



**World Bank Administrative Tribunal**

**2023**

**Decision No. 688**

**GY,  
Applicant**

**v.**

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

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

**GY,  
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 Mahnoush H. Arsanjani (President), Marielle Cohen-Branche (Vice-President), Janice Bellace (Vice-President), Andrew Burgess, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.
2. The Application was received on 30 June 2022. The Applicant was represented by Ryan E. Griffin of James & Hoffman, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 1 May 2023.
3. The Applicant challenges the non-confirmation of her appointment.

**FACTUAL BACKGROUND**

4. The Applicant joined the Bank in April 2021 as a Human Resources (HR) Specialist, Talent Management, Grade Level GF, under a four-year fixed term appointment in the Careers and Mobility (HRDCM) unit of the HR Vice Presidency. Her appointment was terminated on 31 March 2022 due to non-confirmation at the end of her one-year probation.
5. In the fall of 2020, the Applicant applied for an HR Specialist position at the Bank and was subsequently shortlisted, interviewed, and selected for the position. In December 2020, before accepting the Bank's offer for the position, the Applicant had several exchanges with HR and her hiring manager (Manager) regarding her dissatisfaction with the job title being offered as she felt it was not suitable to her level of experience. The Applicant stated that she wanted to use the functional job title "Global Talent Development Lead."

6. On 16 December 2020, the Manager wrote to the Applicant stating that she had no objection to the Applicant using “a functional title that speaks to the global nature of the position” on LinkedIn and other social media, but reiterated that the Applicant’s official job title would remain HR Specialist because the Bank has designated job titles that cannot be changed.
7. Thereafter, the Applicant and the Manager had further discussions and agreed that the Applicant’s official start date would be 1 April 2021.
8. On 26 February 2021, HR issued the Applicant’s Letter of Appointment (LOA), which stated that the Applicant’s duty station was Washington, D.C. The LOA also provided, in relevant part, that the Applicant’s appointment was subject to a one-year probationary period, extendable for up to one additional year.
9. In late March 2021, the Manager arranged for the Information and Technology Solutions Client Services (ITSCS) unit to send the Applicant a corporate laptop and requested ITSCS to set up the Applicant’s Information and Technology (IT) accounts.
10. On 26 March 2021, the Manager virtually introduced the Applicant to two “peer buddies” in HR. The Manager asked these experienced colleagues to support the Applicant at the beginning of her career at the Bank. In the Manager’s email to one of the colleagues, she stated, “One of [the Applicant’s] core deliverable[s] is FCV [Fragility, Conflict, and Violence] Career development where you will both partner closely, and your insights on working at the Bank would be beneficial to [the Applicant].”
11. On 1 April 2021, the Applicant began working remotely from her home in London, as the Bank’s offices in Washington, D.C., were still subject to lockdown due to the COVID-19 pandemic. That same day, the Manager emailed the Applicant to officially welcome her to the Bank and attached various “relevant materials” to help the Applicant get started on understanding the World Bank Group (WBG) HR function.

12. According to the Applicant, her understanding of her role as of her 1 April 2021 start date was that she would be (i) taking on principal responsibilities for a range of career development deliverables oriented around work on careers in FCV countries, (ii) leading the configuration of the talent management platform, (iii) monitoring and assessing the effectiveness of programs, (iv) cultivating relationships, and (v) engaging key internal and external stakeholders, including vendors.

13. The Applicant states that she was supposed to take over the FCV Careers portfolio from an outgoing HR colleague (HR Specialist), who had been covering the portfolio on an interim basis and was retiring at the end of June 2021. In this regard, the Applicant avers that prior to her start date the Manager had suggested that the Applicant start on 1 March 2021 instead of 1 April 2021 to ensure that the Applicant and the HR Specialist overlapped for a sufficient period to allow for a full handoff of the FCV Careers portfolio prior to the HR Specialist's retirement.

14. The Applicant asserts that the Manager was initially supportive of the FCV Careers portfolio transition. On 4 April 2021, the Manager emailed a colleague in the FCV working group, stating, "I am writing to introduce you to [the Applicant] who recently joined my team, part of her work program will be to support FCV Careers. Many thanks to [the HR Specialist] for holding the fort for the last few months."

15. On the morning of 5 April 2021, in response to a query from the HR Specialist asking whether the Applicant was ready to "dive in" or meet other colleagues at an FCV working group meeting that day, the Manager replied, "I don't think [the Applicant] is ready to dive in yet, so feel free to attend on behalf of the team."

16. That same morning, the HR Specialist sent an email to the Applicant, copying the Manager, offering to help bring the Applicant up to speed on FCV initiatives in the HRDCM unit and "issues more generally" at the Applicant's convenience. According to the Applicant, in the weeks that followed, she met virtually with the HR Specialist on at least two occasions to discuss projects and

needs relating to the FCV Careers portfolio and the logistics of transitioning various aspects of the portfolio.

17. Later on the morning of 5 April 2021, the HR Specialist emailed the Manager and the Applicant regarding FCV updates, action items, and a synopsis of the FCV working group meeting from that morning. That afternoon, the Manager responded, stating:

Thanks for sharing the update and suggested actions.

I intend to take a strategic approach to FCV Careers going forward. Given [that the Applicant] is new to the organization and would not be able to actively contribute on this agenda for a few more weeks, I will review all the [tasks] and decide how we can address them in [a] holistic manner.

18. On 13 April 2021, the Manager met with the Applicant to discuss her role and the main tasks that she was expected to work on. On the same day, the Manager sent an email to the Applicant titled “Work Priorities and next steps,” attaching the Manager’s Fiscal Year 2021 (FY21) Performance Objectives and the key responsibilities for the Applicant as an HR Specialist on the team. The email also included a summary of the Applicant’s work priorities with corresponding tentative deadlines for each task. For FY21, Quarter 4 (Q4), the Applicant was expected to develop career development toolkits for managers and locally appointed country office (CO) staff and a Business Requirement Document (BRD). For FY22 and beyond, the Applicant was expected to develop experience maps and a capability matrix framework, implement a soft-skills training curriculum for FCV staff, and work on ad hoc and collaborative projects within HR.

19. In the same email, the Manager also suggested that the Applicant update her FY21 Q4 objectives in the ePerformance system and provided links for the Applicant to familiarize herself with the performance management process and career development website.

20. In late April 2021, according to the Applicant, she sought direction from the Manager regarding the FCV Careers portfolio handoff and how to prioritize various backlogged projects within the portfolio. The Applicant stated that the Manager appeared to be taken aback by the

revelation that the Applicant had been working with the HR Specialist in anticipation of the handoff and that the Manager demurred in response to the Applicant's questions.

21. On 10 May 2021, the Manager announced to her team via email that she had selected one of the Applicant's colleagues, Mr. A (another HR Specialist), to take "over the work on FCV Careers." The email further stated, "Many thanks to [the HR Specialist] for her excellent contributions on this work in the last few months and [the Applicant] for coming in to support during her first few weeks at the Bank."

22. On 29 June 2021, the Manager had another discussion with the Applicant regarding her work program and the Manager's expectation for the coming fiscal year. The next day, on 30 June 2021, the Manager sent an email memorializing the discussion, stating that she wanted to "provide further clarity on our discussion on structure and focus for FY22." The Manager also attached the job description of the HR Specialist position.

23. The Manager encouraged the Applicant to take a "collaborative and integrated approach to design and solutioning in the team going forward as all the work priorities are interrelated," and laid out the Applicant's "core responsibilities" and corresponding deadlines for the FY22 work program as follows:

- Q1: Develop a career development toolkit for managers, revised WBG Finance and Accounting (WFA) career guide, and BRD;
- Q1/Q2: Finalize recommendations and rollout of promotions process;
- Q2: Develop a career development toolkit for locally appointed CO staff;
- Q3: Develop experience maps to replace existing operations experience maps;
- FY22 and beyond: Develop a capability matrix framework focused on skills, experience, and knowledge and design of tool and change management for BRD; and
- Ad hoc projects and opportunities to collaborate across the unit, department, and HR.

24. The Manager's email also addressed the Applicant's onboarding process and integration within the team and the Bank more generally, stating:

I understand you are itching to build a network across the organization, which [is] difficult because of the current virtual home-based work. With your move to DC pending (which I hope is soon), to facilitate your integration, I will nominate you to participate in a working group as a start. I also suggest you register for the introduction to Banking Operations course on OLC [Open Learning Campus] asap.

For our next meeting, reflect on additional ways I can support your integration in the Bank and HR.

25. That same day, on 30 June 2021, the Applicant was medically evaluated and later diagnosed with "mild symptoms of left, carpal tunnel syndrome."

26. On 12 July 2021, according to the Applicant, she and the Manager met to discuss the Applicant's reflections regarding her first three months at the Bank. The Applicant stated that, in response to the Manager's question regarding whether her role thus far matched her expectations, the Applicant took the opportunity to voice various concerns, noting the (i) lack of any well-defined role after the Manager decided not to assign her the FCV Careers portfolio, (ii) difficulty of meeting expectations without any clearly defined set of responsibilities, (iii) limited autonomy under the Manager, and (iv) limited engagement with clients and stakeholders that made it difficult to fully integrate into HRDCM's work. The Applicant stated that the Manager did not directly address these issues during their meeting but did state that the Applicant could join her in client meetings after the Applicant relocated to Washington, D.C.

27. The next day, on 13 July 2021, the Manager forwarded her 30 June 2021 email to the Applicant in reference to their discussion the previous day regarding the Applicant's workplan and focus for FY22.

28. On 22 July 2021, the Manager wrote to the Applicant reiterating her commitment to supporting the Applicant's onboarding and integration into the team and HR. The Manager reiterated her requests to the Applicant to update her FY21 Q4 objectives in the ePerformance

system, familiarize herself with the career development website, and enroll in the Introduction to Banking Operations course on OLC.

29. On 26 July 2021, the HR Business Partner for the Applicant's unit wrote to the Applicant with the Manager in copy to advise the Applicant that the Bank would be in Tier 2 status until 7 September 2021 and that the default working arrangement was Home-Based Work (HBW) until that date. The HR Business Partner added, "Because we have not moved to Tier 1 yet and you want to relocate to DC in August, the VP [Vice President] will have to approve the relocation. Your manager [...] can send an email to the VP asking for approval to relocate to DC while the World Bank Group is still in Tier 2."

30. On 2 August 2021, the Manager replied to the HR Business Partner's email with the Applicant in copy, stating, "Thanks for flagging this to me. I will discuss with [the Applicant] and prepare the necessary note for [the VP's] approval."

31. On 3 August 2021, the Manager held a performance discussion with the Applicant to deliver her assessment of the Applicant's first four months at the Bank. Later that day, the Manager followed up with an email summarizing the conversation, stating in part:

- My early observations include: (i) your lack of responsiveness to mine and colleagues' emails, (ii) your lack of consistent and active engagement/participation in team meetings and other settings, (iii) a tendency to having an individualistic approach to work in a teams based culture, and (iv) demonstrating flexibility with regard to understanding/embracing the organizational culture of the World Bank.
- We discussed the expectation of progressive adaptation to the Bank's culture which includes the alignment with the prerequisite[s] for confirmation which are suitability, technical qualifications and professional behaviors as noted in the probationary process. I stressed the need for you to reflect on this feedback, particularly in light of you expressing a need for additional clarity.
- In response to your question on relocating to DC now versus later, as mentioned, this is your decision to make taking into consideration today's



conversation and your commitment to addressing the areas that need improvement as highlighted above.

32. The Manager further stated in the email that in terms of next steps she wanted to see the Applicant demonstrate her technical capabilities in her HR Specialist role and make substantive contributions to the various core responsibilities itemized in the Manager's 30 June 2021 email to the Applicant. The Manager stated that she would track progress during their weekly one-on-one meetings, and would request feedback from colleagues in September 2021—six months after the Applicant joined the Bank—to determine progress on the areas she cited for improvement. The Manager reiterated that she was committed to supporting the Applicant to learn about the Bank, helping her fully integrate into the team and HR function, and ensuring the Applicant's success. The Manager also encouraged the Applicant to reach out to her peer buddies and the HR Business Partner for additional support.

33. On 6 and 10 August 2021, the Manager followed up with the Applicant requesting acknowledgement of receipt of the Manager's 3 August 2021 email. On 11 August 2021, the Applicant acknowledged receipt of the email.

34. On 12 August 2021, the Applicant had carpal tunnel surgery. Thereafter, according to the Applicant, she took three weeks of leave through 2 September 2021 as recommended by her doctor.

35. On 19 August 2021, the Manager wrote to the Applicant, stating, "I hope you are recovering okay after your procedure last week. As mentioned during our 1-1 this week, please take the appropriate time off work using sick leave to recuperate properly."

36. On 23 August 2021, eleven days after the Applicant's carpal tunnel surgery, the Applicant emailed the HR Business Partner to ask for assistance with entering a sick leave request into the Leave and Attendance Recording System (LARS). That same day, the HR Business Partner responded to the Applicant advising that, if she was unable to access LARS, she should send the

doctor's note to the Manager and ask the unit's Leave Coordinator to record the Applicant's sick leave in LARS on the Applicant's behalf.

37. Later that afternoon, the Applicant wrote to the Leave Coordinator, with the Manager in copy, stating, "Thank you for helping with my additional leave entries into LARS – see attached sick note as agreed." That evening, the Manager wrote to the Applicant, stating, "Just reading the email trail below, sorry to hear about your hand and the subsequent surgery. Do ensure you take the required time as specified by your surgeon and physiotherapist to recover."

38. On 25 August 2021, WBG Senior Leadership announced on the Bank's intranet that Tier 2 status, or default HBW, would be extended to 3 January 2022 due to the COVID-19 Delta variant.

39. On 7 September 2021, the Manager wrote to the Applicant to inform her that she had returned from a week off and wanted to check in to see if the Applicant had fully recovered. The Manager stated, "As previously mentioned, take additional time off to recuperate if you are still on the mend – it is important to have this documented as official sick or annual leave in LARS." The Manager also asked for a status update on the Applicant's deliverables and stated that she would see the Applicant at their one-on-one meeting the next day.

40. On 8 September 2021, the Applicant relocated to Washington, D.C., from London.

41. That same day, the Manager sent the Applicant an email titled "Welfare check-in – response requested," expressing concern about the Applicant's well-being. The email stated:

I hope everything is okay with you and [you] are recovering well from your surgery. Our weekly 1–1 was scheduled for today (though I didn't get a confirmation of your attendance) at 9:15am–9:45am, and I waited on webex from 9:15am–9:30am. I am quite worried about your well-being, given I have observed your lack of response and infrequent communication. I hope all is truly okay with you. Please feel free to call or email me at any time as my role as your manager is to ensure that you are doing well and also well placed to contribute and deliver to the team's agenda.

As previously stated in my emails, I am committed to supporting you in your integration into the team, HR function and the WBG.

If I don't hear from you today, I will need to reach out to your next of kin.

42. The next day, on 9 September 2021, the Manager sent a follow-up email to the Applicant, stating:

I am extremely concerned about you and your well-being, given your lack of response to my emails – most recently from Tuesday and Wednesday this week. I am reiterating again my commitment to supporting your integrating and onboarding to this role and the team.

However, since our August 3 conversation and subsequent follow ups, there has been no improvement in your responsiveness, updates on projects or participation in the team.

Specifically, in this week:

- You did not show up to the team meeting (you declined without any explanation), nor show up to our 1–1 weekly meeting, and the team dry run session on the upcoming career seminar.
- You have also not provided any update to the various projects you are leading.

As previously mentioned in all my emails below, it is very important that all these issues (responsiveness, active participation and delivery) which are part of assessing your suitability, technical qualifications and professional behaviors are addressed for you to be confirmed or not. To date, your overall performance is seriously lacking and cannot support my confirming your probationary appointment. Non-confirmation will lead to the termination of your employment with the World Bank Group.

Please let me know if there is anything going on and how I can support you.

43. On 13 September 2021, the Manager emailed the Applicant stating that she had not received a response from the Applicant to her last few emails. The Manager requested a meeting with the Applicant the next day to discuss the Applicant's overall performance to date and next steps with regard to the Applicant's employment.

44. According to the Manager, on 14 September 2021—six days after the Applicant’s arrival in Washington, D.C.—she learned from the HR Business Partner that the Applicant had relocated to Washington, D.C.

45. On 16 September 2021, the Manager wrote to the Applicant providing her with the relevant Staff Rules relating to relocation and resettlement and reminded her that, “as part of [the] [S]taff [R]ules, staff should inform their manager of their intent to take any form of leave (annual, sick, administrative, etc[.]), and approval should [be] sought and documented in LARS before any absence.” Later that day, the Applicant submitted a retroactive administrative leave request to the Manager covering the period from 3 to 10 September 2021. Under the “Staff Remarks” section, the Applicant wrote, “Duty station relocation/first week’s settlement.”

46. On 20 September 2021, the Manager wrote to the Applicant, welcoming her to Washington, D.C., and expressing surprise that the Applicant had relocated to Washington, D.C., without informing her. The Manager stated that additional onboarding was required to help the Applicant “understand the policies, processes, and ways of working in the institution,” particularly given the Applicant’s recent pattern of “uninformed absences” and retroactive leave requests. The Manager further stated that pursuant to her 3 August 2021 email she would request feedback from colleagues regarding the Applicant’s performance to determine if the Applicant had made progress in the areas the Manager had previously highlighted as areas that required improvement.

47. On 22 September 2021, the Manager informed the Applicant via email that the draft WFA career guide which the Applicant submitted the day before was “far” from the Manager’s and client’s expectations and that the Manager would be reaching out to the client to extend the deadline to the week of 19 October 2021. The Manager further stated, “It is important we contract, plan and deliver quality products that [address] the need[s] of the client. You should not wait for a meeting to let me know you are unable to meet agreed and expected deadlines.”

48. On 30 September 2021, the Manager wrote to the Applicant and stated that the Applicant had missed their weekly meeting scheduled for the previous day. The Manager further stated that

during that meeting she had planned to provide guidance to the Applicant on how to approach the WFA guide, which she stated was taking longer than planned. The Manager then provided guidance and resources on how to approach the WFA career guide, a list of the client's expectations, and a list of drafts relating to the WFA career guide and experience maps that the Manager wanted the Applicant to submit by the close of business (COB) on 14 October 2021.

49. On 19 October 2021, the Manager wrote to colleagues in ITSCS and the ergonomics team at the Bank requesting urgent assistance for ergonomic support for the Applicant. That same day, an ITSCS colleague emailed the Applicant various ergonomic-related links and resources.

50. Later on 19 October 2021, the Manager emailed the Applicant stating that she was waiting for the Applicant to submit a draft of the WFA career guide to determine the status of the draft and to discuss a revised timeline with the client. The Manager stated that she had attached a project tracker document re-clarifying the Applicant's FY22 objectives. The Manager stated, "I am not sure [about] the confusion or lack of understanding, given all the numerous emails I have shared on your objectives." The Manager further stated that she was still waiting for the Applicant to respond to her previous email regarding a list of persistent IT issues the Applicant had purportedly been experiencing so that the Manager could escalate those issues to ITSCS.

51. On the morning of 20 October 2021, the Bank's Lead Ergonomist in the Health and Safety Directorate (HSD) wrote to the Applicant connecting her with the Bank's ergonomic consultant for headquarters (HQ) and providing other ergonomic-related resources.

52. On the afternoon of 20 October 2021, the Manager sent an email to the Applicant informing the Applicant of concerns regarding two deliverables, the WFA career guide and experience maps, that were due to be delivered to a client. The email stated in part:

We are less than 24 hours to the deadline agreed with the client (WFA) – after several follow up[s] via email, feedback and our discussion during our 1–1 meeting yesterday, I am yet to receive the draft experience maps and career guide.

Your continuous lack of response and inability to deliver any tasks on time is very disturbing and unprofessional.

This pattern of behavior is unacceptable and as I have consistently stated in all my emails below, it is very important that all these issues (responsiveness, active participation and delivery) which are part of assessing your suitability, technical qualifications and professional behaviors are addressed for you to be confirmed or not.

To date, your overall performance continues to be seriously lacking, not fully satisfactory and cannot support my confirming your probationary appointment.

53. Later that afternoon, the Applicant submitted updated drafts of the WFA career guide and experience maps to the Manager.

54. That same afternoon, in response to the drafts submitted by the Applicant, the Manager wrote in part:

Given your lack of responsiveness to this deliverable, I have asked [the Director and WBG Chief Accountant, WFA] for additional time for us to complete this work.

I will review the experience maps and come back with comments early next week. On the career guide, it still doesn't reflect the feedback I have provided in all the email exchanges and discussion with [the Director and WBG Chief Accountant, WFA].

I had asked you to review all the emails that you have been copied [on] to ensure the revision reflects the client expectations and ask, review the current WFA guide to clearly understand what is required in the new context and what should be included from the GCS [Global Corporate Solutions] guide (particularly "how to" resources to strengthen and make the guide practical for staff and managers).

I am reattaching the current WFA guide and the GCS toolkit again.

Given the length of time it's taken and your output is still not reflecting the expectation (with all the feedback provided to you), let's have a quick chat tomorrow to go through both documents thoroughly. I will also reclarify [the] expected deliverable again.

55. On 2 November 2021, the Manager met with the Applicant concerning her performance and, in a subsequent email, summarized the points raised:

Following our meeting earlier today, please find below a summary of our discussion. As mentioned, you are an integral member of a small team with major deliverables. Each member's role is critical to the WBG's delivery on career support for all staff. My role is to support every member of the team in successfully delivering their part of this herculean effort, while ensuring that each staff is also able to leverage the institution's benefits to manage their personal wellbeing.

Further to our August 3 meeting, where I shared my observation on your performance and behaviors (responsiveness, active participation and qualitative delivery) which needed sustained improvement to enable an assessment of your suitability, technical qualifications and professional behaviors for confirmation, there has been very little change.

Over the last 7 months, I have provided you with consistent feedback, identified gaps and shared the implications should there be no change. While there has been some improvement in your responsiveness and participation in team meetings as referenced in feedback gathered where colleagues "appreciated your thoughts and perspectives shared in team meetings and brainstorming sessions", despite my ongoing feedback, significant gaps remain in your performance. These are, namely, your inability to consistently respond to your agreed work program and deadlines; and the quality of your delivery during this probationary period, which has been seriously lacking, and not fully satisfactory.

The gaps in your performance can be summarized as follows:

- **Lack of accountability and reliability in delivering assigned tasks on time:** on multiple occasions, you have missed deadlines for tasks assigned to you. Despite repeated feedback to keep me apprised on any issues that may impact your delivery and timeline, you have repeatedly failed to provide such updates and have been unable to deliver any of the tasks on time. Responses or reasons for the lack of a response have only been provided as a result of my follow-up. On the update to the WFA guide, I have had to move the deadline for submission to the client twice (per emails on September 22 and October 20) because of your inability to meet the set deadline which you were aware of. Further, you were copied on all correspondence with the client. This has adversely impacted their plan to launch the updated guide at [the] end of September to support the FY22 objective setting process and career conversations; this has also affected our reputation to deliver on time.

- **Inability to deliver quality products:** Your deliverable to date on the WFA career guide and experience maps has been suboptimal; it has not addressed mine

or the client's expectations, despite consistent, extensive and regular feedback from me on improving the quality of the output. I expected the review and design of the current WFA guide and experience map to be done in line with the discussions with the client, but throughout the process you have not been able to deliver any of these products. I have provided feedback on the expectation, resent all the relevant documents and emails on what was agreed and communicated by the client, and systematically the feedback was either totally ignored or partially addressed. All our email exchanges and the feedback I have provided on the output have been extensively documented.

- **Lack of communication** around updates that may impact the delivery of work and overall team performance which has been extensively documented.

These issues call into question your fit for this role as you have not demonstrated the appropriate technical skills and professional behavior required to deliver in this role.

As I do not see consistent improvement in your unsatisfactory performance as outlined above, I must take the next steps and recommend non-confirmation of your WBG appointment to [the Director]. You will be copied on any such notification and will have ten (10) calendar days to consult with [the HR Business Partner] on your options and provide comments on this recommendation. Thereafter, my recommendation, together with your comments, will be considered and evaluated by [the Director] for final decision. If [the Director] approves this recommendation, i.e., non-confirmation of appointment, we will start a formal process to provide you with at least 60 days of notice that your position is not confirmed. Staff [R]ule 7.01, [S]ection 07 describes the rules for ending employment through non-confirmation of appointment and allows for a severance payment equal to one month's net pay. See also Staff Rule 4.02, Section 4.02.

Please feel free to reach out to [the HR Business Partner] or myself as necessary.

56. On 8 November 2021, the Manager met with the Applicant to discuss the implications of the non-confirmation of her appointment. On the same date, the Manager sent an email memorializing the discussion, stating:

Following our conversation today, I wanted to confirm that in lieu of non-confirmation staff may resign. If we go that route, we need to agree on a resignation effective date. Effective March 1, 2022 would be reasonable and acceptable under the circumstances. Thus kindly submit your resignation through HR Actions to me as soon as possible and I will process.



Alternatively, non-confirmation will lead to the termination of your employment, with its attendant consequences (e.g., may not return to WBG in any capacity).

Again, non-confirmation is outlined in Staff Rules 4.02 and 7.01 and essentially these are the steps that I will take:

- Recommend the non-confirmation of your WBG appointment to [the Director]. You will be copied on any such notification and will have ten (10) calendar days to provide comments on this recommendation.
- Thereafter, my recommendation, together with your comments, will be considered and evaluated by [the Director] for [a] final decision. If [the Director] approves this recommendation, i.e., non-confirmation of appointment, we will start a formal process to provide you with at least 60 days' notice of termination with one month's severance payment.

On resettlement cost – Per [Staff Rule] 7.02, paragraph 2, you will not be entitled to resettlement because you have not completed two years of service or ended your appointment. However, I will see what I can do to help with some of the costs pertaining to resettlement back to your home country.

As I have always stated, my duty is to support you and I will keep doing that as you transition out of the organization.

57. On 12 November 2021, the Applicant replied to the Manager's 8 November 2021 email, stating, "Thanks for your email which I've been trying to get a few questions answered on. Between absences and diary commitments, I've only managed to complete a first leg of conversation so [I] will come back to you on Monday [15 November 2021]." The Manager responded later that day, stating, "Thanks [the Applicant]. As I have always said, reach out if any questions to either I or [the HR Business Partner]."

58. On 16 November 2021, the Applicant wrote to the Manager, stating, "Conscious I'd promised to come back to you today. I'm still awaiting a reply to one of my queries. I'll be in touch as soon as I've heard back." The Manager responded the same day requesting that the Applicant revert soon, preferably by 18 November 2021.

59. The next day, on 17 November 2021, an attempt at mediation between the Applicant and the Manager, initiated by the Applicant, concluded unsuccessfully.

60. On the morning of 19 November 2021, in response to sick leave requests from the Applicant for 18 and 19 November 2021, the Manager stated, “I hope you are getting the treatment needed to support your recovery. Don’t hesitate to reach out to myself or HSD should you require any additional support.” The Manager also informed the Applicant that the Applicant had exhausted all of her accumulated sick leave days and provided the Applicant with a link to the Staff Rules governing sick leave management.

61. On the afternoon of 19 November 2021, the Manager wrote to the Applicant informing her that she would be proceeding with the non-confirmation recommendation on 22 November 2021 unless the Applicant wished to exercise her option to resign. The Manager also stated, “I will be reassigning the WFA deliverables, as you have been unable to complete this task and we are less than two weeks to the third deadline.”

62. On 22 November 2021, after the Manager had not received a response from the Applicant concerning the optional resignation, the Manager sent an email to the Director, with the Applicant in copy, recommending non-confirmation of the Applicant’s appointment. The email reiterated the basis for the Manager’s recommendation for non-confirmation as stated in her 2 November 2021 email to the Applicant, namely, the (i) Applicant’s inability to consistently respond to her agreed work program and deadlines, (ii) unsatisfactory and “suboptimal” quality of the Applicant’s work product, and (iii) lack of communication around updates that may affect the delivery of work. The email concluded by requesting that the Applicant provide her comments on the recommendation within the next ten calendar days.

63. On 23 November 2021, the Manager wrote to the Applicant, noting that the Applicant had missed their weekly meeting that afternoon.

64. The next day, on 24 November 2021, the Manager wrote to the Applicant to inform her that she had received and approved the Applicant's sick leave requests for that day and the previous day. The Manager reiterated that the Applicant should not hesitate to contact her or HSD if the Applicant required additional support.

65. On 30 November 2021, the Manager wrote to the Applicant expressing concern for the Applicant's well-being given the volume of sick leave requests in the previous two weeks. The Manager stated, "I will send a separate email connecting you to relevant HSD colleagues for any additional support you may need."

66. On 3 December 2021, the Manager wrote to the Applicant, stating:

I am writing to follow up on my email with regard to my recommendation of non-confirmation of your probationary appointment. We expected to receive your comments today (per the email you were given 10 days for this purpose). As of this date, we have not received any response or comments from you. We are giving you a further 5 business days, until [COB] Friday, December 10, 2021 to share any comments you may have. We will proceed with the next steps after this date.

67. On 15 December 2021, the Director wrote to the Applicant stating:

I am following up on [the Manager's] recommendation for your non-confirmation, to which you were asked to provide your comments by Friday December 3, 2021, which was further extended by 5 additional days by [COB] December 10, 2021. I have received no comments from you to date, and I will allow a final extension until Friday December 17, 2021 for you to provide your comments.

If I do not hear from you by this date, I reserve the right to proceed with the next steps without any comments from you. I encourage you to avail yourself of this important opportunity.

68. On 20 December 2021, the Applicant wrote to the Director requesting an extension until 24 December 2021. The Director responded, "As we are closed on Friday, grateful for your comments by COB Wednesday December 22, 2021."

69. On 22 December 2021, a second attempt at mediation between the Applicant and the Manager concluded unsuccessfully.

70. Also on 22 December 2021, the Applicant wrote to the Director stating, “I’d hoped to be in a position to fully respond to this matter today, following a meeting intended with [the Manager]. However, that meeting did not materialise. I will be in touch shortly after the meeting is held.”

71. The next day, on 23 December 2021, the Director responded, stating, “Thank you for your email. The last extension was my third and final extension. Please submit your comments by COB today or I reserve the right to proceed with my consideration of [the Manager’s] recommendation without your comments.”

72. On 3 January 2022, the Director sent an email to the Applicant titled “Non-confirmation Notice of Termination.” The email stated in part:

In the past several months, your [M]anager, [...], has discussed with you performance issues in the workplace and ways in which your performance was expected to improve. Specifically, the need to improve on (i) accountability and reliability in delivering assigned tasks on time; [(ii)] inability to deliver quality products; and (iii) lack of communication and updates that impact delivery of work. [The Manager] also advised you that if your performance and behavior did not improve, your appointment would not be confirmed. Because no significant improvement has been noted, the WBG has decided not to confirm your appointment. Please be informed that your employment with the World Bank Group will be terminated effective April 1, 2022, more than 60 calendar days from this email, pursuant to Staff Rule 7.01, Section 7.

On or about March 31, 2022, your last day of WBG service, you will receive a lump sum severance payment equivalent to one month’s net pay in accordance with Staff Rule 7.01, Section 7.05. You will also be paid a lump sum in respect of your accumulated annual leave up to a maximum of 60 days. In addition, we have decided to cover your resettlement. If you are indebted to the WBG, the payment of your severance payment may be reduced by the amount owed or delayed while that amount is established.

73. The Director's email further stated that the Applicant would be placed on administrative leave through the duration of the sixty-calendar day notice period from 4 January to 4 March 2022, and subsequently through 31 March 2022 to correspond with the end of the probationary period. Additionally, the email advised the Applicant of the status of her Bank benefits during the administrative leave period as well as the option to elect to receive a lump sum payment in lieu of administrative leave. The Director thanked the Applicant for her contributions to the team and wished her well in the future.

74. Thereafter, the Applicant was placed on administrative leave until 31 March 2022, when the Applicant's employment terminated.

75. On 8 April 2022 and 12 May 2022, the Tribunal granted requests by the Applicant for extensions to file an application.

76. On 30 June 2022, the Applicant filed this Application with the Tribunal contesting the non-confirmation decision.

77. The Applicant requests the following relief:

- Rescission of the non-confirmation decision and removal of all references to the same from the Applicant's personnel file;
- Reappointment to a comparable, mutually agreeable position at Grade Level GF or higher for a term of at least three years, or appropriate compensation in lieu thereof in recognition of the salary differential between the Applicant's Bank salary and her salary in her subsequent employment;
- In addition to any compensation in lieu of specific performance as requested above, compensation in an amount deemed just and reasonable by the Tribunal to remedy the damages to her career and professional reputation and the personal hardships resulting from the premature termination of her appointment following her international relocation.

78. The Applicant claims legal fees and costs in the amount of \$16,200.00.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

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

#### *The Bank deprived the Applicant of a fair opportunity to prove her abilities*

79. The Applicant contends that the Manager did not afford the Applicant a fair opportunity to prove her abilities and secure confirmation of her appointment. The Applicant asserts that the Manager offered inadequate supervision and guidance from the outset of her employment and set the Applicant up for failure throughout the Applicant's brief tenure at the Bank.

80. The Applicant contends that the Manager's failure to establish a clear work program from the outset was one of the primary obstacles to the Applicant's success. The Applicant asserts that she began the position with the shared understanding that one of her primary functions and projects would be the FCV Careers portfolio. The Applicant further asserts that the Manager initially confirmed the Applicant's understanding during her first week by introducing her to the FCV Careers team, but that the Manager then "backtracked almost immediately from that mutually agreed-to plan." The Applicant contends that the Manager declined to have the Applicant participate in FCV Careers meetings or otherwise support the Applicant's integration into the FCV Careers team. The Applicant contends that—when she took the initiative to meet with the FCV Careers portfolio's outgoing leader, the HR Specialist, in order to understand the current needs and where she could best fit in—the Manager responded by pulling the Applicant off of the portfolio entirely and handing the work to another staff member.

81. Further, the Applicant contends that, after the Manager took the FCV Careers portfolio away from the Applicant only one month into her employment, the Manager failed to establish any other clearly defined work program to take its place. The Applicant asserts that the Manager moved the Applicant through a series of ad hoc projects such as revising the career enrichment toolkits and playing a background role for the Manager in the WFA experience mapping project.

To the Applicant, none of these “one-off projects” provided meaningful opportunities for her to integrate into HRDCM or the Bank’s work. Further, the Applicant asserts that these ad hoc projects did not provide any basis for the ongoing assessments of the Applicant’s “suitability and progress based on achievement of the work program” given that there was no set of clearly defined benchmarks against which the Applicant’s performance could be measured.

82. The Applicant asserts that the fact that she had no real opportunity to succeed during the first five months of her probationary period was confirmed by the Manager during their 3 August 2021 meeting when the Manager told the Applicant, “in essence,” that she could not integrate remotely and would need to relocate to Washington, D.C., to have any chance of being confirmed. To the Applicant, it was entirely unfair given the Bank’s one-year probationary period structure to effectively penalize the Applicant for beginning her employment remotely in accordance with the Bank’s own policies for new internationally recruited Washington, D.C.–based staff prior to September 2021. The Applicant further asserts that her ultimate relocation to Washington, D.C., did not result in a meaningful chance to succeed because she faced the same difficulties at HQ that she faced while working remotely—namely the lack of a clearly defined work program and meaningful supervision and guidance from the Manager in integrating herself into HRDCM’s work and proving her capabilities to succeed at the Bank.

83. Finally, the Applicant contends that the Manager denied her the opportunity to succeed because the Manager did not reasonably account for the Applicant’s medical leave and relocation travel when evaluating the Applicant’s performance. To the Applicant, it was entirely unreasonable for the Manager to criticize the Applicant for a break in communications during her “scheduled international relocation travel” and to not acknowledge the Applicant’s medical leave in evaluating the timeliness of her work. Further, the Applicant avers that the Manager could have done more to accommodate her medical leave. To this end, the Applicant notes that the Manager did not meet with her following her return from medical leave due to carpal tunnel surgery to discuss her limitations and make adjustments to her deliverable timelines. The Applicant contends that it appears from the Director’s summary of the Manager’s rationale for recommending non-

confirmation that the Manager did in fact hold her medical issues and relocation travel against the Applicant when assessing her performance and suitability for the position.

***The Bank's Response***

*The Applicant was given a fair opportunity to prove her abilities, but she failed to do so*

84. The Bank contends that the non-confirmation decision was made on a reasonable and observable basis, and followed proper procedure, in that the Applicant was provided with sufficient guidance on the areas in which the Applicant needed to improve in order to have her appointment confirmed, and the Applicant was provided with ample warning that her failure to improve in the specific areas would lead to non-confirmation of the Applicant's appointment.

85. The Bank contends that the Applicant was provided with a clearly defined work program. First, the Bank asserts that at no point during the interview stage was the lead of the FCV Careers portfolio discussed, nor did it form part of the Applicant's Terms of Reference (TOR). Second, the Bank asserts that, although the Applicant's Manager was initially supportive of the Applicant having a more active role on the FCV Careers portfolio, it quickly became obvious to the Manager that the Applicant was not ready for this task. Finally, the Bank asserts that it is entirely a function of management's discretion to assign, or reassign, tasks in accordance with the Bank's needs.

86. The Bank contends that, from the beginning of the Applicant's appointment, the Applicant was assigned a leading role in delivering two main HR objectives: the career enrichment toolkit and career guide. The Bank asserts that both tasks are in line with expectations for HR Specialists at Grade Level GF and formed part of the Applicant's TOR. The Bank further asserts that, because of the untimeliness and poor quality of the Applicant's work on the career enrichment toolkit and career guide, as well as the Applicant's general lack of responsiveness, the Manager had to assign the tasks to other staff.

87. The Bank avers that, in an effort to support the Applicant's work, the Manager shared templates and other relevant documents with the Applicant to provide structure and guidance to



the Applicant's work and set guidelines as to the expected results. The Bank asserts that the Manager held numerous discussions with the Applicant concerning her work program and documented these conversations. The Bank contends that the Applicant was put on notice, in writing, many times that her performance was substandard and in need of significant improvement. Specifically, the Bank contends that the Applicant was given adequate warnings about the risk of non-confirmation, her lack of responsiveness, and the poor quality of her work in her weekly one-on-one meetings and by email.

88. The Bank contends that a staff member does not own a specific work portfolio. According to the Bank, absent discrimination or an abuse of discretion, the assignment of tasks to a staff member is a discretionary function of management and staff members do not have the right to choose, or veto, their work programs. The Bank asserts that the Tribunal has consistently held that it is within the Bank's discretion to decide upon a staff member's work program.

89. With respect to the Applicant's contention that the Manager did not properly adjust the deadlines of the Applicant's deliverables to fully account for the Applicant's medical leave, the Bank's contends that (i) the projects the Applicant was assigned to were given to the Applicant months before the projected deadlines and before the Applicant's carpal tunnel surgery was known to the Manager and (ii) the Applicant never informed the Manager of her health issues and never raised the fact that the Applicant may not be able to meet the deadlines as a result of her health issues. The Bank asserts:

It is expected that a professional, especially a staff member hired at grade level F, would be able to effectively communicate with her peers, clients and managers. If [the] Applicant needed more time, she could have reached out to the Manager to express her concerns about meeting the looming deadline. The Manager then could have either re-assigned the project [...] or negotiate[d] a new deadline with the client.

90. The Bank contends that, once the Manager was informed of the Applicant's health condition, the Manager made all reasonable accommodations. The Bank submits that, because of the Applicant's failure to communicate with the Manager, the Manager only became aware of the

Applicant's condition after the surgery by way of an email from the Applicant to another staff member, which the Manager was only copied on. Thereafter, the Bank avers that the Manager showed concern, informed the Applicant about the process to request sick leave, and took the necessary steps to ensure that the Applicant received all reasonable accommodations, including ergonomic equipment and support, to help the Applicant perform her job functions.

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

*The Bank treated the Applicant unfairly in multiple respects during the probationary period*

91. The Applicant contends that the Manager treated the Applicant unfairly in multiple respects during the probationary period, particularly regarding her role and her relocation to Washington, D.C.

92. First, the Applicant asserts that the Manager significantly misled her into taking the role for which she was being recruited. The Applicant asserts that the Manager sold her on leaving her senior-level private sector position and joining the Bank based in substantial part on the availability of the FCV Careers portfolio only to pull the Applicant out of that role mere weeks after introducing her to the FCV Careers team. Further, the Applicant avers that it is readily apparent in hindsight that the Manager never actually intended for the functional title of "Global Talent Development Lead" that she agreed the Applicant could use to have any real substance to it because the Manager assigned the FCV Careers portfolio to another staff member only weeks after the Applicant joined the Bank and never gave the Applicant an opportunity to lead anything.

93. Second, the Applicant contends that the Manager put her in a no-win situation by forcing her to make a trans-Atlantic relocation nearly halfway through her probationary period in order to have any chance at confirmation while simultaneously suggesting that uprooting her life in this manner may be futile. The Applicant asserts that she tried to make the best of a difficult situation by relocating to Washington, D.C., signing a one-year apartment lease, and initiating mediation with the Manager only to be informed less than four months after the relocation that she would not be confirmed, leaving her "jobless and visa-less" in the country to which she had just relocated.

The Applicant asserts that the aforementioned incidents show that she was treated unfairly and denied a fair opportunity to succeed.

***The Bank's Response***

*The Bank treated the Applicant fairly during the probationary period*

94. The Bank contends that the Applicant was treated fairly during the probationary period. With respect to the Applicant's contention that the Manager significantly misled the Applicant into joining the Bank as an HR Specialist due to the availability of the FCV Careers portfolio, the Bank asserts:

From the very beginning, [the] Applicant was not only informed of her work program, but it was also made very clear that [the] Applicant's role included many more tasks other than the support of the work on careers in FCV countries. The support of the work on careers in FCV countries was never the main task assigned to [the] Applicant. [The] Applicant's argument that she was removed from the FCV portfolio, the alleged "major component" of her work program, is not credible and is contradicted by the record. The FCV portfolio was never part of [the] Applicant's [TOR]. Although originally supportive of [the] Applicant's desire to work on the FCV portfolio, the Manager reassigned the portfolio to another staff member, as was within her discretion. This portfolio required extensive knowledge of the Bank's policies, procedures and [...] Bank operations. As an external hire, with no prior Bank experience, [the] Applicant simply was not ready for this task. Rather than keep [the] Applicant on an assignment where it was clear she would be at a disadvantage, the Manager provided [the] Applicant with assignments that were more in line with her [TOR] i.e., what she was hired to do.

95. The Bank contends that the record demonstrates that the Applicant's decision to relocate was purely the Applicant's decision. The Bank asserts that the Manager was not even aware of the Applicant's relocation until after the Applicant had arrived in Washington, D.C. Further, the Bank asserts that the Applicant was aware of an approval requirement for her relocation and that, despite knowing that approval was needed and that she did not have the necessary approval, the Applicant decided of her own volition to relocate to Washington, D.C., without informing her Manager. The Bank asserts that the Applicant has failed to produce the required approval because that approval was never sought or obtained.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

## THE BANK'S RULES AND THE TRIBUNAL'S JURISPRUDENCE RELATING TO NON-CONFIRMATION

96. Principle 4.1(c) of the Principles of Staff Employment states:

An appointment for more than a year shall normally commence with a probationary period to allow The World Bank or the IFC [International Finance Corporation] and the staff member to assess their suitability to each other.

97. Staff Rule 4.02 sets out the provisions governing the probationary period. According to paragraph 1.01 of that Rule, “[t]he purpose of the probationary period is to assess the suitability of the World Bank Group Institution and the Staff to each other.”

98. Staff Rule 4.02, paragraph 3.02, provides:

During the probationary period, the Manager or Designated Supervisor:

- a. as soon as practicable, meets with the Staff to establish the Staff's work program; and
- b. provides the Staff feedback on the Staff's suitability and progress based on achievement of the work program, technical qualifications and professional behaviors.

99. Staff Rule 4.02, paragraph 4.02, sets out the requirements for non-confirmation of an appointment at the end of the probationary period, as follows:

At any point during or at the end of the probationary period, the Staff's Manager may recommend to end a Staff's employment by non-confirmation of appointment. The written recommendation to not confirm is supported by prior written notice to the Staff concerning deficiencies in their performance, technical qualifications, or professional behaviors; reasonable guidance and opportunity to demonstrate suitability for the position, and warning that failure to do so may result in termination. The Staff is provided an opportunity to comment on the recommendation. The recommendation, together with any comments of the Staff, are submitted to the Manager's Manager (at Level GI or above) for decision, which

is made in consultation with the Manager, Human Resources Business Partner/Manager and with notice to the Staff's Vice President. Termination procedures are specified in Paragraphs 7.01 through 7.05 of Staff Rule 7.01 "Ending Employment".

100. In *Lusakueno-Kisongele*, Decision No. 327 [2004], para. 42, the Tribunal stated that "the essential purpose of the probationary period is to evaluate the staff member's performance and to decide whether he or she does or does not qualify for permanent employment."

101. In *McNeill*, Decision No. 157 [1997], para. 30, the Tribunal stated:

The scope and extent of the review by the Tribunal of the Bank's decisions concerning confirmation or non-confirmation of appointment during or at the end of the probationary period rest on the basic idea that the purpose of probation is "the determination whether the employee concerned satisfies the conditions required for confirmation" (*Buranavanichkit*, Decision No. 7 [1982], para. 26), that is to say, in the language of Staff Rule 4.02, the determination whether the probationer is "suitable for continued employment with the Bank Group." The probationer has no right to tenure; pending confirmation his situation is essentially provisional and his future with the Bank depends on his suitability for permanent employment. The assessment of his suitability is a matter of managerial discretion, as the Tribunal has ruled in *Salle* (Decision No. 10 [1982]):

It is of the essence of probation that the organization be vested with the power both to define its own needs, requirements and interests, and to decide whether, judging by the staff member's performance during the probationary period, he does or does not qualify for permanent Bank employment. These determinations necessarily lie within the responsibility and discretion of the Respondent [...]. (para. 27).

It is, therefore, for the Bank to establish the standards which the probationer should satisfy. The Tribunal has determined that these standards

may refer not only to the technical competence of the probationer but also to his or her character, personality and conduct generally in so far as they bear on ability to work harmoniously and to good effect with supervisors and other staff members. The merits of the Bank's decision in this regard will not be reviewed by this Tribunal except for the purposes of satisfying itself that there has been no

abuse of discretion [...]. (*Buranavanichkit*, Decision No. 7, [1982], para. 26).

It is also for the Bank to determine, at the end of the probation or at any time during the probation, whether the probationer has proven either suitable or unsuitable for Bank employment and to terminate his employment whenever it concludes that he is unsuitable. As the Tribunal has repeatedly stated, it will not review the exercise by the Respondent of its managerial discretion unless the decision constitutes an abuse of discretion, is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

102. In *McNeill*, para. 34, the Tribunal also stated:

Regarding probation, the problem is not so much whether the probationer has performed satisfactorily as whether he has proven his suitability to the specific requirements of the Bank regarding the work which he would have to perform if he were to be confirmed.

#### WHETHER THE BANK REASONABLY ESTABLISHED A WORK PROGRAM FOR THE APPLICANT

103. The Applicant contends that the Manager failed to establish a clear work program for the Applicant from the outset of her employment. According to the Applicant, she began the position with the shared understanding with the Manager that one of the Applicant's primary functions and projects would be the FCV Careers portfolio. Conversely, the Bank contends that the Applicant was provided with a clear and defined work program which did not include the primary functions and projects in the FCV Careers portfolio.

104. The record shows that the TOR, or job description, as set out in the vacancy notice that the Applicant used to apply for the HR Specialist position contained a list of tasks relating to the role, including the following: (i) contributing to the design and implementation of innovative and evidence-based career development solutions and resources, (ii) leading the configuration and rollout of the Talent Management platform, (iii) monitoring and assessing the effectiveness of implemented HR programs, and (iv) preparing and delivering high-quality communication materials for staff and managers across all levels of the Bank.

105. The Tribunal notes that the TOR did not mention or make any reference to the FCV Careers portfolio. The Tribunal further notes that the TOR was included in the vacancy notice the Applicant used to apply to the HR Specialist position in September 2020, and that the Manager shared the TOR with the Applicant on at least two occasions during the probationary period.

106. On 5 April 2021, during the Applicant's first full week at the Bank, the HR Specialist wrote to the Manager asking how much to include the Applicant on FCV-related tasks. In response, the Manager wrote that she was reassessing the portfolio, stating in part:

I intend to take a strategic approach to FCV Careers going forward. Given [that the Applicant] is new to the organization and would not be able to actively contribute on this agenda for a few more weeks, I will review all the [tasks] and decide how we can address them in [a] holistic manner.

107. The record shows that the Manager met with the Applicant on 13 April 2021 to discuss the Applicant's work program for the current and following fiscal years. On the same day, the Manager sent a follow-up email to the Applicant enumerating six main tasks comprising the Applicant's "core responsibilities"—all with specific deadlines in "FY21 Q4," "FY22," and "FY22 and beyond." The six tasks were to develop (i) a career development toolkit for managers; (ii) a career development toolkit for locally appointed CO staff; (iii) a BRD in partnership with her colleague, Mr. A; (iv) a soft-skills training curriculum for FCV staff; (v) operations experience maps; and (vi) a capability matrix framework.

108. The Manager stated that there would be forthcoming ad hoc projects and opportunities to collaborate across the unit, department, and HR, but she encouraged the Applicant to "[f]irst start by understanding your role, the work in the unit, etc." The Manager attached the HR Specialist TOR to the email.

109. The Manager's email stated specifically that for FY21 Q4 the Applicant's three core responsibilities were to develop a (i) career development toolkit for managers, (ii) career

development toolkit for locally appointed CO staff, and (iii) BRD. The Manager also suggested that the Applicant update the ePerformance system with these FY21 Q4 objectives.

110. The Tribunal observes that on 10 May 2021 the Manager wrote to several colleagues, including the Applicant, informing them that she was assigning the entire FCV Careers portfolio to Mr. A. The email further stated, “Many thanks to [the HR Specialist] for her excellent contributions on this work in the last few months and [the Applicant] for coming in to support during her first few weeks at the Bank.”

111. The Tribunal observes that the Bank cited the following reasoning for the Manager’s decision to assign the FCV Careers portfolio to another colleague:

The FCV portfolio was never part of [the] Applicant’s [TOR]. Although originally supportive of [the] Applicant’s desire to work on the FCV portfolio, the Manager reassigned the portfolio to another staff member, as was within her discretion. This portfolio required extensive knowledge of the Bank’s policies, procedures and [...] Bank operations. As an external hire, with no prior Bank experience, [the] Applicant simply was not ready for this task. Rather than keep [the] Applicant on an assignment where it was clear she would be at a disadvantage, the Manager provided [the] Applicant with assignments that were more in line with her [TOR] i.e., what she was hired to do.

112. With respect to the Manager’s removal of the FCV-related core responsibility from the Applicant’s work program, the Tribunal considers that the FCV Careers portfolio was not one of the tasks referenced in the HR Specialist TOR. Given this fact, as well as the Manager’s reassessment of the FCV Careers portfolio, reasoning for the reassignment, and provision of several other core responsibilities in the Applicant’s work program that were in alignment with the HR Specialist TOR, the Tribunal finds that the Manager exercised reasonable managerial discretion in assigning the FCV Careers portfolio to another colleague and not to the Applicant.

113. The record shows that the Manager met with the Applicant on 29 June 2021 to discuss her revised work program and the Manager’s expectations for the upcoming fiscal year. The next day, on 30 June 2021, the Manager sent an email memorializing the discussion, stating that she wanted



to “provide further clarity on our discussion on structure and focus for FY22.” The email contained a revised FY22 work program for the Applicant with seven core responsibilities, including five with deadlines in FY22 and two with deadlines in “FY22 and beyond.” The Manager added, “Reattaching the job description for the HR Specialist.”

114. The record further shows that on 3 August 2021, following a performance assessment meeting earlier that day, the Manager emailed the Applicant citing various areas for improvement and laying out the same FY22 work program as in the Manager’s 30 June 2021 email. In addition, the Manager wrote that, in terms of next steps, she would like to see the Applicant “[a]ctively participate in team meetings and other settings and share concrete ideas in a collaborative manner,” “[c]ontinue to learn and adapt [her] experience to the organization as appropriate,” and “[i]mprove [her] responsiveness and communication style to emails as this is a key part of the organization’s values and culture.”

115. The record shows that the Manager finalized the Applicant’s FY22 Staff Annual Review objectives on 28 September 2021. Under the “Individual Business Objectives” section, the same five core responsibilities with the same deadlines as in the Manager’s 30 June 2021 email were added except the deadline for the WFA deliverables had changed from FY22 Q1 to “Q2 – Q4.” The record indicates that the deliverable date was changed because the Applicant submitted an untimely and substandard draft of the WFA career guide, which prompted the Manager to ask the client for an extension.

116. The Tribunal observes that, at all times during the probationary period, the Manager ensured that the Applicant was apprised of her work program and corresponding delivery deadlines. The record demonstrates that the Manager communicated the work program and deadlines to the Applicant orally in meetings, in various email correspondence, and through objective setting in the Bank’s ePerformance system. The Tribunal notes that, before and after the Manager’s removal of the FCV-related core responsibility from the Applicant’s work program, the Applicant had no fewer than three core deliverables that she was working on at any given time and

no fewer than five core deliverables in her work program at any given time during the probationary period.

117. Consequently, based on the record, the Tribunal is satisfied that the Manager established a well-defined work program for the Applicant from the outset of the Applicant's employment and throughout the probationary period.

WHETHER THE BANK'S NON-CONFIRMATION DECISION HAD A REASONABLE AND OBSERVABLE  
BASIS

118. The Applicant contends that her performance was not evaluated fairly because the Manager failed to establish a well-defined work program and removed one of her core responsibilities—the FCV Careers portfolio—only to replace it with ad hoc projects. The Applicant further contends that the ad hoc projects did not provide any basis for the ongoing assessments of her “suitability and progress based on achievement of the work program” because there was no set of clearly defined benchmarks against which her performance could be measured.

119. The Bank contends that the non-confirmation decision had a reasonable and observable basis and that it followed proper procedure. The Bank further contends that it did not confirm the Applicant's appointment because of issues related to “(i) accountability and reliability in delivering assigned tasks on time; [(ii)] inability to deliver quality products; and (iii) lack of communication and updates that impact delivery of work.”

120. The record shows that on 13 April 2021, during the Applicant's second full week at the Bank, the Manager wrote to the Applicant setting out six core responsibilities with corresponding deliverables. Of the six core responsibilities, the following three had deadlines in FY21 Q4: (i) the career development toolkit for managers, (ii) the career development toolkit for locally appointed CO staff, and (iii) the BRD in partnership with her colleague, Mr. A. The Manager also suggested in her email that the Applicant update the aforementioned “Q4 objectives” in the ePerformance system.

121. The record further shows that, on 10 May 2021, the Manager assigned the Applicant's FCV-related deliverable to another colleague, leaving the Applicant with five core responsibilities.

122. On 30 June 2021, the Manager wrote to the Applicant memorializing their discussion the previous day regarding the Applicant's work program and the Manager's expectations for the coming year. The Manager laid out a revised work program for the Applicant with seven core responsibilities—five with deliverables in FY22 and two with deliverables in “FY22 and beyond.”

123. The record reflects that, on 3 August 2021, the Manager held a performance discussion with the Applicant to deliver her assessment of the Applicant's first four months at the Bank. That same day, the Manager followed up with an email to the Applicant providing the following feedback:

My early observations include: (i) your lack of responsiveness to mine and colleagues' emails, (ii) your lack of consistent and active engagement/participation in team meetings and other settings, (iii) a tendency to having an individualistic approach to work in a teams based culture, and (iv) demonstrating flexibility with regard to understanding/embracing the organizational culture of the World Bank.

124. The record demonstrates that, over the course of the next few months, the Applicant (i) was unresponsive to her Manager for long periods of time, (ii) relocated to Washington, D.C., without informing her Manager or obtaining proper authorization, (iii) took unauthorized medical leave, (iv) submitted several retroactive leave requests, (v) delivered untimely work product that lacked quality, and (vi) repeatedly failed to inform her Manager of issues, medical or otherwise, that could adversely affect the delivery of her work.

125. Examples of these issues include the following: (i) the Applicant took eight days to acknowledge the Manager's aforementioned 3 August 2021 email even though the Manager followed up with emails on 6 and 10 August 2021 asking the Applicant to acknowledge receipt of the 3 August 2021 email; (ii) the Applicant took unauthorized sick leave following her 12 August 2021 carpal tunnel surgery, but only sought to enter a sick leave request eleven days later on 23 August 2021; (iii) on 8 September 2021, the Applicant relocated from London to Washington,

D.C., without informing or obtaining approval from her Manager and retroactively requested administrative leave for the relocation on 16 September 2021 after the Manager requested her to do so; and (iv) on 21 September and 20 October 2021, the Applicant submitted drafts of the WFA career guide that did not meet the Manager's or client's expectations despite receiving extensive guidance from the Manager and feedback from the client on their expectations.

126. The Tribunal observes that the Manager raised these issues with the Applicant in numerous emails from August to December 2021. For example, on 3 August 2021, the Manager raised several areas in which the Applicant needed to improve, including responsiveness to colleagues and the Manager. On 8 September 2021, the Manager sent a welfare check email to the Applicant, who had missed several meetings that week, and the Manager noted her observations regarding the Applicant's "lack of response and infrequent communication." On 22 and 30 September and 20 October 2021, the Manager wrote to the Applicant informing her that the WFA career guide did not meet the Manager's or client's expectations. The record demonstrates that the Applicant's technical and behavioral performance did not improve despite the Manager's attempts to provide instruction and guidance.

127. On 2 November 2021, the Manager wrote to the Applicant informing her that she would recommend non-confirmation of her appointment. The Manager stated in part:

Further to our August 3 meeting, where I shared my observation on your performance and behaviors (responsiveness, active participation and qualitative delivery) which needed sustained improvement to enable an assessment of your suitability, technical qualifications and professional behaviors for confirmation, there has been very little change.

Over the last 7 months, I have provided you with consistent feedback, identified gaps and shared the implications should there be no change. While there has been some improvement in your responsiveness and participation in team meetings as referenced in feedback gathered where colleagues "appreciated your thoughts and perspectives shared in team meetings and brainstorming sessions", despite my ongoing feedback, significant gaps remain in your performance. These are, namely, your inability to consistently respond to your agreed work program and deadlines; and the quality of your delivery during this probationary period, which has been seriously lacking, and not fully satisfactory.

128. The email emphasized that the Manager had not seen consistent improvement in the Applicant's three main problem areas: (i) lack of accountability and reliability in delivering assigned tasks on time, (ii) inability to deliver quality products, and (iii) lack of communication around updates that may affect the delivery of work.

129. The record further demonstrates that in late November 2021 the Manager assigned the WFA deliverable, which included a career guide and experience maps, to another colleague. She did so because the Applicant's failure to deliver quality drafts on time over the previous months resulted in the Manager having to ask the internal client, WFA, for three extensions.

130. The Applicant contends that she was not assessed against a work program or her individual business objectives. The Tribunal recalls Staff Rule 4.02, paragraph 3.02, which states that the evaluation of a staff member during the probationary period is not limited to "achievement of the work program" but also includes "technical qualifications and professional behaviors." In this case, the Tribunal holds that the Bank reasonably considered the Applicant's performance to be deficient with respect to timeliness, work product quality, and communication around updates that may affect delivery of work.

131. The Tribunal stated in *Zwaga*, Decision No. 225 [2000], para. 32, that it

will not substitute its own judgment for that of the Respondent on the staff member's suitability for employment. In reviewing the Respondent's decision not to confirm the [a]pplicant's appointment, the Tribunal further notes that the concept of unsatisfactory performance as applied in the case of probation is broader than that of a confirmed staff member.

132. The Tribunal concludes that there was a reasonable basis for the adverse assessment of the Applicant's performance. Accordingly, the Tribunal is satisfied that the decision not to confirm the Applicant's appointment was not an abuse of discretion.

## WHETHER THE APPLICANT HAD A FAIR OPPORTUNITY TO PROVE HER ABILITIES

133. The Tribunal will next examine whether the Applicant was afforded a fair opportunity to prove her abilities.

134. In *McNeill* [1997], para. 44, the Tribunal recognized that the Bank has a

duty to meet what the Tribunal has called “the appropriate standards of justice” (*Buranavanichkit*, Decision No. 7 [1982], para. 30). While the probationer has no right to be confirmed, he has the right to be given fair opportunity to prove his ability, and the Tribunal will review whether this right has been respected and whether the legal requirements in this regard have been met.

135. The Applicant contends that the Manager did not afford her a fair opportunity to prove her abilities because the Manager (i) failed to establish a clear work program, (ii) confirmed during their 3 August 2021 meeting that the Applicant “in essence” could not integrate into the team while working remotely and would need to relocate to Washington, D.C., to have a chance at being confirmed, and (iii) did not reasonably account for the Applicant’s medical leave and relocation travel when evaluating the Applicant’s performance.

136. The Bank contends that the Applicant was given a fair opportunity to prove her abilities but that she failed to do so.

Work program

137. As discussed above (see paragraphs 103–117), the Tribunal is satisfied that the Manager established a well-defined work program for the Applicant from the outset of the Applicant’s employment and throughout the probationary period.

### Relocation

138. The Applicant contends that, during their 3 August 2021 meeting, the Manager told her “in essence” that she could not integrate into the team while working remotely and would need to relocate to Washington, D.C., to have a chance at being confirmed. To the Applicant, this purported statement by the Manager confirmed that she had “no real opportunity to succeed” during the first five months of her probationary period and was unfair because it effectively penalized the Applicant for beginning her employment remotely in accordance with the Bank’s own policies.

139. With respect to the Applicant’s possible relocation, the record shows that the Manager stated the following in her 3 August 2021 email: “In response to your question on relocating to DC now versus later, as mentioned, this is your decision to make taking into consideration today’s conversation and your commitment to addressing the areas that need improvement [...].”

140. The Tribunal finds nothing in the Manager’s statement that confirms that the Applicant had no real opportunity to succeed while working remotely nor does the statement have the slightest appearance of penalizing the Applicant or forcing the Applicant to relocate to Washington, D.C. The Tribunal finds that the Manager’s statement explicitly makes clear to the Applicant that it was her decision to relocate to Washington, D.C.

### Reasonable accommodations for the Applicant’s medical leave and relocation travel

141. The Applicant contends that the Manager did not reasonably account for the Applicant’s medical leave and relocation travel when evaluating the Applicant’s performance.

142. The Bank contends that the Manager made reasonable accommodations for the Applicant’s medical leave and fairly evaluated her performance. With respect to the Applicant’s relocation, the Bank contends that the Applicant relocated without the required approval and that the Manager

was not aware of the Applicant's relocation until after the Applicant had arrived in Washington, D.C.

143. With respect to the Applicant's medical issues, the record shows that the Manager showed concern and offered support to the Applicant in various ways. On 19 August 2021, seven days after the Applicant's carpal tunnel surgery, the Manager wrote to the Applicant to check if she was recovering well and stated, "[P]lease take the appropriate time off work using sick leave to recuperate properly." In that same email, the Manager asked for status updates on the operations guide and WFA career guide the Applicant was working on and stated, "Let me know if you are not able to meet [these] deadlines."

144. The record shows that, on 23 August 2021, the Manager followed up on her 19 August 2021 email to the Applicant, stating, "If you are unable to meet the timing specified in my email, let me know when you will have the drafts ready." Thereafter, during an email exchange that afternoon, the Applicant informed the Manager by email that she had been "signed off" by her doctor to take sick leave and would submit the deliverables due that week during the following week. In response, the Manager asked the Applicant to enter her sick leave in the LARS system.

145. Later that day, the Manager was copied on an email from the Applicant to the Leave Coordinator thanking her for helping submit her sick leave request into the LARS system. The Manager replied, stating, "Just reading the email trail below, sorry to hear about your hand and the subsequent surgery. Do ensure you take the required time as specified by your surgeon and physiotherapist to recover."

146. The Tribunal observes that on 8 September 2021, after the Applicant had missed her weekly one-on-one meeting with the Manager following her relocation to Washington, D.C., (which was unknown to the Manager), the Manager emailed the Applicant expressing concern for her well-being and offering support. The email, titled "Welfare check-in – response requested," stated in part:



I hope everything is okay with you and [you] are recovering well from your surgery. Our weekly 1–1 was scheduled for today (though I didn't get a confirmation of your attendance) at 9:15am–9:45am, and I waited on webex from 9:15am–9:30am. I am quite worried about your well-being, given I have observed your lack of response and infrequent communication. I hope all is truly okay with you. Please feel free to call or email me at any time as my role as your manager is to ensure that you are doing well and also well placed to contribute and deliver to the team's agenda.

As previously stated in my emails, I am committed to supporting you in your integration into the team, HR function and the WBG.

If I don't hear from you today, I will need to reach out to your next of kin.

147. The record shows that on 17 October 2021 the Manager wrote to the Applicant asking for a status update on the WFA career guide and experience maps that were due three days earlier. The Manager asked, "Is there a reason why you've not shared it – you had two weeks to work on the revisions?" The next day, in response, the Applicant stated that she would submit the deliverables later that day and explained that the delay was due to her symptoms flaring up and a delay in her receiving an ergonomic keyboard. In response, the Manager stated:

Sorry to hear that your hand is still not fully recovered. As I have previously stated, take sick leave to address any outstanding medical issues. You have continued the pattern of behavior of not flagging issues that impact work delivery after agreed deadlines. As soon as you realize[d] you couldn't meet the deadline, you should have written to let me know.

This is not an acceptable behavior that should continue as [it] impacts client delivery and perception.

148. The record shows that in response, on the morning of 19 October 2021, the Applicant wrote to the Manager, stating in part:

While this is not as black and white as a return from e.g. holiday where one simply switches on to full capacity, I don't necessarily need to be on sick leave. Rather, as suggested by both London and DC [orthopedic] teams, I ought to be taking a phased/modified approach to my return to hand/wrist activity given that the internal healing process of an open carpal tunnel release takes longer than the endoscopic.

I'd intended to raise this as part of a return-to-work interview immediately following my sick leave but when there wasn't one, I figured it's probably not part of the [B]ank's process (and appreciate every organization operates differently although I've historically conducted these with my direct reports upon their return from extended sick/family leave). In addition, I've been super cognizant of the delayed deliverables since the onset/my surgery, which clearly you too have been keen to progress.

I've had to rest my hand a bit as it's been a little inflamed and quite hot. I'm trying earnestly to finish these pending deliverables off and submit to you soonest.

149. The Tribunal observes that the Manager responded to the Applicant that same morning, stating in part:

If your [orthopedic] team recommends modified work – they should provide medical documentation and we should discuss what this means and how we can make it work to ensure you are able to recover fully and quickly. You need to provide timely and clear information about what support you require and what is going on with you to ensure I can support you and manage the expectation/delivery from the client perspective.

As part of your onboarding, I have consistently and [continuously] requested [that] you familiarize yourself with the [S]taff [R]ules to understand the process and practices for working at the World Bank. In addition to this I have been available to meet with you to discuss ways to support you. I am not sure what you mean by a return to work interview – when you don't show up to 1–1 meetings or formally inform me of your surgery until I reach out and insist you take additional time off to recuperate in August.

[...]

At our 1–1 today, let's discuss how I can support you going forward.

150. The record shows that, on the afternoon of 19 October 2021, the Manager wrote to colleagues in ITSCS and the ergonomics team at the Bank requesting urgent assistance for ergonomic support for the Applicant. That same day, an ITSCS colleague emailed the Applicant various ergonomic-related links and resources. The Tribunal observes that the next day the Bank's Lead Ergonomist in HSD wrote to the Applicant connecting her with the Bank's ergonomic consultant for HQ and providing other ergonomic-related resources.

151. The Tribunal observes that the Manager wrote to the Applicant on 30 November 2021 expressing concern for the Applicant's well-being given the volume of sick leave requests in the previous two weeks. The Manager informed the Applicant that she would send a separate email connecting the Applicant to relevant HSD colleagues for any additional support the Applicant may need.

152. The Tribunal notes that, once the Manager became aware of the Applicant's surgery and health issues, the Manager frequently checked on the Applicant's well-being, offered her support, requested ergonomic support on the Applicant's behalf, and connected the Applicant with colleagues in HSD and the Bank's ergonomics team.

153. The Tribunal finds it reasonable that the Manager requested and expected that the Applicant, as an experienced professional, would keep the Manager apprised of any issues, including health-related issues, that may adversely affect delivery of the Applicant's work program. In order to plan and carry out their work programs, it is reasonable for managers to expect that staff will inform them of health-related issues that may affect delivery without necessarily providing details of the particular health issue. The Tribunal also finds it reasonable for the Manager to have mentioned, in her recommendation for non-confirmation of appointment, the Applicant's lack of communication in providing updates on issues that may affect the delivery of her work.

154. The Tribunal recalls several instances in the record where the Applicant missed deadlines or was unresponsive to emails, yet provided an explanation or response only after follow-up from the Manager. Notably, this lack of communication occurred despite the Manager holding weekly one-on-one meetings with the Applicant and repeatedly telling the Applicant in email correspondence to keep her, the Manager, apprised of any issues that may affect delivery.

155. Finally, the Tribunal notes that there is no obligation in the Staff Rules that requires a manager to conduct a return-to-work interview with a staff member returning from sick leave. Despite the absence of such a rule, the Tribunal considers that the Applicant knew or should have

known that she could contact the Manager at any time, including during her weekly one-on-one meetings, to inform the Manager about health issues that may affect the delivery of her work.

156. Based on the foregoing, the Tribunal finds that the Manager made all reasonable accommodations in respect of the Applicant's medical leave and health condition. Further, the Tribunal finds that the Manager reasonably accounted for these issues in evaluating the Applicant's performance.

157. With respect to the Applicant's relocation travel, the record shows that the HR Business Partner wrote to the Applicant on 26 July 2021, with the Manager in copy, informing the Applicant that the Bank was still in Tier 2 status and that the default working arrangement was HBW. The HR Business Partner further informed the Applicant, "Because we have not moved to Tier 1 yet and you want to relocate to DC in August, the VP will have to approve the relocation." The record shows that the Manager replied to the HR Business Partner's email on 2 August 2021, with the Applicant in copy, stating that she would discuss relocation with the Applicant and prepare the necessary note for the VP's approval.

158. The next day, on 3 August 2021, the Manager wrote to the Applicant following a performance discussion, stating that relocation was the Applicant's "decision to make." The record shows that, on 25 August 2021, WBG Senior Leadership announced on the Bank's intranet that Tier 2 status, or default HBW, would be extended to 3 January 2022 due to the COVID-19 Delta variant.

159. The Tribunal observes that, on 8 September 2021, the Applicant relocated to Washington, D.C., without informing her Manager or obtaining the VP's approval. On that same day, the Applicant missed her one-on-one meeting with the Manager without giving the Manager prior notice that she would miss the meeting. The record shows that the Manager wrote to the Applicant that same day, on 8 September 2021, checking on her well-being. Six days later, on 14 September 2021, the Manager stated that she had just learned that the Applicant had relocated to Washington, D.C.

160. The record shows that the Manager emailed the Applicant on 16 September 2021 reminding her that staff should inform their managers of their intent to take any form of leave, including annual, sick, and administrative, and that approval should be sought and documented in LARS before any absence. The Manager instructed the Applicant to retroactively request administrative leave for the unauthorized days that she took off due to her relocation. The Manager also attached the Staff Rules on relocation and resettlement. The record shows that later that day the Applicant submitted a retroactive leave request for five days of administrative leave, for 3 to 10 September 2021 (excluding a Bank holiday on 6 September 2021), for “[d]uty station relocation/first week’s settlement.”

161. With respect to the Applicant’s unauthorized relocation, the Tribunal observes that the Manager informed the Applicant of the Bank’s rules regarding relocation, explained to the Applicant her relocation benefit of up to five days for relocation, and approved the Applicant’s retroactive leave request due to her relocation. The Tribunal concludes that there is nothing in the record to suggest that the Applicant was treated unfairly with respect to her relocation to Washington, D.C.

162. The Tribunal notes that there is no evidence in the record of the Manager taking any punitive action against the Applicant for her unauthorized relocation to Washington, D.C. In these circumstances, the Tribunal finds that the Manager made reasonable accommodations in respect of the Applicant’s unauthorized relocation to Washington, D.C., and that the Manager reasonably accounted for this issue in evaluating the Applicant’s performance.

163. Based on the foregoing considerations, the Tribunal concludes that the Applicant was given a fair opportunity to prove her abilities.

#### WHETHER THE APPLICANT RECEIVED ADEQUATE SUPERVISION AND GUIDANCE

164. The Tribunal will next examine the adequacy of supervision and guidance provided to the Applicant during the probationary period.

165. In *Zwaga* [2000], para. 38, the Tribunal held

that one of the basic rights of an employee on probation is the right to receive adequate guidance and training (*Rossini*, Decision No. 31 [1987], para. 25) and that it is its duty to make sure that the Bank's obligation to provide a staff member on probation with adequate supervision and guidance has been complied with in a reasonable manner. (*Salle*, Decision No. 10 [1982], para. 32.)

166. The Applicant contends that during the probationary period, including before and after her relocation, she did not receive "meaningful supervision and guidance" from her Manager in integrating herself into HRDCM's work and the Bank. The Bank submits that the Manager provided the Applicant with adequate supervision and guidance.

167. The record shows that in late March 2021, prior to the Applicant's start date, the Manager arranged for the Applicant's WBG-issued laptop to be delivered to her residence in London and requested on the Applicant's behalf that ITSCS resolve all IT-related issues "so that [the Applicant] is ready to start on Thursday, April 1." The record also demonstrates that, prior to the Applicant's start date, the Manager secured two senior HR colleagues as "peer buddies" for the Applicant and virtually introduced both colleagues to the Applicant. In the correspondence, the Manager stated that she believed the Applicant would benefit from her colleagues' insight and guidance as she settled into the Bank.

168. The Tribunal observes that, during the Applicant's first week at the Bank, the Manager provided the Applicant with informational materials to help the Applicant "[get] started on understanding the WBG HR function," inquired about the Applicant's IT and email access, and held a one-on-one meeting with the Applicant. In fact, the record indicates that the Manager conducted weekly one-on-one meetings with the Applicant throughout the probationary period to monitor her progress and provide her with guidance.

169. The Tribunal observes that, in addition to the weekly one-on-one meetings, the Manager met regularly with the Applicant to clarify expectations and provide feedback on the Applicant's performance. For example, on 13 April 2021, the Manager met with the Applicant to discuss her

role and the main tasks the Applicant was expected to work on. That same day, the Manager memorialized the conversation in an email to the Applicant detailing the Applicant's main tasks for FY21 Q4 and FY22, provided the Applicant with the TOR of the HR Specialist position, and suggested resources including that the Applicant reach out to the HR Business Partner and familiarize herself with the performance management process and career development website.

170. The record shows that the Manager and the Applicant met on other occasions to discuss her work program and performance, including on (i) 29 June 2021 to discuss the Applicant's FY22 work program and the Manager's expectations, (ii) 12 July 2021 to discuss the Applicant's first three months of employment, (iii) 3 August 2021 to discuss the Applicant's first four months at the Bank and areas for improvement, and (iv) 2 November 2021 to discuss the Manager's decision to recommend non-confirmation of the Applicant's appointment.

171. The Tribunal observes that the Manager shared information, templates, Staff Rules, links, courses, and other resources with the Applicant throughout the probationary period to assist and guide the Applicant with her work, onboarding, and integration into the team and organization. For example, on 6 May 2021, the Manager sent the Applicant various links to resources and sample documents to help the Applicant prepare an outline for the career development toolkits for managers. On 30 June 2021, the Manager emailed the Applicant the job description of the HR Specialist position. On 20 September 2021, in response to the Applicant's difficulty grasping the Bank's administrative policies, the Manager wrote to the Applicant, stating:

It is also obvious that additional onboarding is needed for you to understand the policies, processes and ways of working in the institution [given] the pattern of uninformed absences in the last few weeks and the retrospective nature they were managed, and the recent email exchange with [the HR Business Partner] on your HBW equipment. [...] A huge part of onboarding is asking questions from colleagues and leveraging all the available resources. I will ask [the Leave Coordinator] to work you through LARS, TRS [Time Recording System] and other relevant policies again and familiarize yourself with the Staff Rules.

172. Further, on 30 September 2021 and 20 October 2021, the Manager emailed the Applicant various instructions and materials to assist her in drafting the WFA career guide and experience maps including sample documents, templates, and the client’s feedback.

173. Finally, the Tribunal considers that the level of guidance necessary to be adequate must be proportionate to the relevant professional experience of the probationer and the nature of the particular position. Thus, in *McNeill* [1997], para. 47, the Tribunal observed:

A probationer aged 49, with 25 years of professional experience, a good academic background and a good knowledge of Brazil and of the Portuguese language was not expected to require the same degree of training and guidance as an inexperienced newcomer.

174. In the present case, the Applicant states that she joined the Bank “with two decades of experience in the fields of human resources and talent development” and had “substantial experience in senior HR roles.” The Applicant states that, prior to joining the Bank as a Grade Level GF HR Specialist, she served as “Interim Vice President for Talent Management at BlackRock in London.” The Tribunal finds that an experienced HR professional such as the Applicant coming into a Grade Level GF HR role should not require as much supervision and guidance as a less experienced professional in the same role. Further, the Tribunal finds no evidence in the record to show that the Applicant requested additional supervision or guidance and that the Manager failed to provide it.

175. In view of the foregoing, the Tribunal is satisfied that the Applicant was provided with adequate supervision and guidance during the probationary period.

#### WHETHER THE APPLICANT WAS ACCORDED DUE PROCESS

176. The Tribunal will next determine whether the Applicant was accorded due process during the probationary period.



177. In *Salle* [1982], para. 50, the Tribunal emphasized the importance of due process because “[t]he very discretion granted to the Respondent in reaching its decision at the end of probation makes it all the more imperative that the procedural guarantees ensuring the staff member of fair treatment be respected.”

178. In *Samuel-Thambiah*, Decision No. 133 [1993], para. 32, the Tribunal recognized the elements of due process, in the context of probation, as follows:

First, the staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached. Second, the staff member must be given adequate opportunities to defend himself.

#### Adequate warning

179. The Bank avers that the Manager provided the Applicant with adequate warning that the Applicant’s performance was substandard and in need of significant improvement, and that failure to improve may result in termination.

180. The Applicant contends that she was deprived of due process but does not explicitly allege that the Manager did not provide her with adequate warning. The Applicant contends, however, that her Manager’s warnings about her performance were unfair criticisms given the lack of a clear work program and the challenges associated with trying to integrate remotely into the HRDCM’s “teams based culture.”

181. The Tribunal recalls that, under Staff Rule 4.02, paragraph 4.02, the non-confirmation recommendation must be accompanied by

prior written notice to the Staff concerning deficiencies in their performance, technical qualifications, or professional behaviors; reasonable guidance and opportunity to demonstrate suitability for the position, and warning that failure to do so may result in termination.

182. In *Venkataraman*, Decision No. 500 [2014], para. 66, the Tribunal noted that, even where the applicant received feedback explicitly informing him of performance deficiencies, the “question, however, is whether the [a]pplicant was provided with warning that failure to demonstrate his suitability for the position may result in termination as required by the Staff Rule.” The Tribunal further explained that

not informing the [a]pplicant of the grave consequences of his failure to improve his performance may have denied him the opportunity to fully realize the seriousness of his situation and thereby increase his efforts to prove his suitability for continued employment. (*Id.*, para. 73.)

183. The record shows that, on 3 August 2021, the Manager wrote to the Applicant listing various areas for improvement including responsiveness to emails, lack of consistent engagement in team meetings and other settings, having an individualistic approach to work in a teams-based culture, and demonstrating flexibility with regard to understanding the organizational culture of the Bank. The Manager added:

We discussed the expectation of progressive adaptation to the Bank’s culture which includes the alignment with the prerequisite[s] for confirmation which are suitability, technical qualifications and professional behaviors as noted in the probationary process.

184. On 9 September 2021, the Manager wrote to the Applicant, stating:

I am extremely concerned about you and your well-being, given your lack of response to my emails – most recently from Tuesday and Wednesday this week. I am reiterating again my commitment to supporting your integrating and onboarding to this role and the team.

However, since our August 3 conversation and subsequent follow ups, there has been no improvement in your responsiveness, updates on projects or participation in the team.

Specifically, in this week:

- You did not show up to the team meeting (you declined without any explanation), nor show up to our 1–1 weekly meeting, and the team dry run session on the upcoming career seminar.

- You have also not provided any update to the various projects you are leading.

As previously mentioned in all my emails below, it is very important that all these issues (responsiveness, active participation and delivery) which are part of assessing your suitability, technical qualifications and professional behaviors are addressed for you to be confirmed or not. To date, your overall performance is seriously lacking and cannot support my confirming your probationary appointment. Non-confirmation will lead to the termination of your employment with the World Bank Group.

185. The record demonstrates that the Manager sent similar warning emails to the Applicant on 30 September and 19 October 2021. On 20 October 2021, the Manager wrote to the Applicant, stating in part:

We are less than 24 hours to the deadline agreed with the client (WFA) – after several follow up[s] via email, feedback and our discussion during our 1–1 meeting yesterday, I am yet to receive the draft experience maps and career guide.

Your continuous lack of response and inability to deliver any tasks on time is very disturbing and unprofessional.

This pattern of behavior is unacceptable and as I have consistently stated in all my emails below, it is very important that all these issues (responsiveness, active participation and delivery) which are part of assessing your suitability, technical qualifications and professional behaviors are addressed for you to be confirmed or not.

To date, your overall performance continues to be seriously lacking, not fully satisfactory and cannot support my confirming your probationary appointment.

186. The record shows that the aforementioned email warnings were attached to the Manager's 22 November 2021 email to the Director recommending non-confirmation of the Applicant's appointment.

187. Based on the record, the Tribunal concludes that the Applicant was provided with adequate warning of performance concerns as contemplated by Staff Rule 4.02, paragraph 4.02.

Adequate opportunities to defend herself

188. The Tribunal will finally consider whether the Applicant was denied any meaningful opportunity to defend herself against the bases for the non-confirmation decision.

189. The Tribunal notes that the Applicant does not allege that she was not afforded an adequate opportunity to defend herself. The Bank contends that the Applicant was afforded several opportunities to defend herself after the Manager informed her that she would be recommending non-confirmation but that the Applicant failed to do so.

190. Staff Rule 4.02, paragraph 4.02, provides:

The Staff is provided an opportunity to comment on the [non-confirmation] recommendation. The recommendation, together with any comments of the Staff, are submitted to the Manager's Manager (at Level GI or above) for decision, which is made in consultation with the Manager, Human Resources Business Partner/Manager and with notice to the Staff's Vice President. Termination procedures are specified in Paragraphs 7.01 through 7.05 of Staff Rule 7.01 "Ending Employment".

191. The Tribunal has emphasized the importance of affording staff members the opportunity to defend themselves prior to decisions being made which affect their employment. *See, e.g., FH*, Decision No. 624 [2020], para. 67; *EV (Merits)*, Decision No. 599 [2019], para. 180; *AI (No. 2)*, Decision No. 437 [2010], para. 60.

192. The Tribunal observes that, on 2 November 2021, the Manager sent an email to the Applicant informing her that she would recommend non-confirmation of her appointment to the Director. The Manager further stated, "You will be copied on any such notification and will have ten (10) calendar days to consult with [the HR Business Partner], on your options and provide comments on this recommendation."

193. On 22 November 2021, after the Manager had not received a response from the Applicant concerning their discussions regarding optional resignation, the Manager sent an email to the Director recommending non-confirmation of the Applicant's employment. The email concluded by requesting that the Applicant provide her comments on the recommendation within the next ten calendar days. The Tribunal observes that, after several extensions of the deadline by the Manager and Director following multiple extension requests by the Applicant, the Director wrote to the Applicant on 23 December 2021, stating:

Thank you for your email. The last extension was my third and final extension. Please submit your comments by COB today or I reserve the right to proceed with my consideration of [the Manager's] recommendation without your comments.

194. The Tribunal notes that there is nothing in the record to show that the Applicant submitted comments by the final deadline of COB on 23 December 2021 or anytime afterward.

195. Based on the foregoing, and noting the requirements of Staff Rule 4.02, paragraph 4.02, the Tribunal finds that the Applicant was given a meaningful opportunity to defend herself against the bases for non-confirmation.

196. The Tribunal concludes that the Applicant was accorded due process during the probationary period.

## DECISION

The Application is dismissed.

/S/Mahnoush H. Arsanjani  
Mahnoush H. Arsanjani  
President

/S/ Zakir Hafez  
Zakir Hafez  
Executive Secretary

At Washington, D.C., 12 May 2023