



**World Bank Administrative Tribunal**

**2020**

**Decision No. 634**

**FO,  
Applicant**

**v.**

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

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

**FO,  
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 6 March 2020. The Applicant represented herself. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 30 October 2020.

3. The Applicant requests "review of the pleas and evidence previously submitted to the Vice President [of Human Resources (HRVP)] through the INT [Integrity Vice Presidency]" and challenges the imposition of disciplinary sanctions by which she would (i) be ineligible for "future Bank Group employment as a staff member, contractor, or employee of a contractor;" (ii) have hiring and access restrictions implemented; and (iii) have a written censure placed in her personnel file.

**FACTUAL BACKGROUND**

4. The Applicant joined the Bank in 2016 as a Short-Term Consultant (STC) working in the Bank's office in Country X and continued under a second STC contract in 2017. According to the Bank, the Applicant was responsible for providing support to a Capacity Injection Project (the Project). Some of the Applicant's duties as provided in her Terms of Reference (TOR) were to "[w]ork closely with the government procurement team and provide support to the evaluation of proposals and report to the Bank team on the credibility of the process."

*Relationship with Company A*

5. Prior to and concurrently with her Bank employment, the Applicant worked for Company A, a private management consulting firm that specializes in public sector reforms. Since its incorporation in 2007, Company A has worked with the Bank on various projects. According to the Applicant, the fact that she was an employee of Company A was “clearly disclosed” on the curriculum vitae (CV) which she used to apply for the STC position. On 3 January 2017, the Applicant resigned from Company A, stating in her resignation letter that she intended to become a director of the company and that she was

inspired and fully committed to contribute to the ultimate success of [Company A] and will therefore remain proactive in seeking consultancy opportunities for the firm, in supporting development opportunities in any of the firm’s EOIs/RFPs [Expressions of Interest/Requests for Proposals], and in supporting delivery of any contracted jobs.

6. The Applicant states that from January 2017 to December 2017, although she was no longer being paid a monthly salary, she continued her relationship with Company A “by assisting with its operation and marketing initiatives, actively participating in [Company A’s] Board of Directors meetings, and indicating [her] commitment to becoming a Director of [Company A] upon [her] purchase of the requisite number of [Company A] shares.”

7. On 20 April 2017, the Applicant signed a Letter of Offer and Acceptance of Sale of Shares with Company A. Ultimately, the Applicant was unable to purchase the shares, but she retained a close relationship with Company A such that she was approved for multiple “director advances” from the company.

*Actions Taken while Employed by the Bank*

8. On 27 January 2017, the Project Coordinator from a State Government emailed the Applicant’s Task Team Leader (TTL) in the Bank, copying the Applicant and attaching the TOR and the Request for Expression of Interest (REOI) for the Pay and Grading Contract, a contract under the Project. On 9 February 2017, the Applicant emailed the same TOR to a Company A

Director, copying the Company A Managing Director and other Company A employees. According to the Bank, this detailed TOR was not made available to other bidders until 10 November 2017, when the Request for Proposal (RFP) was issued.

9. On 22 February 2017, the Applicant received an email from the Company A Director copying two employees of the firm with which Company A was partnering for the Pay and Grading Contract bid. The Company A Director asked the Applicant to follow up with the firm employees and introduced the Applicant as “one of our new Directors” who was “working on the proposal.”

10. The forensic review of the Applicant’s Bank computer revealed that the Applicant had a number of documents saved related to the REOI and the Expression of Interest (EOI). One copy of the REOI was created by a Senior Procurement Specialist but, according to the document properties, had last been modified by Company A. The review also revealed two drafts of Company A’s EOI that were opened by the Applicant for significant periods of time; one draft included comments written by the Applicant.

11. On 11 November 2017, on the basis of its EOI, Company A was informed that it was shortlisted to submit a Technical and Financial Proposal for the Pay and Grading Contract.

12. On 27 November 2017, the Applicant emailed a potential Subcontractor from a different firm, stating that she was writing on behalf of the Company A Director. The Applicant explained that Company A had been shortlisted to send a proposal and attached the TOR, requesting advice on putting together a proposal. The Applicant also suggested that team members from the Subcontractor’s firm be included in the proposal. On 29 November 2017 the Applicant emailed Company A’s administrative assistant regarding work on the technical proposal.

13. On 1 December 2017, the Applicant emailed the Subcontractor and the Company A Director, attaching a draft proposal on behalf of Company A. She then forwarded the email to Company A’s administrative assistant but mistakenly copied a Bank Colleague. The Applicant emailed the Bank Colleague shortly after, asking her to ignore the email as it was meant for someone else.

14. On 4 December 2017, the Company A Director emailed the Applicant asking for her assistance with the proposal. The Applicant replied, stating that she would work on it the following evening.

15. On 6 December 2017, the Applicant emailed the Company A Director, including attachments titled “Pay and Grading Reform-FINAL” (Company A’s technical proposal) and “Book 1.xlsx” (a document containing activities, deliverables, and timelines). The document properties for “Pay and Grading Reform-FINAL” show that the Applicant last modified it, while those for “Book 1.xlsx” show that the Applicant created and last modified it.

#### *INT Investigation*

16. After inadvertently receiving the 1 December 2017 email, the Bank Colleague alerted the Project’s Practice Manager and the Applicant’s TTL to the emails, expressing her concern that the Applicant was working with a bidding firm. On 7 December 2017, the TTL submitted the matter to the Office of Ethics and Business Conduct (EBC). EBC thereafter completed an intake interview with the TTL, after which it referred the matter to INT on 19 December 2017. On 20 December 2017, INT opened a preliminary inquiry into the allegations. On 27 June 2018, INT initiated an investigation under Staff Rule 8.01.

17. On the same day, the Applicant received a written Notice of Alleged Misconduct and was interviewed by INT, “having been informed of her rights and obligations under Staff Rule 8.01.” On 1 August 2018, the Applicant received a copy of her interview transcript.

18. On 29 August 2018, the Manager, Human Resources Corporate Case Management, wrote the Applicant a letter notifying the Applicant that the alleged actions, if substantiated, would amount to an abuse of position for personal gain of oneself or another and that such a finding would mandate termination under Staff Rule 8.01. The Manager then offered the Applicant two options: (i) to proceed with the INT investigation; or (ii) to discontinue the INT investigation on the condition that the Applicant agrees to not seek future employment with the Bank Group, to not directly or indirectly engage in activities that would allow her to receive Bank funds or financing,

and to understand that the Bank Group will annotate her permanent ineligibility for future employment and access restriction to Bank Group premises in her personnel file, and that testimony and evidence that she had provided to INT might be used in subsequent proceedings against other parties as relevant. On 9 September 2018 the Applicant responded, indicating that she chose the first option.

19. On 21 September 2018, she submitted her written response to the misconduct allegations. In her response, the Applicant admitted that she shared the TOR with the Company A Director but contended that the TOR was already in the public domain at the time. The Applicant also stated that Company A did not need her assistance in the preparation of the EOI as it had extensive experience on Bank-funded assignments and that she did not have any special knowledge or information that would have furthered the quality of the EOI. The Applicant explained that she was only working part-time at the Bank and therefore “still had responsibility to oversee and guide junior staff” at Company A. The Applicant further admitted that she exchanged multiple communications with Company A while she was assisting the Bank with contract procurement, but qualified that she “neither significantly supported that proposal writing process nor provided any technical knowledge or information that would have enhanced the quality of the proposal.” The Applicant maintained that she did not disclose non-public information to Company A, nor did she engage in “unmitigated conflicts of interest.”

20. According to the INT Final Investigative Report of 5 August 2019, over the course of its investigation, INT

(i) reviewed the complaint received from EBC; (ii) reviewed the transcript of complainant [TTL] interview with EBC; (iii) interviewed [the TTL]; (iv) reviewed additional [Project] information received from [the TTL]; (v) conducted open-source research regarding [Company A], [the partner firm], and [the Applicant]; (vi) reviewed [the Applicant’s] HR [Human Resources] personnel files and SAP STC contract records; (vii) reviewed [Project] documents from Operations Portal, WBDocs, and Client Connection; (viii) conducted a forensic review of [the Applicant’s] email and computer files; (ix) audited [Company A]’s business records; and (x) interviewed eight witnesses, including [Company A] directors and staff.

21. According to the Bank, the INT investigation produced evidence to substantiate the following:

(i) Shortly after expressing her intent to become a director of [Company A] and nine months before the Terms of Reference for the Pay and Grading Contract was shared with other bidders, Applicant provided [Company A] with a copy of the non-public detailed TOR, which she only had access to because of her involvement on the project as part of her functions at the Bank;

(ii) At the same time, Applicant helped [Company A] prepare its expression of interest for this contract, resulting in [Company A]'s shortlisting;

(iii) In connection with the submission of its bid for the Pay and Grading Contract, Applicant assisted [Company A] with its technical and financial proposals by drafting and coordinating with a subcontractor;

(iv) Applicant failed to disclose her employment with [Company A] and efforts to obtain a directorship while employed with the Bank; and

(v) Applicant did not recuse herself from the Pay and Grading Contract procurement process while [Company A] was bidding for the project and she was intimately involved in the process as a Bank staff member.

22. In its Final Investigative Report, INT concluded that the Applicant "abused her position for her own personal gain and to benefit [Company A]," specifically finding that the Applicant

colluded with and attempted to steer the Pay and Grading Contract to [Company A] while simultaneously either serving as [a Company A] employee, actively pursuing a director and shareholder position with the company or acting as a de facto director,

and that the Applicant

had a series of unmitigated conflicts of interest during her tenure with the Bank, as she failed to disclose her relationship with [Company A] and did not recuse herself from the procurement process with which she was involved as both Bank staff and a de facto [Company A] director whilst the company was bidding for the contract.

23. On 18 June 2019, INT emailed the Applicant, informing her that it would soon be transmitting its draft Final Investigative Report to her for comment. On 27 June 2019, INT attempted to share the draft Final Investigative Report with the Applicant. On 9 July 2019, the

Applicant informed INT that she had received the email but could not access the documents. INT ultimately shipped the Applicant the draft Final Investigative Report and exhibits, and the materials arrived on 16 July 2019. INT notified the Applicant that she would have until 31 July 2019 to provide her comments on the draft, unless she requested more time.

24. On 1 August 2019, INT informed the Applicant that it would finalize the draft Final Investigative Report and submit it to the HRVP. On 8 August 2019, the Applicant responded and provided her comments. The Applicant stated that she found “the conclusion not only unfair but subjective and biased mainly because none of the interviewees’ responses indicate any complaint to my integrity in my working sessions with them neither did any of them complain about the work that I do.” She further stated that she “would never do anything to go against [her] morality with God.” INT replied the same day, explaining to the Applicant that the Final Investigative Report had already been finalized for submission to the HRVP, but assuring her that her email would be sent to the HRVP for consideration as well. INT also attached the finalized Final Investigative Report for the Applicant’s review.

25. In a letter dated 5 November 2019, the HRVP informed the Applicant:

After a careful and thorough review of the Final [Investigative] Report, I have determined that these established facts legally constitute misconduct under Staff Rule 8.01, namely:

a) Paragraph 1.01(c) – Fraud, corruption, coercion, collusion, or offering, receiving or soliciting bribes, kickbacks or other (*e.g.*, in kind) personal benefits involving Bank Group financed/supported operations or corporate procurement;

b) Paragraph 2.01(a) – Failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment;

c) Paragraph 2.01(b) – Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; performance of assigned duties in an improper or reckless manner; failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank [...];

d) Paragraph 2.01(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 and Staff Rule 3.01 (*i.e.*, staff members must comply with obligations embodied in the Principles of Staff Employment, the Staff



Rules, and all other policies and procedures of the Bank [...]; in particular, staff members have a special responsibility to avoid situations and activities that might reflect adversely on the Bank, compromise its operations, or lead to real or apparent conflicts of interest); and

e) Paragraph 2.01(d) – Misuse of Bank funds or other public funds for personal gain of oneself or another in connection with Bank activities or employment, or abuse of position in the Bank for personal gain of oneself or another.

26. The HRVP stated:

After having carefully examined the record, including your statements and the documents provided, I agree with INT's conclusion that you colluded with [Company A] in the procurement processes of Bank-financed activities, including attempting to steer a contract to [Company A], and that, as a result of your relationship with [Company A], you created several conflicts of interest that you neither reported nor attempted to resolve. Although, by itself, working for another organization, either directly or indirectly, while also serving as an STC at the Bank is not prohibited, using your position at the Bank to improperly influence a procurement process is a serious offense that has financial, as well as reputational, risks to the institution.

The HRVP further stated that, as a consequence of her misconduct, the Applicant would (i) be ineligible for "future Bank Group employment as a staff member, contractor, or employee of a contractor;" (ii) have hiring and access restrictions implemented; and (iii) have a written censure placed in her personnel file.

27. The Applicant received the HRVP's letter on 7 November 2019. On 3 February 2020, the Applicant responded to the HRVP's letter, indicating that she did not feel that her written response to the Notice of Alleged Misconduct had been given appropriate consideration. She noted that she "admitted to inadvertent mistakes," but maintained that "when all the facts and contexts are diligently put together it will be confirmed that there was never a deliberate initiative by [her] to avail undue influence to [her] then long-term employer." She finally stated that she regretted her mistakes and that she did not deserve the harsh sanctions imposed.

*The Present Application*

28. On 6 March 2020, the Tribunal received the Applicant's Application. She requests "review of the pleas and evidence previously submitted to the [HRVP] through the INT" and challenges the imposition of disciplinary sanctions by which she would (i) be ineligible for "future Bank Group employment as a staff member, contractor, or employee of a contractor;" (ii) have hiring and access restrictions implemented; and (iii) have a written censure placed in her personnel file.

29. The Applicant requests the following relief: rescission of the decision to impose disciplinary sanctions.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

*The Applicant's Contentions*

30. The Applicant contends that her actions do not amount to misconduct and that the sanctions imposed are unduly harsh. According to the Applicant, she did not "collude with [or] attempt to steer a Bank-financed contract to [Company A]"; she did not "disclose any Bank Group non-public information to [Company A]"; she did not "engage in, as the allegations suggest, 'unmitigated conflicts' of interest by failing to disclose [her] relationship with [Company A] to the Bank Group"; and she did not "engage in unmitigated conflicts of interest by failing to [...] recuse [herself] from the procurement process for the HR Audit Services Contract [...] under the Project for which [Company A] competed."

31. With regard to the finding that she attempted to steer the contract to Company A and that she failed to recuse herself from the procurement process, the Applicant submits that she did not have a "significant role" in the procurement process such that she should have recused herself. The Applicant further submits that it was clear from her CV that she was employed with Company A and, given that her STC contract authorized 50 days of work, she should not have been expected to give up her position. To the Applicant, she only sustained the relationship with Company A

because her STC position was only part-time and because she had an “obligation to mentor and support” her replacement at Company A.

32. With regard to the finding that she shared the TOR for the Pay and Grading Contract with Company A in February 2017, the Applicant maintains that the TOR was already in the public domain at the time and therefore did not offer Company A any advantage. With regard to the finding that she assisted Company A in preparing its EOI after which it was shortlisted to submit a proposal, the Applicant contends that Company A did not need her assistance with the preparation and that it was not on the basis of such assistance that Company A was shortlisted. The Applicant finally contends that she “did not do anything to enhance [Company A]’s prospect of winning that [c]ontract” and submits that “neither the ethical code of [Company A] nor [her] personal moral values and faith ethics would have allowed [her] into such temptation.”

### *The Bank’s Response*

33. The Bank contends that its decision to impose disciplinary sanctions met the standard for review established by the Tribunal. According to the Bank, the Applicant “has not claimed any violation of due process in INT’s investigation of the case” nor does she “challenge the substance of the factual record or evidence presented.” Instead, the Bank contends, the “Applicant seeks to supplant [the Bank’s] conclusions with her own, requesting an ‘exoneration’ and rescission of the disciplinary measures imposed on account of her own interpretation of the standards in place.”

34. The Bank submits that the Applicant’s conduct legally amounts to misconduct. The Bank notes that the Applicant has not denied taking the actions which gave rise to the finding of misconduct, but that she rather imposes “various *mens rea* standards and materiality thresholds which simply do not exist in the Principles of Staff Employment or Staff Rule 8.01.” The Bank maintains that the record establishes that the Applicant “colluded with and gave [Company A] an edge in the procurement process” by sharing the confidential TOR with Company A before it was available to other bidders, assisting with Company A’s EOI, and assisting with Company A’s technical proposal. The Bank further contends that including past employment in a CV “is an

inadequate form of disclosing potential conflicts of interest” and submits that the Applicant failed to avail herself of the Bank’s channels for disclosing actual or potential conflicts.

35. The Bank next contends that the disciplinary measures imposed were proportionate. The Bank cites Staff Rule 8.01, paragraphs 3.01–3.03, which

set forth the permissible disciplinary measures that may be imposed for misconduct. The range of measures available includes permanent ineligibility for future employment and contractual opportunities, restrictions on accessing the Bank’s premises as well as written censure.

The Bank notes that the “disciplinary measures taken will be based upon the circumstances of the case, with the HRVP appropriately weighing the unique facts and circumstances.” To the Bank, the disciplinary sanctions imposed here were permissible and appropriate as the Applicant’s “misconduct is as serious as it gets” and is a “terminable offense under Staff Rule 8.01, para. 3.01.” The Bank further contends that the Applicant’s “assertions negate the seriousness of [her] misconduct and serve to demonstrate her apparent and continuing failure to appreciate the risks that her misconduct has had on the institution.”

36. The Bank finally contends that it observed the requirements of due process. The Bank notes that the Applicant maintains that her 21 September 2018 written statement was not given proper consideration, but the Bank submits that the assertions in this statement are “refuted by the body of evidence produced.” To the Bank, the statement was “given appropriate weight and consideration, but cannot prevail over the reasonable conclusions derived from the record.”

## THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

### SCOPE OF THE TRIBUNAL’S REVIEW

37. 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 FG*, Decision No. 623 [2020], para. 60; *EK*, Decision No. 573 [2017], para. 62; *CH*, Decision No. 489 [2014], para. 22; *CG*, Decision No. 487 [2014], para. 38; *CF*, Decision No. 486 [2014], para. 39; *CB*, Decision No. 476 [2013], para. 31; *AB*, Decision No. 381 [2008], para. 53; *Koudogbo*, Decision No. 246 [2001], para. 18; *Mustafa*, Decision No. 207 [1999], para. 17; *Carew*, Decision No. 142 [1995], para. 32.

38. 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* [2007], 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.

39. 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* [2001], para. 21.

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

40. In accordance with *Dambita* [2001], para. 21, the Tribunal will first consider whether the established facts supporting the HRVP’s findings meet the standard of substantial evidence. The Tribunal notes that the Applicant largely does not challenge the facts established by INT but focuses on whether they amount to misconduct as determined by the HRVP.

41. Pursuant to INT’s investigation, the HRVP determined that the Applicant

colluded with [Company A] in the procurement processes of Bank-financed activities, including attempting to steer a contract to [Company A], and that, as a result of [her] relationship with [Company A], [she] created several conflicts of interest that [she] neither reported nor attempted to resolve.

The HRVP also noted that, although

by itself, working for another organization, either directly or indirectly, while also serving as an STC at the Bank is not prohibited, using [her] position at the Bank to improperly influence a procurement process is a serious offense that has financial, as well as reputational, risks to the institution.

42. Based on these facts, the HRVP determined that the Applicant had committed misconduct under Staff Rule 8.01, specifically:

a) Paragraph 1.01(c) – Fraud, corruption, coercion, collusion, or offering, receiving or soliciting bribes, kickbacks or other (*e.g.*, in kind) personal benefits involving Bank Group financed/supported operations or corporate procurement;

b) Paragraph 2.01(a) – Failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment;

c) Paragraph 2.01(b) – Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; performance of assigned duties in an improper or reckless manner; failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank [...];

d) Paragraph 2.01(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 and Staff Rule 3.01 (*i.e.*, staff members must comply with obligations embodied in the Principles of Staff Employment, the Staff Rules, and all other policies and procedures of the Bank [...]; in particular, staff members have a special responsibility to avoid situations and activities that might reflect adversely on the Bank, compromise its operations, or lead to real or apparent conflicts of interest); and

e) Paragraph 2.01(d) – Misuse of Bank funds or other public funds for personal gain of oneself or another in connection with Bank activities or employment, or abuse of position in the Bank for personal gain of oneself or another.

43. The Tribunal notes that there are two general categories of misconduct found by the HRVP, conflicts of interest and collusion in violation of procurement policies, and will consider each in turn.

*Conflicts of interest*

44. It is the Applicant's contention that she did not engage in "unmitigated conflicts of interest" by failing to disclose her relationship with Company A while also employed by the Bank as an STC or by failing to recuse herself from the Bank-financed procurement process.

45. Principle 3.1 of the Principles of Staff Employment imposes the following general obligations on staff members:

The sensitive and confidential nature of much of their work requires of staff a high degree of integrity and concern for the interests of the Organizations. Moreover, as employees of international organizations, staff members have a special responsibility to avoid situations and activities that might reflect adversely on the Organizations, compromise their operations, or lead to real or apparent conflicts of interest. Therefore, staff members shall:

- a. discharge their duties solely with the interest and objectives of the Organizations in view and in so doing shall be subject to the authority of the President and responsible to him;
- b. 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. 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;
- c. conduct themselves at all times in a manner befitting their status as employees of an international organization. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the Organizations. They shall avoid any action and, in particular, any public pronouncement or personal gainful activity that would adversely or unfavorably reflect on their status or on the integrity, independence and impartiality that are required by that status; and
- d. observe the utmost discretion in regard to all matters relating to the Organizations both while they are staff members and after their service with the

Organizations has ended. In particular they shall refrain from the improper disclosure, whether direct or indirect, of information related to the business of The World Bank or the IFC.

46. In explaining the scope of obligations under Principle 3, the Tribunal observed in *AJ*, Decision No. 389 [2009], para. 46:

Principle 3 of the Principles of Staff Employment requires staff members to serve the Bank with a high degree of integrity and loyalty. Every staff member has a special obligation to avoid situations and activities that might (i) reflect adversely on the Bank; (ii) compromise operations of the Bank; and (iii) lead to real or apparent conflicts of interest. The obligation is broad; its objectives are prohibitive as well as preventive. The Applicant had an obligation not to engage in real or apparent conflicts; he also had an obligation to avoid situations and activities that might “lead to real or apparent conflicts of interest.” Principle 3 obligates staff members to “discharge their duties solely with the interest and objectives of the [Bank] in view.” This singleness of purpose should not be compromised by other considerations, such as a staff member’s personal interest in a business relationship of the Bank. This is why the scope of Principle 3 is very broad. It prohibits not only conduct that is clearly wrongful but also conduct that leads to a possible appearance of impropriety.

47. Also relevant is Staff Rule 3.02, paragraph 3.05, which, at the relevant time, provided:

Staff members holding a Short-Term Consultant or Short-Term Temporary (“STC/STT”) appointment may hold concurrent assignments from other public and private employers, subject to the following:

- a. they may not be employed by member governments or other entities to work on Bank Group-financed projects during their period of Bank Group employment if the Bank Group-financed project and the concurrent work involve the same country.
- b. they cannot be an employee of another public entity, including but not limited to governments and other international organizations, unless that entity has approved its employee working at the Bank Group.

48. Staff Rule 3.03, paragraph 3.02, on disclosure and resolution of conflicts of interest, provides:

Each staff member shall disclose any financial interest or business relationship of his/her own or of an immediate family member that, in addition to the prohibited



transactions set out in the preceding paragraphs in Staff Rule 3.03, might reasonably be considered to reflect unfavorably on or cause embarrassment to the Bank Group, or be in real, potential or apparent conflict with the staff member's Bank Group duties, and shall abstain from exercising any related responsibility, except as otherwise instructed by her/his senior manager with the concurrence of EBC. Disclosure shall be made promptly and in writing to the staff member's senior manager and the Financial Disclosure Program Manager. Instructions to the staff member by the senior manager and the Financial Disclosure Program Manager, to proceed with, modify or abstain from the exercise of responsibility, shall be in writing and copies shall be provided to the Financial Disclosure Program Manager. Managers shall consult with the Financial Disclosure Program Manager before taking action on a disclosure made under this rule.

49. As noted by the HRVP and indicated by Staff Rule 3.02, paragraph 3.05, working for another organization while concurrently holding an STC appointment is not prohibited. However, an STC still has an obligation not to engage in real or apparent conflicts of interest under Principle 3.1 and to disclose any relationship which could be a real, potential, or apparent conflict of interest under Staff Rule 3.03, paragraph 3.02.

50. According to the Applicant, the fact that she was employed by Company A was disclosed on the CV that she used when she applied for the STC position. The record contains two CVs by the Applicant, one including her employment with the Bank and one without. One CV states, under "Employment Record," that from "June 2008 to date" the Applicant was an HR consultant with Company A. The other CV states, under "Employment Record," that for the period of "June 2008 – December 2015" the Applicant was an Operations Manager and HR consultant with Company A. In her interview with INT, the Applicant explained that the latter CV contained a typographical error and that 2015 should have been written 2016. Neither CV indicates that the Applicant had a continuing relationship with Company A in 2017.

51. To satisfy Staff Rule 3.03, paragraph 3.02, disclosure of a relationship which could be a real, potential, or apparent conflict of interest must be made in writing to the appropriate persons, including the Applicant's supervisor. In *AJ* [2009], para. 63, the Tribunal remarked on the disclosure requirement:

The duty to disclose is a separate requirement, applicable to all staff members. Once a staff member has any financial interests [or business relationships] that might

reasonably create actual or apparent conflicts of interest, he or she is obligated to reveal that interest to his or her manager. That disclosure has to be made promptly. A staff member is also simultaneously obligated to “abstain from exercising any related responsibility” until he or she is cleared to do so by his or her manager. Compliance with these obligations allows the relevant manager to make an informed decision as to whether an actual or apparent conflict exists, and whether to allow the staff member in question to continue exercising responsibility in the areas of conflict, or how best to handle a possible conflict of interest.

The Tribunal continued to explain that the purpose of the disclosure requirement would be “seriously undermined” if the Tribunal accepted that a breach of the duty to disclose could be cured by, in that case, simply listing financial interests in a yearly financial disclosure form. *Id.*

52. In this case, the Applicant contends that she satisfied the disclosure requirement by listing her employment with Company A on her CV. It was unrealistic of the Applicant to assume that her TTL would know of and bear in mind all the information on her CV and would make the connection between this reference to Company A and her work for the Bank. Moreover, the CV does not indicate that the Applicant’s relationship with Company A continued after joining the Bank. When compared to the applicant in *AJ* [2009], the Applicant’s CV does even less to identify a real or apparent conflict of interest than a “*post facto* yearly financial disclosure form.” The Tribunal considers that simply listing a position on one’s CV fails to satisfy the disclosure requirements under Staff Rule 3.03, paragraph 3.02.

53. As explained by the Tribunal in *AJ* [2009], requiring prompt, written disclosure to a manager of a potential conflict of interest allows the manager to determine the best course of action to resolve the conflict of interest. Here, because the Applicant’s TTL was unaware of the Applicant’s ongoing relationship with Company A, he was unable to take effective steps to protect the Bank from the appearance of impropriety in the procurement process and to prevent the Applicant from engaging in a real conflict of interest.

54. For these reasons, the Tribunal finds that the Applicant did not satisfy her obligation under Staff Rule 3.03, paragraph 3.02, to disclose to her senior manager in writing her relationship with Company A.

55. Regarding the finding that the Applicant failed to recuse herself from a Bank-financed procurement process, the Applicant submits that she did not have a “significant role” in the procurement process such that she should have recused herself. The Tribunal finds, however, that the record does not support this assertion. The Applicant’s TOR for her position provided, as a duty, to “[w]ork closely with the government procurement team and provide support to the evaluation of proposals and report to the Bank team on the credibility of the process” and, as a deliverable, “Terms of Reference for other consultancy assignments related to implementation of the [Project].” The Applicant also acknowledged during her interview with INT that she edited the TOR for the Pay and Grading Contract as part of her work. The Tribunal therefore concludes that the circumstances were such that the Applicant should have recused herself, or at a minimum sought advice on recusal, from the procurement process.

56. The Tribunal upholds the finding of misconduct for the violation of conflicts of interest rules.

*Collusion in violation of procurement policies*

57. The Tribunal recalls that the Applicant was also found to have committed misconduct under Staff Rule 8.01,

Paragraph 1.01(c) – Fraud, corruption, coercion, collusion, or offering, receiving or soliciting bribes, kickbacks or other (*e.g.*, in kind) personal benefits involving Bank Group financed/supported operations or corporate procurement.

58. According to the Bank, the Applicant colluded with and attempted to steer the contract to Company A when she

(i) shared the Terms of Reference (TOR) for the contract with [Company A], prior to its issuance to other bidders, (ii) assisted [Company A] in preparing its Expression of Interest (EOI), after which the company was short-listed to submit a bid, and (iii) assisted [Company A] in preparing its [b]id.

59. In *CF* [2014], para. 49, the Tribunal remarked on the act of “steering,” noting that it considers “the essence of this to be the direction of contracts to a vendor, bidder or contractor by

placing them in a position of unfair advantage, generally involving the violation of procurement policies.”

60. The Applicant maintains that she did not collude with or attempt to steer a Bank-financed contract to Company A.

61. With regard to the finding that she shared the TOR for the Pay and Grading Contract with Company A in February 2017, the Applicant maintains that the TOR was already in the public domain at the time and therefore did not offer Company A any advantage. The record, however, does not support the Applicant’s contention. It is true that at the time the Applicant shared the TOR with Company A there was a publicly available REOI. This publicly available REOI was different from the detailed TOR. The record further shows that the detailed TOR shared by the Applicant in February 2017 did not become publicly available until the RFP was issued on 10 November 2017.

62. The Applicant also asserts that she “innocently” shared the TOR with Company A, believing that her TTL was “keen that [the Company A Director], as the preeminent regional public sector remuneration policy and technical expert in the region should be interested in bidding for this assignment.” The Tribunal recalls Staff Rule 8.01, paragraph 2.01, which provides that “[m]isconduct does not require malice or guilty purpose.” Regardless of the Applicant’s intentions in sharing the confidential TOR with Company A before it was available to other potential bidders, the result was to give Company A an actual or potential unfair advantage in the bidding process and to undermine the integrity of the bidding process.

63. The Tribunal will address the Applicant’s assertion that her TTL had already shared the TOR with the Company A Director. According to the Applicant, at the time she shared the TOR with Company A, she believed that her TTL wanted Company A to bid for the contract. However, during the Applicant’s interview with INT, she expressly stated that her TTL never told her to send Company A the TOR. It is also clear from the Applicant’s interview that any conversation with her TTL regarding Company A and the Pay and Grading Contract occurred (if it occurred at all) in December 2017. The record also does not support the Applicant’s assertion that the TTL had already shared the TOR with the Company A Director; while the record does suggest that

something was shared by the TTL with the Company A Director in December 2016, it was not the TOR for the Pay and Grading Contract at issue here. The Tribunal considers that any impropriety that might have occurred in December 2016 is not within the scope of its current review. The Tribunal therefore finds the Applicant's assertions unpersuasive.

64. With regard to the finding that she assisted Company A in preparing its EOI after which it was shortlisted to submit a proposal, the Applicant contends that Company A did not need her assistance with the preparation and that it was not on the basis of such assistance that Company A was shortlisted. The Tribunal notes that it is irrelevant whether Company A needed or benefitted from the Applicant's assistance. The relevant issue is whether she gave such assistance. The Applicant also submits that she "did not do anything to enhance [Company A]'s prospect of winning that [c]ontract" and avers that "neither the ethical code of [Company A] nor [her] personal moral values and faith ethics would have allowed [her] into such temptation."

65. The Tribunal notes that the Applicant does not deny assisting Company A in preparing the EOI; rather, the Applicant remains focused on whether her assistance enhanced Company A's chances in succeeding with the bid.

66. In this light, the Tribunal considers that the record is clear that from February 2017 to December 2017 the Applicant was providing assistance to Company A in its bid for the Pay and Grading Contract by sending the TOR before it was publicly available; reviewing Company A's EOI; contacting a subcontractor on behalf of Company A for assistance in preparing the technical proposal; and reviewing and editing Company A's final technical proposal.

67. The Tribunal also recalls that, in the Applicant's January 2017 resignation letter from Company A, she indicated that she was

inspired and fully committed to contribute to the ultimate success of [Company A] and will therefore remain proactive in seeking consultancy opportunities for the firm, in supporting development opportunities in any of the firm's EOIs/RFPs, and in supporting delivery of any contracted jobs.

The Tribunal further recalls that, throughout this time, the Applicant was pursuing a directorship with Company A but was unable to purchase the requisite shares. The record suggests that, despite her inability to purchase shares, in July 2017 the Applicant was approved for two “director advances” from Company A and was referred to as a director by Company A colleagues.

68. The Tribunal therefore finds that the record both supports the fact that the Applicant improperly assisted Company A in its bid preparation for the Pay and Grading Contract and indicates the Applicant’s motivation for doing so. The Tribunal is thus persuaded that this conduct constitutes collusion with Company A in the procurement process of a Bank-financed activity. With these considerations, the Tribunal upholds the finding of misconduct under Staff Rule 8.01, paragraph 1.01(c).

WHETHER THE DISCIPLINARY MEASURES IMPOSED WERE SIGNIFICANTLY DISPROPORTIONATE TO  
THE MISCONDUCT

69. The Tribunal notes that the Applicant does not challenge whether the sanctions imposed are provided for in the law of the Bank. The Tribunal will therefore consider whether the disciplinary measures imposed were significantly disproportionate to the misconduct.

70. In this case, the following sanctions were imposed:

- 1) ineligibility for future Bank Group employment as a staff member, contractor, or employee of a contractor;
- 2) hiring restriction and access restriction to all Bank Group premises; and
- 3) written censure to remain in [the Applicant’s] personnel file.

71. In her Application, the Applicant states:

[T]he Bank staff’s investigations in this case have brought to my attention that I made mistakes, which I deeply regret, and for which I profusely tender most sincere apologies. Still, I plead and beg that I do not deserve the harsh sanctions that derive from the decision of the Vice-President. I plead for leniency.

Honestly, I have already learnt my bitter lessons and received the severe punishment of being out of employment since this case came up.

72. The Bank avers that the “Applicant’s actions demonstrate not only manifest professional misjudgment, but serious misconduct warranting equally serious discipline, as her actions posed a significant risk to the institution.”

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

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

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

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

75. Staff Rule 8.01, paragraph 3.01, requires that,

[u]pon a finding of misconduct, disciplinary measures, if any, imposed by the Bank Group on a staff member will be determined on a case-by-case basis. Any decision on disciplinary measures will take into account such factors as the seriousness of the matter, any extenuating circumstances, the situation of the staff member, the interests of the Bank Group, and the frequency of conduct for which disciplinary measures may be imposed.

76. In considering whether the HRVP properly exercised his discretion in determining the sanctions imposed, the Tribunal will examine the five factors enumerated in Staff Rule 8.01, paragraph 3.01. *See S*, Decision No. 373 [2007], para. 52.

77. With regard to the seriousness of the matter, the Tribunal notes the Bank's submission that the Applicant's misconduct is "as serious as it gets" and that it constitutes a terminable offense under the Staff Rules. The Tribunal considers that improperly influencing the procurement process, as the Applicant was found to have done, poses both financial and reputational risks to the Bank. The Tribunal also takes note of the TTL's statement in his interview with INT in which he indicated that the Project was in a fragile country and that the Bank had already received complaints from citizens that the procurement process was skewed. In this context, the Tribunal concludes that the Applicant's misconduct was especially serious.

78. The Tribunal next notes that the Applicant does not assert any extenuating circumstances, apart from expressing her regret for the mistakes she made. The Tribunal recognizes that, as the Applicant was working in a part-time capacity as an STC, it might have been expected that she would also engage in outside employment. In fact, in making his decision on the imposition of sanctions, the HRVP noted that the Staff Rules do not prohibit outside employment by STCs. The Tribunal notes that the Staff Rules pertaining to outside employment for STCs were revised in 2019 to require that STCs inform their manager of all concurrent assignments, thus eliminating any gray area for disclosure. However, notwithstanding this 2019 revision, the rule in 2016–2017 had a clear application to the Applicant's situation. The Applicant's relationship with Company A did not exist in a gray area; the Applicant was situated on both sides of the procurement process and the conflict of interest was obvious.

79. With regard to the situation of the staff member, the Tribunal has explained that it will consider the staff member's contributions and performance. *S* [2007], para. 62. Here, nearly all of the Applicant's time at the Bank was tainted by her conflict of interest with Company A. Her performance, therefore, cannot be considered a mitigating factor.



80. The Tribunal considers that, in cases concerning conflicts of interest and reputational risks to the Bank, the interests of the Bank are “of utmost importance.” *EK* [2017], para. 88. The Tribunal observes that the obligation to avoid even the perception of a conflict of interest is an important one, particularly for staff members of international organizations. The observations made in *AJ* [2009], para. 46, are applicable in this case:

Principle 3 of the Principles of Staff Employment requires staff members to serve the Bank with a high degree of integrity and loyalty. Every staff member has a special obligation to avoid situations and activities that might (i) reflect adversely on the Bank; (ii) compromise operations of the Bank; and (iii) lead to real or apparent conflicts of interest. The obligation is broad; its objectives are prohibitive as well as preventive. The Applicant had an obligation not to engage in real or apparent conflicts; he also had an obligation to avoid situations and activities that might “lead to real or apparent conflicts of interest.” Principle 3 obligates staff members to “discharge their duties solely with the interest and objectives of the [Bank] in view.” This singleness of purpose should not be compromised by other considerations, such as a staff member’s personal interest in a business relationship of the Bank. This is why the scope of Principle 3 is very broad. It prohibits not only conduct that is clearly wrongful but also conduct that leads to a possible appearance of impropriety.

81. Considering this, the Tribunal is fully cognizant of the Bank’s interest in preserving its integrity as an institution and upholding its objectivity – goals which may be undermined if staff members, regardless of their contract type, engage in activities which create a real or apparent conflict of interest or which compromise the integrity of the procurement process. Moreover, the Bank is a financial institution with a commitment to combating corrupt financial activity, and therefore may take a special interest in ensuring that its employees meet the highest standards for judgment and integrity in project or financial matters. It is therefore understandable that the HRVP may wish to severely sanction such conduct which could undermine those goals.

82. Finally, in consideration of the frequency of conduct, the record demonstrates that throughout her Bank tenure the Applicant had the opportunity but failed to disclose her relationship with Company A. The record further demonstrates that from February 2017 to December 2017 the Applicant was colluding with Company A in the procurement process of a Bank-financed activity by sending the TOR before it was publicly available; reviewing Company A’s EOI; contacting a

subcontractor on behalf of Company A for assistance in preparing the technical proposal; and reviewing and editing Company A's final technical proposal.

83. In considering the proportionality of sanctions, the Tribunal has examined other misconduct cases to assess whether the sanctions imposed in a given case are reasonable. In *EK* [2017], paras. 80–83, the Tribunal considered a submission by the Bank providing a comparative chart for disciplinary sanctions imposed for misconduct by STCs versus regular staff. Four of the cases concerned STCs. In one case the STC was found to have engaged in a conflict of interest where there was a failure to disclose, and the sanction was a written censure for three years. In another case, the STC was found to have engaged in a conflict of interest by working on a project as an STC and as a Bank-financed consultant in the same country, and the sanction was a bar on future employment for three years and a written censure for the same duration. The final two cases involved conflicts of interest combined with either abuse of position or failure to recuse from a procurement process. In these cases, the sanctions imposed were a bar on all future employment and contractual opportunities at the Bank in any capacity, an access restriction, and an indefinite written censure.

84. Here, the Applicant was found not only to have engaged in a conflict of interest but also to have colluded with Company A in the procurement processes of Bank-financed activities, including attempting to steer a contract to Company A. The Tribunal notes that other STCs found to have engaged in similar misconduct received the same sanctions as the Applicant. The Tribunal further notes the severity of the risk to the Bank as a result of the Applicant's misconduct, as an improper procurement process exposes the Bank to both financial and reputational risks.

85. While the sanctions imposed on the Applicant were severe, the Tribunal does not find them to be significantly disproportionate to the misconduct found when considered in light of factors such as the seriousness of the matter, any extenuating circumstances, the situation of the Applicant, the interests of the Bank Group, and the frequency of conduct for which disciplinary measures may be imposed.

## WHETHER THE REQUIREMENTS OF DUE PROCESS WERE OBSERVED

86. The Tribunal notes that the Applicant has not alleged any procedural irregularities or due process violations related to the INT investigation. The Applicant does indicate, however, that she did not feel that her written response to the Notice of Alleged Misconduct had been given due consideration by the HRVP in his decision. To the Bank,

[s]taff members subject to INT investigations have a due process right to be heard, but there is no obligation that the institution accept the staff members' representations and claims of innocence, especially where they are contradicted by the evidence.

87. The Tribunal notes that the Applicant's written response to the Notice of Alleged Misconduct is produced in its near entirety as part of the Application. The Tribunal has reviewed the Applicant's contentions and has arrived at the same conclusions as INT and the HRVP. While the Applicant may not agree with these conclusions, they are supported by the record. The Tribunal therefore concludes that the requirements of due process were observed.

## DECISION

The Application is dismissed.

/S/ Andrew Burgess

Andrew Burgess

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C.,\* 16 November 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.