bank argues that these announcements “had to be made quickly to bring stability to the team, and [were] done in the spirit of transparency.” The Bank characterizes these actions as “reasonable protective measures because of the perceived risk surrounding Applicant’s conduct.”

89. Finally, the Bank denies that the reassignment was a disciplinary sanction. It notes that the Applicant was not reassigned from a managerial to a non-managerial role, he was not downgraded, and his salary did not decrease. The Bank claims that the new position had “substantive responsibilities and deliverables.”

The Applicant's Contention No. 3*The placement on leave did not follow the Bank's procedures*

90. The Applicant claims the Director did not follow the procedures for administrative leave, as set out in Staff Rule 6.06, paragraph 10.10. The Applicant submits that there is no evidence that the HRVP was involved in or took the decision to place the Applicant on leave, nor was the Applicant given any written notice of the leave.

91. The Applicant argues that the Director took advantage of the Applicant being on leave to publicize the Applicant's alleged violation of procedures and his reassignment, to bar him from access to Bank premises, and to relocate his work station. All of these actions were taken without advance notice to the Applicant and without any opportunity for him to defend himself or respond.

The Bank's Response*The Applicant was not placed on administrative leave*

92. The Bank denies placing the Applicant on administrative leave and accepts that the Applicant's leave was not contemplated by Staff Rule 6.06. Rather, the Bank states that the Director offered, and the Applicant accepted, "time off" for two weeks for the purpose of "allow[ing] Applicant to take time off, de-escalate, and digest the changes." According to the Bank, the leave was neither punitive nor mandatory but "was a gesture of human kindness from Applicant's Director."

93. The Bank relies on a memorandum dated 20 September 2018 from the Director to the Bank's counsel, where the Director explains the reasons for offering the leave as follows:

[The leave was offered] out of concern for [the Applicant's] well-being. I was concerned about the awkwardness of the situation. [...] it might be difficult for [the Applicant] to adjust immediately to his new role, if he sits around his former direct reports. I was also concerned about the work environment in [the Department] if [the Applicant] would lose his cool and explode. I also felt a fiduciary duty as the [...] director to prevent any potential risk. Considering [the Applicant's] disrespectful behavior and emotional reaction, I had to consider any potential risk to the safety of the Bank's asset management.

The Director states that he “consulted with HR” before offering the leave to the Applicant.

The Applicant’s Contention No. 4

The restriction on the Applicant’s access to Bank premises was arbitrary, was in bad faith, and lacked a fair or transparent process

94. The Applicant states that he was never given any written notice of or justification for the access restriction while he was on leave. Similarly, when he was barred from access to the Bank premises outside of work hours, he was not given any notice or justification for such restriction.

95. The Applicant claims that he learned of the access restrictions “under the most humiliating circumstances – by having to be told to leave by the Acting Director (prompted by [the Director’s] administrative assistant) and by finding his access barred over the weekend.”

96. The Applicant suggests that these actions by the Director were taken without guidance or agreement from the Director’s superiors or Bank security.

97. The Applicant contends that there was no sufficient reason for taking an action as serious as restricting his access to Bank premises, and there is no evidence that the Applicant was in any way a threat to the Bank.

The Bank’s Response

The access restrictions were a necessary consequence of the Applicant’s reassignment

98. The Bank claims that it had to restrict the Applicant’s access to the trading floor and trading systems following his reassignment to a non-trading position. The Bank states that it acted in accordance with the Treasury Systems Logical Access Procedure, which “requires access restrictions to be modified to relinquish access privileges not needed for the performance of the new functions.” The Bank asserts that, to prevent operational or financial risks, “staff who are not involved in the trading activities should not have access to trading systems. Access-Controls in Treasury is a privilege.”

99. Similarly, the Bank submits that the Applicant's work station was moved as a necessary consequence of the change in his position.

The Applicant's Contention No. 5

To the extent that there were justifiable concerns about the Applicant after the trade, the appropriate action was to place the Applicant on an OTI

100. The Applicant notes that he successfully completed the OTI, which was implemented to address his alleged disrespectful manner and inappropriate communications, but the Director did not "reverse any of the punitive measures he had imposed on October 28 and thereafter." The Applicant argues that his alleged disrespectful manner cannot justify the actions taken against him.

The Bank's Response

101. The Bank does not address the issue of the Applicant's OTI since the Applicant has not contested the OTI in this Application.

The World Bank Group Staff Association's Amicus Curiae Brief

102. The World Bank Group Staff Association submitted an *amicus curiae* brief on 9 July 2018. The Staff Association asserts that it has a strong interest in this case because of its interest to ensure that the Principles of Staff Employment are complied with in the treatment of all staff, including Principles 2.1, 5.1(a), and 9.1, and because of its interest in ensuring that due process rights are properly accorded to staff.

103. The Staff Association asserts that the Applicant's reassignment, placement on leave, and access restrictions "were taken without warning or legitimate justification and without a shred of due process."

104. Moreover, the Staff Association argues that the CFO's decision not to accept the recommendations of the PRS Panel "betrays an unacceptable bias and clearly demonstrates that the final decision was not based on a neutral, objective reading of the panel's factual findings." The Staff Association characterizes the Applicant's reassignment as punitive and contends that the reasons for the reassignment, which it rejects, "involved matters that are properly handled through either the performance management or misconduct processes," which are set out in the Staff Manual but were not followed by the Bank.

105. The Staff Association reiterates the Applicant's claims that he did not have sufficient notice of alleged performance deficiencies and that negative comments were given too much weight in his performance review.

The Bank's Comments on the Staff Association's Amicus Curiae Brief

106. In response to the Staff Association's brief, the Bank maintains its refutations in its Answer, to the extent that the Staff Association presents substantially the same arguments as those of the Applicant.

107. The Bank repeats the explanation of the CFO for not accepting the recommendations of the PRS Panel because "the recommendations in this case were neither reasonable nor in the best interests of the Bank Group."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

Whether the FY16 Annual Review and performance rating were arbitrary, unfair, and lacking in due process

108. The Tribunal's assessment of performance evaluations is centered on the determination of "whether the decision was arbitrary, discriminatory, improperly motivated, or carried out in violation of a fair and reasonable procedure." *BY*, Decision No. 471 [2013], para. 33.

109. In *Marshall*, Decision No. 226 [2000], para. 21, the Tribunal further observed that, “[e]ven if the merit rating and SRI [Salary Review Increase] were not a product of intentional ill-will, they might still be overturned by the Tribunal if they were arbitrary or capricious.”

110. The Tribunal has held that “the assessment of performance has ‘to take into account all relevant and significant facts that existed for that period of review’ (*Romain (No. 2)*, Decision No. 164 [1997], para. 19), so as to ensure a reasonable basis for the OPE [Overall Performance Evaluation] ratings and comments.” *Prasad*, Decision No. 338 [2005], para. 28.

111. In *Lysy*, Decision No. 211 [1999], para. 68, the Tribunal emphasized:

A performance evaluation should deal with all relevant and significant facts, and should balance positive and negative factors in a manner which is fair to the person concerned. Positive aspects need to be given weight, and the weight given to factors must not be arbitrary or manifestly unreasonable.

112. The Director identified the following positive aspects of the Applicant’s performance in the Applicant’s FY16 Annual Review:

I acknowledge the successful performance year the [...] team led by [the Applicant] had, especially considering a very difficult market environment. The [...] team contributed significantly to the successful Chinese Renminbi/SDR rebalancing for IDA and IMF. They also played an important role in developing a model portfolio for the new IMF mandate. [The Applicant] demonstrated solid quantitative expertise as a portfolio manager in working on these tasks.

113. However, the following areas for improvement were also noted:

[The Applicant] needs to address significant concerns about his behavior raised by various colleagues. [The Applicant’s] feedback report clearly shows that his behavior needs improvement. For example, the tone and language in several of his emails to colleagues are disrespectful. More importantly [the Applicant’s] behavior could be detrimental to portfolio management activities, because other colleagues feel unable to hold different views.

As a Team leader he is also expected to take a leadership role on Treasury-wide initiatives. I therefore encourage [the Applicant] to participate in department-wide and TRE-wide initiatives.

114. Seven feedback providers provided comments on the Applicant's performance. Three of the feedback providers commented that he needed to improve his communication style since other staff perceived his communications to be offensive and disrespectful.

115. The record includes emails between the Applicant and other staff. The Tribunal observes that at least some of the emails from the Applicant are consistent with the criticisms of the feedback providers.

116. In FY16, the Applicant received a generally positive performance review and a performance rating of 3, which means "fully meets expectations." His claim must therefore be for a higher rating, such as a 4, which means "exceeds expectations."

117. In *Mpoy-Kamulayi (No. 8)*, Decision No. 480 [2013], para. 22, the Tribunal held that "[r]endering judgment on the appropriateness of a Fully Successful versus a Superior rating comes close to a microscopic review. Ordinarily, to allow petitions to the Tribunal regarding disagreements as to the correctness of 'Fully Successful' versus 'Superior' ratings would involve unwarranted intrusion on managerial discretion."

118. The Tribunal finds that the Applicant's FY16 Annual Review was not arbitrary, unfair, or unbalanced. It accurately reflects the feedback from multiple feedback providers and balances both positive and negative aspects of the Applicant's performance.

119. In *DP*, Decision No. 547 [2016], para. 94, the Tribunal stated:

The process of establishing performance ratings is based on a comparative assessment of staff members within the same unit. The Tribunal has recognized that "[g]iven the various decisional elements that are properly taken into account in making such a comparative assessment, it is difficult to support a claim of abuse of discretion."

120. Moreover, performance ratings must have a reasonable and observable basis, and there is obviously a link between the performance evaluation and the performance rating. *BG*, Decision No. 434 [2010], para. 57; *BY*, para. 31.

121. Hence, the Tribunal finds that a performance rating of 3, which means “fully meets expectations,” was not incommensurate with the Applicant’s Annual Review, which was generally positive but identified behavioral issues.

Due Process

122. The Tribunal has recognized “the importance of respecting the requirements of due process in relation to performance evaluations.” *EJ*, Decision No. 572 [2017], para. 110.

123. In *Samuel-Thambiah*, Decision No. 133 [1993], para. 32, the Tribunal held:

Two basic guarantees are essential to the observance of due process in this connection. First, the staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached. Second, the staff member must be given adequate opportunities to defend himself.

124. The first basic guarantee was reiterated in *Garcia-Mujica*, Decision No. 192 [1998], para. 19, where the Tribunal observed that the “staff member affected [must] be adequately informed with all possible anticipation of any problems concerning his career prospects, skills or other relevant aspects of his work.” *See also DC (No. 2)*, Decision No. 558 [2017], para. 68.

125. Furthermore, the Tribunal held in *Prasad*, paras. 25 and 30, that:

[D]iscussion of performance does not replace the need for ongoing feedback throughout the year in question, which should be provided so that the staff member “should be able to anticipate the nature of this year-end discussion and resultant ratings on the OPE.”

[...]

[T]he obligation [is on] the Respondent to fully respect due process rights and conduct a fair and reasonable process of performance evaluation and accordingly to provide an opportunity to correct the mistakes that any staff member has made [...].

126. The Applicant claims that he was not accorded due process during the FY16 performance review process. Specifically, he claims that he did not receive any warning or advance notice of

any performance issues, did not have a mid-year discussion, did not have a formal discussion at the end of FY16 with his supervisor, and did not see the evaluation until the process was over.

127. The Applicant's behavior, and in particular his communication with other staff members, was identified as a performance issue in the Applicant's FY16 Annual Review. Although the Bank has submitted emails between the Applicant and other staff as evidence of inappropriate communication by the Applicant, there is no evidence on record that the Applicant was warned about his behavior prior to his meeting with the Treasurer on 11 August 2016.

128. The Tribunal finds that informing the Applicant of performance issues at the year-end discussion and providing him with a "detailed explanation for a rating of 3" after the end of FY16 does not constitute sufficient notice.

129. The Tribunal has held that "[o]ngoing feedback is necessary so as to avoid any surprises at the end of the review period. Ongoing feedback should be clear and specific so that the staff member can 'anticipate the nature of this year-end discussion and resultant ratings on the OPE.'" *BG*, para. 45.

130. The Tribunal observes that, in the Applicant's FY15 Annual Review, his supervisor commented that the Applicant "has unconventional or contrarian views, and he challenges his colleagues with thought-provoking opinions. He can encourage a healthy debate with his views, which is a very valuable asset for the team." This performance review did not indicate to the Applicant that he needed to change his workplace behavior or communication style.

131. The Tribunal finds that, while the Applicant did not have feedback during FY16 that his behavior was inappropriate, the absence of such feedback did not prejudice the Applicant, warranting compensation, insofar as the Applicant received a rating of 3, which means "fully meets expectations." Moreover, the Applicant's FY16 Annual Review is generally positive and comments identified his communication skills and behavior as areas for improvement.

132. Staff Rule 5.03 regarding the Performance Management Process addresses only year-end discussions. In light of this, the Bank contends that, while a mid-year discussion is considered good practice, it is not mandatory. It explains, in this case, that the Treasurer was relatively new in her position so she did not conduct mid-year discussions in FY16 with any of her direct reports, including the Applicant. In any case, the Bank argues the Applicant had a comprehensive discussion with the Treasurer about his behavior and performance during the year-end discussion, and in subsequent communications with the Director.

133. The Tribunal acknowledges that, while the Staff Rules do not require a mid-year discussion, such discussion is good practice and is recognized by HR as a “process milestone” in the Bank’s performance and talent management cycle. The Tribunal takes note of the Performance Management Reviewer’s finding that:

In this case, management made a generic decision (applied to all of the TLs [Team Leaders] in [the Department]) to forego formal mid-year reviews. Good practice in such circumstances suggest[s] that the affected staff should be afforded the opportunity to request a meeting in lieu of the formal mid-year review if they had specific concerns on their performance at the mid-year stage. In my view, such a meeting would have provided [the Applicant] more concrete feedback and a sense of what to expect in his year-end review and resultant ratings in the evaluation.

134. Regarding the year-end discussion, Staff Rule 5.03, paragraph 2.01(a) states:

At least once in a twelve month period, the Manager or Designated Supervisor and the staff member shall meet and discuss the staff member’s performance, achievements, strengths, areas for improvement, and future development needs. In exceptional circumstances, for World Bank staff, the Vice President, Human Resources or Director, Human Resources, Client Services and for IFC staff, the Vice President for Human Resources or the Director, Human Resources may require that performance evaluations be completed by the Manager or Designated Supervisors more or less frequently.

135. The Tribunal has emphasized the importance of conducting a formal performance discussion in accordance with the Staff Rules and in the past has awarded remedies where this rule of procedure was breached. *See BY*, para. 29; *Prasad*, paras. 25-27; *Yoon (No. 5)*, Decision No. 332 [2005], para. 65; and *Mpoy-Kamulayi (No. 4)*, Decision No. 462 [2012], para. 46. In *Yoon (No. 5)*, para. 67, the Tribunal drew a clear distinction between “informal feedback sessions”

during the year and “the year-end formal discussion.” The Tribunal in *BY*, para. 29, held that “informal discussions or email correspondence [...] are no substitute for a formal OPE discussion held prior to establishing OPE and SRI ratings.”

136. The Tribunal finds that the meeting on 11 August 2016 between the Applicant and the Treasurer satisfied the requirement of a year-end discussion of the Applicant’s performance. The contents of the Applicant’s FY16 Annual Review are consistent with the Bank’s description of the meeting, namely, that the Treasurer acknowledged the Applicant’s success as a Team Leader and emphasized the need to improve his behavior in the workplace.

137. In sum, the Tribunal concludes that the Applicant’s FY16 Annual Review observed due process, with the exception of failing to warn the Applicant in advance that his behavior was inappropriate. However, the Tribunal holds that the absence of such feedback in this case did not prejudice the Applicant, warranting compensation.

Whether the reassignment was reasonable and followed fair procedures

138. Principle 5.1(a) of the Principles of Staff Employment states that the Bank shall “organize, assign and transfer staff to meet the needs of The World Bank [...] with due consideration for the qualifications and wishes of the staff members concerned [...].”

139. Staff Rule 5.01, paragraph 2.01(b), defines reassignment as “any transfer of a staff member from one position to another at the same grade or to or from an ungraded position in a field office.” According to Staff Rule 5.01, paragraph 3.01, reassignment may be “at any time at the initiative of the Bank Group.”

140. Although the Bank, in its case before the Tribunal, appears to concede that the Applicant was reassigned when he was removed as the Team Leader, the Tribunal notes the lack of clarity, even at the PRS hearing, regarding the Bank’s actions. At the PRS hearing, a Senior HR Business Partner testified that the Staff Rule on reassignment within the same department did not apply in this case because the Applicant’s “title did not change, he was not a tagged manager, his reporting

relationship did not change, and he remained in the same department and unit. [...] [The Applicant] was simply given a different Terms of Reference (TOR) and not transferred to a new position.” The HR Client Services Manager, Finance & Corporate, characterized the decision as a “change in work program” rather than a reassignment.

141. The record clearly shows that the Applicant’s work assignment was changed and he was provided with new TOR that did not have any managerial or trading responsibilities. The Applicant was removed as the Team Leader and replaced by another staff member. The Tribunal finds that the Applicant was *de facto* reassigned and will review the Bank’s action as a reassignment.

142. The Tribunal has stated that decisions relating to reassignment are

discretionary decisions for the management of the Bank, and are subject only to limited review by the Tribunal. Such decisions will not be set aside unless they constitute an abuse of discretion, being arbitrary or capricious, discriminatory, or influenced by a lack of due process. *Sengamalay*, Decision No. 254 [2001], para. 29.

143. The Tribunal also affirmed in *Sengamalay*, para. 32, that the power to reassign “must be exercised through appropriate procedures and with proper motive.”

144. The Tribunal will consider whether the Applicant’s reassignment was an abuse of discretion.

145. The Bank has put forward several reasons for the reassignment, which the Tribunal will examine. At the 28 October 2016 meeting, when the Applicant was informed of the reassignment, he was told it was “due to his behavior [which had been discussed previously with management], and the performance evaluation that he had received.” By email dated 5 November 2016, the Director informed the Applicant that the reassignment was due to the Applicant’s “[p]oor judgment and disrespect of the investment decision making procedures[,] [...] refusal to cooperate and provide transaction details post-transaction [...] [and] repetition of misbehavior [namely, ‘disrespectful email communications’] after warning[s] from HR and [the] Director.”

146. Subsequently, before the Tribunal, the Bank justifies the reassignment as necessary to protect the Bank from the risk of a trader in whose judgment it no longer had confidence and to protect the Bank's reputation. The Bank also cites the Applicant's "erratic behavior and increasing level of animosity directed at his peers."

147. Regarding the Bank's first reason for the reassignment, i.e., the Applicant's behavior and his FY16 Annual Review, the Tribunal notes that the Applicant was placed on an OTI on 22 November 2016. The OTI was administered in response to deficiencies in the Applicant's professional behavior and professional communication, including his communications with the Director and the Director of Treasury Operations after the trade on 21 October 2016. The Applicant successfully completed the OTI on 26 May 2017. The Tribunal finds it unreasonable to permanently reassign the Applicant for behavioral issues that were successfully addressed through the OTI.

148. The Bank's second reason for the reassignment relates to the trade on 21 October 2016, which the Bank claims was unauthorized and put the Bank at risk. The Tribunal will examine the Bank's characterization of the Applicant's actions and consider whether such characterization was reasonable and justified the Applicant's reassignment.

149. The Applicant contends that there was no Bank policy or procedure that required him to obtain authorization prior to selling the bond. The Bank admits that there was no policy or procedure about obtaining authorization in advance. However, the Bank contends that the Applicant should have reasonably known that prior authorization was necessary because of the extraordinary circumstances, history of the bond, and recommendation of the ALCO that the bond be sold in December.

150. The Tribunal notes the lack of a written policy or procedure for obtaining advance authorizations. Moreover, the Tribunal observes that witnesses at the PRS hearing "established that there is no practice in the [D]epartment requiring pre-trade approval" and that the Applicant testified before PRS that he had worked in TRE for seventeen years, had executed thousands of transactions worth millions of dollars, and had never had to seek prior trading approval.

151. During the PRS hearing, some managers testified to the extraordinary circumstances of the bond and their understanding that the ALCO recommendation meant that any sale prior to December would require authorization. Other participants at the ALCO meeting testified to having a different understanding. The PRS Panel “observed that the evidence established that there was no common understanding among participants of the ALCO meeting that the ALCO recommendation required pre-trade approval.” The Tribunal finds that the requirement for pre-trade authorization was, at best, ambiguous.

152. The Tribunal observes that the ALCO’s recommendation to accept “the exchange offer for the zero-coupon bonds with the view of exiting from the position on or around December 1st” was based on the premise that the bond would be repurchased by the offeror. The buyback period by the offeror would start on 1 December 2016.

153. There was a possibility of selling the bond in a secondary market, albeit an unlikely one. The Treasurer, in setting out the features of the ZCB to the CFO, acknowledged that it could “be sold in the secondary market, although there is risk of illiquidity in the secondary market for this new debt instrument.” The Applicant also wrote to the secretaries of the ALCO, as they were drafting the minutes of the meeting, that “[s]till, we are not [...] obliged to go to the offeror and we can go secondary any time we want.” It appears to the Tribunal that the liquidation of the bond was a priority since “LEGFI’s [Legal Vice Presidency, Corporate Finance] view is that as long as [the Bank] hold[s] the instruments [the Bank] remain[s] exposed to possible legal challenge of the tender from holdout creditors. LEGFI advises against maintaining the bonds to maturity.”

154. While the Tribunal understands the emphasis on selling after 1 December 2016, it takes into account that this date was based on the potential repurchase of the bond by the offeror which “would result in around 45 cents with the final exit from the position” and which would be more favorable than accepting an immediate cash offer for “30 cents.” The Tribunal finds that a reasonable interpretation of the Bank’s objective was to sell the bond at greater than 30% of its face value and ideally at 45% of its face value, sooner rather than later.

155. In this case, the Applicant acted upon an unexpected opportunity to sell the bond for close to 45% of its face value and with lower transaction costs than if it had been sold in December. In view of the ambiguity of the requirement for pre-trade authorization, the Tribunal finds that the Applicant's action was consistent with the objective of selling the bond sooner rather than later, and at almost 45% of its face value. The Tribunal observes that the Principal Portfolio Managers, who testified at the PRS hearing, stated that the transaction "did not result in any negative impact financially to the institution." The Bank does not deny that the trade resulted in a positive financial outcome for the Bank.

156. The Tribunal appreciates the Bank's concerns about unauthorized trading and the risk that "it leads to riskier trades to cover losses when they occur." However, the Tribunal finds that this is not a case of a rogue trader from whom the Bank needed to protect itself. This case is about a single trade, which was consistent with the Bank's financial objectives.

157. The Bank's third reason for the reassignment relates to the Applicant's alleged refusal to cooperate after the transaction was completed. The record shows that the Applicant exchanged several emails with his supervisors in the days immediately following the transaction. The email exchanges became more acrimonious, as the supervisors asked the Applicant for more information and the Applicant either provided information or insisted that he had already provided the requested information.

158. The Tribunal will not engage in a microscopic inquiry as to how responsive the Applicant was to these requests. However, it cannot be said that the Applicant completely refused to cooperate with his managers. The Tribunal notes that the Applicant responded to his managers' inquiries for details about the transaction, albeit in an increasingly curt and abrasive manner, with information that was not to his managers' satisfaction. However, given the permanent nature of the reassignment and the drastic change in the Applicant's work program, the Tribunal finds that the reassignment was not a reasonable response to the Applicant's post-transaction conduct. Moreover, the Tribunal observes that, to the extent that management was not satisfied with the Applicant's post-transaction communications, the Applicant was placed on an OTI, which he successfully completed, specifically to address his communication deficiencies.

159. In *Prasad*, para. 50, regarding reassignment, the Tribunal stated that “transparency and openness should always characterize such a step.” The absence of transparency and openness, in recalling the applicant in *Prasad* from an assignment as a country manager, led the Tribunal to find that there was an abuse of discretion.

160. The Tribunal has acknowledged that reassignments may have to be implemented quickly “in the best interests of the institution, but even then the matter has to be handled with respect for due process rights, and in the open and transparent manner that has to govern professional relations.” *Id.*, para. 60.

161. In *DB*, Decision No. 524 [2015], para. 79, the Tribunal noted “the rushed nature of the decision-making process and the rapidity with which the reassignment decision was implemented.” The Tribunal remarked that “the hasty manner in which the decision was taken and implemented is all the more notable given that [...] the [a]pplicant had been a manager [...] for 11 years [...] and had for five years occupied the specific managerial position from which he was now reassigned.” *Id.*, para. 81.

162. In this case, the decision to reassign the Applicant was taken on 27 October 2016, as evidenced by emails between the Treasurer and the Director. The following day, the Applicant was notified of his removal as a Team Leader and from all portfolio management functions, effective immediately. His reassignment was then announced to the team and other Department staff within less than two hours after the Applicant himself was informed of the reassignment. The Applicant had been employed in TRE for over seventeen years and had been a Team Leader for over seven years.

163. The Tribunal finds that the Applicant’s reassignment was a disguised disciplinary sanction, imposed without any of the safeguards provided for in the disciplinary process. In making this finding, the Tribunal has regard to the Director’s statements during the PRS proceedings that reassignment was preferable to “a period of warning or other sanction” and that the Applicant’s actions constituted “misbehavior which is not acceptable at the [Department] and Treasury.” At

the PRS hearing, the Treasurer also made the following statements, which suggest to the Tribunal that she considered the Applicant's actions to be misconduct, warranting disciplinary sanctions:

[The Treasurer] testified further that, in her view, [the Applicant's] actions constituted at a minimum a violation of Bank Rules, the Code of Conduct [...]. She explained to the Panel that she could not imagine that an investment officer like [the Applicant] would not be disciplined about not following instructions and ensuring a collaborative approach.

164. In *Sengamalay*, the applicant was reassigned to a non-managerial position because there were issues about his ability to manage staff. However, the Tribunal found the reassignment to be an abuse of discretion because it was “based upon a series of actions on the part of the Respondent that in their totality constituted a failure of due process and thus a violation of the [a]pplicant's terms of appointment and conditions of employment.” *Sengamalay*, para. 47.

165. Having regard to all the foregoing circumstances, the Tribunal finds that the Bank's justifications for reassigning the Applicant permanently were neither reasonable nor fair. The Tribunal considers the reassignment to have been an abuse of discretion.

Due Process

166. Principle 5.1(a) of the Principles of Staff Employment refers to the Bank's discretion, among other things, to reassign staff, but this must be done “with due consideration for the qualifications and wishes of the staff members concerned.”

167. The Tribunal notes the due process considerations set out in Staff Rule 5.01, paragraph 3.05, pertaining to reassignment within the same department. The rule provides:

A department director, or the senior manager responsible for the position, may reassign a staff member to a non-managerial position within the department or unit to which the staff member is currently assigned after consultation with the staff member and the Manager, Human Resources Team (IBRD/MIGA)/HR Regional Head (IFC), or a Designated Official.

168. In this case, the Director consulted only with the Treasurer about the reassignment. The Bank claims that the Director also involved HR, as evidenced by the fact that HR staff were copied on the Treasurer's email of 27 October 2016 to the Director and the presence of HR staff at the meeting on 28 October 2016.

169. In *DB*, para. 88, the Tribunal criticized the International Finance Corporation for failing to consult the applicant about the reassignment in any meaningful way. In that case, when the applicant's supervisor informed him that he was being reassigned, "she did not wait to hear his response – his concerns regarding the decision itself, its rationale, or how it would be presented to the team – before making the decision." *Id.*

170. The Applicant was not consulted about the reassignment. The Applicant was informed of the reassignment and the reasons for it at the meeting on 28 October 2016. On 3 November 2016, the Applicant asked for the reasons in writing and the Director responded two days later.

171. The requirement for consultation does not mean that the affected staff member must agree with the decision. *DB*, para. 103. In this case, the reassignment was unilaterally imposed on the Applicant because, in the Bank's opinion, it had to take swift action to protect the Bank from "the risk of keeping a trader in charge of \$50 billion of the Bank's assets, whose judgment and discipline to follow instructions were doubtful." The Tribunal has already questioned the reasonableness of the Bank's characterization of the Applicant's conduct, as discussed above.

172. The Tribunal is not persuaded by the Bank's explanation that it perceived the Applicant as an immediate threat since the Applicant remained in his position, with full trading authority and responsibilities, for one week after the impugned trade.

173. In the present case, the Tribunal concludes that the reassignment decision was flawed both procedurally and substantively.

174. In *DB*, para. 114, the Tribunal observed that, even where a staff member's salary and grade are unaffected by an improper reassignment, the negative effects are more severe when a long-

serving manager is reassigned to a non-managerial position. The Tribunal will take this into account when determining the appropriate remedy.

Whether the placement of the Applicant on leave followed the Bank's procedures

175. Staff Rule 6.06 sets out the provisions governing leave at the Bank. It contemplates annual leave, sick leave, short-term family leave, parental leave, leave without pay, compensatory leave, emergency leave, and administrative leave. Administrative leave includes leave at the direction of the HRVP "for reasons which s/he determines are sufficient after consulting with the staff member's manager."

176. The record does not contain any contemporaneous evidence that the Director carried out any consultations before placing the Applicant on leave. In a memorandum dated 20 September 2018 from the Director to the Bank's counsel, the Director stated that he consulted with HR before offering the Applicant time off. The Tribunal decides to give minimal weight to this statement because it is not supported by any contemporaneous documentary evidence and was made two years after the incident, to counsel, in response to an inquiry from the Tribunal.

177. The Bank accepts that the Applicant's leave was not contemplated by Staff Rule 6.06. In his email of 8 November 2016 to the Applicant, the Director referred to the leave as follows:

I understand that you asked about the time off that I offered to you. I just wanted to confirm that between October 31, 2016 and November 11, 2016, for the purposes of administration, you will be excused from reporting to duty at WBG Offices to conduct any WBG business. You do not need to formally request administrative leave[.]

178. The Bank claims that the Applicant was offered and voluntarily took paid leave, whereas the Applicant claims that he was pressured to take the leave and did not have a choice. The record is not clear on this point.

179. The Tribunal finds it highly irregular that the leave in question was not contemplated by the Staff Rules and that there was no contemporaneous documentation of the reasons for the leave.

180. The Tribunal holds that the Bank did not act consistently with Principle 2.1 of the Principles of Staff Employment, which states: “The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members.”

181. The Tribunal takes note that, while the Applicant was on leave, the Director (i) announced to staff that the Applicant would no longer lead the team because he failed to follow procedures in executing the trade and failed to cooperate in providing details about the trade; (ii) barred the Applicant from accessing the Bank; (iii) suspended the Applicant’s access rights to trading systems; and (iv) caused the Applicant’s work station to be moved. The Tribunal holds that these actions were prejudicial to the Applicant. They were effected when the Applicant was on leave and unable to respond.

Whether the restrictions were fair

182. On 27 October 2016, the Director and the Treasurer agreed that the Applicant’s “access rights to trading systems are suspended immediately until further notice” and that the Applicant should be reassigned.

183. On 8 November 2016, the Applicant was informed that he was not allowed to be in the office during the period of leave. When he returned from leave, he was informed that his access was limited to working hours, and this restriction continued until 5 October 2017, almost one year after the restriction was imposed.

184. The Bank explains that these restrictions were a necessary consequence of the Applicant’s reassignment to a non-trading position. The Bank also relies on the Treasury Systems Logical Access Procedure, which “requires access restrictions to be modified to relinquish access privileges for the performance of the new functions.”

185. The Tribunal recognizes that the Treasury Systems Logical Access Procedure applies to “TRE system resources” to ensure that access to these resources “is restricted to properly authorized individual[s], workforce member[s] and staff (users) and to allow users to perform their

job function in accordance to the principle of least privilege.” The document states that Business Unit Managers/Application Owners are responsible for “ensur[ing] that user access privileges in their respective applications are appropriately restricted based upon job responsibilities (Business Roles and Functional Roles).”

186. Upon reviewing the Applicant’s TOR as the special advisor to the Director, the Tribunal finds that the new role did not have trading functions. The Tribunal finds that the removal of the Applicant’s access rights to the TRE trading systems is reasonable in these circumstances.

187. Regarding the access restriction to the Bank’s premises, the Tribunal specifically ordered the Bank to produce “All World Bank Group policies or procedures regarding access restrictions to the World Bank Group’s physical premises, including access to the trading floor of the Treasury.” The Bank did not provide any documents.

188. The Tribunal recognizes that access to the Bank’s premises is not an absolute right and the decision to restrict a staff member’s access to the Bank’s premises is a matter of managerial discretion. *Mwake*, Decision No. 318 [2004], para. 35; *R (No. 2)*, Decision No. 396 [2009], para. 43. However, the Bank is obliged to respect the requirements of due process when taking such decisions. *See Venkataraman*, Decision No. 500 [2014], para. 82; *Yoon (No. 13, No. 14, No. 16, No. 17, and No. 18)*, Decision No. 447 [2011], paras. 72 and 75-78; *Q*, Decision No. 370 [2007], paras. 37 and 41; *CR (No. 2)*, Decision No. 582 [2018], para. 91.

189. In *CR (No. 2)*, para. 91, the Tribunal observed that, “[w]hile the Tribunal has stated that different considerations apply when access restrictions are a matter of misconduct or security, it has, however, consistently held that due process standards apply similarly in both cases.”

190. The Tribunal has recognized “that access to the Bank’s buildings is an issue connected with Bank security.” *Venkataraman*, para. 84; *Dambita*, Decision No. 243 [2001], para. 27. It has stated that “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.” *Q*, para. 37; *B*, Decision No. 247 [2001], para. 30, citing *Dambita*, para. 27. Where

the restriction is due to security reasons, the Tribunal has acknowledged that the Bank has broad discretion and considerable deference should be given to such decisions. *Q*, para. 39; *BI (Nos. 6 and 7)*, Decision No. 587 [2018], para. 56.

191. In *Q*, para. 40, the applicant exhibited unacceptable behavior, such that the Tribunal agreed with the Bank's conclusion that the applicant "lacked the balance and judgment required to serve as a staff member." Therefore, the Tribunal held that "it was not unreasonable, arbitrary or improperly motivated for the Bank at that time to exclude the [a]pplicant from the Bank's premises [...] to ensure the safety of Bank staff and others." *Id.*

192. The Tribunal also upheld an access restriction in *BI (Nos. 6 and 7)*, para. 57, where the applicant referred to mass shootings in an email, thus raising safety and security concerns.

193. In *R (No. 2)*, the applicant was disciplined for having violated the Bank's conflict of interest rules and the disciplinary sanctions included an access restriction. The Bank justified the restriction on the basis that the applicant's actions represented "a blatant disregard for the rules and policies of the World Bank" and "resulted in an irreparable breach of trust with the World Bank." *Id.*, para. 44. The Tribunal found that the access restriction in that case was reasonable in the circumstances.

194. In *CR (No. 2)*, para. 87, the Tribunal noted that the Bank imposes entry conditions "without distinction, on any individual who had had his or her access to the Bank's premises restricted for misconduct."

195. The jurisprudence shows that the Bank typically imposes access restrictions for security reasons or where the staff member has been found to engage in misconduct. Where access is restricted as a disciplinary sanction, the Tribunal will determine whether such disciplinary action was justified. In contrast, where access is restricted as a matter of security, the Tribunal will examine whether the Bank abused its discretion.

196. The Tribunal acknowledges that there may be circumstances, other than security or misconduct, under which the Bank restricts access. This is such a case. Where the Bank's reason for restricting access is due neither to security nor to misconduct, the Tribunal will examine the reason to ensure that the Bank's decision is not an abuse of discretion.

197. There is no contemporaneous documentation informing the Applicant of the conditions and reasons for the access restriction. Regarding the first access restriction during the Applicant's leave, the Applicant was not even informed that he was not allowed to be in the office until he was told to leave the office by the Acting Director when the Applicant went to collect documents. Similarly, the Applicant only learned that he was not allowed in the office outside working hours when he found himself unable to access the office on a Sunday morning. The latter access restriction was in place for almost a year.

198. At the PRS hearing, the Director testified that the access restriction was in place "because he [was] 'uncomfortable' with allowing [the Applicant] to come in to the office outside of business hours" and "there was a significant potential risk to the Bank and the issue was not resolved."

199. The Applicant's access to the trading systems having been withdrawn, the Tribunal finds that the Applicant's presence in the office while he was on leave and, subsequently, outside working hours did not constitute a "significant potential risk."

200. With respect to the physical access restrictions, the Tribunal finds that the lack of advance notice to the Applicant, the lack of opportunity for the Applicant to respond, and the lack of details about the nature of the access restrictions, such as the reasons for the restriction and their duration, did not accord with Principle 2.1 of the Principles of Staff Employment.

Conclusion

201. While not condoning certain aspects of the Applicant's behavior, as noted in the Applicant's FY16 Annual Review, the Tribunal makes the following concluding remarks.

202. The Tribunal finds that the Bank's justifications for reassigning the Applicant permanently, after almost twenty years at the Bank with over seven of those years as a Team Leader, were neither reasonable nor fair. The Tribunal considers the reassignment to have been an abuse of discretion.

203. The Tribunal further finds that the reassignment, without any consultation with the Applicant or opportunity for him to respond and with different justifications for the reassignment, was not consistent with Staff Rule 5.01 on reassignment and was flawed procedurally.

204. Taking into account the negative effects of the reassignment on the Applicant's personal and professional reputation, and having found that the reassignment was flawed substantively and procedurally, the Tribunal will award compensation.

205. The Tribunal finds that the Bank did not act consistently with Principle 2.1 of the Principles of Staff Employment when it placed the Applicant on leave that was not provided for in the Staff Rules. Although the Applicant did not suffer a financial loss when he was placed on leave, because it was paid leave, the situation did not allow the Applicant to be informed of the actions taken against him or to respond to the charges against him.

206. The Bank's access restrictions to the physical premises were not reasonable and did not accord with Principle 2.1 of the Principles of Staff Employment. The Applicant was not given any advance notice of these access restrictions, any opportunity to respond, or any details about the nature of the access restrictions.

207. The Tribunal holds that the Applicant should be compensated for the Bank's failures in these respects.

DECISION

- (1) The Bank's reassignment decision of 28 October 2016 is rescinded, and all records of this decision and related decisions taken after 28 October 2016, including but not limited to the physical and systems access restrictions, movement of work station, leave, and removal of trading rights, shall be removed from the Applicant's personnel files;
- (2) The Bank shall reinstate the Applicant to his position prior to the reassignment decision or to a similar position;
- (3) The Bank shall pay the Applicant compensation in the amount of one year's salary;
- (4) The Bank shall pay the Applicant's legal fees and costs in the amount of \$20,663.60;
and
- (5) All other claims are dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 October 2018