



**World Bank Administrative Tribunal**

**2019**

**Decision No. 612**

**FA,  
Applicant**

**v.**

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

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

**FA,  
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), Marielle Cohen-Branche, Janice Bellace, Seward Cooper, and Lynne Charbonneau.

2. The Application was received on 6 November 2018. The Applicant was represented by Marie Chopra and Ryan Griffin of James & Hoffman, P.C. The Bank was represented by Ingo Burghardt, Chief Counsel; Edward Chukwuemeke Okeke, Interim Chief Counsel; and Maria Baechli, Senior Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 23 October 2019. Oral proceedings were held on 23 October 2019.

3. The Applicant challenges (i) the decision of the Vice President, Human Resources (HRVP or HRSVP) that he committed misconduct by failing to resolve a *de facto* conflict of interest arising from a sexual relationship and abusing his authority; (ii) the imposition of disciplinary sanctions; and (iii) the breach of his confidential information regarding the disciplinary sanctions imposed.

**FACTUAL BACKGROUND**

*Misconduct and disciplinary sanctions*

4. The Applicant joined the Bank in June 2011 as a Short Term Consultant (STC). In February 2013, he was appointed to a term position as a Natural Resource Management Specialist, Level GF, which was the position he held at the material time. He was promoted to Senior Agricultural Specialist, Level GG, in July 2017.

5. In late 2015, the Applicant decided to hire an STC for a project. The STC would be responsible for delivering training and writing reports.

6. Recalling a past LinkedIn message from a potential hire (the Complainant) exploring opportunities in the field of environmental science, the Applicant contacted the Complainant in December 2015 and reviewed her curriculum vitae and writing sample.

7. In January 2016, the Applicant met the Complainant for the first time in person, when he invited her to join a happy hour event at a restaurant in Washington, D.C., with other Bank staff.

8. On 25 March 2016, the Complainant was hired as an STC to work on the project. The Applicant was her Task Team Leader (TTL).

9. According to the Applicant, he spent some time with the Complainant socially outside the office, including dinner at a restaurant across from the International Finance Corporation before the Complainant started working at the Bank and drinks at “Exchange” after the Complainant started working at the Bank. The Applicant further states that by April/May the text messages between him and the Complainant “were perhaps 50% personal, 50% business related.”

10. In April 2016, the Applicant and the Complainant communicated through telephone calls, messages, and FaceTime, during and after regular working hours, about personal and professional matters.

11. On 20 April 2016, the Applicant and the Complainant met in the Applicant’s office. After the meeting, the Complainant texted the Applicant with a follow-up message about the project and added:

P.S.- I was borderline shaking sitting next to you.. Maybe this upcoming break is just what we need to feel a little more normal around each other 😊😊. Lies, I will miss you. Shaking, heart racing, it’s pretty bad.

The Applicant responded, “😊[.] Btw. We need to chat about the gift. Apparently I’m not allowed to take gifts from consultants.”

12. On 21 April 2016, the Complainant sent the Applicant a photo of herself, to which the Applicant responded that he wanted to see her “today” and “nice pic.” The Applicant then wrote to the Complainant later that day that he “[w]as just thinking of [her]” and that he was “[t]hinking about how gorgeous [she is].” The Complainant then sent the Applicant another photo of herself, to which he responded, “Beautiful” and “I hope I get to see you tomorrow.” The Complainant wrote to the Applicant, “I fear you’ve done this before or have a wife somewhere.” She asked whether the Applicant had interacted “in this capacity like with previous wom[e]n consultants,” and the Applicant responded, “Never,” “I really didn’t plan this,” “Honestly,” “I really like you,” and “[C]an we meet up earlier?”

13. On 22 April 2016, the Complainant went to the Applicant’s house in Laurel, Maryland, via an Uber that the Applicant had sent. The purpose of the Complainant’s visit and the events that followed are in dispute.

14. According to the Applicant, the Complainant had offered to help him move, but she arrived at his house late, after he had already left, so one of the Applicant’s cousins took the Complainant from the new house in Laurel to the Applicant’s old house. According to the Applicant, when he called his cousin later that evening, his cousin told him that he was having dinner with the Complainant and her friend at a restaurant. The Applicant states that, when he went to the restaurant, the Complainant was angry and refused to speak to him.

15. According to the Bank, as set out in iMessages on 21 April 2016, the Applicant invited the Complainant to come to Laurel and stated, “I was hoping we can chill with some privacy,” to which the Complainant responded, “I think coming to Laurel is a good idea...” The Bank states that there is evidence that the Complainant traveled to the Applicant’s residences, although it notes inconsistencies in the Applicant’s account of events to EBC.

16. In the evening of 22 April 2016, the Complainant sent the following message to the Applicant:

I think it’s best if we just keep things professional. I feel more hurt than I thought I would [...]. [I]t’s just the fact that I spent hours in a hotel room alone while you

were out just to uber back.. [I]f you had called to let me know even two hours after you left I wouldn't feel this way.. But from 2-8 pm I was literally alone and I would never do that to someone I care about.

17. The Applicant responded, in messages sent in the very early morning of 23 April 2016, as follows:

I'm really sorry about this. I think you are misreading everything. It was not my intention to get into a fight. I thought you understood where I was coming from. I agree with keeping things professional, which is why I refused the gift etc. Nothing changes we'll work together and deliver great products. I'm really glad we didn't [g]o through with any thing last night, we were both correct that we needed to separate personal from professional.

In a different time we would be perfect for each other. But this will continue to lead to fights.

18. In late April 2016, the Applicant went to the Complainant's house and met the Complainant's mother. According to the Applicant, this visit was at the request of the Complainant's mother and, at this meeting, the mother told him of the Complainant's "medical issues." After this meeting, the Complainant drove the Applicant from her house to Dulles Airport.

19. On 25 April 2016, the Applicant and the Complainant exchanged personal messages in which the Complainant told the Applicant that a security guard had complimented her beauty and she wrote, "It's a good thing I'm working from home this week, it feels weird without you here." The Applicant responded, "😊" and "Are you sure you aren't happy I'm gone."

20. The Complainant travelled on mission to Country X via Johannesburg between 14 and approximately 24 May 2016.

21. The Complainant travelled on a second mission to Country X via Johannesburg, departing Washington, D.C., on 21 July 2016.

22. On 23 July 2016, the Complainant, the Applicant, and a group of his friends went to dinner in Johannesburg. The Applicant claims that the Complainant's behavior was "erratic" and that "she tried to proposition him."
23. On 24 July 2016, the Complainant flew from Johannesburg to Country X.
24. According to the Bank, this mission was "cut short because the government [...] was not ready for the training," which was part of the project.
25. The Complainant did not receive any more work after the second mission.
26. In August 2016, the Applicant was on leave.
27. By email dated 31 August 2016 to the project team, including the Complainant, the Applicant thanked them for their work and promised "to be in-touch when the report is finalized." The Complainant responded by email on the same day, thanking the Applicant "for the update, and kind words" and wrote that "[i]t was a good experience nonetheless." She also asked to meet or discuss with him to follow up about projects. The Applicant responded on the same day that he "doubt[e]d [he] would be able to keep much of [his] current Africa work."
28. By email dated 22 September 2016, the Applicant contacted the Ethics Helpline about the Complainant. He cited "several initial difficulties with" the Complainant, her "erratic behavior," and "random messages" from her since the end of her contract. The Applicant explained that he was contacting EBC because the Complainant "may try to retaliate in some form or the other. This email is my attempt to get in-front of this issue if that happens; otherwise I am not asking for any action from the Ethics team beyond that [...]."
29. By email dated 23 September 2016, EBC invited the Applicant to discuss his concerns with them.

30. On 27 September 2016, EBC interviewed the Applicant. The Applicant informed EBC that he told the Complainant that he would not give her another contract, that the Complainant “was very upset and aggressive,” and that the Applicant wanted “to put his version of events ‘on the record’ and to seek advice.”

31. The project was closed on 30 September 2016, when funding for the project ended.

32. On 30 September 2016, the Complainant’s employment with the Bank ended.

33. By email dated 4 January 2017, the Applicant forwarded to EBC an email of 30 December 2016, which the Applicant claims to have received from the Complainant’s America Online (AOL) account. The email stated:

Since you feel like you are too good to sleep with me .... Please know that other men are more than willing and will pay good money to do so.

I told you I was very attracted to you, while we were in South Africa, and all you could say was “I am married.”

I can be your side chick .... Just hook me up at the Bank .... :)

34. On 27 March 2017, the Complainant’s attorney sent a letter to the Bank’s General Counsel, the Vice President of EBC and Chief Ethics Officer, and Ombuds Services, claiming that the Applicant had sexually harassed the Complainant and coerced her into performing sexual acts.

35. On 29 March 2017, EBC received a letter from the Complainant’s attorney, alleging that the Applicant had sexually harassed and abused the Complainant, with a link to the Complainant’s video testimony.

36. By letter dated 31 March 2017, the Chief Counsel (Institutional Administration), Legal Vice Presidency informed the Complainant’s attorney that the Complainant’s allegations could be reported to EBC, with the contact information for EBC.

37. By email dated 10 April 2017 to the Complainant's attorney, EBC requested authorization to view the video.

38. By email dated 13 April 2017, the Complainant's attorney sent EBC a link to view the video with the email heading: "CONFIDENTIAL – FOR SETTLEMENT PURPOSES ONLY." EBC viewed the video on the same day.

39. By emails dated 20 April 2017, EBC requested assistance from the Complainant's attorney to schedule an interview with the Complainant and requested the Complainant to arrange an interview with EBC.

40. On 17 May 2017, EBC issued a Notice of Alleged Misconduct to the Applicant and interviewed him. Following the interview, the Applicant provided EBC with screenshots of one iMessage and one WhatsApp message between him and the Complainant. These messages were about his refusal of a gift from the Complainant.

41. By email dated 18 May 2017, the Applicant sent EBC a list of consultants "whose houses [he had] visited" and a list of colleagues with whom he had "solo nights out." In a separate email on the same day, the Applicant sent EBC an email regarding the end of the project.

42. On 19 May 2017, the Applicant informed EBC that he had received an email dated 18 May 2017 from the Complainant's AOL account, which stated "I told you we were coming...." Attached to this email was correspondence between the Complainant, her attorney, and EBC.

43. Between 19 and 25 May 2017, EBC emailed the Complainant and her attorney, requesting the Complainant to contact EBC to schedule an interview. They were informed that, if the Complainant did not contact EBC by 26 May 2017, EBC would close the file.

44. As it had not received a response from the Complainant or her attorney, EBC closed the file on 26 May 2017 and notified the Complainant and her attorney accordingly.



45. On 5 July 2017, the Complainant contacted EBC to request an intake interview.
46. EBC conducted intake interviews with the Complainant on 6 and 7 July 2017. During these interviews, the Complainant provided EBC with screenshots of iMessages that she claimed to have exchanged with the Applicant.
47. EBC interviewed the Complainant again on 12 July 2017.
48. On 20 July 2017, EBC interviewed a Bank consultant who had worked on the project with the Applicant and the Complainant.
49. By email dated 9 August 2017 to EBC, the Complainant clarified the information she had provided during her interviews with EBC.
50. On 6 November 2017, EBC sent the Applicant a pre-notice and informed him of its investigation.
51. On 13 November 2017, EBC presented the Applicant with a second Notice of Alleged Misconduct and interviewed him. According to the Notice, the Applicant was alleged to have
  - (i) sexually harassed [the Complainant], a former Consultant; (ii) retaliated against [the Complainant]; and (iii) failed to promptly disclose [his] sexual relationship with [the Complainant] and resolve the resulting conflict of interest. Specifically, it is alleged that [he] had sexual contact with [the Complainant] several times between April 2016 – September 2016. It is further alleged that he terminated [the Complainant's] short term consultant contract as a result of her informing [the Applicant] that she no longer wanted to maintain a sexual relationship with [him] and/or because [he] believed she was going to report [his] alleged actions to EBC or to management.
52. Between 20 and 26 November 2017, the Applicant provided EBC with documents related to the Complainant's two STC contracts and a printout of an iMessage that he claimed the Complainant had attached to a Skype chat and had sent to him. The iMessage was identical to a screenshot of an iMessage the Complainant had provided to EBC, purportedly as evidence of a

sexual relationship, but the Applicant denied that the telephone number was his and it was from a different number than that in the iMessage provided by the Complainant.

53. On 29 November 2017, EBC interviewed the Complainant about the same iMessage coming from different telephone numbers. The Complainant denied having altered the screenshots and showed EBC several iMessages from her iPad with the same messages as the messages she had provided to EBC earlier.

54. On 6 December 2017, EBC interviewed the Complainant. In response to EBC's request for the Complainant's iPad to extract iMessages, the Complainant stated that she wanted to maintain possession of the iPad at all times or to be present while Information and Technology Solutions (ITS) extracted iMessages from the device. Although ITS was willing to accommodate the Complainant's request to be present during the extraction, the Complainant ultimately decided to hire a third party vendor, Sengroup Solutions, LLC, to extract the iMessages.

55. On 10 January 2018, the Complainant provided EBC with her mobile telephone records.

56. On 18 January 2018, the Complainant provided EBC with the iMessages extracted by Sengroup and an affidavit from Sengroup that the recovered iMessages were a true and accurate record of the messages on the Complainant's device.

57. On 31 January 2018, EBC provided the Applicant with transcripts of his interviews on 17 May 2017 and 13 November 2017, for his comments. EBC also informed the Applicant in an email that it had "conducted a long review of the evidence in this case, and EBC has decided that we will write a report and submit it to the HRVP."

58. On 2 February 2018, the Vice President of EBC and Chief Ethics Officer became the HRVP.

59. By email dated 13 February 2018, the Applicant requested an extension until 19 February 2018 to send his comments on the transcripts. He also asked whether EBC had decided to write a

report in his case. EBC responded by email on the same day, granting an extension, and stated that “given the nature of the allegations we believe it necessary to produce a report.”

60. By email dated 19 February 2018 to EBC, the Applicant provided his comments on the transcripts and continued to deny the allegations against him.

61. On 22 March 2018, EBC invited the owner of Sengroup for an interview. He responded that he would answer questions by email.

62. By email dated 5 April 2018, EBC asked the owner of Sengroup whether he had a prior professional or personal relationship with the Complainant before she had retained Sengroup’s services and the reason for using a particular software to recover the iMessages.

63. By email dated 6 April 2018 to EBC, the owner of Sengroup denied having any relationship with the Complainant and explained that he had successfully used the same extraction software in the past.

64. On 13 April 2018, EBC sent the Applicant its draft investigative report.

65. By email dated 7 May 2018, the Applicant responded to EBC’s draft report. The Applicant identified the following concerns:

(i) the omission of exculpatory evidence in EBC’s analysis; (ii) the implicit biases EBC demonstrated during its investigative process – particularly in regards to the extraordinary accommodations EBC made to [the Complainant] in prosecuting its case; (iii) the quality, coherence and veracity of the evidence considered, which do not meet the factual and legal sufficiency of evidence requirement prescribed in EBC’s Guide to Investigations and Annex A; and, (iv) the conclusions reached based on the flawed evidence presented.

In this email, the Applicant noted his concerns with EBC’s reliance on messages extracted by Sengroup, which he characterized as an “unknown and disreputable company,” whose owner was connected with the Complainant via Facebook.

66. On 22 May 2018, EBC sent the final investigative report to the HRVP. EBC found

evidence that the relationship between [the Applicant] and [the Complainant] was sexual in nature, specifically that they sent each other sexually suggestive iMessages that suggested that some type of sexual contact may have occurred between them. The sexual relationship created a *de facto* conflict of interest which [the Applicant] failed to report or resolve. EBC however found that [the Applicant] did not coerce [the Complainant] into a sexual relationship or otherwise engage in a *quid pro quo* arrangement suggesting sexual favors in return for the STC [contract]. EBC found insufficient evidence that [the Applicant] engaged in reprisals when he did not renew her STC contract.

67. By email dated 4 June 2018, the Applicant wrote to the Manager, Human Resources Development Corporate Operations (HRDCO), complaining that EBC had failed to address, in its final report, several points and issues that he had raised in his comments to the draft report. The Applicant repeated many of the arguments he had presented to EBC and attached documents.

68. On 18 June 2018, HR held a teleconference with the Applicant's Manager. The Bank claims that, during this call, it consulted with the Applicant's Manager before imposing disciplinary sanctions.

69. By email dated 21 June 2018, the Applicant's Manager informed HR that he had briefed his Vice President, Senior Director, and the Country Representative, and that the Country Representative would like to inform the Country Director.

70. By letter dated 9 July 2018 to the Applicant, the HRVP stated that the evidence

fully substantiates the allegation that you engaged in a sexual relationship with a reporting staff member, resulting in a *de facto* conflict of interest, and abuse of authority. The record shows that you had sexual relations with your subordinate between April and July 2016. You did not stop the relationship once it began, nor did you seek some other reporting arrangement for the STC. Further, the record shows that you abused your authority by authorizing the STC's earlier flight to [Country X] via South Africa and approved her stay at the Radisson Blu hotel in Johannesburg, South Africa even though her mission to [Country X] did not start until three days later. Nevertheless, EBC found that you did not coerce the STC into a sexual relationship or otherwise engage in a *quid pro quo* arrangement suggesting sexual favors in return for her STC appointment. Furthermore, EBC

found insufficient evidence that you engaged in reprisals when you did not renew the STC's contract.

71. The HRVP imposed the following disciplinary measures on the Applicant: termination of appointment effective 1 August 2018, ineligibility for future employment with the Bank Group, permanent restriction from access to the Bank Group's premises, and the disciplinary letter to remain indefinitely in the Applicant's personnel file. He placed the Applicant on administrative leave until 31 July 2018.

*Breach of confidentiality*

72. On 1 November 2018, the Applicant obtained a short-term contract with a United Nations (UN) specialized agency to work for 22 days. The project was co-financed by the Bank, and the Applicant was scheduled to attend meetings at a country office.

73. By email dated 6 November 2018 to the Manager, HRDCO, the Applicant requested an exception to the access restriction to permit him to attend meetings at the country office. The Manager, HRDCO, replied by email on the same date, denying the Applicant's request.

74. By letter dated 6 November 2018 to the Tribunal, the Applicant filed his Application with the Tribunal and requested provisional relief to allow him to access the country office for meetings in November.

75. The Applicant states that, on 7 November 2018, Bank security stopped the car of the UN specialized agency's team members, excluding the Applicant, when they arrived at the country office, demanded to know where the Applicant was, and searched the car.

76. According to the Applicant, by email dated 7 November 2018, the Bank's Senior Security Specialist for Central and West Africa informed the Bank's Country Manager that the Applicant "might attempt to access the Bank premises; that he had been dismissed for misconduct; and that he was on a World Bank access restriction list."

77. According to the Applicant, on 7 November 2018, the email from the Senior Security Specialist was forwarded to the Applicant's TTL at the UN specialized agency.

78. By email dated 8 November 2018 to the TTL, the Applicant acknowledged the "events at the World Bank yesterday" and the email that the TTL received from the Bank, but he stated that confidentiality precluded him from disclosing further information. He also apologized "for any inconvenience this breach of confidentiality has caused."

79. According to the Applicant, his contract with the UN specialized agency was terminated two weeks early, due to the information about the disciplinary sanctions.

80. By letter dated 12 November 2018 to the Chief Counsel (Institutional Administration), the Applicant's attorney protested the breaches of confidentiality and demanded that the Bank "take *immediate* action to instruct all personnel that such disclosures are illegal, and that anyone who releases information regarding a staff member or former staff member's misconduct and sanction will be guilty of misconduct themselves and will be punished accordingly." (Emphasis in original.)

81. By letter dated 26 November 2018 to the Tribunal, the Bank opposed the Applicant's request for provisional relief.

82. By email dated 2 December 2018 to the Ethics Helpline, the Applicant reported an alleged breach of confidentiality by HR and the Senior Security Specialist regarding the unauthorized disclosure of his disciplinary sanctions.

83. By email dated 4 December 2018, EBC acknowledged receipt of the Applicant's report and requested to speak with him on 6 December 2018. In response, the Applicant proposed to speak with EBC the following week.

84. By letter dated 4 December 2018, the Tribunal denied the Applicant's request for provisional relief.

85. On 10 December 2018, EBC interviewed the Applicant about his report of alleged misconduct by HR and the Senior Security Specialist.

86. On 11 December 2018, the Applicant submitted a request for review to Peer Review Services (PRS). He claimed that the HRVP's findings of misconduct and the disciplinary sanctions imposed upon him had been unlawfully disclosed to the Security Office and to a UN specialized agency.

87. By memorandum dated 28 January 2019, the PRS Executive Secretary informed the Applicant that PRS dismissed his request for review because all of his "claims fall outside the mandate of PRS and PRS has no jurisdiction to review them."

88. By email dated 8 February 2019, EBC informed the Applicant that a preliminary inquiry was ongoing.

89. On 14 June 2019, EBC issued an investigative report regarding the Applicant's allegation of unauthorized disclosure of confidential information.

90. By letter dated 16 September 2019, the HRVP made a decision based on EBC's investigative report.

#### *Application*

91. In his Application of 6 November 2018, the Applicant challenges the findings of misconduct and the disciplinary sanctions imposed. He seeks (i) rescission of all of the disciplinary sanctions and the removal of all records of them from his personnel file; (ii) the removal of all records of the EBC investigation from his personnel file; (iii) reinstatement to his former position as Senior Agricultural Specialist, Level GG (he was promoted in July 2017), in his former department; and (iv) "[a] letter to be sent to everyone informed about the misconduct finding and the reasons for [the Applicant's] termination (also copied to the U.S. Alternative Executive Director [...]), signed by [the HRVP] and announcing the rescission of [the Applicant's]

termination and an apology for the treatment given to [the Applicant].” As compensation, the Applicant claims “[b]ack pay and all benefits from the date of his termination [...] until [the Applicant’s] reinstatement, adjusted, as appropriate for any annual pay increases,” compensation “for the extraordinary stress caused by the unfair and abusive treatment inflicted on [the Applicant] and on his family; the additional lost income for his wife who was forced to relinquish her new job [...]; the violation of [the Applicant’s] due process rights; the exceptionally serious damage to his reputation; the negative impact on his career; and the financial costs of having to relocate to another country in search of work,” as well as legal fees and costs in the amount of \$56,046.20.

## SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

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

*There is no clear and convincing evidence of misconduct, and the investigation was flawed*

92. The Applicant claims that EBC had no “clear and convincing” evidence of a sexual relationship between him and the Complainant, beyond “conjecture or speculation” about iMessages, the origins and reliability of which the Applicant disputes. The Applicant notes that EBC did not find that he engaged in retaliation, sexual harassment, or “physical sexual activity” with the Complainant.

93. The Applicant contends that his interactions with the Complainant do not constitute a “sexual relationship,” a term which was not defined by EBC. To support his contention, the Applicant relies on the definition of “sexual relations” in Black’s Law Dictionary, i.e., “sexual intercourse” or “physical sexual activity that does not necessarily culminate in intercourse,” and maintains that EBC’s findings regarding the activities between the Applicant and the Complainant, based on their communications, do not satisfy this definition.

94. The Applicant contends that the Complainant lacked credibility, so EBC “should have rejected all of [the Complainant’s] narrative” and, therefore, dismissed the allegations against him.



95. Even accepting EBC's characterization of "suggestive" iMessages, the Applicant states that there were no such messages after mid-May 2016, so any such communications only lasted for approximately three weeks, and not six months, as found by EBC. Moreover, the Applicant denies that he and the Complainant exchanged iMessages that were personal or had sexual connotations before and during the Complainant's July 2016 mission. The Applicant contends that, of the 208 pages of iMessages between him and the Complainant, "only a very few of those pages could possibly be considered 'sexually suggestive.'"

96. The Applicant submits that the iMessages are not reliable because of several problems that the Bank has failed to explain. For example, the Applicant notes that the Complainant's description of the Applicant's request about the Complainant's dress was not reflected in any iMessage and contradicted the Complainant's testimony to EBC; an allegedly incriminatory iMessage discussing the Applicant's previous girlfriends and telling the Complainant he liked her was sent from a different telephone number than the Applicant's or was sent on a different date; and some of the allegedly incriminating messages were missing from the iMessages extracted by Sengroup.

97. The Applicant submits that EBC failed to follow up on possible exculpatory evidence. For example, according to the Applicant, EBC failed to interview witnesses proposed by the Applicant "who would have supported his version of events." The Applicant claims that the only other witness interviewed by EBC gave exculpatory evidence, but "her testimony was ignored by EBC and misrepresented" by the HRVP. The Applicant contends that EBC ignored conclusive evidence of his innocence, namely, an email from the Complainant to the Applicant dated 30 December 2016, which indicates that "there had previously been no sexual relationship" between them as the Applicant "had refused to have a sexual relationship with" the Complainant. He states that he provided EBC with exculpatory evidence regarding his personal contacts in the past with other staff and their parents.

### *The Bank's Response*

98. The Bank states that the Applicant supervised the Complainant as he had selected the Complainant for an STC appointment; was her TTL; "assigned, supervised, and evaluated her

work product[;] and ultimately made the decision not to renew” her contract. The Bank reiterates EBC’s finding that the “Applicant had a personal relationship with [the Complainant] that was sexual in nature” and that the “Applicant and the Complainant sent each other sexually suggestive iMessages that show that sexual contact may have occurred between them.”

99. The Bank submits that “sexual relationship” should be defined as “includ[ing] situations where there is an intimate personal relationship between a staff member and his or her subordinate, even if there is no sexual intercourse or physical sexual activity that does not necessarily culminate in intercourse between the two staff members.”

100. The Bank further relies on “Living Our Values: Code of Conduct” (Code of Conduct), which requires a supervisor to resolve a conflict of interest, which arises when there is a sexual relationship between a supervisor and a subordinate. According to the Bank, the rationale for the caution required in the context of a supervisor-subordinate relationship “is because of the potential adverse impact that such relationships can have on the Bank as an institution, the subordinate in question (given the inherent imbalance of power inherent in any supervisor-subordinate relationship) and other staff.” The Bank further explains that “an intimate personal relationship between a supervisor and a subordinate, even without physical sexual intercourse, undermines the supervisor’s objectivity,” thus impacting the supervisor’s ability to make decisions with respect to the subordinate, the unit’s work program, and the dynamic between staff in the unit.

101. The Bank states that, pursuant to Staff Rule 3.01, paragraph 4.02, a sexual relationship in this case gave rise to a *de facto* conflict of interest, which the Applicant was obligated to resolve by reporting it to his management or EBC. It claims that the Applicant failed to make such a report, thereby engaging in misconduct.

102. The Bank submits that it was reasonable for EBC to rely on the totality of the iMessages and text messages between the Applicant and the Complainant as “independent corroborating evidence to substantiate the credibility of the parties’ stories.” The Bank notes that, while the Applicant questions the credibility of all of the iMessages, the “Applicant did not provide EBC

with the full record of iMessages and text messages between him and [the Complainant], and only produced a screen shot of” one conversation.

103. Contrary to the Applicant’s assertion that he and the Complainant exchanged messages for three weeks, the Bank contends that “extensive inappropriate communications” were exchanged for six months.

104. In response to the Applicant’s attack on the Complainant’s credibility, the Bank notes that “EBC questioned the credibility of the testimony of both [the Complainant] and Applicant in certain areas of inquiry during its investigation and identified the areas of inconsistency in the EBC report. [...] The record shows that Applicant was not forthcoming with EBC from the outset.”

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

#### *The HRVP abused his authority, made factual errors, and had a conflict of interest*

105. The Applicant contends that the HRVP’s finding that the Applicant abused his authority by authorizing the Complainant’s earlier flight to Johannesburg for the second mission was not based on any finding by EBC. He states that the HRVP’s conclusion on this issue was based on incorrect facts and was made without having given the Applicant an opportunity to defend himself. As a result, the Applicant claims that the HRVP’s conclusion “was a serious abuse of authority and undermines both his decision and the sanctions he imposed which were, presumably, based at least in part on this irregular and unsupported finding.”

106. The Applicant identifies the following other flaws in the HRVP’s decision-making process: the HRVP’s reference to “the testimonies of the witnesses” fully substantiating the allegations when only one witness was interviewed and she supported the Applicant’s position, and the severity of the sanction being influenced by the Applicant’s consistent denials of a sexual relationship, which were justified.

107. The Applicant states that there was a conflict of interest because the Vice President of EBC and Chief Ethics Officer subsequently became the HRVP, thus eliminating the separation of

functions between the investigative and disciplinary functions. The Applicant claims that an EBC investigator informed him that a report would be prepared if there was “‘clear and convincing evidence’ of wrongdoing,” and that he was informed on 31 January 2018, while Mr. X was the Vice President of EBC, that EBC would prepare a report. The Applicant contends that “Mr. [X] as head of EBC decided that there was clear and convincing evidence in [the Applicant’s] case and that he was going to send *himself* a report on which to make a decision as to whether the evidence was clear and convincing.” (Emphasis in original.) The Applicant notes that “[w]hatever Mr. [X] may have learned during the investigation [...] doubtless influenced his decision making.”

### *The Bank’s Response*

108. The Bank denies any conflict of interest when the HRVP found misconduct and imposed the disciplinary sanctions. It states that, at the time EBC started to prepare the draft investigative report, Mr. X was no longer the Vice President of EBC and at the time Mr. X made the disciplinary decision, as the HRVP, he had been away from EBC for five months.

109. The Bank explains that Mr. X was not involved in the investigation involving the Applicant and, as the Vice President of EBC, would not generally be involved in a specific investigation.

110. Contrary to the Applicant’s assertion that Mr. X decided there was clear and convincing evidence against the Applicant, the Bank submits that this determination was made by the EBC investigator, in consultation with the Manager, Business Integrity Review (BIR). The Bank denies that Mr. X was consulted or informed about this step in the process.

111. Relying on the Code of Conduct, the Bank disagrees that Mr. X had a conflict of interest in this case since he “had no personal interests that would have competed with his professional ones, and there is no evidence of any limitations on his ability to discharge his work objectively and effectively at all times.”

112. The Bank submits that the HRVP’s finding of abuse of authority regarding the Complainant’s second mission travel “was based squarely on the four corners of EBC’s findings.”

It quotes from the EBC report regarding the dates and times of the Complainant's mission travel, and the Complainant's statement that the Applicant "authorized her earlier flight and approved her stay at the Radisson Blu hotel." The Bank states that the wording of the HRVP's decision letter is "consistent with the facts in the EBC report."

***The Applicant's Contention No. 3***

*The Applicant was denied due process*

113. The Applicant reiterates the submission, above, that the finding of abuse of authority in respect to the Complainant's second mission travel was "based on facts that were not established – or even considered – by EBC and against which [the Applicant] had no chance to defend himself."

114. The Applicant contends that EBC's ignorance of or failure to obtain exculpatory evidence denied him due process. As examples, he cites (i) EBC's failure to recognize the Complainant's admission in an email that she did not have a sexual relationship with the Applicant and that the Applicant had refused her advances; (ii) EBC's failure to interview witnesses proposed by the Applicant; and (iii) EBC's ignorance of or failure to look into the Applicant's observations that some of the iMessages had been tampered with or were otherwise not reliable.

115. The Applicant claims that EBC was biased against him, as reflected in the draft report, which was "full of unwarranted and unsupported statements," although EBC "ton[ed] down its language a little in the final report." According to the Applicant, EBC's bias is also demonstrated by its misrepresentation of the Applicant's testimony.

***The Bank's Response***

116. The Bank submits that the "EBC investigation was fair, unbiased and followed proper procedures [...]." For example, the Bank notes that EBC provided the Applicant with a Notice of Alleged Misconduct, informed the Applicant of the allegations against him and the standards relevant to allegations of misconduct, provided the Applicant with transcripts of his interviews for

his comments, gave the Applicant the opportunity to submit evidence that supported his case, provided the Applicant with a draft investigative report and the opportunity to comment on it, and took into account the Applicant's comments when preparing the final investigative report.

117. In response to the Applicant's allegation that EBC ignored or failed to obtain exculpatory evidence, the Bank submits that EBC exercised "its investigative discretion in determining what evidence is relevant and credible" and that EBC reviewed "extensive testimonial evidence from both Applicant and [the Complainant], other documents related to EBC's investigation and [...] over 208 pages of iMessages between Applicant and [the Complainant]." The Bank further claims that, in reviewing the iMessages, "EBC carefully looked for both inculpatory and exculpatory evidence" and gives an example of an exculpatory iMessage that had been extracted by Sengroup but had not been provided by the Complainant to EBC.

118. According to the Bank, EBC "has broad discretion to determine which individuals to interview in connection with an investigation" and considers a range of factors. It notes that the Applicant has not explained why interviewing only one other witness is "extraordinary," in a case about the existence of a sexual relationship between the Applicant and the Complainant. The Bank explains that EBC did not interview any of the four witnesses proposed by the Applicant because "it determined that [their proposed testimony] would have limited probative value" insofar as these witnesses could not testify as to how the Applicant and the Complainant "conducted themselves in private or in private communications." The Bank notes that EBC interviewed one witness proposed by the Applicant, but the witness did not provide any relevant information about the facts in dispute.

119. The Bank rejects the Applicant's contention that EBC ignored the Applicant's concerns about the authenticity and reliability of the iMessages. Rather, the Bank states that "EBC's investigative report explored thoroughly the authenticity and reliability of the iMessages and their evidentiary value in the investigation." The Bank explains that EBC recognized that the iMessages recovered by Sengroup may not comprise all of the iMessages and text messages between the Applicant and the Complainant, so EBC also looked to the iMessages produced by the Applicant

and the Complainant. The Bank gives examples where EBC identified inconsistencies among the iMessages and rejected certain iMessages due to lack of credibility.

120. Regarding the 30 December 2016 email, which the Applicant relies upon as being exculpatory, the Bank submits that EBC's investigation focused "on the communications between Applicant and [the Complainant], not on whether physical sexual contact occurred."

121. The Bank submits that the Applicant had the opportunity to comment on EBC's findings of fact regarding his authorization and the travel details of the Complainant's second mission, when he was provided with the draft report. Therefore, according to the Bank, the Applicant's due process rights in respect of this allegation were respected.

#### ***The Applicant's Contention No. 4***

##### *The disciplinary sanctions were disproportionate*

122. Even if misconduct were established, the Applicant submits that the disciplinary sanctions were disproportionate since the misconduct he was found to have engaged in was the exchange of "sexually suggestive text messages that suggested that some type of sexual contact may have occurred [...]." The Applicant contends that his case is not comparable to that of *CR*, Decision No. 511 [2015] because (i) the applicant in *CR* was a senior manager, whereas the Applicant was a very junior staff member managing his first project; (ii) the applicant in *CR* admitted to having physical sexual relations with his direct report, whereas EBC did not make any such finding about the Applicant; and (iii) the applicant in *CR* had already retired so the Bank had limited possible sanctions.

123. The Applicant alleges that, in other cases where staff have failed to report a consensual sexual relationship, more lenient disciplinary sanctions were imposed, such as a downgrade or salary reduction. He cites, for example, one case from Fiscal Year 2018 (FY18) of a "GH level staff member who failed to report a sexual relationship with a direct report and failed to disclose the relationship" and "was sanctioned only by being demoted and deemed ineligible for promotion for three years, with written censure to remain in the personnel record for three years." The

Applicant claims that the Bank's production of *de facto* conflict of interest and abuse of authority cases and corresponding disciplinary sanctions from 2013 to 2018 is "incomplete, incorrect, and unreliable." The Applicant differentiates his case from the cases cited by the Bank because those cases "likely [...] consisted of an actual physical relationship," in three cases the staff member chose to resign, and the only other case where the staff member's appointment was terminated involved findings that the staff member engaged in *quid pro quo* sexual harassment and abuse/misuse of the Bank's email facility.

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

124. The Bank states that the disciplinary sanctions imposed on the Applicant were provided for in the Bank's law.

125. The Bank submits that, in considering proportionality, the HRVP "duly considered various factors such as 'the seriousness of the matter, the interests of the World Bank Group, any extenuating circumstances, the situation of the staff member, and the frequency of the conduct for which disciplinary measures may be imposed,'" as well as mitigating factors, such as the Applicant's cooperation with EBC and the absence of any prior investigations or disciplinary proceedings against the Applicant. According to the Bank, aggravating factors include the Applicant's supervisory role, "the extreme power imbalance between him and a very junior and temporary STC," and the fact that his inappropriate behavior spanned over more than six months.

126. The Bank states that the Applicant's "continued lack of remorse or appreciation for the seriousness of his misconduct make[s] him unsuitable for future employment with the Bank."

127. The Bank reiterates the HRVP's analogy between this case and the case of *CR*, which involved a manager's failure to report a sexual relationship with a direct report. According to the Bank, although the applicant in *CR* separated from the Bank during the investigation, the additional disciplinary measures imposed in *CR* were similar to those imposed on the Applicant, and both were precluded from future employment with the Bank. The Bank identifies the following similarities between this case and *CR*, namely, that the two applicants were direct supervisors of



the complainants, who were STCs, that they had “an intimate personal relationship and ma[de] decisions regarding the subordinate staff member’s employment,” that the disciplinary sanctions were comparable, and that there was evidence “of a personal relationship that was sexual in nature, creating a de facto conflict of interest.”

128. The Bank submits that Mr. X, as the HRVP, has imposed the same disciplinary sanctions in two other cases involving the failure to disclose a *de facto* conflict of interest arising from a sexual relationship between a supervisor and a staff member.

129. The Bank explains that a written censure is “complementary to Applicant’s ineligibility for future hire and is necessary for Respondent’s institutional and record purposes.”

130. The Bank justifies the access restriction on the basis of the Applicant’s “serious misconduct.”

### ***The Applicant’s Contention No. 5***

#### *The Bank violated the Applicant’s right to confidentiality*

131. The Applicant submits that the Bank has violated his confidentiality by ordering his Manager to report information about the termination of his appointment to the Country Management Unit, which did not need to know this information.

132. The Applicant submits that his confidentiality was further breached by the Bank’s disclosure to more Bank staff, such as the Senior Security Specialist, and to persons outside the Bank, namely, those at the UN specialized agency. The Applicant contends that the disclosure of disciplinary measures to those outside the Bank “is only permitted (1) to local or national authorities for law enforcement purposes [...]; or (2) to governmental bodies of a member country or a public international organization,” subject to certain conditions. According to the Applicant, neither circumstance applies in this case.

***The Bank's Response***

133. The Bank notes that the Applicant has not provided any evidence about the length of his contract with the UN specialized agency or that it was terminated prematurely as a result of the alleged disclosure about the disciplinary sanctions.

134. The Bank submits that an EBC investigation is necessary to determine whether the events, as described by the Applicant, took place and whether the Applicant suffered harm. According to the Bank, until EBC's investigation is complete and a final decision is made, the Applicant cannot establish a non-observance of his terms of employment.

***The World Bank Group Staff Association's Amicus Curiae Brief***

135. The World Bank Group Staff Association submitted an *amicus curiae* brief on 14 March 2019. The Staff Association asserts that it “has a particular interest in ensuring that the Bank bases any punishment for alleged misconduct on a full and fair finding of fact and applies such punishment in a consistent manner that takes into account mitigating factors.” The Staff Association further asserts its “interest in ensuring that staff members are protected from any ancillary harm that may result from its personnel decisions absent appropriate due process,” such as the alleged harm to the Applicant's professional reputation resulting from an alleged breach of confidentiality regarding the imposition of disciplinary sanctions.

136. The Staff Association states that the disciplinary sanctions in this case were disproportionate to the misconduct, which was a “relatively minor infraction of failing to report a sexual relationship with a subordinate [...]” and were more severe than the disciplinary sanctions imposed in similar cases of misconduct.

137. The Staff Association challenges the Bank's finding of misconduct in this case, stating that “the so-called evidence in this case is highly questionable at best.” The Staff Association questions the reliability of the phone records, submits that the messages “fail to do anything more than suggest that the Applicant engaged in a sexual relationship with the accuser, and indeed the words

of the accuser herself clearly show that he did not,” and states that “the record in this case raises serious doubts about the credibility of the accuser.” (Emphasis in original.)

## THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

### THE TRIBUNAL’S SCOPE OF REVIEW IN DISCIPLINARY CASES

138. The Tribunal’s scope of review in disciplinary cases extends to an examination of (i) the existence of the facts; (ii) whether they legally amount to misconduct; (iii) whether the sanction imposed is provided for in the law of the Bank; (iv) whether the sanction is not significantly disproportionate to the offense; and (v) whether the requirements of due process were observed. *See EZ*, Decision No. 601 [2019], para. 67; *CH*, Decision No. 489 [2014], para. 22; *CG*, Decision No. 487 [2014], para. 38; *CF*, Decision No. 486 [2014], para. 39; *CB*, Decision No. 476 [2013], para. 31; *AB*, Decision No. 381 [2008], para. 53; *Koudogbo*, Decision No. 246 [2001], para. 18; *Mustafa*, Decision No. 207 [1999], para. 17; *Carew*, Decision No. 142 [1995], para. 32.

139. The Tribunal has held that the burden of proof in misconduct cases lies with the Organization and has stipulated on multiple occasions that the standard of evidence “in disciplinary decisions leading [...] to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.” *Dambita*, Decision No. 243 [2001], para. 21. Stated differently, there must be substantial evidence to support the finding of facts which amount to misconduct. *See, e.g., P*, Decision No. 366 [2007], paras. 33–34; *Arefeen*, Decision No. 244 [2001], para. 42. In *M*, Decision No. 369 [2007], para. 60, which involved an allegation of sexual harassment, the Tribunal stated that “the standard of proof must be demanding to the point of being clear and convincing.” *See also CK*, Decision No. 498 [2014], para. 59.

140. The Tribunal has also stated that its role is to “ensure that a disciplinary measure falls within the legal powers of the Bank.” *M*, para. 54. This, however,

does not mean that the Tribunal is an investigative agency. The Tribunal simply takes the record as it finds it and evaluates the fact-finding methodology, the

probative weight of legitimately obtained evidence, and the inherent rationale of the findings in the light of that evidence. *Id.*

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

#### EXISTENCE OF THE FACTS AND WHETHER THE FACTS LEGALLY AMOUNT TO MISCONDUCT

##### *De facto conflict of interest*

142. It is not disputed that the Applicant, as the Complainant's TTL, was in a supervisory position vis-à-vis the Complainant.

143. The Applicant and the Complainant presented EBC with conflicting accounts of events that took place while the Complainant was employed by the Bank as an STC between 25 March and 30 September 2016. Based on the evidence, EBC found in its final report that

- i. the Applicant sent an Uber to bring the Complainant to his house and that the Complainant visited the Applicant's residences in late April 2016, but EBC was unable to conclude that they had engaged in sexual activity at his house or that they went to a hotel subsequently and engaged in sexual activity;
- ii. the Applicant visited the Complainant's house and the Complainant drove him to the airport, but "EBC did not find conclusive evidence that he engaged in the physical contact that [the Complainant] attributed to him during the drive or that he engaged in the conversation she described"; and
- iii. although EBC could not conclude that they engaged in sexual activity during the Complainant's two missions, EBC found that prior to and during the first mission, they "engaged in conversation that was personal in nature and that was laden with sexual connotations. [...] [T]he content of the iMessages was either sexually suggestive or showed evidence that [the Applicant] had romantic feelings for [the Complainant] and was jealous of the time she spent with other men."

144. In its final report, EBC concluded that

[t]he relationship between [the Applicant] and [the Complainant] was sexual in nature, specifically that they sent each other sexually suggestive iMessages that suggested that some type of sexual contact may have occurred between them. The sexual relationship created a de facto conflict of interest which [the Applicant] failed to report or resolve. EBC however found that [the Applicant] did not coerce [the Complainant] into a sexual relationship or otherwise engage in a quid pro quo arrangement suggesting sexual favors in return for the STC [contract]. EBC found insufficient evidence that [the Applicant] engaged in reprisals when he did not renew her STC contract.

145. The HRVP concluded that the Applicant had “engaged in a sexual relationship with a reporting staff member, resulting in a *de facto* conflict of interest, and abuse of authority,” which he had failed to resolve. The HRVP found that the Applicant had engaged in misconduct, contrary to the following provisions:

Staff Rule 3.00 (Office of Ethics and Business Conduct), paragraph 6.01 (Allegations of Misconduct Addressed by EBC) during its investigation of the reported misconduct:

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

- (a) Abuse of authority;
- (b) Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct;
- (c) Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment including the requirements that staff avoid situations and activities that might reflect adversely on the Organizations (Principle 3.1) and conduct themselves at all times in a manner befitting their status as employees of an international organization (Principle 3.1(c)).

Staff Rule 3.01, paragraph 4.02. A sexual relationship between a staff member and his/her direct report, or direct or indirect manager or supervisor, is considered a de facto conflict of interest. The manager/supervisor shall be responsible for seeking a resolution of the conflict of interest, if need be in consultation with management, who will take measures to resolve the conflict of interest. Failure to promptly resolve the conflict of interest may result in a finding of misconduct; and

Living our Values: Code of Conduct. Supervisors and managers have a special responsibility to treat all their staff fairly and objectively, without showing any favoritism. Because a sexual relationship between a subordinate and a direct or indirect supervisor undermines the supervisor's objectivity, it creates a conflict of interest. It can also create morale issues among colleagues. For these reasons, it is the responsibility of the more senior person to promptly resolve the conflict of interest by bringing it to the attention of the next-in-line senior manager, HR professional, or EBC and by taking appropriate action. Failure to do so may result in disciplinary sanction.

146. The Applicant contests the existence of a sexual relationship, which is a necessary element for a *de facto* conflict of interest. The Tribunal begins its assessment by considering whether the record supports the finding that the Applicant and the Complainant had a sexual relationship.

147. The Applicant denies the existence of a sexual relationship and relies on EBC's failure to find that he engaged in "physical sexual activity" with the Complainant and an email dated 30 December 2016 from the Complainant's AOL account, which he claims demonstrates his refusal of a sexual relationship when proposed by the Complainant. He also impugns the credibility of the iMessages relied upon by EBC and claims that any such suggestive iMessages were sent only for a period of three weeks.

148. For its part, the Bank submits a broader interpretation of "sexual relationship," namely, that it should "include situations where there is an intimate personal relationship between a staff member and his or her subordinate, even if there is no sexual intercourse or physical sexual activity that does not necessarily culminate in intercourse between the two staff members."

149. The Bank further explains that

an intimate personal relationship between a supervisor and a subordinate, even without physical sexual intercourse, undermines the supervisor's objectivity. [...] Such a relationship limits the supervisor's ability to objectively make decisions that affect or relate to the subordinate in question, which may impact the unit's work program and can also create morale issues among colleagues in the unit.

150. The Tribunal observes that a sexual relationship, in today's digital age, can encompass "sexually suggestive iMessages," such as those exchanged between the Applicant and the Complainant. According to the Bank, this interpretation is necessary "considering the ultimate objective of the rule to prevent a conflict of interest occurring in the workplace." The Tribunal takes note of the Bank's interpretation, as it is supported by the rationale of the conflict of interest rule, which, according to the Code of Conduct, is to avoid "undermin[ing] the supervisor's objectivity [...] [and] creat[ing] morale issues among colleagues." The Tribunal finds clear and convincing evidence, namely, in the iMessages between the Applicant and the Complainant, of a sexual relationship giving rise to a *de facto* conflict of interest in this case.

151. The Tribunal recalls that, in *CR*, paras. 56–57, although the physical sexual relationship ended in December 2012, the Tribunal found that the sexual relationship lasted until 18 January 2013, having regard to "the last time the [a]pplicant and Ms. R exchanged messages of a sexual nature." The messages in question consisted of a two-hour "internet chat session which included graphic sexual language." *Id.*, para. 21.

152. The United Nations Dispute Tribunal in *Mapuranga*, Judgment No. UNDT/2018/132, para. 125, characterized the language in two text messages and a card sent by the applicant to the complainant as "contain[ing] terms of endearment and convey[ing] messages of sexual or at least romantic connotation." The tribunal found that these "amount to a behaviour of a sexual nature within the definition of" sexual harassment, as defined in the Executive Director's Bulletin on "Special measures for protection from sexual exploitation and sexual abuse." *Id.*

153. Similarly, the United Nations Appeals Tribunal in *Applicant*, Judgment No. 2013-UNAT-280, considered email communications, including a photograph of genitalia, between an applicant and a complainant. Despite the absence of physical contact, the appeals tribunal upheld the Secretary-General's conclusion "that the [a]pplicant's approaches to the [c]omplainant remained sexual in nature, notwithstanding the absence of overt sexual comments or entreaties on the part of the [a]pplicant." *Id.*, para. 62.

154. In this case, EBC analyzed iMessages that were exchanged between the Complainant and the Applicant and found that the iMessages “revealed that they had a personal relationship” and that “their personal relationship was at least characterized by sexually suggestive comments and innuendoes.” According to EBC, the communications between the Applicant and the Complainant “suggested that some type of sexual contact may have occurred between them.” EBC found that they had a sexual relationship, “specifically that they sent each other sexually suggestive iMessages.”

155. One undisputed iMessage conversation between the Applicant and the Complainant took place on 20 April 2016. The Complainant wrote, “P.S.- I was borderline shaking sitting next to you.. Maybe this upcoming break is just what we need to feel a little more normal around each other 😊😊. Lies, I will miss you. Shaking, heart racing, it’s pretty bad.” The Applicant responded, “😊[.] Btw. We need to chat about the gift. Apparently I’m not allowed to take gifts from consultants.”

156. EBC’s interpretation of this message was that it was an expression of the Complainant’s attraction to the Applicant, and that,

[g]iven [the Applicant’s] response of a happy face emoji, EBC noted that there was no independent evidence to demonstrate that he told her that the message was inappropriate or unwelcome. EBC further found that there must have been some prior circumstances or conditions such that [the Complainant’s] message was not surprising or otherwise warranted a rebuke from [the Applicant].

The Applicant claims that his response was “a nuanced message to [the Complainant] that her advances were improper.”

157. At the Applicant’s interview on 13 November 2017, EBC presented him with text messages between him and the Complainant and gave him an opportunity to comment. The Applicant responded, “So first and foremost, most of this does not look familiar at all, and let us go through them one by one.” Regarding one message, he stated, “I am absolutely sure that I never asked [the Complainant] to have any privacy with me. [...] But this is not from me; I can tell you that for a fact.” With respect to another message, he admitted to having seen it before. The Applicant denied



the contents of a third message, stating, “This is one I don’t know what this is about. [The Complainant] and I have never been in a hotel room [...]. But this whole interaction never happened.” He then claimed that “it looks like something that I said was spliced into things I didn’t say.” In other instances, as noted in the EBC report, the Applicant “said he could not recall or remember sending the texts.”

158. In one of the messages EBC showed to the Applicant during his 13 November 2017 interview, the Applicant had written to the Complainant, “I feel you. We need to figure out how [to] manage this professionally and personally so as to avoid any conflict of interest[.] Easier said than done.” The Applicant admitted to having a screenshot of this message, which he believed was sent in early May. He claimed that he sent it in response to the Complainant “bugging [him]” and he “felt the best way to sort of push her backward was to say, look, you know, like this could be an issue. I mean, let’s make sure that this is not a problem.” The Tribunal finds that this message constitutes an admission from the Applicant that the situation had resulted in or was going to result in a conflict of interest that needed to be managed, as foreseen in Staff Rule 3.01, paragraph 4.02. However, the Applicant failed to report or resolve this conflict of interest.

159. Although the Applicant questions the authenticity and reliability of the iMessages as a whole, the Tribunal emphasizes that EBC explored this issue thoroughly in its report and concluded that it was “reasonable to rely on the iMessages provided by Sengroup in making its analysis.” The Manager, BIR testified during the oral proceedings before the Tribunal that EBC treated the messages extracted by Sengroup as credible because Sengroup was an independent company and its owner had provided an affidavit authenticating the extracted iMessages. The EBC Senior Investigator testified during the oral proceedings before the Tribunal that EBC noted some messages extracted by Sengroup as being adverse to the Complainant so collusion between Sengroup and the Complainant was unlikely. The EBC Senior Investigator also testified that one of the iMessages provided by the Applicant was included in the iMessages extracted by Sengroup, but had not been provided by the Complainant to EBC. Finally, the EBC Senior Investigator testified that EBC checked Sengroup’s registration with the Maryland Secretary of State, did a Better Business Bureau search, and looked it up on the Internet.

160. The Tribunal notes that EBC reached its conclusion after interviewing the Complainant five times, interviewing the Applicant three times, analyzing over 200 pages of iMessages, and reviewing the Applicant's responses to his transcripts and the draft investigative report together with additional documentation provided by the Applicant.

161. The Tribunal itself has reviewed the EBC investigative report and thirty-five exhibits and examined the communications between the Applicant and the Complainant. The Tribunal notes that some of these messages included photographs and personal messages. The Tribunal determines that EBC reasonably construed these communications as evidence of a sexual relationship.

162. The Tribunal finds that the evidence in the record is clear and convincing and supports the conclusion that the Applicant had a sexual relationship with the Complainant, giving rise to a *de facto* conflict of interest, which the Applicant failed to promptly report or resolve. This constitutes misconduct under Staff Rule 3.01, paragraph 4.02, and the Code of Conduct.

*Abuse of authority regarding mission travel*

163. In his letter of 9 July 2018, the HRVP also found that the Applicant "abused [his] authority by authorizing the STC's earlier flight [...] and approved her stay at the Radisson Blu hotel in Johannesburg, South Africa even though her mission [...] did not start until three days later."

164. The Tribunal recalls that such a finding of grave misconduct cannot be established by conjecture or mere speculation. *See M*, para. 60, and *EZ*, para. 72.

165. The record shows that the Complainant flew from Washington, D.C., on 21 July 2016 to Johannesburg, where she stayed at the Radisson Blu hotel, en route to the mission in Country X. The record is not clear as to whether the Applicant landed in Johannesburg on 21 or 22 July 2016, although her trip itinerary shows that the hotel in Johannesburg was booked for 22 to 24 July 2016. According to the EBC report, the Complainant stated that the Applicant "flew [her] out three days before" the mission began. She stated that the Applicant authorized her earlier flight and approved

her stay at the hotel even though the mission did not start until 24 July 2016. The Tribunal notes that this allegation is the only mention of the mission travel in the EBC report.

166. In his 27 September 2016 interview with EBC, the Applicant stated that he was based in Johannesburg, from the first week in June until the first week in August 2016, and explained that he could not go on the second mission because of his other planned missions. He informed EBC that he asked the Complainant to travel “to Johannesburg on her way to [Country X] and spend a day to meet with me to go through the final mission sort of schedule, et cetera.”

167. In his 17 May 2017 interview with EBC, the Applicant again explained the reason for the Complainant’s travel itinerary as follows:

[B]ecause I couldn’t come to -- I couldn’t come to [Country X] because I had to go to three countries the next -- the same week she was -- the same few weeks she was in [Country X] -- I thought I’d just come and spend -- I’d do a layover, I think of one or two days, and so that we could go through, you know, sort of what’s -- because I hadn’t seen her in two months, so I said come and do a layover. It was a mission layover for two days. And we went through sort of what she had to do while she was there.

168. The HRVP testified at the oral proceedings before the Tribunal that he relied on the information in the EBC report about the reason for the mission travel to conclude that the Applicant had engaged in misconduct. The Tribunal observes that the information in the EBC report consists of the travel itinerary and the Complainant’s explanation for travelling earlier. EBC did not make any findings as to whether the Complainant’s explanation was credible. EBC did not include the Applicant’s explanation in its report nor did it make any findings as to whether the Applicant’s explanation was reasonable or any findings regarding the Applicant’s credibility in this regard. Similarly, in his letter of 9 July 2018, the HRVP did not accept or reject the Applicant’s explanation for the Complainant’s travel itinerary.

169. The Tribunal also takes note that neither EBC nor the HRVP referred to any Bank policy or rule that the Applicant had violated. In response to the Tribunal’s order to produce “references to any relevant Bank policies or practices regarding mission travel,” the Bank refers to the World Bank Group Procedure, Official Travel, Section III, paragraph 14. The Tribunal notes that this

document was effective as of 8 August 2016, subsequent to the mission in question, which took place in July 2016. The Tribunal finds that this document, therefore, is not applicable to the present case, and the HRVP could not have found the Applicant to have been in breach of this policy.

170. The Bank has also produced “Procedure AMS 3.00 Operational Travel,” which was in effect from 1 November 2011 to 8 August 2016, during the material time. However, the paragraphs that the Bank relies upon, retroactively, for the HRVP’s conclusion that the Applicant abused his authority are not in this document but are in the Official Travel policy document that was in effect after the Complainant’s mission travel in July 2016. In any case, the Tribunal stresses the importance of informing the staff member in the disciplinary letter of the relevant Bank rule or policy that was breached.

171. In *BP*, Decision No. 455 [2011], para. 16, the Tribunal reviewed the scope of the HRVP’s powers in determining whether misconduct occurred and in imposing disciplinary sanctions. The Tribunal stated that “[t]he difficulty arises when HRSVP purports to rely on others’ *evaluation* of the evidence, if such evaluation was not focused on determining factors bearing upon the exercise of discretion, such as extenuating circumstances or the seriousness of the matter.” *Id.* (Emphasis in original.) In that case, the Tribunal found that errors in EBC’s investigation “led to an incomplete presentation of findings likely to result, in turn, in an erroneous review of the factors to be properly taken into account when HRSVP decided the disciplinary measure to be imposed.” *Id.*, para. 31.

172. In this case, the Tribunal finds that EBC made a bare recitation of statements about the Complainant’s mission travel, without presenting the Applicant’s rationale for her earlier travel to Johannesburg. Moreover, EBC did not investigate the Applicant’s alleged authority to approve the Complainant’s mission travel, authority which the Applicant denies having. The Tribunal finds that the HRVP’s conclusion that there was an abuse of authority was based on facts that had not been established by EBC. It is not sufficient for the HRVP to endorse the Complainant’s allegations, as set out in the EBC report, without explaining how these legally amounted to misconduct by the Applicant.

173. As a result, the Tribunal holds that the finding that the Applicant abused his authority by authorizing the Complainant's travel to Johannesburg on 21 July 2016 cannot stand.

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

174. In his decision of 9 July 2018, the HRVP imposed the following disciplinary measures on the Applicant: termination of appointment effective 1 August 2018, ineligibility for future employment with the Bank Group, permanent restriction from access to the Bank Group's premises, and the disciplinary letter to remain indefinitely in the Applicant's personnel file.

175. The Applicant does not dispute that the sanctions imposed are provided for in the law of the Bank. He contests, however, their proportionality.

176. In deciding on the appropriate disciplinary measures, Staff Rule 3.00, paragraph 10.09, further requires the HRVP to "take into account such factors as the seriousness of the matter, any extenuating circumstances, the situation of the staff member, the interests of the Bank Group, and the frequency of conduct for which disciplinary measures, as provided in paragraph 10.06 of this Rule may be imposed."

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

Consistently with *Mustafa*, paragraph 3.01 states that "[a]ny decision on disciplinary measures will take into account such factors as the seriousness of the matter, any extenuating circumstances, the situation of the staff member, the interests of the Bank Group, and the frequency of conduct for which disciplinary measures may be imposed." It appears these factors were intended to guide the HRSVP in the exercise of his discretion concerning what disciplinary measures to impose. Thus, if paragraph 3 is read in its full context, it is reasonable to conclude that in exercising his discretion under paragraph 3.02, the HRSVP should consider the factors listed in paragraph 3.01.

178. In *Gregorio*, Decision No. 14 [1983], para. 47, the Tribunal held that, in order for a sanction to be proportionate,

there must be some reasonable relationship between the staff member's delinquency and the severity of the discipline imposed by the Bank. The Tribunal has the authority to determine whether a sanction imposed by the Bank upon a staff member is significantly disproportionate to the staff member's offense, for if the Bank were so to act, its action would properly be deemed arbitrary or discriminatory.

179. In *Houdart*, Decision No. 543 [2016], para. 95, the Tribunal reiterated the principle of proportionality and observed that,

in addressing the issue of proportionality, its job is not to decide what sanction the Tribunal would impose or whether the HRVP chose the best penalty, but, rather, whether the HRVP reasonably exercised his discretion in this matter. [...] [T]here is no mechanical formula on how to weigh these considerations. The selection of the sanction in a given case requires a judgment of balancing the relevant factors by the HRVP. That discretionary judgment is for the HRVP to make, and as long as HRVP's decision was not unreasonable, the Tribunal will not interfere.

180. The Tribunal has observed that "termination of a staff member's appointment is the most serious disciplinary measure." See *CH*, para. 64. In *CT*, Decision No. 512 [2015], para. 45, the Tribunal reiterated that it

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

181. The Applicant asserts that the sanctions imposed on him were disproportionate to his misconduct because his conduct was not comparable to the applicant in *CR*, who had comparable disciplinary sanctions imposed, and, in other cases where staff have failed to report a consensual relationship, more lenient disciplinary sanctions were imposed.

182. The Bank submits that aggravating factors in this case include the Applicant's supervisory role, the "extreme power imbalance between him and a very junior and temporary STC," and the fact that his inappropriate behavior spanned over more than six months.

183. In considering the proportionality of the disciplinary sanction in response to a failure to resolve a *de facto* conflict of interest, the Tribunal in *CR*, para. 92, "recognize[d] that managers are in a position of special trust and must therefore be even more vigilant as to actual and apparent conflicts of interest."

184. The Applicant and the Bank disagree as to whether the facts of this case are analogous to *CR*, which was cited by the HRVP in his disciplinary letter. The Tribunal acknowledges that the cases have some similarities, involving supervisors who had sexual relationships with subordinates who were STCs. In both cases, EBC found that the supervisors failed to resolve a *de facto* conflict of interest arising from the sexual relationship but that there was insufficient evidence of sexual harassment.

185. Although the record does not support the Bank's characterization that the Applicant's inappropriate behavior spanned over more than six months, the record shows that inappropriate messages were exchanged between the Applicant and the Complainant for at least two months out of the Complainant's six-month contract, where the Complainant effectively worked for three of those months, although not continuously. Therefore, the Applicant's inappropriate behavior took place during at least half of the Complainant's time at the Bank.

186. Pursuant to the Tribunal's order to produce documents, the Bank submitted a comparative analysis of the disciplinary sanctions imposed in five cases (including the Applicant's), from 2013 to 2018, involving a *de facto* conflict of interest arising from a sexual relationship with a subordinate and abuse of authority. The Tribunal will analyze the four cases, excluding the Applicant's case. Three of those cases also involved a finding of misuse or abuse of authority and, of those three, one involved sexual relationships with two subordinates, sexual harassment, and abuse or misuse of the Bank's resources. In two of those cases, physical sexual contact was denied or contested. A Senior HR Specialist testified at the oral proceedings before the Tribunal that one

case involved the exchange of sexually explicit messages and photos while the other case involved the exchange of “a handful, not many” text messages that “were intimate in nature.”

187. Two staff members were given the choice of termination or resignation, and both resigned; a third staff member had already retired before disciplinary measures were imposed. Although the Applicant reasons that “there is no evidence on *what* sanctions would have been imposed in these cases,” the Tribunal is persuaded that the record shows that the Bank did not intend to retain the services of these staff members but allowed them to choose their mode of separation. The fourth staff member’s appointment was terminated. In addition, the Bank imposed a ban on eligibility for future employment with the Bank, an access restriction on three of the four staff members, and a written censure to remain in the staff record indefinitely for all four.

188. Not included in the Bank’s comparative analysis is a case from FY18 that the Applicant identifies as an example of where more lenient sanctions were imposed. That case involved a GH-level staff member who was found to have “engaged in a sexual relationship with a direct report and failed to disclose the relationship in a timely manner, resulting in a de facto conflict of interest.” The disciplinary sanctions imposed were demotion to Level GG, ineligibility for promotion for three years, and a written censure to remain on the personnel record for three years. The Senior HR Specialist who testified at the oral proceedings before the Tribunal explained that this case was not included in the analysis because no abuse of authority had been found. The Tribunal notes that this case differs from the Applicant’s because the former case involved a consensual sexual “relationship [that] started when the two staff members were peers” and “the male staff member had supervisory authority over the female staff member for only part of the time when they engaged in a sexual relationship.”

189. The Tribunal observes that the sanctions imposed upon the Applicant were comparable to those imposed on similarly situated staff members.

190. When considering the principle of proportionality and the appropriate disciplinary measure to impose, it is important to look at the underlying rationale for the conflict of interest rule. As set out in the Code of Conduct:



Conflicts of interest can adversely impact the World Bank Group's activities and reflect poorly on the institution.

[...]

Supervisors and managers have a special responsibility to treat all their staff fairly and objectively, without showing any favoritism. Because a sexual relationship between a subordinate and a direct or indirect supervisor undermines the supervisor's objectivity, it creates a conflict of interest. It also can create morale issues among colleagues. For these reasons, it is the responsibility of the more senior person to promptly resolve the conflict of interest by bringing it to the attention of the next-in-line senior manager, HR professional, or EBC and by taking appropriate action.

191. The Tribunal recalls that “a manager owes a greater duty of care to ensure a safe working environment for his or her staff. This situation is compounded by the fact that the [c]omplainant was in a vulnerable position as a short-term consultant embarking on her first employment.” *CK*, para. 85. The Tribunal observes a similar power imbalance in this case, which involves a young, junior staff member on an STC contract.

192. According to Staff Rule 3.00, paragraph 10.09, one of the factors to take into account when imposing disciplinary measures is the “interests of the Bank Group.” In *EK*, Decision No. 573 [2017], para. 89, the Tribunal stated, “The creation of doubt about the integrity of the institution and its members through the conduct of a staff member is not permissible.”

193. In light of the seriousness of the misconduct in this case and the Bank's interest in promoting a respectful workplace environment and ensuring that staff are treated “in a fair and unbiased manner,” the Tribunal finds that the failure to resolve a *de facto* conflict of interest, arising from a sexual relationship between a supervisor and a subordinate, in this case, is serious misconduct, warranting the imposition of severe disciplinary sanctions.

194. Considering the foregoing, the Tribunal concludes that the sanctions imposed by the HRVP on the Applicant, namely, termination of appointment, ineligibility for future employment, a permanent access restriction, and the disciplinary letter to remain on the personnel record, were a reasonable exercise of the HRVP's discretion. The Tribunal reaches this conclusion, even though

the Tribunal does not uphold the finding that the Applicant abused his authority by authorizing the Complainant's mission travel via Johannesburg.

#### WHETHER DUE PROCESS WAS FOLLOWED

195. The Applicant contends that EBC's ignorance of or failure to obtain exculpatory evidence denied him due process. As examples, he cites (i) EBC's failure to recognize the Complainant's admission in an email that she did not have a sexual relationship with the Applicant and that the Applicant had refused her advances; (ii) EBC's failure to interview witnesses proposed by the Applicant; and (iii) EBC's ignorance of or failure to look into the Applicant's observations that some of the iMessages had been tampered with or were otherwise not reliable. The Applicant also claims that EBC was biased against him, as reflected in the draft report and in EBC's representation of the Applicant's testimony.

196. For its part, the Bank disputes the Applicant's claims and asserts that the EBC investigation followed proper procedures and respected the Applicant's due process rights.

197. The Tribunal has consistently held that an investigation into a disciplinary matter is administrative and not adjudicatory in nature. *See, e.g., Arefeen*, para. 45; *Rendall-Speranza*, Decision No. 197 [1998], para. 57. In addition, "compliance with all technicalities of a judicial process is not necessary, if it is conducted fairly and impartially." *CB*, para. 43. The criteria for due process were elaborated in *Kwakwa*, Decision No. 300 [2003], para. 29:

[T]he due process requirements for framing investigations of misconduct in the context of the World Bank Group's relations with its staff members are specific and may be summarized as follows: affected staff members must be appraised of the charges being investigated with reasonable clarity; they must be given a reasonably full account of the allegations and evidence brought against them; and they must be given a reasonable opportunity to respond and explain.

198. The record shows that the Applicant was provided with Notices of Alleged Misconduct on 17 May 2017 and 13 November 2017. He was also provided with transcripts of his interviews with EBC, which he commented upon on 19 February 2018, and was provided with the draft

investigative report, which he responded to with 16 pages of comments and annexed additional documents. During the Applicant's interviews with EBC, EBC presented the Applicant with messages exchanged between him and the Complainant, and the Applicant had ample opportunity to dispute the allegations and evidence against him.

199. The record shows that EBC had regard to the email of 30 December 2016, which the Applicant claims is exculpatory evidence. EBC relied on this email to question the Complainant's credibility and motive. The Tribunal refrains from substituting its own judgment in place of EBC's as to whether this email is, in fact, evidence that the Applicant never had a sexual relationship with the Complainant.

200. The Tribunal is cognizant that it "does not micromanage the activity of investigative bodies." See *Houdart*, para. 112, citing *G*, Decision No. 340 [2005], para. 73. In *G*, para. 73, the Tribunal added that

[it] has no authority to micromanage the activity of INT [Integrity Vice Presidency]. What is required of INT is not that every inquiry be a perfect model of efficiency, but that it operates in good faith without infringing individual rights.

201. Regarding EBC's choice of witnesses to interview, the Bank explains that it did not interview any of the four witnesses proposed by the Applicant because "it determined that their proposed testimony would have limited probative value" insofar as these witnesses could not testify as to how the Applicant and the Complainant "conducted themselves in private communications."

202. Finally, the record does not support the Applicant's contention that EBC ignored or failed to look into his claim that some of the iMessages extracted by Sengroup were incomplete or had been manipulated. To him, the iMessages extracted by Sengroup should not have been relied upon by EBC. In his response to the draft investigative report, the Applicant noted at least five instances where iMessages present elsewhere in the record were missing from the messages extracted by Sengroup. Upon reviewing all of the iMessages in the record, the Tribunal confirms that the Applicant is correct. However, the omitted or missing iMessages do not exonerate the Applicant.

At most, they support his contention that the Complainant was not harassed or abused. The Tribunal recalls that the issue in this case is whether there was a *de facto* conflict of interest and not whether the Applicant had sexually harassed the Complainant.

203. Contrary to the Applicant's assertions, the authenticity of the iMessages provided by the Complainant and extracted by Sengroup is addressed by EBC in its investigative report, and EBC explained its rationale for relying on the iMessages extracted by Sengroup. The Tribunal is satisfied that EBC was alert to the issue of the iMessages' authenticity and reliability and reasonably relied on the iMessages extracted by Sengroup for its analysis.

204. The Tribunal acknowledges that there were changes from the draft investigative report to the final report. This is expected as the final report should, and in this case did, incorporate the Applicant's comments on the draft report and the transcripts of his interviews with EBC. Upon comparing the differences between the draft investigative report and the final report, the Tribunal notes that the changes were to the Applicant's benefit. For example, EBC used more neutral language in a section heading, refrained from detailing the alleged sexual acts, provided more details of the alleged gift from the Complainant to the Applicant, and stated that EBC could not conclude that they went to a hotel and engaged in sexual activity.

205. Staff Rule 3.00, paragraph 10.11 provides:

The World Bank Group Human Resources Vice President, will decide, after consultation with the staff member's manager and based on EBC's findings, whether conduct warranting the imposition of disciplinary measures on a staff member occurred and what, disciplinary measures should be imposed.

206. In response to the Tribunal's order, the Bank states that it consulted with the Applicant's Manager on 18 June 2018, and the Senior HR Specialist testified at the oral proceedings before the Tribunal that the Applicant's Manager was consulted before the HRVP made his decision. The Tribunal is satisfied that the Bank complied with Staff Rule 3.00, paragraph 10.11.

207. The Tribunal therefore finds that the requirements of due process were observed in this case.

WHETHER THE HRVP ABUSED HIS AUTHORITY, MADE FACTUAL ERRORS, OR HAD A CONFLICT OF INTEREST

208. Staff Rule 3.00, paragraph 10.11 regarding the imposition of disciplinary sanctions provides:

Where there is conflict of interest for the World Bank Group Human Resources Vice President, a Managing Director, or the President or his/her designee shall make the decision.

209. There are a few cases where an applicant has alleged a conflict of interest by the HRVP, although these claims have been rejected by the Tribunal. In *DJ (Merits)*, Decision No. 548 [2016], para. 109, the Tribunal rejected the applicant's allegation that the HRVP had a conflict of interest because the applicant had accused the HRVP of failing to protect the applicant pending an EBC investigation. In *Houdart*, para. 149, the applicant claimed that the HRVP could not be impartial because the applicant had reported him to EBC and had mocked him in his blogs; however, the Tribunal disagreed that the HRVP had a conflict of interest and should have recused himself.

210. The Applicant states that there was a conflict of interest because the Vice President of EBC and Chief Ethics Officer during the investigation into his alleged misconduct then became the HRVP, who decided that the Applicant had engaged in misconduct and imposed disciplinary sanctions.

211. The Tribunal accepts the Bank's explanation that the Vice President of EBC and Chief Ethics Officer was not involved in the investigation into the Applicant's alleged misconduct. The Bank has produced a sworn statement from the former Vice President of EBC and Chief Ethics Officer, denying any involvement in the Applicant's case at the investigative stage, and he testified at the oral proceedings before the Tribunal that, as the Vice President of EBC and Chief Ethics Officer, he was not involved in the investigation or the review of the Applicant's case.

212. A conflict of interest does not arise merely because the HRVP takes a disciplinary decision in a case where EBC had conducted an investigation during his tenure as Vice President of EBC

and Chief Ethics Officer. The Tribunal finds that there is no evidence in this case of a conflict of interest that would have required the HRVP to recuse himself.

213. The claims regarding the HRVP's factual errors and abuse of authority have been addressed in the section, above, on the existence of the facts and whether they legally amounted to misconduct.

#### WHETHER THERE WAS A BREACH OF CONFIDENTIALITY

214. The Applicant also submits that the Bank violated his confidentiality by ordering his Manager to report information about the termination of his appointment to the Country Management Unit.

215. The Bank acknowledges that it communicated the disciplinary sanctions imposed upon the Applicant, including the termination of his appointment, to the Applicant's Manager and his Vice President, and that the Manager briefed the Vice President, the Senior Director, and the Country Representative. The Bank explains that "[t]he purpose of these communications was to implement the decision with respect to Applicant's employment and provide management information regarding the basis of the decision."

216. Staff Rule 2.01, paragraph 5.01, provides that

the World Bank Group Human Resources Vice President, or his/her designee, may decide that information about disciplinary measures in a particular case should be disclosed to other staff members when the circumstances warrant.

217. The Tribunal finds that the communications to a limited group of senior managers to implement the decision were reasonable in the circumstances and were permitted under the relevant Staff Rule.

218. The Applicant further alleges that there was an unauthorized disclosure of his confidential information, specifically the disciplinary sanctions imposed upon him, to a third party, which led to the early termination of his contract with the UN specialized agency.

219. The Bank contends that this is a new claim, which was prematurely brought before the Tribunal, pending an EBC investigation. It contends that the “Applicant has not yet exhausted his internal remedies, and this claim is not yet ripe for the Tribunal’s review.”

220. The record shows that EBC issued its final investigative report in this matter on 14 June 2019 and that the HRVP made a decision on 16 September 2019. These documents were provided to the Tribunal for *in camera* review only.

221. The findings of EBC are critical to establishing the facts of the Applicant’s allegations. The record does not show whether the Applicant was informed of the outcome of the EBC investigation or the HRVP’s decision. Given the sequence of events, the Tribunal determines that this claim has not been adequately pleaded by the parties and so the issue cannot be adjudicated by the Tribunal at this time. The Tribunal’s decision is made without prejudice to any claim the Applicant may bring in the future regarding the unauthorized disclosure of his confidential information and consequent damages suffered by him.

#### FINAL OBSERVATIONS

222. It is apparent from this case that there is a lack of clarity regarding the meaning of “sexual relationship” in the context of a *de facto* conflict of interest. Bearing in mind the development of technology and new methods of communication, the Bank is called upon to provide further guidance, for example, through policies and training, about the meaning of “sexual relationship” so that there is a common understanding among Bank staff of this term, as used in Staff Rule 3.00, paragraph 4.02, and the Code of Conduct.

223. The Applicant has prevailed in only one of his claims, namely, that the Bank’s finding that the Applicant abused his authority in respect of the Complainant’s mission travel cannot be

sustained. The oral proceedings ordered by the Tribunal, pursuant to Rule 17 of the Tribunal's Rules, provided more clarity on the core issues in this case. Some contribution to the Applicant's legal fees and costs is thereby warranted.

#### DECISION

- (1) The Application is dismissed; and
- (2) The Bank shall contribute to the Applicant's legal fees and costs in the amount of \$22,000.00, which includes legal fees and costs associated with the oral proceedings.



/S/ Mónica Pinto  
Mónica Pinto  
President

/S/Zakir Hafez  
Zakir Hafez  
Executive Secretary

At Washington, D.C., 25 October 2019