



World Bank Administrative Tribunal

2019

Decision No. 615

**FC,
Applicant**

v.

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

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

**FC,
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 20 December 2018. The Applicant was represented by Jeffrey Bartos and Raziya Brumfield of Guerrieri, Bartos & Roma, P.C. The Bank was represented by Ingo Burghardt, Chief Counsel; Edward Chukwuemeke Okeke, Interim Chief Counsel; and Claire Stubbe, 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 claims that (i) "she was subjected to sexual harassment in violation of Bank policies"; (ii) the investigation by the Office of Ethics and Business Conduct (EBC) was neither fair nor impartial; and (iii) her contract was terminated in retaliation for opposing her Supervisor's sexual advances and she was not given "proper notice" about the reason for the termination.

FACTUAL BACKGROUND

4. The Applicant was employed by the Bank from 25 March 2016 to 30 September 2016 as a Short Term Consultant (STC). The circumstances of the Applicant's initial appointment are set out below.

5. After graduating from college in 2014, the Applicant contacted the Supervisor on 2 December 2014 by LinkedIn message to explore opportunities in the field of environmental science.
6. By LinkedIn message on 8 October 2015, the Supervisor contacted the Applicant because the Supervisor needed an STC for a project to deliver training in Country X.
7. Following a telephone conversation with the Supervisor in December 2015, the Applicant sent the Supervisor her curriculum vitae and writing samples on 7 January 2016.
8. By email dated 19 January 2016, the Supervisor invited the Applicant and several other Bank staff to meet at a restaurant on 21 January 2016, from 6:00 p.m. until 7:30 p.m., and the Applicant attended.
9. By email dated 5 February 2016, the Supervisor sent the Applicant documents about the project. The Applicant responded by email the following day, expressing her interest in an STC contract.
10. On 25 March 2016, the Applicant was offered an STC contract, which stated that her services would be needed “for about 30 days from March 25, 2016 to June 30, 2016.” The Applicant accepted the contract.
11. Shortly after the Applicant began working at the Bank, she and her Supervisor exchanged both personal and professional messages, during and outside of working hours.
12. The Applicant claims that, shortly after her contract started, the Supervisor invited her to a happy hour at a restaurant and to a bar, where he asked her personal questions; and, when “[h]e stated that he was interested in dating her,” she declined and told him “that they should remain friends.”

13. The Applicant describes an incident in April 2016 at the Supervisor's house, where he "grabbed [her] abruptly and began kissing and groping her." According to her, she told the Supervisor that she wanted to go home so he called an Uber, and she left his house.

14. The Applicant claims that, after this incident, the Supervisor "began to call her frequently and asked questions regarding her personal activities. [...] He asked her to send him pictures of herself and stated that he wanted to date her." The Applicant states that she told the Supervisor she was open to having a friendship, but was not interested in dating anyone.

15. On 19 and 20 April 2016, the Applicant and the Supervisor exchanged personal messages. After returning from the Supervisor's office, the Applicant sent him 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 Supervisor responded, "😊[.] Btw. We need to chat about the gift. Apparently I'm not allowed to take gifts from consultants."

16. On 21 April 2016, the Applicant sent the Supervisor a photo of herself, to which he responded, "Now I want to see you[.] Today[.] Nice pic." Later that evening, the Applicant sent a message greeting the Supervisor, and he responded that he was thinking of her. He wrote to the Applicant, "Thinking about how gorgeous you are," to which she responded, "😊" and sent another photo of herself. The Supervisor wrote, "Beautiful," and "I hope I get to see you tomorrow." The Applicant responded, "You will," and then expressed her worry that the Supervisor had a wife or had "[i]nteracted like this with someone before me [...] previous wom[e]n consultants." The Supervisor responded, "Never," "Seriously," "Honestly," and told the Applicant, "I really like you." They also exchanged messages about plans to meet the following day. The Supervisor suggested that the Applicant come to Laurel, Maryland, and that he hoped they could "chill with some privacy." The Applicant agreed and wrote that she thought "coming to Laurel is a good idea. I suppose depending on what we plan [t]o do."

17. On 22 April 2016, the Supervisor sent an Uber to the Applicant's house to pick her up and bring her to his house. The facts of the ensuing incident are in dispute.

18. According to the Applicant, the Supervisor drove her from his house to a hotel, and in the hotel room, he “began to kiss her,” “removed his pants and proceeded to undress and aggressively fondle [her],” engaged in a sexual act, after which he left her in the hotel room, and engaged in a sexual act again after he returned to the hotel room.

19. According to the Bank, at different times the Applicant gave different reasons to EBC for visiting the Supervisor’s house, either to discuss work or to socialize. It states that the Applicant did not mention during her first interview that she wanted to leave the hotel room when the Supervisor left the first time, and it states that the Applicant never mentioned to EBC that the Supervisor’s conduct was aggressive or forced.

20. Later that evening, the Applicant sent a message to the Supervisor, requesting approval for a payment request. Two hours later, the Applicant sent another message to the Supervisor, stating:

I think it’s best if we just keep things professional. I feel more hurt than I thought I would and I’m not sure why but I need time. It’s not you cancelling, I think it’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.

21. In the early morning of 23 April 2016, the Supervisor sent the following message to the Applicant: “I’m really sorry about this. [...] I thought you understood where I was coming from. I agree with keeping things professional, which is why I refused the gift etc. [...] 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.”

22. According to the Applicant, one week later, the Supervisor asked her to drive him to the airport. The Supervisor went to the Applicant’s house, where he met her mother, and subsequently the Applicant drove the Supervisor to the airport. According to the Applicant, during the drive, the Supervisor told her about a woman at the Bank who had reported her boss for harassment and had been blacklisted. The Applicant also claims that the Supervisor placed his hands under her clothes

and rubbed the outside of her underwear. EBC stated that it “did not find conclusive evidence” to support the Applicant’s version of events.

23. Following this incident, the Applicant claims that the Supervisor made a video call, telling her that he missed her, asking her personal questions, and requesting her to take off her clothes for him. The Applicant claims that she complied out of fear that the Supervisor would retaliate against her and because she did not want to be blacklisted.

24. On 10 May 2016, the personal messages between the Applicant and the Supervisor included a message from the Applicant, telling the Supervisor that using his office while he was on mission “[m]ade me miss you more [...]”. The Supervisor responded, “😊 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.”

25. On 11 May 2016, the Supervisor informed the Applicant that he would be moving to work in another country in September. The Applicant congratulated him but wrote, “😞 I can’t believe you are moving already [...] It’s bittersweet.”

26. The Applicant’s first mission was from 14 to 25 May 2016. She flew to Country X via Johannesburg.

27. According to the Applicant, on this mission, the Supervisor asked her to join him and a friend for dinner in Johannesburg, which she did. The Applicant claims that, when the Supervisor drove her back to the hotel, he placed his hand under her blouse and touched her breast. At the hotel, the Applicant claims that the Supervisor insisted that she come to his room, which she did. She claims that the Supervisor removed her dress, kissed her, performed a sexual act, and asked her to have sexual intercourse. She states that she refused his request. According to her, the Supervisor performed a sexual act, while she “remained still, feeling disgusted and numb.” According to the Bank, the Applicant’s account of these events to EBC “suggest[s] a consensual exchange where Applicant, by her own admission, actively agreed to (and did) perform specific sexual acts on [the Supervisor] [...]”

28. On 22 May 2016, according to the Applicant, the Supervisor accused her of acting unprofessionally by going to another restaurant with a colleague, after the Applicant, the Supervisor, and several team members had dinner together. The Applicant claims the Supervisor told her “that he had taken a risk hiring her, and she had shown that she was not ready for the position” and that “he had ‘a decision to make’ once they returned to Washington D.C.”

29. According to the Applicant, later that evening, the Supervisor asked her to come to his room, which she did. She claims that he “apologized for his outburst” and told her that “if you knew what I did for your contract you’d feel like you owe me.” The Applicant states that she returned to her hotel room and Skyped with a friend, telling him about “the abuse.” The Applicant claims to have written a letter of resignation on her computer.

30. Later that evening, the Applicant states that she went to the hotel lobby, at the request of the Supervisor, who bought her a drink and told her that he had given her an opportunity that she should “leverage.” The Applicant claims that she confronted him about being married, which he denied. According to the Applicant, the Supervisor asked her to go to his hotel room, which she did out of fear for her job. The Applicant states that, in his hotel room, the Supervisor kissed her neck and performed sexual acts on her.

31. Regarding the events on 22 May 2016, the Bank states that the “Applicant initially failed to mention that any sexual activity occurred between the pair at all.” The Bank asserts that it was not until the Applicant’s fourth interview with EBC that she alleged that the Supervisor performed sexual acts on this occasion.

32. The Applicant states that, on 23 May 2016, she asked the Supervisor to be “professional” and that he responded by accusing her of “being selfish because she was not considering how he felt, and he asked if she was playing hard to get or being serious.” Later that evening, according to the Applicant, the Supervisor asked her to come to his hotel room, which she did. Although she asked him to keep things professional, she claims that he did not agree and made her perform sexual acts, which she did to “more quickly be allowed to leave [the Supervisor’s] presence.”

33. The Bank notes that the Applicant did not mention the incidents on 23 May 2016 at her initial interview with EBC and that, subsequently, she gave conflicting accounts of what had occurred.

34. The Applicant returned to Washington, D.C., after the end of the mission and did not do any work for the Bank in June 2016.

35. On 3 June 2016, the Applicant and the Supervisor met at or near the Bank. The Applicant claims that they discussed a second mission. According to the Applicant, she told the Supervisor that “she would not mind working remotely” but the Supervisor “questioned her commitment.” She states that, when he told her that he would not be present during the second mission, except possibly for a few days, she agreed to participate. After this conversation, the Applicant claims that the Supervisor suggested that they go to a nearby restaurant, where he denied that he was married and “asked if he could pay for her to go on a vacation with him and friends to South Africa.” The Applicant claims that she declined. She claims that the Supervisor reiterated the invitation to South Africa in a video call later that evening, but that she maintained her refusal.

36. By letter dated 30 June 2016, the Bank offered the Applicant another STC appointment with the Supervisor as the Task Team Leader. The letter of appointment stated:

We expect to need your services for about 20 days from July 06, 2016 to September 30, 2016. In the event the World Bank finds it necessary to cancel the assignment or to shorten its duration, the World Bank reserves the right to adjust the terms of the assignment as necessary. Your appointment will terminate accordingly unless it is extended or a new appointment is made. The World Bank has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding [...].

37. The Applicant was scheduled to lead the second mission from 25 July to 5 August 2016.

38. The Applicant claims that the Supervisor directed her to meet him in Johannesburg, before the second mission began. On 22 July 2016, the Applicant arrived in Johannesburg. The Applicant states that, on the day of her arrival, she went to the Supervisor’s apartment, where sexual acts, including sexual intercourse, occurred. According to the Applicant, she acquiesced, telling the

Supervisor to “just get it over with” because “[s]he felt trapped” and was worried that the Supervisor would retaliate against her. The Bank does not contest that the Applicant went to the Supervisor’s apartment, where sexual acts occurred, but the Bank asserts that “it was Applicant who ultimately decided that the couple should have sexual intercourse on that occasion.”

39. The Applicant told EBC that, on 23 July 2016, she accepted the Supervisor’s invitation to go to a club with some of his friends. According to the Applicant, she stepped outside with one of the Supervisor’s friends who was smoking marijuana and, at the end of the evening when the Supervisor dropped her off at her hotel, the Supervisor told her, “I know what to add to your file now.”

40. On 29 July 2016, the Supervisor directed the Applicant to end the mission and return to Washington, D.C. The Applicant told EBC that the Supervisor asked both the Applicant and another consultant to return early, due to ongoing accountability issues with the local disaster management authority.

41. The Applicant’s final payment was processed on 3 August 2016. The Applicant worked for twelve of the estimated twenty days under her STC contract.

42. On 10 August 2016, the Applicant apologized to the Supervisor for being angry with him during the second mission and asked him for work. In response, he recommended that she apply to graduate school.

43. By email dated 31 August 2016, the Applicant emailed the Supervisor to follow up on possible future projects. The Supervisor responded on the same day that it seemed unlikely that he would be able to keep much of his Africa work.

44. On 7 September 2016, the Applicant sent the Supervisor the following message:

My belief is that with anything work related, as my boss, you were great to work with – hence why I’m curious about further opportunities. By bad experience, I didn’t mean things that were work related. I think you already know what I mean

by that [...]. I'd like to move forward having had one good professional experience with the intentions of working strictly professionally with you, minus having to cope with egregious internal politics.

45. The Supervisor responded by message the same day that he would let the Applicant know if a suitable opportunity arose, but advised her to consider graduate school.

46. On 8 and 9 September 2016, the Supervisor informed the Applicant that his colleague was looking for a consultant, and she asked him to keep her "updated on potential opportunities for work and if anything suitable comes up."

47. On 20 September 2016, the Applicant messaged the Supervisor, indicating that she had questions for him. He responded that he was "only available to answer work related questions." The Applicant wrote about feeling "deeply troubled" and having done "very personal and sacred things with [the Supervisor] blindly without ever knowing the full truth." The Supervisor accused the Applicant of asking his friends to buy her illegal drugs, which she denied. They continued to argue, with the Supervisor insisting that the Applicant should accept his feedback and the Applicant demanding answers to her questions.

48. On 23 September 2016, the Applicant began seeing a Licensed Clinical Social Worker. She was treated for post-traumatic stress disorder.

49. The Applicant requested the Supervisor to write her a recommendation for graduate school, which he did.

50. On 30 December 2016, an email from the Applicant's America Online (AOL) account was sent to the Supervisor's Gmail account. The Applicant denies sending this email and claims that her account was hacked.

Official Complaint and EBC Investigation

51. By letter dated 27 March 2017 to the Bank's General Counsel, the Vice President of EBC and Chief Ethics Officer, and Ombuds Services, the Applicant's attorney claimed that the Applicant had been sexually harassed by the Supervisor between April and August 2016. The Bank was invited to view a "testimonial video describing [the Applicant's] allegations in detail" and was informed that the Applicant "would consider releasing her potential legal claims in recognition of certain consideration."

52. By letter dated 31 March 2017, the Chief Counsel (Institutional Administration), Legal Vice Presidency informed the Applicant's attorney that the Applicant could report her allegations to EBC, which is responsible for investigating such allegations.

53. By email dated 10 April 2017 to the Applicant's attorney, EBC identified itself as the office responsible for investigating allegations of sexual harassment and abuse. EBC sought access to the Applicant's video and requested that the Applicant contact it to arrange a time to speak.

54. By email dated 11 April 2017, the Applicant's attorney provided the username and link to access the video.

55. By email dated 12 April 2017, EBC advised that it was unable to access the video. EBC reiterated the need for the Applicant to contact it to give details about her allegations.

56. By email dated 13 April 2017, the Applicant's attorney sent EBC a link to view the video with the email heading: "CONFIDENTIAL – FOR SETTLEMENT PURPOSES ONLY." He requested EBC to communicate with the Applicant only through counsel and stated that "[o]ur communications should provide notice to conduct an investigation." EBC viewed the video on the same day.

57. By email dated 14 April 2017, EBC confirmed that it was able to access the video.

58. By email dated 20 April 2017 to the Applicant's attorney, EBC confirmed that it had reviewed the video and requested to speak with the Applicant to obtain additional details. By email on the same day, EBC invited the Applicant to speak with investigators on 24 April 2017, to give more information about her complaint.

59. By email dated 20 April 2017, the Applicant's attorney rebuked EBC for contacting the Applicant directly and suggested a meeting.

60. By email dated 23 April 2017, the Applicant's attorney instructed the Applicant not to "make direct contact with anybody at WBG [World Bank Group]."

61. On 17 May 2017, EBC opened a file and issued a Notice of Alleged Misconduct to the Supervisor and interviewed him.

62. By email dated 18 May 2017, an email was sent from the Applicant's AOL account to the Supervisor's Gmail account, forwarding emails between the Applicant, her attorney, and EBC, with the statement: "I told you we were coming....." Subsequently, in her email of 1 July 2017 to EBC, the Applicant denied sending the May 2017 email and claimed that her account had been hacked.

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

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

65. By email dated 1 July 2017 to EBC, the Applicant indicated that she would speak with EBC and explained that she had not contacted EBC because her attorney had advised her not to communicate with anyone at the Bank. The Applicant also claimed that her AOL account had been

illegally accessed by multiple Internet Protocol addresses, including one from the city where the Supervisor was living at the time.

66. On 6 and 7 July 2017, EBC conducted intake interviews with the Applicant. During these interviews, the Applicant provided EBC with screenshots of messages exchanged between her and the Supervisor. EBC assigned one male investigator (First Male Investigator) and a female investigator to the case.

67. On 12 July 2017, EBC interviewed the Applicant for a third time.

68. By email dated 9 August 2017 to the EBC investigators, the Applicant provided additional information about her allegations and stated:

I realize that in our last interview, there was quite a bit of confusion in regards to certain texts and the context in which they were written. I walked away feeling misunderstood in some respects and I realize it is due to the fact that while I answered your questions, understanding my thought process and mindset at the time that this was all happening was never brought into question. [...] I'd like to provide background information which will clear this up, and provide a fuller scope of understanding. I can certainly clarify where needed.

[...]

Due to the complexity of this case, I felt this background information was vital to your interpretation of the texts, understanding of what occurred, and why I reacted the way that I did.

69. On 16 August 2017, the First Male Investigator informed the Applicant that another male investigator had been assigned to the case and had been provided with the information given by the Applicant to EBC. According to the Bank, the change of investigator was due to the First Male Investigator's workload.

70. On 6 November 2017, EBC sent the Supervisor a pre-notice and informed him about its investigation.

71. On 13 November 2017, EBC interviewed the Supervisor and presented him with a second Notice of Alleged Misconduct.

72. On 29 November and 6 December 2017, the Applicant was interviewed by EBC. At the latter interview, the Applicant showed EBC her iPad with iMessages between her and the Supervisor. EBC asked for the iPad so that the Bank's Information and Technology Solutions (ITS) could extract the messages. The Applicant refused to hand over the iPad unless the extraction occurred in her presence. In the alternative, she would agree to the extraction by a forensic examiner. ITS agreed to the Applicant's request to be present for the extraction, but the Applicant decided to use a third party, Sengroup Solutions, LLC, to extract the messages at her expense. The Applicant provided these messages to EBC on 18 January 2018.

73. By email dated 5 March 2018 to EBC, the Applicant asked about the timeline for the investigation. EBC responded by email the following day, informing the Applicant that it was finalizing a draft report, which would be provided to the Supervisor for his comments, prior to finalizing and sending to the Vice President, Human Resources (HRVP or HRDVP).

74. By email dated 17 April 2018, the Applicant asked EBC for an update. EBC responded by email the following day, informing the Applicant that the draft report was with the Supervisor for his comments and that EBC hoped to send the final report to the HRVP by late April or early May.

75. By email dated 19 April 2018 to EBC, the Applicant complained about the length of the investigation. By email dated 23 April 2018, EBC informed the Applicant that the investigation began in July 2017 because the earlier file had been closed due to the Applicant's unavailability for an interview. EBC estimated that the final report would be sent in late April or early May. The Applicant responded by email on the same day, acknowledging the information from EBC.

76. On 22 May 2018, EBC issued its final investigative report. EBC concluded that

the relationship between [the Supervisor] and [the Applicant] 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 Supervisor] failed to report or resolve. EBC however found that [the Supervisor] did not coerce [the Applicant] 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 Supervisor] engaged in reprisals when he did not renew her STC contract.

77. By email dated 13 June 2018 to the Manager, Business Integrity Review of EBC (Manager, BIR), the Applicant submitted a formal complaint against the First Male Investigator in respect of his conduct during her interviews on 6, 7, and 12 July 2017. She claimed that, “[d]uring [her] interview with [the First Male Investigator], [she] was intimidated, victim blamed, and mocked,” and she gave examples of the three types of behavior exhibited by the First Male Investigator. She further alleged that his conduct “robbed [her] of [her] right to bring forth a claim without being treated in a hostile manner or intimidated.”

78. The Manager, BIR responded to the Applicant by email on the same day and assured her that she would “look into the matter more and speak with the investigator involved.” She also reiterated the Bank’s commitment to addressing sexual harassment.

79. By email dated 15 June 2018, the Applicant thanked the Manager, BIR for “her prompt and thoughtful response.”

80. On 9 July 2018, the HRVP found that the Supervisor had engaged in misconduct. The HRVP informed the Supervisor 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 [Applicant’s] earlier flight to [Country X] via South Africa and approved her stay [...] 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 [Applicant] 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 Applicant's] contract.

The HRVP imposed the following sanctions on the Supervisor: (i) termination of employment effective 1 August 2018; (ii) ineligibility for future employment with the Bank; (iii) a permanent restriction from access to the Bank's premises; and (iv) the misconduct letter to remain in the Supervisor's personnel record indefinitely.

81. By email dated 11 July 2018, EBC informed the Applicant that

the HRDVP on July 9, 2018, made a decision in the matter you reported to EBC against [the Supervisor] with a finding that misconduct occurred.

The appropriate sanction was determined to be termination and the loss of future employment and contractual opportunities with the World Bank Group, effective August 1, 2018. Thereafter, his employment will terminate, and a hiring restriction will be placed in his personnel records and a copy of the sanction letter will remain in his personnel record indefinitely. His access to World Bank Group's premises will be restricted. He has also been placed on administrative leave from the date of his receipt of the decision until August 1.

82. By email on the same day, the Applicant thanked EBC for the update and asked, "[W]ho will be compensating me for the mental anguish, suffering, and losses incurred as a result of the misconduct of [the Supervisor][?]"

83. By email dated 12 July 2018, EBC informed the Applicant that its power is limited to investigation and that "EBC has no mandate to award any compensation under Staff Rule 3.0." EBC referred the Applicant to the Staff Association and Ombuds Services for further assistance.

Internal Justice Services

84. By email dated 18 July 2018, the Applicant thanked Ombuds Services for meeting with her and explaining her options to her. The Applicant also clarified the timeline regarding her initial interactions with EBC.

85. By email dated 20 July 2018, Ombuds Services asked the Applicant for her permission to speak with EBC and indicated that Ombuds Services had left a message with HR. By email on the same day, the Applicant gave her permission.

86. According to the Applicant, Ombuds Services advised her that her claims were outside their scope and directed the Applicant to the Tribunal.

87. By email dated 14 August 2018, the Applicant requested mediation and sought compensation for the termination of her appointment and the hacking of her AOL account.

88. On 17 August 2018, the Applicant and the Mediation Services Manager discussed her request for mediation.

89. On 23 August 2018, the Mediation Services Manager informed the Applicant that potential criminal allegations were outside the scope of Mediation Services and mediation could not be conducted with the Supervisor because he was no longer employed by the Bank.

90. On 24 July 2018, the Applicant submitted a request for review to Peer Review Services (PRS).

91. By memorandum dated 10 August 2018, the PRS Executive Secretary informed the Applicant that PRS did not have the authority to review her claims. The PRS Chair determined that the Applicant's claims regarding the reduction in working days, as set out in the second STC contract, and the termination of that STC contract, were untimely. The PRS Chair further determined that her claim relating to EBC's investigation was outside PRS's mandate.

92. By email on the same day, the Applicant asked the PRS Chair to reconsider her decision to dismiss the Applicant's claims.

93. By memorandum dated 31 August 2018, the PRS Executive Secretary informed the Applicant that the PRS Chair had reviewed the Applicant's request for reconsideration and upheld the original decision.

Application

94. By email dated 31 August 2018, the Applicant requested an extension of time to file her Application to the Tribunal.

95. By letter dated 7 September 2018, the Applicant was granted an extension until 3 January 2019 to file her Application.

96. The Applicant filed the Application on 20 December 2018. The Applicant claims that (i) "she was subjected to sexual harassment in violation of Bank policies"; (ii) the investigation by EBC was neither fair nor impartial; and (iii) her contract was terminated in retaliation for opposing her Supervisor's sexual advances and she was not given "proper notice" about the reason for the termination.

97. As relief, the Applicant claims compensation "for the stress and emotional distress caused by the sexual harassment and abuse she has suffered; [her] lost income based on the improper non-renewal of her contract[;]" and legal fees and costs including information technology-related costs in the amount of \$128,498.76.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The Applicant was subjected to sexual harassment in violation of Bank policies

98. The Applicant states that "[p]rotection against harassment is part of ever[y] staff member[']s conditions of employment and terms of appointment [...]."

99. The Applicant alleges that she was sexually harassed by the Supervisor. She claims that the Supervisor subjected her to “verbal, nonverbal and physical conduct of a sexual nature” throughout her employment. The Applicant refers to implied sexual statements from the Supervisor, sexually suggestive text messages, requests for her to send him nude pictures of herself, and sexually physical conduct towards her. The Applicant alleges that the Supervisor’s repeated communications about personal matters “affected her ability to complete work assignments.”

100. The Applicant submits that the Supervisor’s conduct “unreasonably interfered with [her] work at the Bank” because she felt “intimidated and harassed, [...] trapped and isolated in her employment.” According to her, the Supervisor controlled her presence at the Bank and her interactions with colleagues by requiring her to sit in his office, preventing her from going to the Bank if he was not present, and chastising and criticizing her for interacting with colleagues. The Applicant states that she continues to require medical treatment and special accommodations to deal with the negative impact of the Supervisor’s conduct.

101. The Applicant alleges that the Supervisor “engaged in quid pro quo sexual harassment by using his power and authority over [the Applicant] to force unwelcome sexual contact” and he made “sexual activity a condition of her employment.” The Applicant submits that the termination of her appointment was “in direct retaliation for her refusal to adhere to his sexual advances.”

102. The Applicant describes the Supervisor’s conduct as having “created an intimidating and offensive working environment and [as having] interfered with [the Applicant’s] work.”

103. The Applicant avers that she told the Supervisor she wanted to maintain a professional relationship and that his sexual overtures were not welcome, but he ignored her. She gives the following examples: leaving the Supervisor’s home immediately after he started to kiss her, blocking the Supervisor on Instagram after he “liked” a picture of her in a swim suit, and declining his offer to pay for her to accompany him and his friends on an overseas vacation. She describes having “to balance her need to remain employed at the Bank with her attempts to reject her supervisor in a manner that would not anger or disappoint him.”

The Bank's Response

The Bank satisfied its obligation to the Applicant, and there was no sexual harassment

104. The Bank submits that its obligation towards the Applicant, as set out in Principle 2.1(b) of the Principles of Staff Employment, is to “make all reasonable efforts to ensure appropriate protection and safety for staff members in the performance of their duties,” including appropriate protection and safety from sexual harassment.

105. The Bank notes that it has “clear processes and procedures in place which allow staff to report allegations of sexual harassment to, among other resources, the World Bank Group’s EBC office for investigation.” The Bank states that soon after receiving the Applicant’s report, after she had left the Bank, EBC “conducted a thorough investigation in accordance with all applicable procedures.” According to the Bank, EBC identified the misconduct in question and the HRVP imposed appropriate disciplinary sanctions on the Supervisor, thereby discharging the Bank’s obligation towards the Applicant.

106. In addition to EBC, the Bank identifies other avenues that the Applicant could have utilized to report sexual harassment, such as Corporate Security, Ombuds Services, Respectful Workplace Advisors, Staff Association Relations Counselors, and Personal and Work Stress Counseling.

107. The Bank states that there was no sexual harassment in this case. The Bank contends that the Applicant “was involved in a consensual, romantic relationship with [the Supervisor], which was sexual in nature.” It notes that “there is no reliable evidence in this case to support Applicant’s claims that any of [the Supervisor’s] alleged sexual conduct was ‘unwelcome.’ [...] In contrast, there is an abundance of evidence showing that Applicant ‘solicited, invited [and/or] encouraged’ [the Supervisor’s] advances and affections.” The Bank submits that the “Applicant did not clearly communicate to [the Supervisor], at any relevant time, that she found his conduct offensive or wanted it to stop.” Moreover, the Bank maintains that the Applicant has not established that the Supervisor’s conduct created a hostile work environment or that there was a *quid pro quo*. The Bank describes the Applicant as being “perfectly at ease around [the Supervisor], both professionally and personally” and notes that, despite having been given an independent

workspace, the Applicant chose to work from the Supervisor's office when he was away. The Bank submits that there is no evidence that "show[s] to a 'clear and convincing' standard that [the Supervisor] made sexual activity a condition of Applicant's employment or used it as the basis for making decisions affecting her role."

The Applicant's Contention No. 2

EBC's investigation was not fair or impartial vis-à-vis the Applicant

108. The Applicant alleges that the conduct of the First Male Investigator "was grossly contrary to Bank Rules and Principles." According to her, he "mocked, blamed and belittled her during the EBC process." She further describes the First Male Investigator's questioning as "intimidating, hostile and unprofessional."

109. The Applicant relies on contemporaneous evidence that purports to reflect her feeling of being mistreated, such as her email to EBC investigators of 9 August 2017, which was sent "because she felt that she had not been adequately heard," and her email to the Manager, BIR on 13 June 2018.

110. The Applicant claims that EBC presented her with "falsified evidence," including "a fraudulent text message claiming to be sent from her to [the Supervisor]."

The Bank's Response

EBC's investigation was fair, was impartial, and followed proper procedures

111. The Bank submits that the "investigation was conducted in a fair, impartial, and proper manner, in accordance with the applicable procedures." Relying on the transcripts from the EBC investigation, the Bank states that all of the investigators, including the First Male Investigator, "acted professionally at all times."

112. Specifically regarding the First Male Investigator's conduct, the Bank submits that he "acted properly at all times, including by offering Applicant tissues and breaks on numerous occasions," and that he interrupted her rarely and not in a "condescending way."

113. With respect to the Applicant's claim about falsified evidence, the Bank submits that the fairness and impartiality of the EBC investigation is underscored by EBC having shown the Applicant copies of all documents received by EBC during the investigation and having given the Applicant the opportunity to respond. The Bank states that EBC expressly discussed the Applicant's allegation that her AOL account had been hacked, and recommended that she report this to law enforcement.

The Applicant's Contention No. 3

The Applicant's appointment was terminated in retaliation, and she was not given "proper notice" of the reason for the termination

114. The Applicant submits that her appointment "was terminated in retaliation for opposing [the Supervisor's] sexual advances." She states that she did not receive any assignments after August, despite her contract's end date of September 2016 and outstanding tasks on the project.

115. The Applicant alleges that she was not given a written reason for the termination, "contrary to Bank Fundamental Principles." Rather, when the Applicant asked the Supervisor for an explanation, she claims that she was told "that he could not work with her any longer because she had engaged in misconduct while overseas," an accusation that the Applicant denies.

The Bank's Response

There was no retaliation, and the Applicant was given sufficient notice and the reason for the termination

116. The Bank submits that EBC considered and rejected the allegation that the Supervisor retaliated against the Applicant by not renewing her STC contract.

117. The Bank explains that the Applicant's appointment was not terminated; rather, the Supervisor decided to end the project one month earlier than scheduled "due to accountability issues with the local disaster management authority [...]." The Bank denies that there was any further work for the Applicant to perform once the Bank's involvement in the project ended.

118. The Bank states that the Applicant was not given any expectation that there would be further work on the project for the remainder of her contract, after August. Moreover, the Bank notes the project's end date of 30 September 2016, after which time no more funding would be available.

119. The Bank explains that the Applicant's appointment expired according to its terms on 30 September 2016. It denies any obligation to extend the Applicant's appointment. The Bank claims that it is not "required to give written notice to an STC in the circumstances of this case, namely, where their appointment expires according to its terms."

120. Nevertheless, the Bank submits that the Applicant had appropriate notice because the Supervisor expressly informed her of his decision to end the project early and of the accountability issues as the reason for his decision. It notes that the Applicant also knew that the project would finish by 30 September 2016, the same date as the end date of her contract.

121. The Bank contends that it is inconsistent for the Applicant to claim that she was retaliated against for rejecting the Supervisor's advances, when, according to her, the last time the Supervisor "made sexual advances towards her was in Johannesburg [...]. Relevantly, Applicant told EBC that, on that occasion, she agreed to have sexual intercourse with [the Supervisor] and that she went out drinking with him and his friends the following evening." The Bank states that the "Applicant has not identified any sexual advance, which she refused, and which then formed the basis" for retaliation.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

WHETHER THE BANK'S PROCESS FOR DEALING WITH COMPLAINTS OF SEXUAL HARASSMENT WAS
FOLLOWED

122. The Applicant alleges that she was sexually harassed by her Supervisor, in violation of Bank policies.

123. The Tribunal will first consider the nature and scope of the Bank's obligations towards the Applicant.

124. The Bank submits that its obligation towards the Applicant is set out in Principle 2.1(b) of the Principles of Staff Employment, namely, to "make all reasonable efforts to ensure appropriate protection and safety for staff members in the performance of their duties."

125. The Applicant's claim against the Bank in this case is similar to the applicant's claim in *Rendall-Speranza*, Decision No. 197 [1998], para. 42. In the latter case, the applicant complained that she had been subjected to sexual harassment by her Director "and that the Respondent failed to discharge its obligation to protect her from such harassment [...] through the Bank's acceptance of the findings and recommendations of an outside investigator [...] that concluded that sexual harassment had not taken place, and through the Bank's resulting decision not to impose disciplinary measures against the Director." *Id.*

126. In *Rendall-Speranza*, para. 45, the Bank acknowledged its obligation to protect staff members from harassment and stated:

The Bank has, within its discretion, concluded that the appropriate way by which to implement its obligations is to afford certain procedures to its staff members who complain about the harassing behavior of other staff members. The mechanism provided by the Bank is the mechanism that is provided more generally in the Staff Rules relating to disciplinary measures. These Rules provide for the filing of a formal complaint on the basis of which an investigation is to be undertaken into the alleged misconduct.

127. Staff Rule 3.00, paragraph 8, in force at the material time, sets out the following steps for reviewing allegations of misconduct, including harassment and sexual harassment:

Preliminary Enquiries

8.01 If EBC receives an allegation within the scope of Section 6, “Allegations of Misconduct Addressed by EBC,” of this Rule, or if the basis for any such allegation otherwise comes to EBC’s attention, EBC shall undertake an initial review. [...] Based on the initial review, EBC may conduct a further review of the matter by:

[...]

c. conducting a fact finding in accordance with Section 10, “Fact Finding,” of this Rule.

[...]

Notice and Right to Respond

8.02 A staff member whose conduct is at issue will be notified in writing of the allegations against him/her, and of the staff member’s rights and obligations, at the onset of any of the procedures set forth in clauses (a), (b), or (c) of paragraph 8.01 of this Rule. A staff member has a right to respond to the allegations made against him/her, either orally or in writing, or both, and may be required to do so within a reasonable period of time. The amount of time allowed a staff member to respond in writing will take into account the complexity and seriousness of the matter, but will not be less than 10 business days.

Gathering of Information

8.03 The person conducting the preliminary enquiry or further review may at any time obtain information believed to be relevant to allegations made under this Rule, including personnel information and other records and documents, and may consult with persons who are believed to have knowledge or information that may assist in the resolution of the issues and questions raised.

[...]

Decision to Conduct a Fact Finding

10.01 If the Vice President and Chief Ethics Officer, EBC, or a designated EBC official, determines that there is a sufficient basis to believe that facts may develop that would effectively be addressed through performance management measures or disciplinary measures, or that a fact finding may otherwise be useful in understanding and resolving the matter, EBC, or a line manager requested by EBC

to perform this function, may conduct a fact finding to determine further information regarding the substance and circumstances of the matter.

[...]

Summary of Findings

10.03 If at the end of the fact finding process the person conducting the fact finding determines to recommend that the allegations be addressed through performance management measures or disciplinary measures, a written summary of factual findings and recommendations will be prepared.

[...]

Disciplinary Measures Recommendations

10.05 If the person conducting the fact finding recommends that the matter be addressed through the imposition of one or more disciplinary measures, the staff member whose conduct is at issue shall be provided with a written summary of factual findings and recommendations. This staff member shall be given an opportunity to comment on the findings, and these comments shall be reviewed to determine whether they warrant any modification to the recommendations on the matter. The amount of time allowed a staff member to comment will take into account the complexity and seriousness of the matter, but will not be less than 10 business days. The summary, along with the staff member's comments and a response from the person conducting the fact finding, will be submitted to the World Bank Group Human Resources Vice President for a decision.

128. The Bank's "Living Our Values: Code of Conduct" (Code of Conduct) states that "[r]espectful workplace concerns brought forward by staff and clients will be taken seriously and dealt with promptly." Specifically regarding sexual harassment, the Code of Conduct provides that the Bank Group "takes allegations of sexual harassment seriously. [...] Anyone experiencing and reporting such unwelcome behavior should know that the matter will be handled with the utmost sensitivity."

129. In a letter dated 27 March 2017, almost six months after the Applicant's employment with the Bank had ended, the Applicant raised the issue of sexual harassment for the first time by sending a letter from her attorney to the Bank's General Counsel, the Vice President of EBC and Chief Ethics Officer, and Ombuds Services. EBC promptly responded to the Applicant's allegations by identifying itself as the office responsible for investigating allegations of sexual

harassment and reached out to the Applicant and her attorney several times in April and May 2017 to obtain more details from the Applicant. EBC also issued a Notice of Alleged Misconduct to the Supervisor and interviewed him on 17 May 2017. However, due to the Applicant's lack of response, EBC closed the file on 26 May 2017.

130. After the Applicant emailed EBC on 1 July 2017, EBC conducted intake interviews with the Applicant five days later. EBC presented the Supervisor with a second Notice of Alleged Misconduct and interviewed him on 13 November 2017.

131. On 5 March 2018, when the Applicant asked EBC about the timeline for the investigation, EBC responded on the same day that the draft report was being finalized. Again, on 17 April 2018 when the Applicant asked for an update, EBC responded on the same day, informing her that the draft report was with the Supervisor for his comments and estimating that the final report would be sent to the HRVP by late April or early May.

132. The final investigative report was issued on 22 May 2018. EBC concluded that there was

evidence that the relationship between [the Supervisor] and [the Applicant] 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 Supervisor] failed to report or resolve. EBC however found that [the Supervisor] did not coerce the Applicant 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 Supervisor] engaged in reprisals when he did not renew her STC contract.

133. On 9 July 2018, the HRVP found that the Supervisor had engaged in misconduct and imposed disciplinary sanctions on him.

134. The Tribunal finds that the above sequence of events shows that the Bank promptly addressed the Applicant's allegations of misconduct by opening an investigation, conducted its investigation within a reasonable period, and kept the Applicant updated about the progress of the investigation.

WHETHER THERE WAS A REASONABLE BASIS FOR EBC'S FINDINGS REGARDING SEXUAL
HARASSMENT

135. The HRVP imposed the most serious disciplinary sanctions on the Supervisor, having found that the Supervisor engaged in misconduct by failing to resolve a *de facto* conflict of interest arising from his sexual relationship with the Applicant. The record shows that the HRVP reached this conclusion based on EBC's findings of fact, as set out in the final investigative report.

136. In its report, EBC stated that there was "insufficient evidence to conclude that [the Supervisor] coerced or sexually abused [the Applicant]." In her Application, the Applicant claims that she was sexually harassed by the Supervisor.

137. The Bank's Code of Conduct defines "sexual harassment" as

any unwelcome sexual advance, request for sexual favor, or other verbal, nonverbal, or physical conduct of a sexual nature that interferes with work, is made a condition of employment, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment generally falls into two main categories:

- Quid pro quo – when submission to sexual advances or requests for sexual favors is made a condition of employment or used as the basis for employment decisions
- Hostile work environment – when sexual conduct or other actions interfere with a staff member's work or create an intimidating or offensive work environment.

138. The definition of sexual harassment was considered by the Tribunal in *CK*, Decision No. 498 [2014]. In that case, the Bank upheld the finding of sexual harassment by looking at whether "the conduct in question was of a sexual nature" and "whether the [a]pplicant knew, or should have known that it was unwelcome." *Id.*, para. 83.

139. In its investigative report, EBC stated:

The WBG Policy and Procedure Framework [...] defines sexual harassment as a specific form of harassment that is an unwelcome sexual advance, request for

sexual favor or any other verbal, non-verbal or physical conduct of a sexual nature which unreasonably interferes with work, alters or is made a condition of employment, or creates an intimidating, hostile or offensive environment.

Under the Guidance, in order for a staff member's actions to be considered sexual harassment, the recipient of the sexual advance must find it to be unwelcome. In addition to the unwelcome aspect, the advances must also have unreasonably affected [the Applicant's] ability to work, conditioned her continued employment or future employment on accepting the advances, or created a hostile environment.

140. EBC reached its conclusions after conducting five interviews with the Applicant (on 6, 7, and 12 July 2017, 29 November 2017, and 6 December 2017) and three with the Supervisor (on 27 September 2016, 17 May 2017, and 13 November 2017), as well as an interview with a consultant who worked on the project with the Applicant and the Supervisor. EBC also examined over 200 pages of iMessages between the Applicant and the Supervisor, most provided by the Applicant or extracted from the Applicant's device by a third party contracted by the Applicant, and some messages and emails provided by the Supervisor.

141. EBC did not find that there was sexual harassment in this case, noting

several credibility concerns with [the Applicant's] allegations that [the Supervisor] sexually coerced or abused her. In the iMessages [...] she made several statements indicating her interest in having a consensual relationship with [the Supervisor]. For example, [the Applicant] stated that she "was borderline shaking next to you [the Supervisor]." In another message she stated "my sincerest apologies, if you are thinking of just maintaining friendship and a cool working dynamic. I can certainly give you that. Don't want to overstep any boundaries."

[The Applicant] also sent [the Supervisor] photographs of herself and would refer to him as "sunshine" and "my little early bird."

[...]

[The Applicant's] many messages to [the Supervisor], which she provided to EBC, show her engaging in flirtatious dialogue and sexual innuendoes being exchanged between her and [the Supervisor].

142. EBC also referred to an email dated 30 December 2016 from the Applicant's AOL account to the Supervisor's Gmail account, which EBC characterized as having been sent by the Applicant to make him "jealous and for financial gain."

143. EBC further noted that the Applicant contacted the Supervisor multiple times after the end of her employment with the Bank, including after EBC had told her not to contact him and after she had raised claims of sexual harassment and abuse.

144. The Tribunal understands that a power imbalance between a supervisor and a junior STC may make it difficult for an STC to clearly express that a supervisor's conduct is unwelcome. The question, as set out in *CK*, para. 83, is whether there is evidence that the supervisor "knew, or should have known that it [i.e., the sexual conduct] was unwelcome."

145. The evidence in this case may be distinguished from *CK*, para. 84, where the supervisor admitted observing that the complainant "physically distanced herself from him" and where the "evidence suggests that the [a]pplicant was not as oblivious to the [c]omplainant's discomfort as he asserts." In contrast, the Tribunal finds in this case that the Applicant responded to the Supervisor with personal, intimate text messages and sent him photos of herself on multiple occasions.

146. The record shows that EBC duly considered the testimonies of the Applicant and the Supervisor and, given their differing versions of events, looked to their communications, particularly their contemporaneous messages, to characterize their relationship. The Tribunal finds that there is nothing in the investigative report that shows a lack of objectivity on EBC's part.

147. The Manager, BIR testified at the oral proceedings before the Tribunal that EBC relied heavily on documentary evidence since the credibility of both the Applicant and the Supervisor posed problems for EBC. An EBC Investigator also testified at the oral proceedings before the Tribunal that EBC interviewed one witness and tried but was unable to contact another witness identified by the Applicant. The Manager, BIR testified at the oral proceedings that EBC

typically do[esn't] interview relatives, cousins, mothers, not even sometimes non-staff members unless completely pertinent to the case at hand. [...] None of the witnesses had personal knowledge of the facts in question. None of the witnesses were there, as typical in these cases, where these incidents happen behind closed doors. None of the witnesses were privy to the abundance of personal communication [...] between the two parties.

The EBC Investigator testified at the oral proceedings that EBC did not interview any other persons because “most of the allegations occurred in closed doors. And [the Applicant] had spoken to some of these witnesses either after the fact, sometimes months after the fact. Sometimes, it wasn’t very clear what she had told them.”

148. The Tribunal observes that, in this case, EBC could have made a greater effort to interview more than one witness. In cases of sexual harassment where direct evidence is difficult to obtain, circumstantial evidence such as accounts to third parties at the time of the events in question becomes especially important.

149. In this case, EBC could have more carefully assessed the evidence that the Applicant claims was falsified due to her AOL and Skype accounts having been hacked. Contrary to the EBC Investigator’s testimony at the oral proceedings before the Tribunal that EBC did not give credence to a December 2016 email from the Applicant’s AOL account, but simply included it in the report to complete the record, the report states, “EBC concluded that [the Applicant] had a motive to her to falsify facts.” The Tribunal observes that, in its investigative report, EBC drew inferences about the Applicant’s credibility based on evidence that it subsequently purported not to have relied upon.

150. Despite the above observations, having reviewed the EBC investigative report, including the exhibits thereto and the Supervisor’s response to the draft investigative report, the Tribunal concludes that there is no basis to set aside EBC’s findings regarding sexual harassment. The Tribunal finds that it was not an abuse of discretion for the Bank to endorse those findings. The Tribunal upholds the Bank’s finding that there was insufficient evidence that the Supervisor coerced the Applicant into a sexual relationship or otherwise engaged in a *quid pro quo* arrangement. Nevertheless, the Tribunal does not condone the Supervisor’s behavior in engaging with the Applicant and considers that his behavior was absolutely not appropriate.

OBSERVATIONS REGARDING THE BANK'S TREATMENT OF SEXUAL HARASSMENT ALLEGATIONS

151. The Tribunal notes that the prevention of sexual harassment requires rules especially conceived to deal with it and a change in the culture of the Organization. The institutional ways to deal with sexual harassment need to be constantly updated. In this regard, the Tribunal welcomes the Bank Group's "Action Plan for Addressing and Preventing Sexual Harassment," including the creation of the position of an Anti-Harassment Coordinator.

152. The Tribunal makes the following observations regarding the Bank's treatment of sexual harassment allegations.

153. The Tribunal stated in *Arefeen*, Decision No. 244 [2001], para. 17, that "[t]he evidence of the [a]pplicant's misconduct consists of the statement of Ms. X, some corroborative material, and certain admissions by the [a]pplicant. The basis of the disciplinary action necessarily depended on considerations of the credibility of Ms. X and the [a]pplicant."

154. In cases like the present one, there is a common pattern of structural inequality between the staff members; they were not on the same footing.

155. It is important that staff, including complainants of sexual harassment, have trust in EBC. The Tribunal underscores the importance of assuring staff that any evidence they offer will be fairly considered by EBC and that EBC will be open to evidence that may support a complainant's allegations. Given the seriousness of sexual harassment allegations, it is to be expected that all evidence will be subjected to careful scrutiny and questioning.

156. The Tribunal emphasizes the importance of specialized training for EBC investigators who interview complainants of sexual harassment. As well, a specialized training for supervisors and STCs should be envisaged so as to avoid misunderstandings and as a preventative measure.

157. The Tribunal urges EBC, in response to sexual harassment allegations, to ensure that it addresses all of the concerns of a complainant. While EBC does not have to accept all the evidence

from a complainant or take the allegations at face value, the Tribunal encourages EBC to be sensitive to a complainant's situation and to reflect this in the way the investigation is conducted and in the investigative report. For example, EBC should acknowledge a significant difference in age, grade level, or appointment type between a complainant and supervisor, which may influence their interactions or a complainant's response to incidents.

WHETHER THE DECISION NOT TO EXTEND THE APPLICANT'S CONTRACT WAS IMPROPERLY
MOTIVATED

158. The Applicant claims that her appointment "was terminated in retaliation for opposing [the Supervisor's] sexual advances."

159. The Bank's Code of Conduct describes retaliation in the workplace as follows:

Retaliation is "any direct or indirect detrimental action recommended, threatened, or taken because an individual engaged in a [protected activity]." (SR [Staff Rule] 8.02) [...].

Retaliation in the workplace encompasses a range of behavior, from something as small as a remark to something as serious as an administrative action affecting a staff member's work program or employment. When taken as a means of retaliation, other examples can include: reprimand, discharge, suspension, demotion, denial of promotion, and denial of transfer. Any staff member who in good faith raises a concern is protected from retaliation.

160. In *O*, Decision No. 337 [2005], para. 47, the Tribunal explained that an applicant alleging retaliation must discharge his or her burden of proof by

establish[ing] facts which bring his or her claim within the definition of retaliation under the Staff Rules. 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.

161. In *Bodo*, Decision No. 514 [2015], para. 77, the Tribunal observed that

an applicant asserting discrimination or retaliation must still make a *prima facie* case with some evidence to show the discriminatory or retaliatory motives behind the impugned decision. Without any elaboration on her claims or evidence of actual or perceived retaliation and discrimination by the Sector Manager, the Applicant has given the Tribunal little to deliberate on.

162. In *AH*, Decision No. 401 [2009], para. 36, the Tribunal found:

It is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person. There must be a direct link between the alleged motive and the adverse action to amount to retaliation.

163. The Tribunal stated in *Bauman*, Decision No. 532 [2016], para. 95:

As the Tribunal has frequently observed, the Staff Rules are clear that retaliation against any person “who provides information regarding suspected misconduct or who cooperates or provides information in connection with an investigation or review of allegations of misconduct, review or fact finding, or who uses the Conflict Resolution System” is prohibited. *See* Staff Rule 3.00, paragraphs 6.01(g) and 7.06, and Staff Rule 8.01, paragraph 2.03; *see also* *CS*, Decision No. 513 [2015], para. 104; *Sekabaraga (No. 2)*, Decision No. 496 [2014], para. 60. This prohibition extends also to retaliation against any person who is believed to be about to report misconduct or believed to have reported misconduct, even if such belief is mistaken.

164. In *DJ (Preliminary Objection)*, Decision No. 536 [2016], para. 40, citing *Sekabaraga*, Decision No. 494 [2014], para. 42, the Tribunal acknowledged EBC’s “important contribution to a proper consideration of the complex factual background against which retaliation is alleged.”

165. The record shows that EBC conducted an investigation into the Applicant’s claim of retaliation and stated that “[d]ue to the pre-established end date of the [...] project, and the lack of budget for the [...] project, EBC found an objective and reasonable basis for the non-renewal of [the Applicant’s] STC [contract] and therefore found insufficient evidence that [the Supervisor] engaged in reprisals by not renewing her contract.”

166. There is no evidence that the Applicant reported or threatened to report the Supervisor's alleged misconduct prior to the expiry of her STC contract. On this basis, the Tribunal concludes that the record does not contain a *prima facie* case of retaliation.

167. Notwithstanding the Applicant's failure to establish a *prima facie* case that the non-renewal of her contract was due to retaliation, the Tribunal examines whether there was a reasonable basis for the non-renewal. In *CS*, Decision No. 513 [2015], para. 70, citing *Barnes*, Decision No. 176 [1997], para. 10, the Tribunal acknowledged that the decision to extend a contract is "within the Bank's discretion" and "must be reached fairly and not in an arbitrary manner."

168. In *AQ*, Decision No. 412 [2009], para. 41, the Tribunal held:

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 De Raet*, Decision No. 85 [1989], para. 67; *Marshall*, Decision No. 226 [2000], para. 21; *Desthuis-Francis*, Decision No. 315 [2004], para. 19.

169. The Applicant's STC contract of 30 June 2016 provided in part as follows:

We expect to need your services for about 20 days from July 06, 2016 to September 30, 2016. In the event the World Bank finds it necessary to cancel the assignment or to shorten its duration, the World Bank reserves the right to adjust the terms of the assignment as necessary. Your appointment will terminate accordingly unless it is extended or a new appointment is made. The World Bank has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding [...].

170. The record shows that the non-extension of the Applicant's STC contract was based on the lack of funding and the end date of the project for which the Applicant was hired. The only other STC hired for the project by the Bank last worked and was paid in mid-June 2016, and the Applicant's final payment on 3 August 2016 was the last payment to an STC on the project.

171. The Tribunal concludes that the decision not to renew the Applicant's contract was properly motivated. The question that arises at this moment is whether, despite being motivated

by business reasons not to renew, the Bank was still under the obligation to provide sufficient notice and reasons to the Applicant that her STC contract would not be extended beyond 30 September 2016.

172. The Applicant contends that she was not given a written reason for the termination, “contrary to Bank Fundamental Principles.” Rather, when the Applicant asked the Supervisor for an explanation, she claims that she was told “that he could not work with her any longer because she had engaged in misconduct while overseas,” an accusation that the Applicant denies.

173. The Applicant’s letter of appointment stated that the “World Bank will make every effort to give you as much notice as possible of any such change to your appointment.”

174. The issue of how much notice to give to consultants was considered by the Tribunal in *DK (Merits)*, Decision No. 552 [2017], para. 132, and *EM*, Decision No. 578 [2018], para. 81. In those cases, the Tribunal reviewed the record to determine “whether the Bank indeed made an effort to provide the [a]pplicant with a reasonable amount of time to ‘allow her to make necessary arrangements regarding her career and, most important for STC staff under a G-4 visa status like the [a]pplicant, to make arrangements regarding her immigration status in the United States.’” *EM*, para. 81. However, unlike the consultants in *DK (Merits)* and *EM*, the Applicant in this case did not hold a G-4 visa, did not have a family whose immigration status depended on hers, and did not hold consecutive contracts with the Bank spanning several years.

175. The record shows that the Applicant was on notice by early August that her contract would not be renewed at the end of September due to the end of the project. She was also on notice, after the end of her second mission in July 2016, that she would not perform additional work on the project due to issues with the local authority. The Applicant had been employed with the Bank for less than six months, on two consecutive contracts, for thirty and twenty days, respectively, under each contract. The Tribunal finds that two months’ notice was reasonable for the Applicant to make the necessary arrangements.

176. As for the reasons given to the Applicant for the non-renewal, the record shows that the Applicant herself admitted to EBC that “the project ended on the 25th [of July] because the biggest issue was accountability on district management at the relief part – management authority’s part.” This accords with the Supervisor’s reason for ending the project early.

CONCLUDING REMARKS

177. While the Applicant has not prevailed in her claims, the Tribunal finds that her efforts in raising this matter before the Tribunal have presented the opportunity to comment on the Bank’s treatment of sexual harassment allegations. In addition, 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 \$65,000.00, 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