



**World Bank Administrative Tribunal**

**2020**

**Decision No. 623**

**FG,  
Applicant**

**v.**

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

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

**FG,  
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 Andrew Burgess (President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche (Vice-President), Janice Bellace, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received on 11 October 2019. The Applicant was represented by Nat N. Polito of The Law Offices of Nat N. Polito, P.C. The Bank was represented by Edward Chukwuemeke Okeke, Interim Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 5 May 2020.

3. The Applicant challenges (i) the decision of the Vice President, Human Resources (HRVP) that she committed misconduct in violation of Principle 3 of the Principles of Staff Employment, Staff Rule 3.00, paragraphs 6.01(a), (b), and (c), and Staff Rule 3.01 and (ii) the imposition of disciplinary sanction in the form of termination of her employment contract. The Applicant further contends that there were due process violations and procedural irregularities in the investigation conducted by the Office of Ethics and Business Conduct (EBC).

**FACTUAL BACKGROUND**

4. The Applicant, of Indian nationality, joined the World Bank in 2003 as a Resource Management Assistant, Level GD, in the Middle East and North Africa region on a term appointment. For the duration of her contract the Applicant was based in the Bank country office in Country X. On 16 April 2007, the Applicant's appointment was converted to an open-ended appointment, and on 1 July 2009 she was promoted to a grade level GE position. During the

relevant period, the Applicant's responsibilities included planning, integrating, monitoring, and reporting on the country office's operational and administrative budget.

5. The Applicant's husband is the pastor of a church which he founded in 2008 in Country X. In 2013, he registered a non-governmental organization (NGO) called YMF which provides assistance to members of the church and humanitarian assistance generally in Country X.

6. In March 2015, the Bank's office in Country X was closed due to armed conflict and staff members were evacuated to other countries. The Applicant and seven other staff members elected to remain in Country X.

7. On 9 August 2017, a company, YMT, was registered at the Ministry of Commerce in Country X by a Mr. B, an Indian national living in Country X and a friend of the Applicant and her husband. Mr. B is also an employee of the Applicant's husband's church and was paid a monthly salary of \$300.00 by YMF to help maintain the church. According to the registration documents, Mr. B is the sole owner of YMT.

8. In September 2018, the Bank's Country Manager for Country X received a series of emails from a non-World Bank staff member, Mr. S, initially accusing the Applicant's husband of engaging in human trafficking and subsequently accusing the Applicant of involvement in "Human Enslavement, Human trafficking, Abuse of Job & Religious Abuse, unlawful holding Indian Passport."

9. The allegations by Mr. S concerned four Indian nationals who were allegedly lured to Country X under false pretenses with promises of employment with YMT. According to Mr. S, the Applicant confiscated the passports of the four Indian nationals and forced them to do menial domestic chores at her house without compensation.

10. On 6 September 2018, an EBC investigator contacted Mr. S regarding the complaint he made to the Country Manager. The investigator requested an interview the same day. Mr. S responded requesting an interview the following day and suggested having "the actual

complainants along with [him] during the interview, which will provide [the investigators] an opportunity to talk with them directly.”

11. On 7 September 2018, EBC investigators held the interview with Mr. S. The transcript of the interview does not show that the complainants to whom Mr. S had referred were present. Due to poor connection, the telephone call was disconnected and eventually rescheduled for 10 September 2018. The transcript of the 7 September 2018 interview notes the following:

[EBC Investigator]: Okay? The second part of your allegation, which you write in the very end as case number 5 and the table that you provide us, you also say that [the Applicant] is misusing her position at the World Bank to obtain favors from the government of India. So this is the part of the allegation –

[Mr. S]: Assumed. I said I assume.

[EBC Investigator]: You assume. So this is the part of the allegation that is within our mandate to look at, okay? Of course, if our staff member is convicted and found guilty in a national court of a crime then their employment at the World Bank will be terminated, but the World Bank is an organization. It’s like a company, okay? We don’t do criminal investigations.

12. On 10 September 2018, EBC held another interview with Mr. S. The transcript of the 10 September 2018 interview notes the following:

[EBC Investigator]: Okay. Okay. So okay. So the last thing in your complaint, you call it case 5 and you write that you have information that [the Applicant] is misusing her employment authority of the World Bank to get favors from the government of India? Can you please tell us what you mean by this?

[Mr. S]: [...] Now this couple actually, the husband and wife, actually the wife is employed as a nurse at the hospital, at the government hospital here and her husband [Complainant 1], they were newly married, and the husband had joined them. [...] So I spoke to him and I asked him who helped you to come to [Country X] and how did you get the waiver? And actually, there is something about this waiver. The waiver is not even to [Country X] in terms for working in [Country X]. You know, if for example a nurse goes and applies for a waiver they don’t give unless there is some kind of a valid reason or anything that they have to come, they are not given by the Ministry of External Affairs. So I strongly suspect that [the Applicant] had written for a recommendation or something for them to come. [...] So I strongly think that [the Applicant] has used her influence to get a waiver, I mean, this permission record from the government of India. I don’t know how she

issued or what influence she used or what kind of thing that she did, I don't know, but it must be investigated.

[...]

[EBC Investigator]: Okay. So, [Mr. S], we don't have any other questions for you at the moment.

[Mr. S]: No. No. No. No. No. You shouldn't abort it, no. How did [Complainant 1] – now a really important thing we are missing about here. Now [Complainant 1] told me that he never communicated with the Ministry of External Affairs. This is what he told me. He told me that he did not communicate with the Ministry of External Affairs.

[EBC Investigator]: Okay.

[Mr. S]: He did not communicate with the Ministry of External Affairs in India. Then I asked him who communicated. He said that they went to Delhi, he and his wife went to Delhi and they got the [Country X] permission from the Ministry of External Affairs in Delhi and then they sent it to [Mr. B]. And he said [Mr. B] or Mr. – probably [the Applicant] sends her emails to the – so that is all. But the thing is even if it's illegal for them, I'm personally investigating because I want to write a report for the government of India. If the government of India has been also – been allowing people just writing for somebody else and even this letter. Because I am very involved with the government of India for people illegally coming to [Country X]. So I'm working on – I'm working because I send periodical reports to the government of India.

[...]

[EBC Investigator]: And then for case number 5, you're basically implying that this couple that came to [Country X] received their waiver through [the Applicant] because she used her World Bank position to influence the government of India to give them a waiver. Is that understanding correct?

[Mr. S]: I'm suspecting. I'm suspecting.

[EBC Investigator]: You're suspecting? And your suspicion is just based on the fact that they received a waiver when most people don't receive a waiver. Is that correct?

[Mr. S]: Yes. The last statement again, please? I didn't hear it properly?

[EBC Investigator]: You're saying you're suspecting based on the fact that they received the waiver because most people do not receive a waiver? Is that correct?

[Mr. S]: Exactly. Exactly. Exactly and number two, because they came on the same flight, number three, now [Complainant 1] is also employed in the same – in the same – in the same organization, number four, they go to church at the same place and, number five, [Complainant 1] did not communicate with the Ministry of External Affairs in India.

[EBC Investigator]: Okay. Okay. [...].

13. On 17 September 2018, one of the EBC investigators sent an email to Mr. S thanking him for speaking with EBC investigators the prior week. The investigator then requested copies of a report that Mr. S had made to the “Ministry of Religious Affairs,” which he had referenced during their conversation.

14. On 24 September 2018, EBC conducted an interview with the former Country Manager of Country X. The former Country Manager stated that he could not recall whether the Applicant had requested his approval to establish an NGO in Country X. He recalled that the Applicant’s husband had a church and the Applicant was “supporting him, [...], at the church.”

15. On 25 September 2018, Mr. S forwarded to EBC a document titled “Ministry Complaint.” In his email, Mr. S noted: “Moreover I had personally spoken with [Complainant 1], who clearly stated that [the Applicant] had personally told [him] that she had written to the [Country X] Foreign ministry through World [B]ank for his arrival. [...] Currently [Complainant 1] is employed at [YMF].” Mr. S added:

There are several issues involved here:

- 1) If proven [the Applicant] has clearly used World Bank office to influence (It’s up to your offices to decide whether it is legal or illegal) the [Country X] foreign Ministry to issue a letter for [Complainant 1]’s wife to arrive in [Country X] [and] [Complainant 1] to accompany his wife.
- 2) [Country X] mission has communicated on behalf of [Complainant 1] and his wife] to the Ministry of External Affairs – India.

16. On 30 October 2018, Mr. S sent an email to EBC with the following documents as attachments: “[Complainant 1] Complaint full.pdf,” “[the Applicant] forwarded mail with [...] visa 2.docx,” “[the Applicant] forwarded mail with [...] Visa 1.docx.” In his message, Mr. S stated

that he was attaching the “complaint raised to the Embassy of India against World Bank Staff [the Applicant] and her team.” He stated: “This complaint is unique because it outlines [the Applicant’s] involvement and her abuse of World [B]ank position to advance her personal gains.” Mr. S also stated that he submitted “evidences of [the Applicant] using her official mail id [*sic*] to distribute the [...] Visa of the complainant.” To Mr. S:

This raises several questions:

- a) How did she receive the [...] visa in her official mail?
- b) Why did she issue of [*sic*] get involved in the [...] Visa issuance on the first instance?

Answer to all these questions can only be found if [the Applicant’s] email is accessed from the server and reviewed.

17. On 7 November 2018, EBC received a letter from the Indian nationals who had lodged complaints against the Applicant. The letter titled “Application regarding justice for four of us,” stated:

Our humble request is, these people ([the Applicant’s husband] (Indian National), [the Applicant] (Indian National passport [...], UNLP passport No. [...]), [Mr. B] (Indian National passport No. [...])) bring us to [Country X] by stating that they will provide job in their own company. After bringing us here ([the Applicant’s husband and the Applicant]) these people made us to work in their house as servants. After that they stopped giving salary too and started to make us their slaves under ([YMT]– name of their company)[.]

18. On the same day, EBC received a complaint from one of the four complainants, Complainant 1, alleging that the Applicant was torturing him. Complainant 1 sent EBC several email messages between 7 November and 11 December 2018.

19. On 12 November 2018, the Director and Chief Ethics Officer, with the approval of the Senior Vice President and General Counsel as well as the Managing Director and WBG (World Bank Group) Chief Administrative Officer, sent a memorandum to the Vice President and WBG Chief Information Officer to request a search of the Applicant’s emails. The memorandum requested authorization for the examination of “email correspondence of a World Bank Group

(WBG) staff member who may have committed misconduct,” and noted that the examination would

focus on email correspondence sent or received by the staff member in connection with the operation of a private business and the obtaining of entry visas and other correspondence relating to the travel of non-World Bank staff members between June 1, 2017 and October 31, 2018.

20. Following receipt of the Applicant’s emails from the Office of Information Technology, EBC reviewed them and identified email exchanges involving the Applicant relating to the two organizations in question: YMF and YMT.

21. On 14 November 2018, EBC conducted an interview with the Country X Country Manager. During her interview with EBC, the Country Manager stated:

[I]t started initially with accusations for her husband on human trafficking and I think even [Mr. S] initially mentioned something in one because there was so many emails. One of them was about how also [the Applicant’s] involved somehow in his NGO and all that.

22. On 15 November 2018, EBC conducted an interview, through an interpreter, with Complainant 1, one of the Indian nationals who lodged a complaint against the Applicant. Complainant 1 recounted how the Applicant assisted him and his wife to travel from India to Country X. According to Complainant 1, he believed he was coming to Country X to work for YMT on a salary of \$400.00 per month. However, upon his arrival, he was paid only \$200.00 per month for the first couple of months and subsequently did not receive a salary. Regarding YMT, Complainant 1 stated:

[YMT] is under the front of this other person called [Mr. B] who is seen as the face of the company and they paid him \$300 a month is what I know for sure.

23. According to Complainant 1, Mr. S and another individual provided assistance to Complainant 1 and the other Indian nationals who had lodged complaints against the Applicant, including filing their complaint against the Applicant before the World Bank. Complainant 1 stated that he owed the Applicant \$1,500.00, “which are the costs that she incurred in bringing us here.”



24. Regarding the allegation that the Applicant abused her World Bank position, the following extracts from the interview transcript are relevant:

[EBC Investigator]: Can you please ask [Complainant 1] through his obtaining the visa and entering [Country X], has he ever seen [the Applicant] present to him a document that had World Bank Group label on it? Has he ever felt that she was using the World Bank [G]roup's influence to obtain his visa and so forth?

[Complainant 1]: No. No. Basically she only said she has a lot of influence through her World Bank employment, like she never showed anything. We just believed her.

[...]

[Complainant 1]: [The Applicant] is just using her connections at the World Bank as a way to just establish her power with everybody local, the police station, the immigration office, the embassy.

[EBC Investigator]: I just want to understand you. What does influence mean? What does that mean?

[Complainant 1]: Basically she is just using her connection with the World Bank as – I don't know.

[EBC Investigator]: No, I think that's clear. Thank you.

25. EBC investigators asked Complainant 1 what he wanted:

[EBC Investigator]: I gather from what you're saying that you want to be able to stay in [Country X] because your wife is working. Is that right?

[Complainant 1]: Because I want some kind of justice. I believe we would like to stay on here because of the great here, but just to be able to stay on and work peacefully. Right now we go back to India, we owe a lot of debt to a lot of people, around the debt that we had incurred around our wedding and to be able to come here. So, if we could, we would like to stay on.

26. On 27 November 2018, EBC conducted an interview with the Manager of the Indian Embassy in Country X. The record does not contain a transcript but rather a "Note to the Case File" which summarized the conversation between the EBC investigators and the Manager of the Indian Embassy. According to the Note, the Manager of the Indian Embassy informed the investigators that YMT was owned by Mr. B who presented to the Manager of the Indian Embassy

documents from Country X's Chamber of Commerce demonstrating that Mr. B was the sole owner of the organization. The Manager of the Indian Embassy also stated that he was informed by Mr. B that Mr. B took possession of the passports of the complainants as the sponsor of the Indian nationals working with YMT. According to the Note, the Manager of the Indian Embassy informed the investigators that all the passports were presently with the Ministry of Interior of Country X. The Manager of the Indian Embassy is recorded to have stated that he "believed there were personal issues between [Mr. S, the Applicant, and Mr. B]." The Manager of the Indian Embassy further stated that "he had not seen any indication that [the Applicant] was misusing her connection to the World Bank."

27. On 1 December 2018, Mr. S sent the following email to EBC and the Country X Country Manager:

I deeply applaud the efforts of World Bank in covering the back of its employee [the Applicant], her husband and their associates, who are [...] nothing more but a bunch of thugs, who are involved in human trafficking, domestic violence against employees, bribing officials for the purposes of suppressing justice and harming people (of course this cannot be proved however this is the fact of the matter), continually plotting, commanding and orchestrating threats and trying to damage the livelihood of persons who are in support of the victims.

At this point I even suspect World Bank's direct advise [*sic*] and support to their Employee [the Applicant] because her ruthlessness and actions, which are exceeding all limits and despite all evidences being produced to World Bank no visible action have been taken to stop their Employee's actions but rather is on the rise.

I was thinking that this was the norm of developing nations but did not expect this from a world's top employer World Bank.

28. Between 2 December 2018 and 9 January 2019, Mr. S sent EBC additional email messages. In one such email, dated 10 December 2018, he stated:

I had received a news from very confidential sources that [the Applicant] and her husband had created this NGO [YMF] for the purposes of participating and obtaining World Bank projects through World Bank Tenders. I am not sure how far this is true. I have conveyed to you what I have heard. I do not have any evidence or proof to the above.

29. On 14 December 2018, EBC provided the Applicant with a copy of the Notice of Alleged Misconduct. The Notice contained the following specific allegation:

[S]ince January 2018 you have provided services for the company, [YMT] contrary to Principle 3 of the “General Obligations of Staff Members” without having the written approval of your senior manager and in doing so, you used Bank Group facilities, namely your official World Bank Group email account. Furthermore, you have used World Bank Group facilities to arrange the travel to [Country X] of a number of Indian nationals on the false promise of employment with the company, [YMT].

30. On the same day, the Applicant was interviewed by EBC in person, in Washington, D.C., concerning the allegations. Regarding Mr. S, the Applicant explained that he and her husband were once friends who fell out due to religious differences and, in her view, Mr. S had instigated the Indian nationals to raise allegations against her husband, Mr. B, and herself. In her opinion, Mr. S and another individual raised these allegations as a means to close down her husband’s church.

31. The Applicant explained her relationship with Mr. B, noting that she had known his wife, who was a church member, for at least 15 years. According to the Applicant, Mr. B became a church member and church members supported Mr. B when he opened YMT “[b]ecause in the church, it happens like that. You want to move and grow, we will support you.” The following extract is relevant to the allegation that the Applicant worked for YMT:

[EBC Investigator]: Okay. And in relation to the work that you did for [Mr. B] and [YMT], did you seek any kind of approval from your manager to do that?

[The Applicant]: I didn’t do any work for them.

[EBC Investigator]: In relation to the contracts or visas?

[The Applicant]: Visas was only for [the wife of Complainant 1] because she is a church member, only for [Complainant 1 and his wife] because [Complainant 1’s wife] is our church member and she is bringing her husband. We financially supported her and did all those things because she is a church member. Not for other things. Only because a church member. For [Mr. B], and his wife is also our church member, and his wife is very close friend [...]. And the first time when he is doing that, he asked for the English edification. Only English, if you see all the e-mails he has written: This is my draft, please edify it, please check whether it’s correct. Because he is doing it for the first time, he just asked us on the English

basis. It's not like a work basis. As a friend, he asked, like a friend sending it to another friend and asking clarifications, whether this is fine and doing it for the first time, can you check.

32. Regarding the allegation that the Applicant was responsible for luring three of the four Indian nationals to Country X, the following extracts of her interview with EBC are relevant:

[EBC Investigator]: So for these people, who paid for the tickets?

[The Applicant]: Of the three?

[EBC Investigator]: For [the Indian nationals] and –

[The Applicant]: I think they came on their own money.

[EBC Investigator]: They paid for their own?

[The Applicant]: [Mr. B] does not have anything to give them. They came on their own.

[EBC Investigator]: So how come they are in the jail now?

[The Applicant]: I told you, because [Mr. B] removed the sponsorship, his guarantee, they need to find another sponsor or guarantee so they can go out.

[EBC Investigator]: Why did he remove the sponsorship?

[The Applicant]: They went and complained about [Mr. B], they complained at the police station, and he didn't like it.

[EBC Investigator]: Have you been in any way involved in this complaint or this legal process that's going on?

[The Applicant]: No. Personally, me? No.

[EBC Investigator]: Or have you assisted in any way?

[The Applicant]: The complaint?

[EBC Investigator]: Yes.

[The Applicant]: No. The only one thing is in that complaint, my husband's name was there.

[EBC Investigator]: Why?

[The Applicant]: Because everybody thinks that we support [Mr. B] more, because his wife is very close to us. And only the legal people said, he has nothing to do – nothing to do with them.

33. The Applicant further explained that, after the employment dispute arose between Mr. B and the four Indian nationals, the latter were imprisoned. She stated that she, on behalf of her church, purchased return tickets to India for the four Indian nationals:

[The Applicant]: In [Country X], when the employer is not satisfied, he removes his guarantee. He removes his sponsorship and he gives ticket to go back. Okay? And for [Mr. B], I am the one who bought the ticket for these four people, because we don't want him to be for four people a long time in the jail, and [Mr. B] is not agreeing, so we bought the four people's ticket.

[EBC Investigator]: Who bought them?

[The Applicant]: Me. For them to go back home.

[EBC Investigator]: When did you buy the tickets?

[The Applicant]: Before coming here, we bought the ticket and we told [Mr. B], that [when] you have money, pay us back, but don't put people in the jail for a long time, because in the church it's very hard to keep –

[EBC Investigator]: You bought tickets for [...].

[The Applicant]: Everybody.

[...]

[The Applicant]: Because my husband said arrested, he said the church buy this, because we cannot – according to the Bible, we cannot put people in the jail. If we need to release them, we need to release them. We bought the ticket and gave it to [Mr. B] and said please release them and send them back to India.

[...]

The flight available is January 11 and my husband requested to me to buy because they should not think that we are not supporting them. So we told them, we told [Mr. B] please, don't torture them more, send them back, and when you have money, when it goes for your business, pay us back for the church.

[...]

[W]e don't want [Mr. B] to delay them, to put them in jail is very bad place. And as a church, we cannot allow our church members to be there.

[EBC Investigator]: But this is the thing, why are you buying the tickets if it's not in any way your responsibility?

[The Applicant]: This is from the church they are buying. They don't want anybody being in jail for a long time. This is the church's responsibility, to help them as a charity. And we know them and my husband does not want them to be in jail.

34. EBC investigators presented the Applicant with a business card for YMT with her husband's name on it:

[EBC Investigator]: There is a business card here.

[The Applicant]: Yes. This is my husband's business card.

[EBC Investigator]: Why does he have a business card for [YMT]?

[The Applicant]: I don't know. There is no one leading [YMT]. Mechanic.

[EBC Investigator]: You agree –

[The Applicant]: This is my husband.

[EBC Investigator]: But this is a business card for [Mr. B's] company?

[The Applicant]: Yes. Just company.

[EBC Investigator]: Is your husband connected with the business, or working for the business, or owner of the business?

[The Applicant]: No. He is not the owner. Owner is [Mr. B]. Legally, the owner is [Mr. B]. I don't know this business card is for what. I should ask my husband and I should ask [Mr. B] what is this[.]

35. The Applicant acknowledged that Complainant 1 owed the church \$1,500.00 for travel expenses but also noted that she had not complained to any authorities about the nonrepayment. She stated: “[...] I think he just want to escape from paying this[.]”

36. On 14 December 2018, following the interview with EBC, the Applicant received a Notice of Administrative Leave dated 10 December 2018. The Notice advised her that effective 14

December 2018 she would be placed on paid administrative leave. The Notice did not refer to the ongoing investigation and no reason for the administrative leave was provided in the document.

37. On 9 January 2019, Mr. S sent EBC and the Country X Country Manager an email stating: “Dears @ [World] Bank, I do not know what [is] wrong with you guys?? Can’t you reign in on your Employee? If you cannot do it let me know to whom I should be writing? This [is] going way out of control.” He complained that he had been called for a meeting with “high officials” in the Government of Country X to address the dispute with the Applicant. According to Mr. S, he was told by the person who called him for the meeting that the “World Bank has called the Ministry of External affairs [of] India and the Ministry of Interior of [Country X] in support of [the Applicant].”

38. On 10 January 2019, EBC provided the Applicant with the transcript of her interview for her review and comment.

39. On 22 January 2019, the Applicant sent EBC an email response with additional documents including a letter from the Ministry of Interior of Country X concerning “the complaint submitted by the Indian citizens [Mr. S], [...] and others against the Indian citizen [the Applicant’s husband] and his wife [the Applicant] and the Indian citizen [Mr. B].” The letter was translated from Arabic to English. According to the translation the letter stated:

With reference to the above subject, we would like to state that we have received a complaint from the above mentioned persons and the validity of the complaint was verified and the facts and circumstances thereof were searched until arriving at a meeting with all the parties involved and their statements were heard and they were brought together and face to face and each party raised the problem which he is having and it was found that the complaint does not need to reach the point which it reached and it was also noticed that [the Applicant] does not have ownership in the stores of [Mr. B] and the enterprises of the Indian [the Applicant’s husband] and his partner [...].

40. The letter further noted:

Therefore,

It was agreed to withdraw any complaint presented to any authority whatsoever by all the parties and not to file or present any actions/claims whether malicious, seditious or threatening or any other type, and to open a new page of mutual amicability, respect, and love.

This agreement took place in the presence of His Excellency Assistant Minister of Interior for International Cooperation & Strategic Planning and Director General of External Relations and International Criminal Police.

41. The Applicant also provided EBC with registration documents demonstrating that YMT was owned by Mr. B. Furthermore, through the email, the Applicant explained the nature of the relationship between Mr. S and her family. According to her, they were once family friends but due to religious differences the friendship had ended.

42. On 28 February 2019, EBC provided the Applicant with a draft investigative report (Draft Report) for her comments. The Applicant responded on 13 March 2019 and included additional documents.

43. On 5 April 2019, EBC's Final Investigative Report (Final Report) was submitted to the HRVP. In this Final Report, EBC made the following conclusions under the heading "Conclusions":

95. EBC finds that the email correspondence in [the Applicant's] WBG account provides substantial evidence that she is involved in assisting with [the church founded by the Applicant's husband] and YMF.

96. Despite [the Applicant's] assertions that YMF did not undertake any activities other than visa services for church members, the YMF website and documents indicate that YMF seeks to present a picture of a functioning humanitarian organization.

97. EBC notes [the Applicant's] assertion [that YMT] is owned by [Mr. B] and is a separate entity to YMF. However, the document discovered on [the Applicant's] WBG email account addressed to [...], describes the Trading and Services division of YMF which hired two skilled workers and one domestic worker. This implies that the company, [YMT,] is a division of YMF.

98. EBC finds that [the Applicant] assisted in producing employment contracts on behalf of [YMT] for the complainants, [the four Indian nationals].



99. EBC finds that [the Applicant] used her official WBG email account to obtain [...] visas for [Complainant 1 and his wife] to facilitate their travel to [Country X].

100. EBC notes that despite [the Applicant's] contention that she was not involved in the dispute between [Mr. B] and [the four Indian nationals] which led to their arrest and detention, the properties of the document file entitled, 'Court File 4.docx' indicate that [the Applicant] is the author of a document filing a complaint against them which she sent using her WBG email account.

101. EBC notes [the Applicant's] own assertion that she bought flight tickets for [the four Indian nationals] to return to India.

102. EBC further notes that [the Applicant] is the senior representative of the World Bank in [Country X] with little supervision. Her employment status with the World Bank is referred to by the complainants and in the documentary evidence adduced in connection with YMF and [YMT]. These facts coupled with the involvement of the Indian Embassy in [Country X] and [Country X] Government authorities may adversely reflect upon the reputation and integrity of the World Bank Group in [Country X].

103. In conclusion, EBC determined that there is sufficient evidence to substantiate the allegations that [the Applicant] provided services for the company, [YMT], contrary to Principle 3 of the "General Obligations of Staff Members" without having the written approval of her senior manager. EBC further found sufficient eviden[ce] that in doing so, [the Applicant] misused Bank Group facilities, namely her official WBG email account.

104. Based on the evidence above, EBC is referring this matter to the [HRVP] to determine whether [the Applicant's] behavior and actions: (i) constitute a failure to observe generally applicable norms of prudent professional conduct; and (ii) violates Principle 3.1 and Principle 3.1(c).

44. On 16 July 2019, the HRVP informed the Applicant that there was sufficient evidence to support a finding that she had engaged in misconduct as defined under

Staff Rule 3.00, paragraph 6.01, "Allegations of Misconduct Addressed by EBC": Misconduct does not require malice or guilty purpose, and it includes failure to observe the Principles of Staff Employment, Staff Rules, Administrative Manual, Code of Conduct, other Bank Group policies, and other duties of employment, including the following acts and omissions:

- 1) Paragraph 6.01(a) - Failure to observe obligations relating to the unauthorized use of Bank Group offices, equipment, computer resources;

- 2) Paragraph 6.01(b) - Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct;
- 3) Paragraph 6.01(c) - Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3, “General Obligations of Staff Members,” of the *Principles of Staff Employment*, including the requirements that staff avoid situations and activities that might reflect adversely on the Organization (*Principle 3.1*) and conduct themselves at all times in a manner befitting their status as employees of an international organization (*Principle 3.1(c)*); and

Staff Rule 3.02 (Employment Outside the Bank Group), paragraph 3.06, “Employment activities requiring managerial approval”:

Staff at grade GE or below may perform duties for an outside entity or engage in self-employment for profit with the written approval of her/his senior manager.

45. The HRVP informed the Applicant that there was sufficient evidence to support the allegations that she provided services to YMT, contrary to Principle 3 of the Principles of Staff Employment and Staff Rule 3.01, “Standard[s] of Professional Conduct,” without the written approval of her senior manager. He further stated that in doing so the Applicant misused the Bank Group’s facilities, namely her official WBG email account, to “make travel arrangements to [Country X] and produce employment contracts on behalf of YMT for four Indian nationals.” The HRVP added: “In light of the evidence, I find that your misuse of your official WBG email account was in furtherance of alleged illegal activity involving the employment of the Indian nationals in YMT.”

46. The Applicant was informed that, in addition to the findings above, her conduct “potentially may have adverse consequences on the reputation and integrity of the Bank Group in [Country X] given the allegations raised against [her] with local authorities in which [her] Bank Group employment status is implicated, as well as the involvement of the Indian Embassy in [Country X] and the [Country X] government authorities in this matter.”

47. The HRVP imposed the following sanctions on the Applicant:

(1) termination,

- (2) ineligibility for future World Bank Group employment,
- (3) an access restriction to the World Bank Group premises, and
- (4) written censure to remain in [her] personnel file.

48. On 11 October 2019, the Applicant submitted this Application challenging the HRVP's finding that she engaged in misconduct and the proportionality of the termination sanction. The Applicant asserts that EBC violated her due process rights by, *inter alia*, "failing to conduct a reasonable and balanced investigation[.]" She seeks damages for "lost career opportunity, for reputational damage, inconvenience, lost work opportunities and physical/mental/emotional stress, reasonably assessed at one year's compensation, reinstatement as a Resource Management Analyst, and such other and further relief as this Tribunal deems just and appropriate under the circumstances." The Applicant seeks legal fees and costs in the amount of \$26,556.69.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

### *The Applicant's Contentions*

49. The Applicant contends that the Bank failed to discharge its burden of proof for misconduct. Referring to the Tribunal's jurisprudence, the Applicant notes that the Tribunal instructs that "there must be substantial evidence to support the finding of facts which amount to misconduct." (Citing *CB*, Decision No. 476 [2013], para. 31.) The Applicant argues that no such substantial evidence has been found. Rather, she points out that EBC states it found "sufficient evidence" that the Applicant provided services for YMT contrary to Principle 3 of the Principles of Staff Employment and Staff Rule 3.01. EBC also found "sufficient evidence that in doing so, the [Applicant] misused WBG facilities, namely her official WBG email account." In the Applicant's view, the evidence proffered by EBC does not meet the requisite standard. To the Applicant, the "handful" of emails at issue, "mainly being sent from [the Applicant] to herself, do not prove that she was 'providing services for' or employed by YMT." She maintains that there is no record of her receiving compensation or other tangible "private gain."

50. The Applicant asserts that even if the Tribunal finds that she used her WBG email account for non-Bank business this does not appear to be a violation of the Staff Rules "especially

considering the Bank's policy of allowing a 'minimum' amount of personal email use." The Applicant further states that even if she were employed by YMT – which was not admitted – the Staff Rules permit her to do so as long as she receives approval from her senior manager, "not that the employment activity itself would be necessarily grounds of dismissal." To the Applicant, it is unclear why the employment with YMT, even if proven, would be grounds for dismissal. She states that the "conclusion of misconduct cannot be proven as any more than a mere balance of probabilities and thus, the burden of proof was not met."

51. The Applicant contends that the EBC investigation was fatally flawed and that she was denied due process. According to the Applicant, "EBC's report does not cite to the documents produced by [the Applicant] in her defense"; notably there was no mention of the letter from the National Central Bureau of Interpol in Country X exonerating her of any wrongdoing in relation to the arrests of the four Indian nationals, or the agreement dismissing all complaints relating to the Applicant for lack of proof. The Applicant avers that, at a minimum, "fundamental fairness means that EBC's investigation must take into account not only the arguments and documents of the complainants, but also those produced by the accused." The Applicant provides additional examples of the allegedly flawed investigation including EBC's failure to interview "key witnesses, most glaringly, [Mr. B], who is directly involved in this matter and is the registered owner of [YMT], the company that forms the basis of the alleged Staff Rule 3.02 violation." The Applicant contends that testimony from Mr. B could significantly illuminate the issues in the case such as whether or not the Applicant was involved with, or engaged in, activities in relation to YMT.

52. The Applicant also observes that EBC's Final Report did not take into account her explanations as to why certain documents were on her WBG email account, nor did it give any reason "why the statements of persons outside the Bank with potential personal vendettas against [the Applicant] and her husband should be believed over the statements of a long-time respected, 16-year staff member of the Bank." Furthermore, the Applicant contends that EBC's investigation was "blatantly one-sided," and "did not pursue interviews of potential key witnesses that would have likely corroborated [the Applicant's] account of events." To the Applicant, the Final Report focused on the involvement of the Government of Country X and finds this to be an adverse

reflection on the Bank, even though the Applicant was cleared of any wrongdoing or illegal conduct.

53. On the proportionality of the sanctions, the Applicant contends that the termination sanction was an extreme measure which lacked a reasonable basis and was unsupported by the record. To the Applicant, termination of her contract was disproportionate to the alleged offense given that there was no history or pattern of such conduct. The Applicant requests the Tribunal to consider her difficult circumstances notably that she allowed the WBG employees remaining in Country X during a time of armed conflict to work out of her home with the Bank's approval, "essentially allowing her home to become the WBG office in that country without asking for or accepting any benefits or rewards." To the Applicant, this should have been considered as a mitigating factor in the determination of the sanction.

54. The Applicant further contends that "at worst" she exercised poor judgment in using her email account to conduct outside business and, in hindsight, "perhaps the email account should not have been used." The Applicant states that there were other sufficient sanctions for this conduct that would have remedied the issue and should have been imposed, "especially considering [...] that [the Applicant] was never even made aware of the fact that she was doing anything inappropriate by her supervisor or manager." The Applicant asserts that this minor issue should have been addressed "through progressive punishment, such as a sanction or a demotion in level, if not just a warning from her supervisor."

55. Finally, the Applicant notes that the HRVP stated that her conduct "potentially may have adverse consequences on the reputation and integrity of the Bank Group in [Country X.]" To the Applicant, the "potential" for harm to the Bank's reputation should not be sufficient to justify termination. She argues that this potential never came to pass and the Bank has not provided proof that its reputation was in fact harmed.

*The Bank's Contentions*

56. The Bank contends that EBC has demonstrated the existence of the facts. According to the Bank, though EBC noted the Applicant's assertion that YMT is owned by Mr. B and is a separate entity from YMF, the document discovered on the Applicant's WBG email account describes the "trading and services" division of YMF which hired two skilled workers and one domestic worker. To the Bank, this "implies that the company [YMT] is a division of YMF." The Bank states that EBC also found that the Applicant assisted in producing employment contracts for the four Indian nationals who levied complaints against the Applicant, and that she used her official WBG email account "to obtain [...] visas for [Complainant 1 and his wife] to facilitate their travel to [Country X]." Furthermore, EBC noted the Applicant's own assertion that she purchased the flight tickets for the four Indian nationals to return to India and that, despite the Applicant's claim that she was not involved in the dispute between Mr. B and these complainants, the properties of the document file titled "Court File 4.docx" indicate that the Applicant was the author of a document filing a complaint against them which she sent using her WBG email account. According to the Bank, the Applicant was the "senior representative of the World Bank in [Country X] with little supervision." To the Bank, its reputation and integrity in Country X may be adversely affected since the Applicant's employment status was referenced by the complainants and the Indian Embassy in Country X and the Government of Country X became involved in the dispute.

57. The Bank contends that the record demonstrates that the Applicant's actions legally amount to misconduct. The Bank states that the Applicant misused her email for personal non-Bank business that was unauthorized, and she was also actively engaging in outside business activity without proper managerial approval, using her WBG email account to do so.

58. The Bank further contends that the sanctions imposed were provided for in the law of the Bank, and they were reasonable and proportionate to the Applicant's misconduct. According to the Bank, the HRVP duly considered various factors and imposed the disciplinary sanctions "in light of all the inculpatory and exculpatory factors." To the Bank, the sanctions imposed "were required by the principles of responsible management," noting that the HRVP observed that the Applicant's conduct "potentially may have adverse consequences on the reputation and integrity

of the Bank Group in Country X[.]” The Bank maintains that the other disciplinary sanctions imposed were a logical consequence of the termination of the Applicant’s employment and the Applicant fails to consider that, in determining the appropriate penalty for misconduct cases, the HRVP must take into account factors other than how such sanctions negatively impact the Applicant and her post-Bank career.

59. Finally, the Bank asserts that the Applicant’s due process rights were observed. To the Bank, EBC’s investigation was fair, was unbiased, and followed proper procedures set out in Staff Rule 3.00 and the WBG Directive/Procedure on Conduct of Disciplinary Proceedings for EBC Investigations. The Bank states that EBC offered the Applicant the opportunity to submit evidence and considered her additional documents in preparing its Final Report. According to the Bank, the Final Report “correctly reflects the independently established facts, taking into account [the] Applicant’s comments and any additional exculpatory or incriminatory evidence.”

## THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

### *Scope of the Tribunal’s Review*

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

61. As was held in *M*, Decision No. 369 [2007], para. 54, the Tribunal must “naturally ensure that a disciplinary measure falls within the legal powers of the Bank.” This, however, does not mean that the Tribunal is an investigative agency. As stated in *M*, para. 54, the Tribunal

simply takes the record as it finds it and evaluates the factfinding methodology, the probative weight of legitimately obtained evidence, and the inherent rationale of the findings in the light of that evidence. The judicial function cannot be reduced to a mechanical formula. Decisions will perforce be fact-specific; the ideal of perfect and general predictability must give way, to some degree, to the individual discernment of those called upon to judge a given case.

*The existence of the facts and whether they legally amount to misconduct*

62. Following the approach in *BP*, Decision No. 455 [2011], the Tribunal considers it advantageous in this case to begin by setting to the side allegations against the Applicant which are peripheral to, and do not form, the basis of the misconduct findings against the Applicant. These include the allegations by Mr. S and the Indian nationals that the Applicant was engaged in human trafficking, torture, the issuance of threats, and procurement of employment under false pretences; and the allegations that the Applicant abused her World Bank position to obtain visas for the Indian nationals and withheld their passports. These allegations are undoubtedly of the most serious nature. However, they do not form the basis of the misconduct findings against the Applicant by the HRVP.

63. Pursuant to EBC's investigation, the HRVP found that the Applicant engaged in the following activities:

1. Provision of services to an outside entity, YMT, contrary to Principle 3 of the Principles of Staff Employment and Rule 3.01 without the written approval of a senior manager as required by Staff Rule 3.02, paragraph 3.06; and
2. Misuse of the WBG official email to make travel arrangements and produce employment contracts on behalf of YMT for four Indian nationals in furtherance of an alleged illegal activity involving employment of Indian nationals in YMT.

64. It is to be noted that EBC's Final Report expressly stated that EBC found

sufficient evidence to support the allegations that [the Applicant] provided services to YMT, contrary to Principle 3 of the Principles of Staff Employment and Staff Rule 3.01, "Standards of Professional Conduct," without having the written approval of [her] senior manager. EBC also found sufficient evidence that, in doing so, [the Applicant] misused Bank Group facilities, namely [her] official WBG email



account to make travel arrangements to [Country X] and produce employment contracts on behalf of YMT for four Indian nationals.

65. Based on that statement, the HRVP determined that there was “sufficient evidence to support a finding that [the Applicant had] engaged in misconduct” in violation of the following paragraphs of Staff Rule 3.00:

- 1) Paragraph 6.01(a) - Failure to observe obligations relating to the unauthorized use of Bank Group offices, equipment, computer resources;
- 2) Paragraph 6.01(b) - Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; [and]
- 3) Paragraph 6.01(c) - Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3, General Obligations of Staff Members,” of the Principles of Staff Employment, including the requirements that staff avoid situations and activities that might reflect adversely on the Organization (Principle 3.1) and conduct themselves at all times in a manner befitting their status as employees of an international organization (Principle 3.1(c)).]

66. The Applicant was also found by the HRVP to have violated Staff Rule 3.02 (Employment Outside the Bank Group), paragraph 3.06 “Employment activities requiring managerial approval”:

Staff at grade GE or below may perform duties for an outside entity or engage in self employment for profit with the written approval of her/his senior manager.

67. The Tribunal has held that the burden of proof in misconduct cases lies with the Organization. *See, e.g., Dambita*, Decision No. 243 [2001], para. 21. The Tribunal has also clearly stipulated on multiple occasions that there must be substantial evidence to support the finding of facts which amount to misconduct. *See, e.g., EZ*, Decision No. 601 [2019], para. 69; *P*, Decision No. 366 [2007], paras. 33–34; *Arefeen*, Decision No. 244 [2001], para. 42. In other words, the “standard of evidence in disciplinary decisions leading, as here, to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.” *Dambita*, para. 21.

68. The Applicant contends that the Bank has failed to discharge its burden of proof because the evidence it proffered did not meet the requisite substantial evidence standard to establish the “facts” which formed the basis of the misconduct findings. Of this, the Tribunal has in its

jurisprudence insisted that, bearing in mind the burden of proof, the Organization must meet the requisite standard of substantial evidence and that this is more than a balance of probabilities.

69. The Tribunal will now review the evidence which the Bank has submitted pertaining to each misconduct finding to determine whether that evidence rises to the standard of substantiality necessary to discharge the Bank's burden of proof in misconduct cases.

*Provision of services to an outside entity, YMT, contrary to Principle 3 of the Principles of Staff Employment and Staff Rule 3.01 without the written approval of a senior manager as required by Staff Rule 3.02, paragraph 3.06*

70. Principle 3.1 concerns general obligations of staff members of the World Bank Group. Pursuant to Principle 3.1(b), staff members shall

respect the international character of their positions and maintain their independence by not accepting any instructions relating to the performance of their duties from any governments, or other entities or persons external to the Organizations unless on secondment to them or employed by them while on leave of absence from The World Bank or the IFC [International Finance Corporation]. Staff members shall not accept in connection with their appointment or service with the Organizations any remuneration, nor any benefit, favor or gift of significant value from any such governments or other entities or persons, nor shall they, while in the service of The World Bank or the IFC, accept any medal, decoration or similar honor for such service. Staff members may retain reemployment rights or pension rights acquired in the service of another organization[.]

71. Staff Rule 3.01 (Standards of Professional Conduct), paragraph 12.01 (Use of Bank Group Services, Supplies or Facilities), provides that "Staff Members shall not use Bank Group services, supplies or facilities for private gain or permit other persons to do so."

72. Staff Rule 3.01, paragraph 6.01 on "Instructions and Remuneration from Outside Sources," provides that, "[e]xcept as otherwise required to perform Bank Group assignments involving service to other entities, Staff Members owe their duty entirely to the Bank Group and to no other authority."

73. Staff Rule 3.01, paragraph 6.02, provides:

Except when holding Special Assignment Appointments, or if the Staff Member is on External Service without Pay or on leave without pay in order to accompany a spouse/Domestic Partner on a Bank assignment, Staff Members do not accept any remuneration from governments or other external entities or persons in connection with their appointment to or service with the Bank Group.

74. The Staff Rules provide an exception for staff members at grade level GE or below. According to Staff Rule 3.02, paragraph 3.06:

Staff at grade GE or below [...] may perform duties for an outside entity or engage in self-employment for profit with the written approval of her/his Senior Manager [...].

75. The Tribunal observes that the Staff Rules do not proscribe the provision of voluntary services or assistance to outside entities. Staff Rule 3.02, paragraph 3.04, governs “Employment activities for which permission is not required.” Pursuant to Staff Rule 3.02, paragraph 3.04(b), accepting or serving in a non-compensated position in a not-for-profit corporation does not require permission unless (i) the organization has or intends to have any business or fundraising activities with the Bank Group or (ii) the organization is a political party or is supporting one or several candidates in an election or (iii) the values or goals of the organization are incompatible with the obligations of Bank Group staff members. In this regard, the Bank has not alleged, nor has it proffered any evidence to suggest, that either YMF or YMT was engaged in any activities that fell within the exceptions above.

76. Furthermore, the Tribunal observes that Staff Rule 3.02, paragraph 3.04(e), permits staff members to contribute to

activities of local public interest other than public office (e.g. helping in the school library, coaching and involvement in sports teams, sports training, joining a volunteer firefighter team, etc.), even for a nominal fee.

77. Given the foregoing rules, and since the Applicant was a staff member at grade level GE, the key facts that the Bank is required to establish to sustain a charge of misconduct under Principle 3 or Staff Rule 3.01 are (i) that the Applicant provided services to YMT for profit or remuneration;

and (ii) that the Applicant performed such duties without the written approval of her senior manager.

78. The services which the Bank asserts the Applicant performed for YMT concerned documents found in the Applicant's WBG official email account. These documents are (i) employment contracts between YMT and the four Indian nationals; and (ii) two documents titled "5th September 2018.docx" and "Court File 4.docx," respectively.

79. Regarding the employment contracts, the record shows that EBC discovered two emails in the Applicant's official WBG email account, both dated 29 May 2018 from Mr. B, the owner of YMT. These emails contained draft employment contracts in Microsoft Word format. Mr. B wrote in the email: "Praise the Lord Mama. Please see the drafts of the employee – contracts as on the attachment. Kindly requests [*sic*] you to go through the same." The record contains evidence that members of the church referred to the Applicant as "Mama."

80. The Applicant does not deny that she received draft employment contracts from Mr. B. However, she states that Mr. B sent the contracts to her for editorial review. According to the Applicant, she knows Mr. B from the church her husband founded and Mr. B performs services for the church for which he is paid the sum of \$300.00 monthly. The Applicant asserts that she was not the only one at the church whom Mr. B had reached out to for advice regarding his business. The Applicant also maintains that she provided only English language editorial review of the contracts as a favor and she received no remuneration for this assistance.

81. Regarding the two documents titled "5th September 2018.docx" and "Court File 4.docx," respectively, the Applicant asserts that these documents were also sent to her by Mr. B for English language editorial assistance since he was sending them to the authorities to address the employment dispute between YMT and the four Indian nationals. The document "5th September 2018.docx" is a letter sent to the Manager of the Indian Embassy in Country X and signed by another name for YMT. The Applicant informed EBC investigators that she was not present at the meeting which Mr. B had with the Manager of the Indian Embassy. She also stated that she did not meet the Manager of the Indian Embassy.

82. Below is an extract from the Applicant's EBC interview in response to the question of why Mr. B sent the document to the Applicant for review:

[EBC Investigator]: Is this a general practice of [Mr. B] sending you – other –

[The Applicant]: Not always. It's only because he is now in a problem. Okay? He is suffering, he is in a problem, and he needs everybody to help him. So he says I'm not in a good mood to type all these things. Can you check whether it is correct[?] He just not send it to me. He sends to other friends in the church, whether it's correct or not. He checks with two or three people before he gives it.

83. Regarding the document titled "Court File 4.docx," the Applicant stated that she received the document from Mr. B and she sent it to herself by email. This document concerned allegations which had been made against Mr. B and the Applicant's husband by the four Indian nationals. The Applicant stated that she received the document from Mr. B for editorial assistance and saved the document on her computer because it concerned allegations against her husband.

84. The record does not contain any indication that EBC investigated whether the Applicant received compensation or profit for the editorial and other services she acknowledged providing, nor is there any evidence in the record to the effect that she did. There is no record of an interview with Mr. B who, as the registered owner of the outside entity to which the Applicant is said to have provided services, would have been in a position to state whether or not the Applicant performed these services for compensation or profit.

85. It is possible that EBC considered that interviewing Mr. B was unnecessary given the allegations that YMT was in fact owned by the Applicant and her husband. In this regard, the Tribunal notes that the record contains a document titled "Jay letter" which was found on the Applicant's WBG email. This document was addressed to a former United Nations (UN) Ambassador and describes "trading and services" as a division of YMF which hired two skilled workers and one domestic worker. In explaining the existence of this document on her WBG email account, the Applicant stated that she did not draft the email and had no personal knowledge of its contents or veracity. According to the Applicant, she received this email from Mr. B and forwarded it to her sister-in-law. The record shows that the Applicant did in fact receive an email on 18 October 2018 from Mr. B and she forwarded that same email with this document to someone on

20 October 2018. The Tribunal observes that EBC does not attribute authorship of this document to the Applicant nor was it alleged by any witness that the Applicant wrote the letter to the former UN Ambassador.

86. The record thus contains conflicting evidence. On the one hand, there is this document titled “Jay letter” which refers to “trading and services” as a division of YMF. There are also the allegations by Mr. S and the four Indian nationals that YMT and YMF are one and the same. On the other hand, there are registration documents demonstrating Mr. B’s sole ownership of YMT, the Note to File of the interview with the Manager of the Indian Embassy who independently investigated the employment allegations against YMT, and the Applicant’s own claims and denials.

87. The Tribunal finds that even assuming that YMT was a division of YMF, which the Applicant acknowledged supporting in a volunteer capacity, the requisite evidence to support a finding that the Applicant committed misconduct by providing services to YMT for profit or remuneration has not been established. It is clear beyond peradventure that the Applicant did not have the written approval of her senior manager to engage in her activities with YMT. As a Level GE staff member, pursuant to Staff Rule 3.02, paragraph 3.06, she needed such written approval if her activities at YMT were “for profit.” However, there is no substantial or other evidence that the Applicant’s activities were for profit. Consequently, the Tribunal finds that the Bank has not substantiated the charge for misconduct under Staff Rule 3.02, paragraph 3.06.

*Conduct resulting in a violation of Staff Rule 3.00, paragraph 6.01(a) – Failure to observe obligations relating to the unauthorized use of Bank Group offices, equipment, and computer resources*

88. Here, the Bank’s contention is that the Applicant misused her World Bank official email to make travel arrangements and produce employment contracts on behalf of YMT.

89. Administrative Manual AMS 12.10 provides:

### Using Email for Personal Purposes

8. The Bank Group's Email is to be used for business purposes. While personal electronic mail is permitted, it is to be kept to a minimum.

The clear implication of this policy is that, while the World Bank official email is intended for business purposes, staff members are permitted to send personal emails with their official email account as long as such use is kept to a minimum.

90. The undisputed evidence is that the Applicant received emails from Mr. B at her World Bank official email. When asked why, the Applicant provided the following response:

[EBC Investigator]: Why is he sending it to your World Bank address?

[The Applicant]: I don't use my personal mail much.

[EBC Investigator]: Why?

[The Applicant]: Nobody sends me anything there. People from my family calls me only through WhatsApp and mostly I'm not using my –

[EBC Investigator]: Obviously World Bank e-mail address is for World Bank business.

[The Applicant]: This is only for help, not for – just go through is it draft and tell me if that's correct or not. And he calls me Momma, he doesn't call me anything. He just tells me are you fine.

[...]

[EBC Investigator]: Why are you using your World Bank e-mail address?

[The Applicant]: Just to help. I can check it very easily. I forgot to use my personal account for a long time. Whatever comes, I just send it from here.

91. According to Bank policy stated in Administrative Manual AMS 12.10, all personal use of the WBG official email has to be kept to a minimum. The Tribunal must therefore consider the parallels which the Bank draws between the Applicant in this case and the applicant in *CG*, Decision No. 487 [2014]. In *CG*, the applicant, who owned a translation company, sent 70 emails to non-Bank Group clients and subcontractors using his WBG official email. The record in that

case also contained attachments of translated documents and the applicant's hard drive folders on his WBG computer contained 737 megabytes – 20,000 pages – related to non-Bank Group clients and work. On that evidence the Tribunal found that “[the Vice Presidency, Institutional Integrity (INT)] and the voluminous record in the case have shown that the [a]pplicant's improper and unauthorized use of the Bank's resources was substantial and did not fall under the exception in AMS 12.10 [.]” *Id.*, para. 77.

92. In the present case, there is no basis in the record to substantiate a claim that the Applicant's personal use of her official email was substantial. The record contains thirteen instances of personal email usage of which four were emails sent by the Applicant to herself. In this regard, the Tribunal notes that the Bank's contention is not that the Applicant's personal use of the Bank's email was not kept to a minimum, but that the “Applicant's use of her official Bank e-mail for personal reasons created confusion regarding whether [the] Applicant was performing the work in her official capacity as a World Bank staff member.” To the Bank, such “use was plainly against Bank policies, which restrict the use of Bank Group email to official Bank Group purposes.”

93. The Tribunal finds unavailing the Bank's characterization of the misconduct it asserts the Applicant committed. As noted above, AMS 12.10 permits the personal use of World Bank official email. The only restriction is that such usage should be kept to “a minimum.” The Bank does not contend that the Applicant violated this requirement. Furthermore, the Bank does not state in what way confusion was created and for whom. The Bank refers to the involvement of Country X authorities and the Indian Embassy. However, there is no suggestion in the evidence that these authorities were confused that the personal dispute involving the Applicant concerned her official capacity as a World Bank staff member. There is also no evidence to suggest that these authorities believed that the Applicant was performing work for YMT or that she performed such work in her official capacity as a World Bank staff member.

94. The Tribunal notes that the primary source of the allegation that there was any confusion is Mr. S – the individual who initiated the complaint against the Applicant and, as the record shows, subsequently accused the Bank of protecting the Applicant when he was summoned by Country X's authorities to resolve the dispute between the parties. However, during his interview with EBC,



Mr. S admitted to EBC that he “assumed” that the Applicant was misusing her position at the World Bank. Complainant 1, one of the Indian nationals who lodged a complaint against the Applicant, also informed EBC that there was no evidence that the Applicant used her position at the World Bank improperly. The Bank has not explained why these statements were not relied upon to counter the claim that the Applicant’s use of her email created confusion.

95. Having reviewed the record, the Tribunal finds that there is no substantial and reliable evidence to support a finding that the Applicant misused her World Bank official email in violation of Staff Rule 3.00, paragraph 6.01(a), which characterizes as misconduct the failure to observe obligations relating to the unauthorized use of Bank Group offices, equipment, and computer resources.

*Conduct resulting in a violation of Principle 3.1(c) of the Principles of Staff Employment and Staff Rule 3.00, paragraph 6.01(b) and paragraph 6.01(c)*

96. The Tribunal will now review the record to ascertain whether the Applicant engaged in conduct which displayed a reckless failure to identify, or a failure to observe, generally applicable norms of prudent professional conduct. In addition, the Tribunal will assess any acts or omissions by the Applicant in conflict with the general obligations of staff members to avoid situations and activities that might reflect adversely on the Organization (Principle 3.1(c) of the Principles of Staff Employment).

97. The record shows, and the Applicant does not deny, that she was involved in providing assistance to YMT which included facilitating the acquisition of a transit visa for Complainant 1 and his wife, as well as reviewing documents sent to her by Mr. B. Whether or not these activities are categorized as voluntary, the Applicant should have known that using her WBG email blurred the lines between her personal activities and the obligation to avoid situations that might adversely reflect on the Organization. The Applicant was implicated in the dispute between Mr. S, the four Indian nationals, her husband, and Mr. B. Whether or not the serious allegations against the Applicant are legitimate is not a matter before the Tribunal. Rather, it is for the Tribunal to assess

the Applicant's conduct *vis-à-vis* the administrative rules of the Organization, and the Tribunal finds that the Applicant committed misconduct in this regard.

98. The Applicant acknowledged receiving documents on behalf of YMT using her WBG email. She admits that she was personally involved, through her church, in repatriating the Indian nationals who had raised employment claims against YMT. She also acknowledged that she was aware that their passports had been confiscated by Mr. B – a common practice by some employers in Country X which was nevertheless illegal. The Applicant further acknowledged that using her WBG email to assist with correspondence from YMT was, in hindsight, a lack of sound judgment. It is however the Applicant's claim that she was not informed that she had done anything wrong and, had she been told, she would have immediately stopped all impugned activity.

99. The Tribunal is of the view that the Applicant did not need to be told that it was prudent conduct to separate herself and her World Bank affiliation from the activities of YMT. Due to her close connection to the parties in the dispute, and alleged direct involvement, the Applicant was implicated in the dispute and was a signatory to the dispute resolution letter signed by the Assistant Minister of Interior for International Cooperation and Strategic Planning in Country X. The matter was of such a nature that the record contains a letter from the National Central Bureau of Interpol in Country X stating:

Please be advised that [the Applicant] Indian citizen has no complaints against her. Also she has nothing concerning the Indian citizen issue. These complaints are only malicious and we ask you kindly to ignore pay [*sic*] attention to such complaints.

100. While the record contains evidence that the dispute in which the Applicant was implicated was ultimately resolved by the parties and the claims against the Applicant were categorized by Interpol as "malicious," the Tribunal is satisfied that, by failing to distance herself from the activities of her husband and Mr. B, and by using her WBG email to assist in the review of documents and receive transit visas on behalf of YMT, the Applicant did not observe generally applicable norms of prudent conduct, and in fact conducted herself in a manner which might reflect adversely on the Organization.

101. The Tribunal finds that, in the particular circumstances of the present case, there is substantial evidence on the record to establish the misconduct, namely failure to observe generally applicable norms of prudent professional conduct in violation of Staff Rule 3.00, paragraphs 6.01(b) and (c). In addition, in light of the fact that due to the armed conflict in Country X the Applicant was, despite her grade level, the most senior staff member of the Bank there, the Applicant's acts or omissions regarding YMT were in conflict with the general obligations of staff members, including the obligation to "conduct themselves at all times in a manner befitting their status as employees of an international organization."

102. The Tribunal now arrives at the HRVP's finding of misconduct on the basis of the Applicant's alleged "illegal activity." This is a matter which demands special consideration, and the Tribunal recalls that this matter was similarly addressed in *BP*. The applicant in that case was alleged to have engaged in human trafficking and abuse of her domestic employee. The case was investigated by the United States Federal Bureau of Investigation (FBI), which never charged the applicant with abuse let alone human trafficking. The applicant was not indicted of any crime but was offered the possibility of pleading guilty, without indictment, to two felony counts for having made false statements to the FBI (*BP*, para. 7). The applicant accepted the guilty pleas. The applicant's employment was subsequently terminated pursuant to Staff Rule 3.00, paragraph 10.09, which governs mandatory termination of a staff member's service if he or she is convicted of a "felonious criminal offense." In that case, EBC's Summary Case Report observed that the guilty pleas related to false statements that were "made in connection with a U.S. Government investigation into allegations of human trafficking and abuse of [the applicant's] G-5 Visa holder domestic employee[.]" *Id.*, para. 31. The Tribunal found that the prominence of that observation in the Report suggested "unfortunate confusion and emphasis on that characterization of the misconduct." *Id.*, para. 10.

103. To the Tribunal in *BP*, para. 10:

The Bank cannot have it both ways; EBC cannot give any weight to trafficking and abuse allegations while at the same time stating that "once there has been a felony conviction there is really honestly nothing to fact-find other than the documents from the court," given that the conviction was not based on human trafficking or abuse.

The Tribunal cautioned against the “danger of conflating the actual guilty pleas with potential charges that were never made.” *Id.*

104. In the present case, the only confirmed facts are that the Applicant received and reviewed documents from Mr. B and that she facilitated the acquisition of transit visas for Complainant 1 and his wife. Notwithstanding, the HRVP found that the Applicant committed misconduct, “[i]n light of the evidence” that the Applicant’s “misuse of [her] official WBG email account was in furtherance of alleged illegal activity involving the employment of the Indian nationals in YMT.” The allegation by Mr. S that the Applicant was engaged in illegal activity was not substantiated. Furthermore, as noted above, the record contains a letter from the National Central Bureau of Interpol in Country X which characterized the allegations of illegal activity as “malicious.” The Bank has neither challenged the authenticity of the letter from the National Central Bureau of Interpol nor offered reasons to ignore this document in relation to the alleged illegal activity. It is of critical importance not to conflate the established facts with an allegation of illegal activity which was not substantiated. Without more, an allegation that the Applicant engaged in illegal activity cannot be relied upon to support a misconduct finding and disciplinary sanctions.

*Whether the sanctions imposed were significantly disproportionate*

105. The Tribunal recalls that disciplinary sanctions are reviewed on a case-by-case basis and that the sanctions imposed depend on various factors including the gravity of the case. It is nevertheless within the Tribunal’s “authority to determine whether a sanction imposed by the Bank upon a staff member is significantly disproportionate to the staff member’s offense, for if the Bank were so to act, its action would properly be deemed arbitrary or discriminatory.” *Gregorio*, Decision No. 14 [1983], para. 47.

106. Having found that the record establishes that the Applicant committed some misconduct, the Tribunal will now examine whether the sanctions imposed were significantly disproportionate to the misconduct found.

107. The Applicant contends that the termination sanction was an extreme measure which lacked a reasonable basis and was unsupported by the record. To the Applicant, termination of her employment was disproportionate to the alleged offense given that she had no history or pattern of such conduct. The Bank, for its part, contends that the HRVP duly considered various factors and imposed the disciplinary sanctions “in light of all the inculpatory and exculpatory factors.” To the Bank, the sanctions imposed “were required by the principles of responsible management,” noting that the HRVP observed that the Applicant’s conduct “potentially may have adverse consequences on the reputation and integrity of the Bank Group in [Country X.]”

108. As was held in *CT*, Decision No. 512 [2015], para. 45, the Tribunal

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

109. As part of the production of documents, the Tribunal ordered the Bank to produce comparative information from the last five consecutive years (2014–2019) concerning:

- a. The disciplinary sanctions imposed for violations of Staff Rule 3.00, paragraph 6.01, and Staff Rule 3.02, paragraph 3.06, specifically concerning the performance of outside activities or engagement in self-employment without written approval of a staff member’s senior manager and the misuse of the official WBG email account; and
- b. The types of misconduct sanctioned with a combination of termination, ineligibility for future WBG employment, access restriction to WBG premises, and written censure on the staff member’s personnel file.

110. The chart produced by the Bank in response to (a) contained seven cases and concerned the following staff members who were sanctioned with a combination of termination of employment, ineligibility for future employment at the Bank, and written censure. Five out of the seven were also sanctioned with restrictions to their access to Bank premises.

- An STC found to have committed the misconduct of misrepresentation; the unauthorized use of the Bank Group offices, equipment, and computers; performance of outside activities while working for the Bank without the supervisor's permission; and performing work as a vendor under an assumed name while also working as an STC for the Bank (*CG*, Decision No. 487 [2014]);
- A grade level GF staff member found to have committed the misconduct of misuse of Bank assets/resources to send disparaging emails about her manager to a staff member (*CT*, Decision No. 512 [2015]). As an aggravating factor the contents of the email exchange contained ethnic slurs and racial epithets considered to be harassment of others and creating a hostile, abusive, and uncomfortable work environment. The emails were perceived as threatening and caused grave concern for the manager and her family;
- A grade level GE staff member found to have committed the misconduct of misuse of Bank assets/resources to send disparaging emails to the staff member in *CT*, Decision No. 512 [2015], about a manager using WBG resources;
- A grade level GG staff member who was found to have committed the misconduct of misrepresentation for seeking kickbacks and personal favors and trying to circumvent the rule limiting an STC to 150 days per fiscal year;
- A grade level GD staff member who was found to have committed the misconduct of misrepresentation by altering emails to cover failure in work responsibility;
- A grade level GE staff member who was found to have submitted fraudulent Value Added Tax (VAT) exemption claims to the country office for government reimbursement; solicited and received personal loans from PIU; solicited personal loans from multiple corporate vendors; taken unauthorized personal leave; and misrepresented his Bank position to government officials; and

- A consultant who was found to have committed “fraud, corruption, coercion, collusion, or offering, receiving or soliciting bribes, kickbacks or other personal benefits involving Bank Group financed/supported operations or corporate procurement.” Additional charges against the consultant were the “[m]isuse of bank funds or other public funds for personal gain of oneself, abuse of bank position in the Bank for personal gain of oneself.”

111. The chart produced in response to (b) contained twenty-six individual cases (excluding the Applicant) concerning, *inter alia*, the following activities:

- Solicitation and receipt of personal loans from potential clients and failure to recuse himself from involvement in the procurement process for a single source selection for vendor;
- *De facto* conflict of interest and *quid pro quo* sexual harassment;
- Sexual relationship with subordinate, *de facto* conflict of interest, abuse of authority;
- Education benefits fraud;
- Medical benefits fraud;
- Solicitation of personal payments on multiple occasions from one or more subordinate consultants;
- Sending disparaging emails to others using WBG resources;
- Fraud/VAT exemption;
- Altering emails to cover failure in work responsibility (knowingly and intentionally failed to send email responses to clients registering cases with INT; knowingly and intentionally altered emails in order to create the appearance that emails in question were sent);
- Abuse of authority, abuse of WBG benefits and resources, willful misrepresentation of facts;
- Inappropriate videos taken of female staff;
- Abuse and misuse of staff access to SAP, abuse and misuse of WBG funds related to travel, a willful misrepresentation of facts;

- Inappropriate use of WBG funds, received proceeds of rentals from the WBG housing unit and failed to deposit in proper accounts;
- Acting as an agent of and for another entity in order to offer, negotiate, and facilitate illicit payments to government officials, and in exchange for facilitating these illicit payments to a government official, the staff member received kickbacks of approximately \$47,970.00;
- Misuse of WBG resources by creating fictitious group travel requests, receiving advances, and creating fictitious statements of expenses totaling \$234,536.41 without authorization from the Task Team Leader;
- Staff member submitting for reimbursement twelve fraudulent invoices to the WBG medical insurance provider for medical services that were not provided, and receiving medical reimbursement on the basis of the fraudulent invoices;
- Staff member stealing personal laptop from WBG premises and using it to secure a loan from a pawn broker;
- Staff member failing to return funds related to travel (approximately \$5,779.00) and using the money for personal purposes;
- Theft of old gymnasium equipment from the Country Office premises;
- *De facto* conflict of interest, sexual relationship with an STC, and abuse of authority;
- Sexual harassment;
- Misappropriation of office supplies for personal use, with staff member removing a sofa bed and office supplies without authorization; and
- Sexual harassment and the creation of a hostile work environment.

112. In these cases the aggravating factors included creating an intimidating, hostile and offensive work environment; misusing a United Nations laissez-passer (UNLP) fifty-six times; taking funds and using them for personal gain; theft of property; non-cooperation with investigative bodies; tax fraud for personal gain; the misconduct occurring over an eighteen-month period; fraud and willful misrepresentation against the Bank Group; and receipt of approximately \$135,000.00 as loans from Bank clients.



113. Having reviewed the Bank's disciplinary practices, the Tribunal considers that termination of the Applicant's employment is significantly disproportionate to the misconduct which the Tribunal has established in this judgment. Even so, the Applicant is not immune from some form of appropriate disciplinary measure. The Applicant's failure to exercise sound judgment and conduct herself in a manner consistent with the general obligations of a World Bank staff member is inexcusable and is, in the Tribunal's judgment, a violation of Staff Rule 3.00, paragraphs 6.01(b) and (c).

114. The Tribunal considers to be of importance the protection of the Bank's integrity as an international organization and the obligation each staff member bears to avoid activities that could bring reputational harm to the Bank Group in its relations with its host country. The allegations which were raised against the Applicant are troubling. Allegations of human trafficking are grave and, while these allegations remain unsubstantiated and qualified by Interpol as malicious, the Applicant should have known better than to associate herself and her Bank affiliation with an entity, albeit only months old, with questionable employment practices to state the least.

115. At the same time, the Tribunal looks to the totality of the record including the existence of any mitigating or aggravating factors. The Tribunal notes that this is the first instance of misconduct in the Applicant's sixteen-year career at the Bank. The Applicant's supervisors praised the Applicant's performance, and the Applicant was considered a well-respected member of the Organization. The Bank does not dispute that the Applicant made her home available, with the Bank's approval, to facilitate the work of the remaining staff members in Country X. Furthermore, neither EBC nor the HRVP identified any aggravating factors necessitating the imposition of the most severe sanction available to the Bank.

116. It is the Bank's assertion, in its pleadings before the Tribunal, that the "Applicant's explanations and excuses for her behavior are aggravating factors, rather than mitigating factors, that further justify the sanctions imposed." As to this, the Tribunal underlines that a staff member's exercise of her right to defend herself cannot be construed as an aggravating factor justifying sanctions. As was held in *BP*, para. 13, "[w]hatever the nature of her misconduct, she is entitled to

invoke her rights to be treated fairly in the circumstances, without need of being apologetic and diffident.”

117. The Tribunal finds the termination decision significantly disproportionate to the misconduct finding upheld by the Tribunal and the decision is set aside.

*The existence of procedural irregularities and whether the requirements of due process were observed*

118. It is the Applicant’s contention that EBC violated her due process rights by failing to conduct a reasonable and balanced investigation and failing to provide a reasonable explanation as to why witnesses or information in support of the Applicant were not credited. Specifically, the Applicant asserts that EBC did not interview others, including local authorities, who could have provided additional information regarding the complaints by Mr. S and the four Indian nationals. To the Applicant, at a minimum, EBC should have explained why exonerating evidence was not pursued.

119. The Bank contends that “EBC exercises its investigative discretion in determining what evidence is relevant and credible, taking into account limited investigative resources that need to be employed to support all staff, not just [the] Applicant.” According to the Bank, the Applicant cannot demand that any witness she proposes be interviewed by EBC, and she provides no reason for her contention that EBC’s interviewing of witnesses was one-sided. The Bank further contends that EBC complied with all procedural safeguards established to ensure due process, and that the Applicant has not shown otherwise, nor has she shown that she was unfairly singled out, or that management was motivated by any improper purpose.

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

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

121. While the Applicant was provided with some of the basic requirements of due process, EBC's decision not to address in its Final Report the evidence the Applicant provided negatively impacted the Applicant's due process rights. In *BP*, para. 31, the Tribunal held:

Simply attaching documents without presenting and justifying conclusions drawn from them [...] while nevertheless alluding to them in the conclusion without any explanation, led to an incomplete presentation of findings likely to result, in turn, in an erroneous review of the factors to be properly taken into account when HRSVP decided the disciplinary measure to be imposed.

122. In the present case, the evidence the Applicant provided was not referenced in the conclusions of the Final Report. This may have contributed to the HRVP referring to "alleged illegal activity" in his decision letter even though the record contained evidence characterizing the said allegations as "malicious." It is EBC's duty, "and the Bank provides it with the appropriate resources for this purpose, to conduct investigations of misconduct diligently and to present accurate findings so that the Managing Director can make appropriate determinations based on these findings." *Koudogbo*, para. 54. *See also EZ*, para. 106.

123. The Tribunal finds that the record also supports the Applicant's assertion that the investigation was not balanced. The record contains no evidence of consideration given to the possibility of an improper motivation behind the reports by Mr. S and the four Indian nationals. For instance, there was some evidence that there were personal disputes between Mr. S and the Applicant's husband. Furthermore, during her interview with EBC, the Applicant alleged that Complainant 1 had behaved inappropriately with some of the girls in the church. While these matters do not address the substance of the misconduct with which the Applicant was charged, they are relevant pieces of information with which to test the credibility and motivation of the witnesses relied upon by the investigators.

124. The record also shows that other witnesses who may have supported the Applicant's explanations or provided a more substantial record of the case were not interviewed. Even though the complaints levied against the Applicant were peripheral issues and ultimately not the misconduct charged, it is evident to the Tribunal that the allegations Mr. S and the Indian nationals raised against the Applicant, though unsubstantiated, influenced the scope of EBC's investigation and ultimately the findings and sanctions against her. For instance, significant portions of the Final Report addressed the allegations, but these allegations were neither scrutinized nor analysed against other evidence in the record. As "a neutral fact-finding body, EBC is responsible for conducting a thorough investigation of both sides of the case." *EZ*, para. 106.

125. The Tribunal observes that, even though Mr. S and the Indian nationals claimed that YMT was a subsidiary of YMF, the record contained evidence that YMT was a separate legal entity owned by Mr. B. EBC investigators did not interview Mr. B or other witnesses who could have verified true ownership of the company or the Applicant's rebuttal that she merely reviewed the documents as a favor to Mr. B and that he often requested such assistance from other members of the church.

126. The Bank defends EBC's decision not to interview witnesses on whom the Applicant sought to rely by asserting that, in determining whether to interview a witness or which witness to interview, EBC typically considers a range of factors, including but not limited to:

- (i) the relevance and substance of the information the individual can attest to or provide in relation to the relevant disputed or unresolved facts or issues;
- (ii) the sufficiency and credibility of existing evidence in the investigatory record in relation to the substance of the information the individual can attest to or provide;
- (iii) the relationship of the individual to the person(s) involved (e.g., personal, professional, familial, intimate);
- (iv) whether the testimony would be mitigating in favor of the subject;
- (v) availability of the individual; and
- (vi) the impact of the interview(s) on the duration of the investigation in relation to the relevance and substance of the information the individual can attest to or provide.

127. The Bank does not explain why Mr. B's testimony was deemed irrelevant to the disputed or unresolved facts or issues. Rather, the Bank contends that the Tribunal "has consistently upheld EBC's broad discretion in determining relevancy of witnesses." While the Tribunal does not micromanage investigations, the exercise of discretion must not be made in an arbitrary manner. It is "imperative that due diligence is conducted at all times[.]" *EZ*, para. 112. The Tribunal recently cautioned the Bank on the failure to conduct a full and fair investigation into all the potential eyewitnesses. *See EZ*, para. 106. As with *EZ*, the Tribunal finds no evidence in the present case that additional witnesses who could have provided a comprehensive account which would have strengthened the record were contacted.

128. It is also notable that the record does not demonstrate that EBC gave any weight to the interview of the Manager of the Indian Embassy who, according to the Note to File, stated that (i) YMT was a separate organization solely owned by Mr. B; (ii) there was no indication that the Applicant was abusing her World Bank position; and (iii) there were personal issues between Mr. S, the Applicant, and Mr. B. EBC also does not explain the deviation from procedure which resulted in the Manager of the Indian Embassy being the only witness without a transcript and the Applicant receiving a Note to File with the Draft Report as opposed to the transcripts of witness interviews as required by section C(4)(i) of the Directive/Procedure on the Conduct of Disciplinary Proceedings for EBC Investigations.

129. Rather than credit the testimony of the Manager of the Indian Embassy, whose credibility or neutrality was not questioned, EBC placed weight on the testimony of Mr. S and the Indian nationals who said that YMT was a subsidiary of YMF even though there is evidence on the record to query their motives. If EBC doubted the Manager of the Indian Embassy's credibility or the authenticity of the registration documents, such an assessment should have been included in the Final Report to ensure a balanced investigation.

130. In light of the above, the Tribunal finds due process violations and procedural irregularities in the investigation necessitating some compensation to the Applicant.

*Concluding remarks*

131. As indicated above, the Tribunal determines that the decision to terminate the Applicant's employment was significantly disproportionate to the misconduct finding upheld by the Tribunal. While the Applicant prevails in her claim that she did not violate all of the Staff Rules charged, the Tribunal is satisfied that the misconduct found does warrant some disciplinary sanctions albeit to a lesser degree than termination.

132. Having found procedural irregularities in the conduct of the investigation, the Tribunal will separately award the Applicant twelve months' salary as compensation. The Bank was no doubt justified in responding to the grave allegations against the Applicant with utmost seriousness. Nonetheless, the Bank is reminded that the requirement of due diligence in investigations cannot be taken lightly. As was held in *EZ*, para. 112,

a finding that misconduct has occurred must be made by the decision maker after a thorough review that the evidence submitted by EBC meets the requisite standard. Anything less is a failure to comply with due process obligations and the duty to treat staff fairly at all times as required by Principle 2.1 of the Principles of Staff Employment.

## DECISION

- (1) The disciplinary sanctions of termination of employment, ineligibility for future World Bank Group employment, an access restriction to the World Bank Group premises, and a written censure in the Applicant's personnel file are hereby rescinded;
- (2) The Bank shall reinstate the Applicant to a position similar to the one she was occupying at the time of the termination of her employment, subject to the condition that the Bank may impose any disciplinary measure, or a combination of disciplinary measures contained in Staff Rule 3.00, paragraph 10.06, short of termination. In the alternative, the Bank shall pay the Applicant the sum of three years' salary net of taxes based on the last salary drawn by the Applicant in lieu of reinstatement;

- (3) The Bank shall remove from the Applicant's personnel file all records relating to the allegations of misconduct, including the Final Report and the decision of the HRVP, and shall substitute them with a copy of this judgment;
- (4) The Bank shall pay the Applicant compensation in the amount of twelve months' net salary based on the last salary drawn by the Applicant;
- (5) The Bank shall contribute to the Applicant's legal fees and costs in the amount of \$26,556.69; and
- (6) All other claims are dismissed.

/S/ Andrew Burgess

Andrew Burgess

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., \* 30 May 2020

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\* In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.