



**World Bank Administrative Tribunal**

**2019**

**Decision No. 613**

**FB,  
Applicant**

**v.**

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

**(Merits)**

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

**FB,  
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 16 October 2018. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant is contesting (i) the Bank's ongoing failure to attribute the Applicant as a co-author and co-editor of a Bank publication; (ii) the Bank's decision to remove the Applicant's work program without notice in July 2018; and (iii) the Bank's decision not to renew the Applicant's Short Term Consultant (STC) contract for a period of one year.

**FACTUAL BACKGROUND**

4. The Applicant first joined the Bank in August 2010 as a Junior Professional Associate with the Health, Nutrition and Population (HNP) unit. She left in 2012 to pursue advanced degrees at Columbia University. The Applicant rejoined the Bank in 2014 under an STC contract to work on health system strengthening projects in the HNP Global Practice.

*The Bank's alleged failure to attribute the Applicant as a co-author and co-editor of  
Publication A*

5. On 31 March 2015, the Applicant began working on an Advisory Services and Analytics (AAA) team on a Bank project that resulted in Publication A (the publication). The publication was composed of three chapters and was led by a Lead Health Specialist and two Senior Health Specialists as Task Team Leaders (TTLs) for each of the three chapters. The Applicant worked with the entire AAA team and assisted the third chapter's TTL on the Bank project.

6. Several working drafts of the manuscript of the publication were circulated between 2016 and 2017. In each of these drafts, the Applicant was listed on the cover as an editor. In addition, the acknowledgments section in these drafts stated that "[t]he writing and editing of this paper was led by [the Lead Health Specialist], [the second chapter's TTL] and [the Applicant] from the World Bank."

7. By email dated 23 March 2017, the Lead Health Specialist who was also the publication's Lead TTL informed the AAA team, including the Applicant, that the project "has now been accepted for publication as a Category 2 World Bank (stand-alone) publication" and congratulated each member of the AAA team for the "hard work that all of you put into the preparation of this report."

8. In preparation for the publication, the Lead Health Specialist informed the Acquisitions Editor of the World Bank publisher on 23 September 2017 that the cover of the publication should include the Lead Health Specialist's name, as well as the names of the second chapter's TTL and the third chapter's TTL as editors and added that this would "reflect[...] the task leadership of this study." In addition, on 26 October 2017, the Lead Health Specialist told the Acquisitions Editor by email, "We have circulated the report among the authors and other relevant individuals for one last review prior to publication." Moreover, before the publication was finalized, the Lead Health Specialist signed the Author Sign-Off Sheet on 27 November 2017, which stated the following: "I understand that no further changes to the print or electronic files may be made to the publication."

9. On 30 January 2018, the official publication was released by email. The Applicant's name had been removed as an author and editor of the publication. The cover listed the three TTLs as editors. The Applicant's contribution was recognized in the acknowledgments section of the publication, which stated that "[t]he writing team of the disease surveillance chapter and sections was [the Applicant] and [the third chapter's TTL] (both of the World Bank)."

10. On the same date, the Applicant wrote to the Lead Health Specialist seeking clarification regarding the removal of her name from the publication. In response, he replied the following: "The editorship decision was based on the fact that there are three designated TTLs for the [AAA]. Trust this clarifies."

11. On 1 February 2018, the Applicant met with the Lead Health Specialist. She claims that the Lead Health Specialist told her that the Bank publications unit had wanted to restrict the number of editors listed on the cover and that it had therefore directed that the list include only the TTLs on the project. The Applicant alleges that the Lead Health Specialist also stated that the decision was influenced by "HR [Human Resources] protocols" requiring the listing of only regular staff members.

12. According to the Applicant, she received assurances from the Lead Health Specialist and the second chapter's TTL that they would contact the Bank publisher to make the necessary corrections. The Applicant states that she did not hear from them for over five weeks, despite making several attempts to follow up. After not receiving updates from them, the Applicant reached out to the HNP Director, who advised the Applicant to contact her unit's Practice Manager before reaching out to him.

13. On 20 March 2018, the Applicant met with her unit's Practice Manager, the Lead Health Specialist, and a Staff Relations Counselor. The Applicant states that the Lead Health Specialist denied at this meeting that the Applicant had served as an editor of the publication. The Applicant further states that, following the meeting, the Practice Manager justified the removal of the Applicant's attribution on the basis that "it was not [the Applicant's] responsibility to deliver on the publication, which was an important work for the Bank and all the partners involved."

14. On 3 April 2018, the Applicant met with the HNP Director, the Practice Manager, the Staff Relations Counselor, and an HR representative. At the meeting, the Applicant claimed that the removal of her name as author and editor from the final publication was unethical, and that her work had been falsely attributed to the third chapter's TTL.

15. Further on 3 April 2018, the Practice Manager asked the Lead Health Specialist for clarification on the Applicant's role in the publication. The Lead Health Specialist replied the following:

While she definitely led the writing of the surveillance chapter, she did not serve as an editor for the volume, no[r] was that role ever discussed with or offered to her.

[...]

[W]ith contributions coming from many others amongst the Bank team for the individual chapters, and with a number of external authors contributing to the final version of the HR chapter, the TTLs decided [...] to have only the editors, rather than all the authors listed on the cover, while duly recognizing the contributions of the individual authors in the acknowledgement section (as is standard practice within the Bank's Publication Unit). [...] I did try to get in touch with [the Applicant] but found that her email was no longer listed on Outlook.

16. On 4 April 2018, the HNP Director wrote to the three TTLs on the project inquiring whether there was a business reason, "apart from the instruction or guidance from the publisher," as to why the Applicant was not listed on the cover as an editor of the publication.

17. By email dated 9 April 2018, the Lead Health Specialist wrote to the HNP Director explaining in greater detail the reasons for the removal of the Applicant's attribution. He stated:

[T]he decision on editorship was based on our collective judgement of the respective roles played by the many people – both within and outside the World Bank – who participated in the study and made this publication possible, rather than simply the instruction of the publisher. We essentially had two choices: a) Listing all of the over two dozen authors on the cover; or b) Listing on the cover the editors, rather than those authoring individual chapters. While the Publications unit did suggest naming the editors on the cover, while acknowledging the contributions of the authors in the order of their contribution to each chapter, as is standard practice in the Bank's formal publications [...], they did not suggest any restrictions on the number of editors on the cover.

18. In this email, the Lead Health Specialist also conceded that the Applicant deserved to be the third chapter's "lead author" and "perhaps even the sole author." He argued, however, that the Applicant had not "played the role of an editor of the volume, since her role [...] was restricted to finalizing her chapter." He also stated that, after publication, he had requested that the Applicant be named as the sole author of the third chapter, but the Bank publisher had advised him that "the request could not be accommodated" because it was "a major undertaking" and "did not meet the Bank's bar (which is evidently based on reputational risk to the Bank)."

19. On 2 May 2018, the HNP Director met with the Applicant and the three TTLs on the project and acknowledged that the removal of the Applicant's name from the list of authors and editors in the final publication was an error.

20. By email dated 3 May 2018, the HNP Director summarized the decisions made in the meeting as follows: (i) "[s]eek publication of the [third] chapter as a stand-alone report, with [the Applicant] as the sole author"; and (ii) "[s]eek publication online of an amended version of the full report" that would list the Applicant and six other people on the cover as editors. He also noted that a list of corrections would be sent to the Bank publisher but clarified that he "cannot compel the Publisher to make the changes."

21. By email dated 26 May 2018, the HNP Director wrote to the Acquisitions Editor of the Bank publisher proposing the following changes to the publication: "(i) recognition on the front cover of an expanded list of staff as Editors of the volume; and (ii) re-formatting of the Table of Contents such that the authors of each Chapter can be listed below the Chapter Title." He listed seven editors, including the Applicant, whose names should be added to the corrected publication cover and attached a list of the authors by chapter.

22. On 29 May 2018, the Acquisitions Editor rejected the proposed corrections noting that the modification of published files at that late stage is made only in "extenuating circumstances when there is reputational risk posed to the institution such as a misquote or a major error in data." She concluded that the case presented to her did not "meet the bar for embarrassment to the institution"

that would justify the modification of the publication. The Applicant claims that she has not heard anything further from management following the Acquisitions Editor's response.

23. On 6 June 2018, the HNP Director informed the Lead Health Specialist that the Acquisitions Editor's response "seem[ed] like a final and definitive decision." On the same date, the Practice Manager suggested to the HNP Director that a stand-alone publication of the third chapter could still be offered to the Applicant, to which the HNP Director responded, "I'd give it serious consideration."

24. On 30 May 2018, the Applicant filed a Request for Review to Peer Review Services (PRS) and identified the disputed employment matters as "[e]xploitation and misrepresentation of intellectual work by a lack of attribution, and a false attribution of my work as an author and editor of an important World Bank publication as the work of a staff."

25. On 18 June 2018, PRS dismissed the Applicant's Request for Review on the basis that "there is no right of attribution or authorship in staff members' contract of employment or terms of appointment," and the claims are thus outside the mandate of PRS.

*The removal of the Applicant's work program and the non-renewal of her STC contract*

26. Shortly after the release of the publication, the Applicant traveled to Pakistan on a Bank assignment (the Pakistan project). At the time, she also provided implementation support to the Regional Disease Surveillance Systems Enhancement (REDISSE) project in Liberia (the REDISSE Liberia project). The Project Manager of REDISSE was also the TTL of the publication's third chapter.

The Pakistan project

27. The Applicant claims that, in early March 2018, her country TTL on the Pakistan project informed her that he was not certain that her services would be needed on the Pakistan project after 30 June 2018 when the Applicant's contract was set to end. The Applicant states that the country

TTL's explanation was that, as he would be moving to Thailand, he would no longer need the Applicant's work on the project.

28. The Applicant states that as of 1 June 2018, she had not heard from her country TTL regarding her work program but had continued to be treated as though her duties would continue uninterrupted into the next fiscal year.

29. By email dated 1 June 2018, the Applicant wrote to her country TTL asking for clarification on her work program for the following fiscal year.

30. By email dated 3 June 2018, the Applicant's country TTL wrote to the Applicant, stating:

I have just approved the last payment request. Thanks very much for all your help with this. As I mentioned last we spoke, I will be relocating to Bangkok in July, so I should be able to be much more hands-on with project supervision and will therefore likely not need your help next FY [fiscal year]. Now that you have developed the ToR [Terms of Reference] and the government consultation and identified a preferred firm, the team will be able to take this survey forward through the next steps of procurement and implementation. I'd like to thank you for your valuable input to the project and assure you that it will be recognized on any analytic products that arise from the survey. I'd be very grateful if you could assist [...] me with any introductions we might need to the firm going forward.

31. By email dated 4 June 2018, the Applicant thanked her country TTL for the "update" and noted, consequently, that she would hand over her work on the project.

#### The REDISSE Liberia project

32. By email dated 4 June 2018, the Applicant wrote to her country TTL on the REDISSE Liberia project, seeking clarity on whether her services would be needed for the project during the upcoming fiscal year.

33. By email dated 5 June 2018, the Applicant's country TTL forwarded the Applicant's message to the REDISSE Project Manager asking for guidance. On the same day, the REDISSE Project Manager responded that they "need[ed] to discuss this with [the HNP Practice Manager],"



as they were “hoping to move towards more locally based support rather than use international consultants.”

34. By email dated 5 June 2018, the HNP Practice Manager informed the Applicant’s country TTL that,

in the interests of efficient use of available constrained BB (esp. variable) as well as our in-house staff expertise, we are looking into rebalancing the use of staff and consultants. We will get back to you in the coming days regarding the proposed staffing to support all of the REDISSE countries. Please do not enter into any consultant contracts for REDISSE in the interim.

[The REDISSE Project Manager], perhaps you could send a similar email to all the REDISSE country TTLs to manage expectations.

35. By email dated 7 June 2018, the Applicant’s country TTL responded to the Applicant stating that she had “no firm answers” to the Applicant’s question, given that the project’s needs and budget were “being planned to be worked out as a consolidated whole for all REDISSE countries” and that “individual country-TTLs will not be planning from this, instead we will wait to hear from [the REDISSE Project Manager].” The Applicant notes that the REDISSE Project Manager had the ultimate authority over the Applicant’s contract.

36. On the same date, the Applicant replied that she would “wait to hear news from you about what the needs will be in the new FY – please let me know when you have some to share.”

37. The Applicant claims that during the following weeks she continued to receive emails from her country TTL, her colleagues, and country partners as though she would continue in her current role in the REDISSE Liberia project.

38. On 26 June 2018, the Information and Technology Solutions (ITS) department reached out to the Applicant asking her to return the Bank’s laptop before the end of her contract on 30 June. The Applicant wrote to her country TTL asking for “an update/follow up with [the REDISSE Project Manager] concerning the implementation support needs for Liberia in the new FY as I’m really doing my best with securing a new contract in the new FY on time, and with minimal

disruption.” Later that day, the Applicant’s country TTL informed the Applicant that she would not be able to provide guidance regarding the Applicant’s contract until the new fiscal year.

39. By email dated 27 June 2018, the Applicant wrote to the REDISSE Project Manager asking him to authorize an extension to her account access on her behalf “to ensure minimal disruption, and in anticipation to continue to provide the required support in the new FY to the government of Liberia with the implementation of the REDISSE project.”

40. On the same date, explaining that, “[d]ue to the delays with processing a new contract in the FY19,” the REDISSE Project Manager requested ITS to extend the Applicant’s account access for the following “[f]uture contract dates: 07/01/2018 to 06/30/2019” in order “to ensure minimal disruption and in anticipation to continue to provide the required support in the new FY to the team.” The Applicant contends that this request reflected the expectation of both the Applicant and her Bank colleagues that she would continue her work in REDISSE for at least another year.

41. On 27 June 2018, the ITS department informed the Applicant that it could extend her account access for a maximum of 15 days from the current end date of her appointment. Later that day, the Applicant’s account access was extended until 14 July 2018.

42. By email dated 5 July 2018, the Applicant wrote to the REDISSE Project Manager to request updates about the “processing [of] the contract for REDISSE Liberia.” She also noted that she was “in the middle of renewing [her] G4 visa, and HR requires proof of contract in the system to help with the process. [...] Grateful if the contract can be processed over the next few days prior to the deadline.”

43. By email dated 9 July 2018, the REDISSE Project Manager informed the Applicant:

I have had a back and forth with [the Applicant’s country TTL] about this and am waiting to hear from her regarding number of days for the contract. I am afraid that even in the best case scenario we are not going to be able to offer very many days. Does the contract have to be for a minimum number of days for you to process everything you need? I will follow up with [the Applicant’s country TTL] to see what she has decided.

44. On the same date, the Applicant replied that, “[f]or the visa renewal, I am expected to have at least 65 days on the contract.”

45. By email dated 10 July 2018, the REDISSE Project Manager reached out to the Applicant to inform her that she would no longer work on the REDISSE Liberia project and that her contract would be extended only for a maximum of 10 days to allow the handover of her work. He stated:

I have heard back from [the Applicant’s country TTL] and now know what is needed. [The Applicant’s country TTL]’s team for Liberia is being expanded with the addition of a [World Bank Group (WBG)] staff member in a unit-wide effort to more efficiently use staff resources and reduce reliance on short term consultants. A senior health specialist has been assigned to assist [the Applicant’s country TTL] and will begin shortly. The staff member is expected to take on the responsibilities of the STC position with respect to technical support and guidance as well as administrative and reporting duties. As such, if you are interested and if it is helpful to you, we can offer 7-10 consulting days for a handover assignment.

46. On the same date, the Applicant replied to the REDISSE Project Manager requesting that he “go ahead with authorizing the processing of the contract for the 10 days while I continue to work on getting a new contract with another unit.”

47. The Applicant’s STC contract was extended for 10 days from mid-July until the end of August 2018. Upon the request of the Applicant, the contract was subsequently extended until 30 September 2018. The Applicant was provided a different STC contract for three days from 3 October 2018 to 30 June 2019.

### *The Application*

48. The Applicant filed her Application on 16 October 2018. The Applicant contests (i) the Bank’s ongoing failure to attribute the Applicant as a co-author and co-editor of the publication; (ii) the Bank’s decision to remove the Applicant’s work program without notice in July 2018; and (iii) the Bank’s decision not to renew the Applicant’s STC contract for a period of one year.

49. The Applicant requests the following: (i) that the Bank correct its publication to include the Applicant's name on the cover as editor and as the sole author of the third chapter; (ii) that the Bank publish the publication's third chapter and attribute it to the Applicant as the sole author, as promised; (iii) a formal apology; (iv) a new STC contract for at least 180 days under different management; and (v) legal fees and costs in the amount of \$46,616.92.

50. On 26 November 2018, the Bank filed a preliminary objection against the Applicant's claim regarding her right of attribution. The Bank requested that the Tribunal decide on the Tribunal's jurisdiction in relation to this claim prior to considering this case on the merits. On 26 April 2019, the Tribunal rendered its judgment dismissing the Bank's preliminary objection in *FB (Preliminary Objection)*, Decision No. 609 [2019].

## SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

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

*The Bank's decision to remove the Applicant's attribution from the publication was unfair, violated the principle of equality, and constitutes an abuse of discretion*

51. The Applicant claims that the removal of her attribution from the publication was unfair because "it misleads readers as to [her] contribution and—worse—passes her work off as [the third chapter's TTL]'s." For the Applicant, the Bank "has robbed" her and given her attribution, including "all of the personal and professional value that flows from attribution as an author of a significant publication," to one of its regular staff. The Applicant asserts that the Bank's conduct is outlawed under the principle of fair treatment, which surely does not permit the Bank "to steal from its staff members."

52. The Applicant further claims that the removal of the Applicant's attribution violated her right to equal treatment prescribed in Principle 2.1 of the Principles of Staff Employment. The Applicant states that the justification given by the Bank to remove the Applicant's attribution is based on an alleged protocol that mandates the listing of regular staff only, which denotes an "irrational segregation" between regular staff and consultants "*irrespective* of those individuals'

contributions to the work.” (Emphasis in original.) For the Applicant, this is “an unjustifiable differentiation and cannot stand.”

53. In support of her claims, the Applicant relies on the jurisprudence of the Administrative Tribunal of the International Labour Organization (ILOAT), which has twice held that, while the decision to name authors of a work is within the discretion of an organization, once the organization has decided to name any authors of a publication, it must name “all those who can claim authorship” and not mislead as to the contributions each author has made, in line with the principles of equality and fair treatment. The Applicant also refers to the Berne Convention and U.S. competition and trademark laws to assert that the Applicant’s right of attribution is non-transferable and to claim that, by misattributing the Applicant’s work, the Bank committed unfair competition.

54. The Applicant further asserts that the Bank abused its discretion by deciding to list some of the authors of the publication and not the Applicant, even though she was the sole author of the third chapter and contributed to the editing of the publication as a whole. Specifically, the Applicant states that Staff Principles 2.1 and 9.1 provide a “right against *misattribution*.” (Emphasis in original.) For the Applicant, this means that, “[w]hile the Bank has discretion to name *no* individual authors of a publication, it is beyond its discretion to list *some* but not all of those authors.” (Emphasis in original.) According to the Applicant, it is also beyond the Bank’s discretion to mislead as to the contributions of each author. In this regard, the Applicant stresses that the final publication continues to attribute the Applicant’s work to the third chapter’s TTL, “who has agreed that he performed none of the work now credited to him.” The Applicant also claims that the process for determining attribution was unfair because a single person, the Lead Health Specialist, decided who would be given attribution in the final publication without consulting with anyone.

***The Bank's Response***

*There is no right of attribution under the Principles of Staff Employment, Staff Rules, or the Applicant's contract of employment or terms of appointment; the Bank treated the Applicant fairly in reaching its decisions*

55. The Bank claims that, under Principle 3.2 of the Principles of Staff Employment, staff members cannot claim a right of attribution for the work produced as part of their official duties. The Bank states that this provision applies the “work-for-hire” doctrine, meaning that “all rights to any work created by an employee belongs to the employer.” The Bank notes that “all rights” includes the rights of ownership to the material and intellectual property rights of staff work and the right of attribution. The Bank maintains that the “work-for-hire” doctrine serves the institution’s purpose and character as a multilateral organization operating in multiple legal jurisdictions. For the Bank, it is “absolutely foundational” to reserve “‘all rights’ to deliver its analytical and advisory services for the benefit of its member countries and to produce development knowledge as a public good.”

56. The Bank further claims that the Applicant’s contract of employment or terms of appointment do not provide for a contractual right of attribution. The Bank states that the Applicant’s Letter of Appointment includes the standard language that, “[u]nless otherwise provided in your Terms of Reference, all intellectual property rights in or relating to any works produced during the course of your appointment shall belong to the Bank.”

57. The Bank asserts that the rationale for an institutional right of attribution, instead of an individual one, is based on the fact that, as a development institution, it possesses the discretion to decide “which of the views expressed in its many documents will be attributable to the different levels corresponding to its organizational structure.” The Bank states that works that are not approved by the Board of Directors but constitute an Advisory Services and Analytics (AAA) work, such as Publication A, “are attributable to the institution but at the senior management level only.” The Bank states that another more practical reason for an institutional right of attribution is to prevent any “hijack[ing] [of] the institution’s ability to control the rights to its own work” given that this would “frustrate the institution’s mandate to develop and disseminate its published works

and subject the institution's work to the dictates of individual staff." Another reason cited by the Bank for justifying an institutional right of attribution is the fact that an individual right of attribution could create a conflict of interest. For the Bank, if staff mistakenly consider the work as their own, they may assign the copyright to a third party, which could "potentially expose the institution to competing copyrights, or even prohibit the [Bank] from using its own work."

58. The Bank asserts that the Applicant's ToR does not support her claim that there was "an express understanding" that she would be the co-editor of the Bank publication and the author of the third chapter. The Bank submits that, when the Applicant was appointed as an STC in 2014, it was to work on the impact evaluation of an HIV health program in South Africa and on service delivery indicators, and not initially on the Bank publication project and the related REDISSE project, as she wrongly claims.

59. The Bank challenges the Applicant's claim that she be attributed as an author of the publication. The Bank explains that the Bank project on which the publication was based constituted a Bank AAA activity and that any project qualifying as an AAA activity "represents the views of the Bank" and is "always attributed to the institution as author and not to individual staff." In this regard, the Bank adds that the work product claimed by the Applicant as her own "was duly conceptualized by the institution during the Programmatic and Project AAA Phase." The Bank notes that the Applicant's unit initiated the AAA project on 5 March 2015, before the Applicant was assigned to the project, and the unit was the third chapter's "true" author, thus denying the Applicant's contention that she developed the third chapter's concept. The Bank further denies the Applicant's contention that she wrote the third chapter "unsupervised" and asserts that the Lead TTL for the AAA project provided consistent feedback to the "various staff working on the [...] three main chapters."

60. The Bank adds that, under the Bank's guidelines on Discrete Economic and Sector Work and Technical Assistance (entitled Discrete ESW and TA Guidelines), only the responsible unit could be recognized as the institutional author. For the Bank, the Applicant misinterpreted the fact that she would be credited for her writing work as an "express understanding" to be attributed as an author. While the Bank concedes that the Applicant has written part of the third chapter, the

Bank states that her work has been acknowledged, and naming her as an author would be contrary to the Bank's policies.

61. The Bank denies that the Applicant served as an editor of the publication. The Bank asserts that only the TTLs played editorial roles and that the Lead TTL's decision to list the TTLs on the cover as "editors" was a "reasonable decision, consistent with the Bank's practices, and it was not unfair to any contributor." In this regard, the Bank contends that the third chapter's TTL did not lose his status as TTL by allowing the Applicant to perform her tasks. The Bank maintains that the Lead TTL's decision to list only the TTLs on the cover was "within his authority" and "exercised with due regard for the applicable rules," and that his reasoning was not merely a "*post hoc* justification." (Emphasis in original.)

62. The Bank claims that the Applicant is misleading the Tribunal by labeling the AAA project's output as a "publication." The Bank explains that, "[i]n the AAA context, there is no publication, only an output," which is either a report or a study. The Bank notes that the AAA project's concept note did not include a formal publication of the output and that it was only in a meeting of 9 May 2016 and the project completion summary of June 2016 that the "possibility of publishing the report in peer reviewed journals" was contemplated. Moreover, the Bank states that the AAA project Lead TTL did not pursue the formal publication of the AAA project's output until February 2017. Finally, the Bank asserts that the formal publication process entailed a significant amount of substantive editing and that the Applicant was not involved in this process.

63. The Bank denies the Applicant's allegation of unfair treatment under Principles 2.1 and 9.1 of the Principles of Staff Employment and the Applicant's contention that she was treated differently from the rest of the publication contributors. The Bank states that the Applicant was "duly credited" as a writer of the chapter in the same manner as all others who wrote the different chapters of the publication. The Bank asserts that the Applicant did receive recognition for contributing to the writing of the third chapter.

64. The Bank claims that it has acted in good faith in its attempts to address the Applicant's complaints of non-attribution after the Bank publication was released. The Bank notes that the



HNP Director made an “exceptional effort” to request changes to the publication in order to add the Applicant as an author of the third chapter but made it clear to the Applicant that in so doing he could not exceed what was within his authority and could not overstep the authority of the Acquisitions Editor. The Bank further notes that it was also within the Acquisitions Editor’s authority to reject the suggested changes and that her decision was based on a reasonable exercise of discretion. The Bank contends that, pursuant to the Bank’s Open Access Policy and the Bank’s formal publishing rules, the Acquisitions Editor had every reason to rely on the Lead TTL’s authority to decide to list the TTLs as editors. Finally, the Bank maintains that the Acquisitions Editor was right in rejecting the modification of the Bank publication given that the criteria for modification had not been met.

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

*The Bank breached its promise to renew the Applicant’s contract*

65. The Applicant claims that, on 27 June 2018, the REDISSE Project Manager, who had ultimate authority over the Applicant’s contract, submitted a request to ITS to extend the Applicant’s account access, stating that her contract would be extended for a full year. The Applicant asserts that this request shows that the Bank “made a promise by unequivocal statement to renew [the Applicant’s] contract for one year.” By failing to renew her contract, the Applicant asserts, the Bank failed to fulfill its promise and caused detriment to the Applicant, who was left “suddenly unemployed with no income” and a “threatened [...] ability to maintain her visa.”

***The Bank’s Response***

*The REDISSE Project Manager did not make a promise that he would renew the Applicant’s contract for one year*

66. The Bank denies that it made a promise to renew the Applicant’s contract for FY19. The Bank claims that the email sent by the REDISSE Project Manager to ITS was not a promise of renewal but “an administrative email addressed to Services, requesting for an extension of Applicant’s IT[S] account access.” The Bank submits that this email was sent as a “precautionary

measure and with a view to minimizing disruption while the team decided on the question of renewal.”

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

*The Bank abused its discretion in failing to renew the Applicant’s contract; the Bank did not follow due process; and the Bank failed to communicate clearly with the Applicant regarding the removal of her work program*

67. The Applicant claims that the non-renewal of her contract was arbitrary and carried out in violation of a fair and reasonable procedure. The Applicant states that she had a reasonable expectation that the Bank would renew her contract for the following reasons: (i) the Bank had repeatedly renewed and extended her “contracts eight times over four years”; (ii) the Applicant’s account access was extended “specifically to bridge the gap in her employment while [HNP management] drew up her contract for the next fiscal year”; (iii) HNP management provided “irrational and inconsistent explanations” for reversing the decision to renew the Applicant’s contract; and (iv) at the end of her contract, the Applicant “still had many deliverables that were not yet complete.”

68. The Applicant asserts that the Bank also violated its obligation to provide an honest reason for the non-renewal of her contract given that the reasons for non-renewal were “irrational and contradictory” and only “pretexts for retaliation” against her. The Applicant indicates the Bank’s reliance on budgetary constraints and its need to limit the use of consultants as the reasons that were provided for the non-renewal of her contract. The Applicant claims that these reasons are pretextual because the HNP unit hired two STCs to work on the REDISSE Project during FY19. According to the Applicant, this proves that the HNP unit did not intend to reduce its use of consultants.

69. The Applicant further complains that the non-renewal of her contract did not follow a fair and reasonable procedure. She states that the Bank failed to provide her with notice of any kind that “her July 2018 extension would be her last,” in contravention of her right to be given advance notice of non-renewal. The Applicant explains that she realized for the first time that her contract

would not be renewed on 5 July 2018, “ten days before her account extension expired, and five days after her original contract expired.” The Applicant contends that the Bank’s treatment in this regard is “deplorable given [the Applicant’s] six years of service to the Bank and her G-4 visa status.”

70. The Applicant claims that HNP management “abruptly” removed the Pakistan project from her work program and failed to communicate this significant change “for at least three months, despite multiple opportunities to do so, including multiple inquiries by [her].” Likewise, the Bank informed the Applicant that she would be removed from the REDISSE Liberia project only after the new fiscal year started, when her contract had already expired.

### ***The Bank’s Response***

*The decision not to assign the Applicant additional work after FY18 was based on a reasonable and observable basis; the Bank’s discretion was exercised in a fair manner*

71. The Bank claims that there were “valid” and “grounded reasons” for its decision not to renew the Applicant’s contract at the end of FY18. The Bank further claims that the REDISSE Liberia project for which the Applicant was hired was completed by the time of the non-renewal of her contract.

72. The Bank asserts that the Applicant was first assigned to assist in the preparation of a concept note for the REDISSE Liberia project on 31 March 2015. The Bank states that the Applicant’s REDISSE work included specific tasks relating to project design, preparation, and implementation arrangements in Liberia, tasks which neared completion by 2018. The Bank states that the Applicant was aware of the transitory nature of her work. The Bank also states that, when the project transitioned to another project phase, REDISSE 3, “this period formed an apt time for a handover to a full-time staff member.”

73. The Bank submits that there were budgetary constraints justifying the non-renewal decision. It states that, by email dated 5 June 2018, the HNP Practice Manager in the unit informed the Applicant’s country TTL and REDISSE Project Manager that there was a “need to rebalance

the use of staff and consultants” and advised them to “manage expectations.” The Bank contends that the Applicant was duly informed of the possibility of the non-renewal of her contract due to budgetary constraints in the unit as shown in her correspondence with the REDISSE Project Manager, who in an email dated 9 July 2018 informed the Applicant that “[he] was afraid that even in the best case scenario we are not going to be able to offer very many days.” The Bank denies that the Applicant was “targeted” and asserts that the budget-related HNP implementation support decision affected all STCs working on the REDISSE projects in various countries and not only the Applicant. The Bank also states that the two consultants the HNP unit hired following the non-renewal of the Applicant’s contract were Extended Term Consultants (ETCs) who did not perform the role that the Applicant had been hired for. The Bank further asserts that the two consultants have “specialized skills which [the] Applicant does not have.”

74. The Bank denies the Applicant’s claims of unfair treatment and asserts that the Applicant received proper notice of non-renewal by email dated 10 July 2018, in which the REDISSE Project Manager informed her that the unit “was trying to reduce its reliance on STCs” and that a senior health specialist would take over her REDISSE portfolio and begin “shortly.” The Bank states that, given this context, the Applicant “accepted graciously” the maximum of “7-10 consulting days for a handover assignment” for her last contract. The Bank further states that the Applicant received on 26 June 2018 an automated notification from the ITS department confirming “what [she] already knew – that her appointment was for a fixed term with an expiry date, and that she would have to return her laptop.”

75. The Bank claims that it kept in mind the Applicant’s G-4 visa status prior to notifying the Applicant of the non-renewal of her contract. The Bank asserts that the Applicant’s TTLs “scrounged their budgets to assign her the required number of days so she could maintain her G4 visa.” The Bank adds that the Applicant was given another contract from 3 October 2018 to 30 June 2019, “which presumably resolved her G4 visa status.”

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

*The Bank's mistreatment of the Applicant suggests retaliation*

76. The Applicant claims that her treatment by the Bank in regard to her work program and contract “raises the specter of retaliation” for the following reasons: (i) the Bank provided “multiple, conflicting, and patently dishonest reasons” for its decisions; and (ii) “in delivering his final decision to transfer [the Applicant’s] Pakistan portfolio, [the Applicant’s country TTL] established a direct link between the removal of [the Applicant’s work program] and her misattribution dispute with the Bank.”

***The Bank's Response***

*The decision not to renew the Applicant's contract was not tainted with retaliatory animus*

77. The Bank denies the Applicant’s allegations of retaliation. The Bank claims that, as in *DK (No. 2)*, Decision No. 591 [2018], it has demonstrated that it was “similar budget constraints, and not retaliation which drove its decision not to assign Applicant more than ten (10) days” in her contract. In denying the allegations of retaliation, the Bank further states that the HNP Practice Manager “sought Director level approval to increase [the Applicant’s] rate above the allowed increase,” which, according to the Bank, “is not consistent with retaliatory *animus*.” (Emphasis in original.)

***The Staff Association's Amicus Curiae Brief***

78. On 21 August 2019, the World Bank Staff Association filed its *Amicus Curiae* Brief with the Tribunal. In its Brief, the Staff Association contends that the Bank’s process for giving attribution to the authors of the publication was unfair, given that the process did not duly credit the Applicant for her work and attributed her work to a person who played a smaller role in the editing and writing of the document. The Staff Association further asserts that the Bank did not provide “clear, ‘well-reasoned criteria’ and a transparent process for attributing editorship and authorship of publications.” The Staff Association underscores what it considers to be the professional value of proper attribution, especially for STCs who may face limited opportunities

if they do not get proper attribution for their work. Moreover, the Staff Association contends that the decision not to renew the Applicant's contract violated the Principles of Staff Employment, since the non-renewal occurred after her new contract was expected to begin and after she had expressed her dissatisfaction with the removal of her name from the cover of the publication.

***The Bank's Response to the Staff Association's Brief***

79. The Bank states that the Staff Association's *Amicus Curiae* Brief has simply restated the Applicant's claims without providing any new facts or evidence.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

*Whether the Bank treated the Applicant unfairly for failing to attribute her as a co-author and co-editor of the publication*

80. The Tribunal notes that the Bank's principal argument is that there is no right of attribution for the Applicant, and that the right of attribution ultimately belongs to the Bank. This claim necessitates a review of the relevant rules and policies governing copyright for works produced by staff members in their official capacity, as follows. The Tribunal observes that the Bank has not provided a Bank policy on the authorship of publications.

81. Principle 3.2 of the Principles of Staff Employment provides that "[a]ll rights in any work produced by staff members as part of their official duties shall belong to The World Bank or the IFC [International Finance Corporation] unless such rights are explicitly relinquished."

82. Furthermore, Administrative Manual Statement (AMS) 14.50 of the Bank's Administrative Manual sets forth the provisions governing the Bank's formal publishing process. Paragraph 9 of AMS 14.50 provides as follows:

*Rights and Licensing*

Copyright. The World Bank owns the copyright to any work produced by staff and consultants within the scope of their employment. (Refer to Principle 3.2 of the

Principles of Staff Employment.) The Bank Group retains the right to publish or disseminate in any form all work prepared by authors in their capacity as Bank staff members or consultants. This right is administered by EXTOP [Office of the Publisher]. (Emphasis in original.)

83. The Applicant's ToR shows that she was assigned to the AAA project to "work under the guidance of [the Lead Health Specialist], and [the third chapter's TTL], the Team leads for the AAA on the West Africa Post-Ebola Health Systems Strengthening Financing Framework, and the REDISSE project." Furthermore, the Applicant's Letter of Appointment states that, "[u]nless otherwise provided in your Terms of Reference, all intellectual property rights in or relating to any works produced during the course of your appointment shall belong to the Bank."

84. The Bank contends that Principle 3.2 of the Principles of Staff Employment provides for the "work-for-hire" doctrine under which any work produced by Bank staff members, including consultants, in the course of their employment, belongs to the Bank, rather than staff members. The Tribunal accepts this statement and agrees that Principle 3.2 provides for the "work-for-hire" doctrine.

85. However, the Tribunal notes that the Applicant contends that the fundamental issue is whether she was treated fairly with regard to the Bank's removal of her attribution as a co-author or co-editor of the publication. The Applicant does not contest the Bank's ownership of her work product or the fact that the Bank owns the copyright to any work produced by staff and consultants.

86. The Applicant claims that the removal of her attribution from the publication was unfair because "it misleads readers as to [her] contribution and—worse—passes her work off as [the third chapter's TTL]'s." For the Applicant, the Bank "has robbed" her and given her attribution, including "all of the personal and professional value that flows from attribution as an author of a significant publication," to one of its regular staff. The Applicant asserts that the Bank's conduct is not permitted under the basic principle of fair treatment, which surely does not permit the Bank "to steal from its staff members."

87. The Applicant further claims that the removal of the Applicant's attribution violated her right to equal treatment prescribed in Principle 2.1 of the Principles of Staff Employment. The Applicant states that the justification given by the Bank to remove the Applicant's attribution is based on an alleged protocol that mandates the listing of regular staff only, which denotes an "irrational segregation" between regular staff and consultants "*irrespective* of those individuals' contributions to the work." (Emphasis in original.) For the Applicant, this is "an unjustifiable differentiation and cannot stand."

88. In support of her claims, the Applicant relies on the jurisprudence of the ILOAT, which has twice held that, while the decision to name authors of a work is within the discretion of an organization, once the organization has determined to name any authors of a publication, it must name "all those who can claim authorship" and not mislead as to the contributions each author has made, in line with the principles of equality and fair treatment. *See In re Press*, ILOAT Judgment No. 66 (1962), para. 3, and *In re Nielsen*, ILOAT Judgment No. 611 (1984), para. 11. The Applicant also refers to the Berne Convention and U.S. competition and trademark laws to assert that the Applicant's right of attribution is non-transferable and to claim that, by misattributing the Applicant's work, the Bank committed unfair competition.

89. Principle 2.1 of the Principles of Staff Employment states in relevant part:

The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members. They shall not differentiate in an unjustifiable manner between individuals or groups within the staff and shall encourage diversity in staffing consistent with the nature and objectives of the Organizations. They shall respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal.

90. Principle 9.1 of the Principles of Staff Employment states in relevant part: "Staff members have the right to fair treatment in matters relating to their employment."

91. The Tribunal has recognized that the Principles of Staff Employment form part of the contract of employment or terms of appointment of staff members. *BB*, Decision No. 426 [2009], para. 52.



92. The Tribunal has consistently held that it is within the scope of its authority to review discretionary decisions. In *AK*, Decision No. 408 [2009], para. 41, the Tribunal observed:

Decisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a staff member's contract of employment or terms of appointment.

*See also Sisler*, Decision No. 491 [2014], para. 63.

93. In *Eindhoven*, Decision No. 23 [1985], para. 43, the Tribunal stated:

So long as the Bank's resolution and policy formulation is not arbitrary, discriminatory, improperly motivated or reached without fair procedure, there is no violation of the contract of employment or of the terms of appointment of the staff member.

94. In this regard, the Bank asserts that the Lead TTL possessed the discretion to decide which contributors would be listed on the cover of the final publication and that his decision to list only the TTLs had a clear and observable basis. The Bank states that, as a development institution, it possesses the discretion to decide "which of the views expressed in its many documents will be attributable to the different levels corresponding to its organizational structure." The Bank asserts that according to the Bank's policies regulating AAA activities, such as the publication, they "are attributable to the institution but at the senior management level only."

95. The Applicant asserts that the Bank has abused its discretion and failed to treat her fairly by deciding to list some of the authors of the publication and not the Applicant, even though she was the sole author of the third chapter and contributed to the editing of the publication as a whole. The Applicant claims that, "[w]hile the Bank has discretion to name *no* individual authors of a publication, it is beyond its discretion to list *some* but not all of those authors." (Emphasis in original.) The Applicant asserts that it is also beyond the Bank's discretion to mislead as to the contributions of each author. In this regard, the Applicant stresses that the final publication continues to attribute the Applicant's work to the third chapter's TTL, "who has agreed that he performed none of the work now credited to him."

96. The record shows that, on 5 March 2015, the HNP Global Practice initiated an AAA project on the West Africa Post-Ebola Health Systems Strengthening Financing Framework. The AAA project was composed of three activities, each one an ESW, as follows:

- a. HS Strengthening and Financing Framework ([the Lead Health Specialist], [Lead] Task Team Leader);
- b. HR Management & Development ([the second chapter's TTL], TTL); and
- c. Regional Disease Surveillance & Response ([the third chapter's TTL], TTL).

97. Moreover, the Applicant was assigned to work on the third ESW product, under the supervision of “[the Lead Health Specialist], and [the third chapter's TTL], the Team leads for the AAA on the West Africa Post-Ebola Health Systems Strengthening Financing Framework, and the REDISSE project,” starting from 31 March 2015.

98. During the dissemination stage of the AAA project, several working drafts of the publication manuscript were circulated, listing the Applicant on the cover as an editor. The acknowledgments section in these drafts stated that “[t]he writing and editing of this paper was led by [the Lead Health Specialist], [the second chapter's TTL] and [the Applicant] from the World Bank.” The Applicant was listed on the cover among four editors in one draft and seven contributors in another. Both drafts were dated June 2016. In addition, the publication was included in the World Bank Fall 2017 publications catalog. In the publication's listing in the catalog, the Applicant was named both under the title in the catalog and on the cover in the picture that accompanied the listing. There were six other people named alongside the Applicant.

99. The final publication was released on 30 January 2018. The cover listed the Lead TTL, the second chapter's TTL, and the third chapter's TTL as editors, but not the Applicant. The Applicant did not become aware that her name, as an editor, had been removed from the cover until January 2018 when the report was published online.

100. The Applicant claims that, in a meeting on 1 February 2018, the Lead TTL told her that HR protocols required that only regular staff members be listed on the cover of the publication.

101. The Lead TTL justified his decision to name only the three TTLs on the cover as editors in an email to the Practice Manager on 3 April 2018. He stated that, as contributions had come from “many” people both inside and outside the Bank, “the TTLs decided” that only the editors should be listed on the cover. He also stated in this regard that the Applicant did not perform an editorial role in the publication.

102. The Lead TTL further expressed in an email dated 9 April 2018 that the decision of whom to list on the cover “was based on our collective judgement of the respective roles played by the many people” who contributed to the publication, “rather than simply the instruction of the publisher.” He clarified that the “standard practice in the Bank’s formal publications” is to name the editors on the cover and acknowledge the authors “in the order of their contribution to each chapter.” He also stated that, while the Applicant was the third chapter’s lead author, if not the sole author, she did not play an editorial role in the publication, as her role was limited to completing the third chapter.

103. On 2 May 2018, the HNP Director met with the Applicant and the three TTLs on the project and acknowledged that the removal of the Applicant’s name from the list of authors and editors in the final publication was an error. Further, in an email dated 3 May 2018, the HNP Director summarized the decisions made in the meeting as follows: (i) “[s]eek publication of the [third] chapter as a stand-alone report, with [the Applicant] as the sole author”; and (ii) “[s]eek publication online of an amended version of the full report” that would list the Applicant and six other people on the cover as editors. He also noted that a list of corrections would be sent to the Bank publisher but clarified that he “cannot compel the Publisher to make the changes.”

104. On 29 May 2018, the Acquisitions Editor rejected the proposed changes on the basis that corrections at that late stage are made only if there are extenuating circumstances, such as errors in data. The Bank provided two examples of corrections that have been made after publication in the past: one having to do with a photograph potentially being used without consent and another relating to a trademark issue.

105. The Tribunal notes that, while the Lead TTL said in multiple emails that the decision to list only the TTLs on the cover was made collectively among all three TTLs, there is nothing in the record to corroborate this statement or to indicate that there was any discussion between the Lead TTL and the other two TTLs concerning the relative contribution of persons who worked on the publication. There is no information concerning the procedure that was followed. Moreover, between 30 January and 9 April 2018, the Lead TTL provided the Applicant with different reasons for his decision, including that she was not an editor and that he was following HR policy. The Tribunal observes that there is no HR policy that the Bank has produced that requires only TTLs or regular staff members to be attributed as authors and editors of a Bank publication.

106. The Applicant relies on two ILOAT cases, which have held that an organization must name all authors of a publication, once it decides to name any of the authors. The ILOAT has also linked naming “all those who can claim authorship” to the principle of equal treatment. *See In re Press*, para. 3, and *In re Nielsen*, para. 11.

107. In *In re Press*, the complainant was appointed as a scientific expert at the World Health Organization. He provided technical data for a paper on insecticides that was produced by two other staff members. The question presented to the ILOAT was whether the complainant was an author of the paper, in which case he should be named on the title page of the publication, or if he supplied technical data to the authors without making interpretations or conclusions on the data, in which case he had no right to claim authorship. *In re Press*, para. 4. The ILOAT stated that an official of an international organization has no rights “in the results of such work as he performs [...] on behalf of this organisation within the scope of his duties.” *Id.*, para. 3. However, the ILOAT clarified that, where an organization decides to name some authors, it “is bound to respect the principle of equality [...] and, consequently, to mention the name of all those who can claim authorship.” *Id.* The ILOAT ultimately decided that the complainant was not a co-author of the paper because his contribution was limited to supplying part of the data used by the authors in one aspect of their study. *Id.*, para. 5.

108. Likewise, the ILOAT explored the issue of attribution and equal treatment in *In re Nielsen*. In that case, the complainant drafted part of a technical report that was subsequently altered and

then not published by the United Nations Educational, Scientific and Cultural Organization (UNESCO). The complainant claimed that he had a right and a vested interest in the publication of the report. *In re Nielsen*, para. B. UNESCO, in turn, claimed that the complainant had no property right in the report, and that UNESCO did not have to ask for his approval before altering the report. *Id.*, para. C. The ILOAT held that the relevant policy gave UNESCO the copyright to the report and the discretion to publish or not publish it. *Id.*, para. 10. The ILOAT stated that, nevertheless, UNESCO must respect the rights of staff members and that, where the authorship of a publication is stated, the principle of equal treatment requires all of the authors to be named. *Id.*, para. 11. The ILOAT also concluded that the organization must not mislead as to the contribution made by each author, where there are several authors. *Id.*

109. The Tribunal notes that, in the present case, no policy or guidelines were provided by the Bank on the process to determine authorship or editorship of publications. Moreover, there is nothing in the record to indicate that a process or practice was in place to determine who could properly claim authorship or editorship and who could be listed on the cover of a Bank publication. This is in contrast to the clear rules in place regarding ownership of intellectual property.

110. There is nothing in the record to suggest that any TTLs or anyone in the management gave clear instructions about these matters to the Applicant before she started the project. Nor can it be said that any TTL had a clear conversation with the Applicant about what criteria or standard would be used in determining authorship or editorship or listing anyone on the cover page. The Applicant states that she joined the project with the understanding that she would be a co-author of the third chapter of the publication and co-editor of the publication. The Tribunal takes into account the facts as a whole, including the level of contribution the Applicant made and that every working draft of the circulated manuscript reflected her contribution by featuring her name on the cover as an editor and in the acknowledgments as a co-editor and co-author. The Tribunal finds that the Applicant had a reasonable expectation that her contribution would be recognized as such in the final publication. The Tribunal further finds that the Bank's failure to act consistent with the Applicant's reasonable expectation in this case resulted in the unfair treatment of the Applicant. In fact, it is reasonable to infer that the Bank's own HNP Director recognized the unfairness that the Applicant experienced and as such he proposed appropriate remedies. However, they were not

implemented because of the objection from the Bank's publisher. This did not absolve the Bank of its duty to treat the Applicant fairly in this case.

*Whether the Bank abused its discretion in not renewing the Applicant's contract for another fiscal year*

The scope of the Tribunal's review of non-renewal decisions

111. The Tribunal has consistently held that there is no right, absent unusual circumstances, to the extension or renewal of temporary appointments. *See e.g., CP*, Decision No. 506 [2015], para. 36.

112. In *Barnes*, Decision No. 176 [1997], para. 10, the Tribunal held, however, that

the decision not to convert or extend [the applicant's] contract was nonetheless a decision which, like any other exercise of discretion by the Respondent, must be reached fairly and not in an arbitrary manner. The Tribunal has held that even where the "circumstances of the case do not warrant any right to a renewal of a fixed-term contract, the Bank's decision not to renew the contract at the expiration of its predetermined term, however discretionary, is not absolute and may not be exercised in an arbitrary manner."

*See also EG*, Decision No. 567 [2017], paras. 69–70; *EM*, Decision No. 578 [2018], para. 87; *DK (No. 2)*, para. 64.

113. Regarding the reasons given by the Bank for the non-renewal of the Applicant's appointment, the Tribunal held in *CS*, Decision No. 513 [2015], para. 77, that the Bank "must give an honest reason for the non-renewal of a Term appointment." In *Skandera*, Decision No. 2 [1981], para. 28, the Tribunal observed that

notice of termination should communicate to the affected staff member the true reasons for the Bank's decision. It is in the interest of the Bank that the employment of qualified employees not be terminated on the basis of inadequate facts or ill-founded justifications, and one way to assure this is to furnish the staff member at the time of termination with a specific and true assessment which will provide a

fair opportunity to the individual to dispute, and possibly to seek rectification of the decision of the Bank.

114. Moreover, in *Tange*, Decision No. 607 [2019], para. 129, the Tribunal “affirm[ed] the requirement to give reasons for the nonrenewal of a term appointment.”

115. Accordingly, the Tribunal will examine whether the Bank’s decision not to renew the Applicant’s STC contract followed these standards.

#### The non-renewal of the Applicant’s contract

116. The Applicant does not dispute that her contract had expired. She states that she had a reasonable expectation that the Bank would renew her contract for the following reasons: (i) the Bank had repeatedly renewed and extended “her contracts eight times over four years”; (ii) the Applicant’s account access was extended “specifically to bridge the gap in her employment while [HNP management] drew up her contract for the next fiscal year”; (iii) HNP management provided “irrational and inconsistent explanations” for reversing the decision to renew the Applicant’s contract; and (iv) at the end of her contract, the Applicant “still had many deliverables that were not yet complete.”

117. Staff Rule 7.01, paragraph 4.01, provides the legal basis for non-renewals. It states:

A Staff Member’s appointment expires on the completion of an appointment for a definite term, as specified in the Staff Member’s letter of appointment, or as otherwise amended.

118. The Applicant’s Letter of Appointment is explicit that the Bank had no obligation to extend the appointment or to offer a new appointment, unless it is “agreed to in writing at the time of the expiration of the appointment.”

119. As the Tribunal stated in *Degiacomi*, Decision No. 213 [1999], para. 27:

The Tribunal has previously determined that an employee of the Bank under a contract for a fixed period of time may claim an entitlement to renewal where the

circumstances show that a promise was made that the contract would be renewed or extended or where certain acts or pronouncements by the Bank were such as to create a reasonable expectation in the mind of the staff member that renewal or extension would be forthcoming. Under such circumstances, the conduct of the Bank creating a “legal expectation” of renewal or extension becomes part of the contract of employment, and failure to meet such legal expectation may be deemed to be a violation of the contract of employment.

120. The record shows that there was no agreement on the renewal of the Applicant’s contract. The Applicant claims, however, that the REDISSE Project Manager promised that he would extend her contract for another fiscal year and that such promise was set out in the email he sent to ITS on 27 June 2018 to extend the Applicant’s ITS account access.

121. The Tribunal stated in *Chavakula*, Decision No. 277 [2002], para. 15, that evidence of a promise would “have to be proven unequivocally.” Additionally, in *Moss*, Decision No. 328 [2004], para. 45, the Tribunal expressed the need for “an unequivocally proved promise, a clear and irrefutable commitment or assurance.” However, in the absence of an unequivocal statement, circumstances may warrant the inference of a promise. See *DZ (Merits)*, Decision No. 589 [2018], para. 131.

122. The record shows that, on 27 June 2018, explaining that, “[d]ue to the delays with processing a new contract in the FY19,” the REDISSE Project Manager requested that the Applicant’s account access be extended for the following “[f]uture contract dates: 07/01/2018 to 06/30/2019” in order “to ensure minimal disruption and in anticipation to continue to provide the required support in the new FY to the team.”

123. On 27 June 2018, the ITS department informed the Applicant that it could extend her account access for a maximum of 15 days from the current end date of her appointment. Later that day, the Applicant’s account access was extended until 14 July 2018.

124. The Tribunal disagrees with the Applicant’s contention that there was an expectation of both the Applicant and her Bank colleagues that she would continue her work in REDISSE for at least another year. The Tribunal concludes that the REDISSE Project Manager’s email dated 27



June 2018, which was prompted by the Applicant's email on that same day seeking an administrative extension as she needed to renew her G-4 visa, does not amount by itself to an unequivocally proven promise of renewal of a contract.

125. The next question before the Tribunal is whether the Bank has shown that there were business reasons justifying the non-renewal of the Applicant's contract.

126. The Applicant asserts that the Bank also violated its obligation to provide an honest reason for the non-renewal of her contract given that the reasons for non-renewal were "irrational and contradictory" and only "pretexts for retaliation" against her. The Bank claims that there were "valid" and "grounded reasons" for its decision not to renew the Applicant's contract at the end of FY18. The Bank further claims that the project for which the Applicant was hired was completed by the time of the non-renewal.

127. The Bank also contends that budgetary constraints led it to rely less on STCs, like the Applicant. The Applicant takes issue with this explanation because the unit hired two consultants around the time that her contract was not renewed. The Bank contends that those consultants were ETCs, and they were hired to perform roles that the Applicant did not perform. The Bank asserts in this regard that a regular staff member took over the Applicant's REDISSE-related responsibilities. The Bank also claims that the consultants have specialized skills that the Applicant does not have. For example, one of the ETCs has years of experience working in disaster/emergency response as well as a PhD, while the other ETC has expertise in laboratory strengthening.

128. The record shows that the HNP Practice Manager informed the Applicant's country TTL and the REDISSE Project Manager in June 2018 that they needed to rebalance the use of staff and consultants. Furthermore, the REDISSE Project Manager informed the Applicant that HNP would not be able to offer "very many days" to her. The Tribunal finds that the Applicant was provided business reasons for the non-renewal of her contract, and that the record reflects that these reasons were honest, rather than pretextual.

Right to be given timely notice of non-renewal

129. The next question is whether, despite being motivated by business reasons, the Bank provided timely notice to the Applicant that her STC contract would not be renewed.

130. The Applicant complains that the non-renewal of her contract did not follow a fair and reasonable procedure. She states that the Bank failed to provide her with notice of any kind that “her July 2018 extension would be her last,” in contravention of her right to be given advance notice of non-renewal. The Applicant explains that she realized for the first time that her contract would not be renewed on 5 July 2018, “ten days before her account extension expired, and five days after her original contract expired.” The Applicant contends that the Bank’s treatment in this regard is “deplorable given [the Applicant’s] six years of service to the Bank and her G-4 visa status.”

131. The Bank denies the Applicant’s claims of unfair treatment and asserts that the Applicant received proper notice of non-renewal by email dated 10 July 2018, in which the REDISSE Project Manager informed her that the unit was reducing its reliance on STCs and that a senior health specialist would take over her REDISSE portfolio and begin “shortly.” The Bank states that, given this context, the Applicant “accepted graciously” the maximum of “7-10 consulting days for a handover assignment” for her last contract. The Bank further states that the Applicant received on 26 June 2018 an automated notification from the ITS department confirming “what [she] already knew – that her appointment was for a fixed term with an expiry date, and that she would have to return her laptop.”

132. Finally, the Bank claims that it kept in mind the Applicant’s G-4 visa status prior to notifying the Applicant of the non-renewal of her contract. The Bank asserts that the Applicant’s TTLs “scrounged their budgets to assign her the required number of days so she could maintain her G4 visa.” The Bank adds that the Applicant was given another contract from 3 October 2018 to 30 June 2019, “which presumably resolved her G4 visa status.”

133. The record shows that, on 10 July 2018, the Applicant was informed that her STC contract would be extended for a maximum of ten days.

134. Staff Rule 7.01, in paragraphs 4.01 and 4.02, states:

A Staff Member's appointment expires on the completion of an appointment for a definite term, as specified in the Staff Member's letter of appointment, or as otherwise amended.

Extended Term Consultant, Extended Term Temporary, Short Term Consultant, Short Term Temporary, and Special Assignment Appointments may be ended by the Staff Member's Manager prior to expiration on grounds that the employment is no longer required, with such advance notice to the Staff Member as the Manager determines consistent with the Staff Member's letter of appointment. A Staff Member separated under this paragraph is not entitled to severance payments.

135. The Applicant's Letter of Appointment stated the following: "The World Bank will make every effort to give you as much notice as possible of any such change to your appointment."

136. The Tribunal has previously emphasized the importance of the "prompt communication of reasons for termination." *Skandera*, para. 28; *DK (No. 2)*, para. 75.

137. The Applicant was informed on 10 July 2018 that her contract would not be renewed, which was after the new fiscal year had already started and after the stated termination date of 30 June 2018 in her contract. She had sought clarification on the renewal of her contract since 4 June 2018, but she did not receive a clear answer until 10 July. Furthermore, on 27 June 2018, the REDISSE Project Manager requested ITS to extend the Applicant's account access for a contract date ending on 30 June 2019, which might have caused further uncertainty in the Applicant's mind as to the status of her contract. Because the Applicant received no clear answers to her queries regarding her status after 30 June 2018 and was not informed before the end of her contract that it would not be renewed, the Tribunal finds that she was not provided timely notice of the non-renewal of her contract.

*Whether the decision to remove the Applicant's work program was properly motivated and followed due process*

138. The Applicant claims that HNP management “abruptly” removed the Pakistan project from her work program and failed to communicate this significant change “for at least three months, despite multiple opportunities to do so, including multiple inquiries by [her].”

139. The Tribunal has previously stated, “[D]eveloping a work program is a managerial responsibility and it will not interfere therewith absent proof of arbitrariness.” *Yoon (No. 10)*, Decision No. 432 [2010], para. 30; *see, e.g., Prudencio*, Decision No. 377 [2007], para. 74.

140. The Applicant’s country TTL for the Pakistan project informed her in March 2018 that he was not certain her services would be needed after her contract ended on 30 June 2018. He stated that he would be moving to Thailand and would no longer need the Applicant’s work on the project. Moreover, on 3 June 2018, the country TTL told the Applicant that he had approved her last payment request and would not need her assistance in the following fiscal year. The Applicant responded to the country TTL the following day, saying that she would hand over her work on the project.

141. The record thus shows that the change in her work program was not abrupt, as the Applicant’s country TTL had informed her as early as March 2018 that there was a possibility her work would not be needed after the end of her contract, as he was moving to Thailand. The country TTL further told the Applicant in early June 2018 that her work would no longer be needed for the same reason as in March 2018. The Tribunal finds that the Applicant had sufficient notice that her work would no longer be needed after June 2018. The Tribunal further finds that there was no proof of arbitrariness in the development of her work program.

*Whether the non-renewal of the Applicant's contract and the removal of her work program were retaliatory*

142. The Applicant claims that her treatment by the Bank in regard to her work program and contract “raises the specter of retaliation” for the following reasons: (i) the Bank provided “multiple, conflicting, and patently dishonest reasons” for its decisions; and (ii) “in delivering his final decision to transfer [the Applicant’s] Pakistan portfolio, [the Applicant’s country TTL] established a direct link between the removal of [the Applicant’s] Pakistan work and her misattribution dispute with the Bank.”

143. The Bank denies the Applicant’s allegations of retaliation. The Bank claims that, as in *DK (No. 2)*, it has demonstrated that it was “similar budget constraints, and not retaliation which drove its decision not to assign Applicant more than ten (10) days” in her contract. In denying the allegations of retaliation, the Bank further states that the HNP Practice Manager “sought Director level approval to increase her rate above the allowed increase,” which, according to the Bank, “is not consistent with a retaliatory *animus*.” (Emphasis in original.)

144. The Tribunal has determined that in order to substantiate a retaliation claim an applicant “bears the onus of establishing some factual basis to establish a direct link in motive between an alleged staff disclosure and an adverse action. A staff member’s subjective feelings of unfair treatment must be matched with sufficient relevant facts to substantiate a claim of retaliation.” *O*, Decision No. 337 [2005], para. 47.

145. The Applicant specifically points to the following statement made by the country TTL of the Pakistan project in his 3 June 2018 email as evidence of retaliation: “I’d like to thank you for your valuable input to the project and assure you that it will be recognized on any analytic products that arise from the survey.” According to the Applicant, this statement established a link between the removal of her work program on the Pakistan project and her dispute regarding attribution for her work on the publication that was separate from the Pakistan project.

146. The Tribunal has previously concluded that a comment made to a staff member about the staff member resorting to the conflict resolution system “does not, without more, establish retaliation.” *CA*, Decision No. 475 [2013], para. 59. In that case, a director told the applicant that the applicant was “essentially su[ing]” his managers after he initiated PRS proceedings. *Id.*, para. 57. The Tribunal noted that this comment was “ill-judged” but that it did not establish retaliation, especially since the director who made the statement was not the same person who had ultimately made the non-renewal decision that the applicant was contesting. *Id.*, para. 59.

147. The Tribunal notes that *CA* is similar to the present case, in that the country TTL for the Pakistan project was not among the parties who were involved in the earlier misattribution dispute with the Applicant, and in fact he had only made a statement referring to recognizing the Applicant for her work on any future analytic products. Moreover, he provided a reason for the removal of her work program, which was that he would be moving to Thailand and would not need the Applicant’s help on the project any longer. Therefore, the Tribunal finds that his statement “without more” is not sufficient to establish a link in motive that would prove retaliation.

148. The Applicant further states that the Bank provided dishonest reasons for its decisions, which also inform her retaliation claim. The Applicant has not expanded on this allegation or provided a factual basis to establish a retaliatory motive on the part of the Bank. Therefore, the Tribunal dismisses her claim of retaliation.

## DECISION

- (1) The Bank shall revise the online version of Publication A to include the Applicant’s name on the cover as an editor, include her name in the citation for the publication on the inside front cover, and include her name in the second paragraph of the acknowledgments section on p. xiii. For unfair treatment in this respect, the Bank shall pay the Applicant compensation in the amount of \$15,000.00;
- (2) The Bank shall pay the Applicant compensation in the amount of \$10,000.00 for unfair treatment with regard to the lack of timely notice of the non-renewal of her contract;

- (3) The Bank shall contribute to the Applicant's legal fees and costs in the amount of \$35,000.00; and
- (4) All other claims are dismissed.

/S/ Mónica Pinto

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Mónica Pinto

President

/S/Zakir Hafez

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Zakir Hafez

Executive Secretary

At Washington, D.C., 25 October 2019