



World Bank Administrative Tribunal

2023

Decision No. 694

**HC,
Applicant**

v.

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

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

**HC,
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 3 January 2023. 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 30 October 2023.
3. The Applicant challenges the decision not to renew her term appointment.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in February 2019 as an Extended Term Consultant in Washington, D.C. Effective 28 October 2019, the Applicant was appointed to a Term appointment for a three-year period as an International Affairs Officer at Grade Level GF in the Bank's New York Office. According to the Bank, the New York Office is a corporate office under the responsibility of the External and Corporate Relations Vice Presidency (ECR) and it "manages the various political and intergovernmental relationships between the WBG [World Bank Group] and the United Nations system at large [...] on a wide range of development issues and initiatives."
5. The Applicant's Letter of Appointment (LOA), dated 24 October 2019, stated:

Your appointment will terminate at the end of this 3 years 0 months period unless it is renewed or a new appointment is made. The World Bank Group has no

obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if the interests of the World Bank Group require it and it is agreed in writing. Your appointment is subject to a probationary period of one year, which may be extended for up to one additional year, subject to the length of your appointment.

6. The Applicant's manager from 1 June 2020 until 31 December 2022 was the Special Representative to the United Nations in ECR and Director, Multilateral and International Affairs Offices in ECR (Manager). According to the Manager, she "was not based in New York per management request given [her] global portfolio and traveled to New York per business needs."

7. In July 2021, the Applicant had an incident with a colleague (Colleague).

8. According to the Applicant, during a phone conversation on 13 July 2021, "in the context of discussing who should send out a particular meeting invite, [the Applicant] offered a different perspective to what [the Colleague] proposed." According to the Applicant, "[i]n response, [the Colleague] said 'why do you not listen to me? Because I am a man and from Afghanistan.'" According to the Applicant, "[the Colleague] did not provide any explanation for this allegation or why he allegedly felt this way."

9. According to the Applicant, "[s]he responded by conveying to [the Colleague] that she found his comment very offensive and that she had no problem with his identity." Further, according to the Applicant, "[s]he then ended the conversation, but followed with a text to the same effect, to which [the Colleague] did not reply."

10. On 15 July 2021, the Applicant emailed the Human Resources Business Partner (HRBP) seeking guidance on a draft email to the Colleague.

11. On 15 July 2021, the Applicant emailed the Colleague and stated:

Dear [Colleague],

Your comment during our discussion on Tuesday has troubled me. I would like to reinforce that I have no problem working with you, and I do not have a problem

with your racial, ethnic, gender or sex identity. I have enjoyed working with you over the years and continue to look to.

Best regards,
[The Applicant]

12. On 15 July 2021, the Colleague responded:

[The Applicant]
Thank you for your email.

I truly wish I could agree and I have tried my best to have good working relations with you as I do with the rest of the team, but I must say that I have continuously felt excluded and marginalized by you over the past year. Your behavior has demonstrated a lack of respect and has hurt my feelings on numerous occasions. I do not want to escalate this, but if you would like to have a discussion in the presence of [the Manager]/mediator, I will be open to that.

Best,
[Colleague]

13. On 16 July 2021, the Applicant emailed the HRBP sharing the email the Applicant sent to the Colleague on 15 July 2021 and the Colleague's response. The HRBP responded the same day and advised the Applicant, "I think it would be good to have a discussion with [the Manager at] this point. There seems to be different perspectives at play and if not addressed could escalate further."

14. On 16 July 2021, the Applicant responded to the HRBP and stated, "I think it would be appropriate to have some outside neutral assistance. May I book a mediation session through HR [Human Resources]?" The HRBP responded the same day and advised the Applicant to directly contact Mediation Services.

15. On 3 August 2021, the Applicant responded to the Colleague's 15 July 2021 email and stated:

Dear [Colleague],

I have been processing your response to my prior email. I am saddened and surprised by this reaction, particularly after we spoke openly with one another in June. I am concerned about our relationship. I am inviting you to speak about this with me as I would like to understand and I propose that we meet, the two of us in person. If you would prefer a mediator present, we can have an ombuds professional join us.

Best regards,
[The Applicant]

16. The record does not indicate that the Colleague responded to the Applicant's 3 August 2021 email.

17. In September 2021, the Applicant and the Manager had a phone call regarding the incident with the Colleague, and, on 9 September 2021, the Applicant forwarded her email exchange with the Colleague to the Manager.

18. On 23 September 2021, the Manager emailed Mediation Services requesting "a very brief chat today as I need guidance on an issue involving two NY [New York] office staff that may require mediation." The Manager further stated that she "would appreciate a chat [...] to make sure I can support the process."

19. On 23 September 2021, the Applicant and the Manager met in New York. According to the Manager, she informed the Applicant that she had spoken to the Colleague about the incident. According to the Manager, she relayed to the Applicant that the Colleague "told [the Manager] that he had felt extremely stressed on July 13, 2021, due to work commitments during a period where he was acting Special Representative and that he had felt unsupported and undermined by [the] Applicant that day." According to the Manager, she relayed to the Applicant that the Colleague said "that he did not actually feel that [the] Applicant was treating him this way because he was a man from Afghanistan, but that he had not been able to explain himself as [the] Applicant had hung up the phone during their conversation."

20. According to the Applicant, during the 23 September 2021 meeting with the Manager, the Applicant "questioned" the explanation provided by the Manager regarding the Colleague, and the

Applicant “pointed out that [the Colleague] had not only made his comments over the phone on July 13, but had then reiterated them in writing two days later.” The Applicant states that the Manager “responded by turning on [the Applicant] and suggesting that she was at fault for her difficulties with [the Colleague].” The Applicant further states that the Manager told the Applicant “that she had potential but that she needed to comply, which [the Applicant] understood to as [sic] a warning that continuing to defend herself against [the Colleague’s] allegations could have unwanted repercussions for her career and for the renewal of her contract.”

21. According to the Manager, during the 23 September 2021 meeting with the Applicant, she “also conveyed concerns that other colleagues had raised with [the Manager] regarding [the] Applicant’s tone and that they also felt her lack of respect for them as colleagues or their authority.” Further, according to the Manager, she “also explained to the Applicant that she needed to be more engaged in her work and communicate and coordinate with other colleagues in the very small New York team, as others having to take on her work created friction among the team.”

22. On 24 September 2021, the Applicant sent an email to an Ombudsman, Ombuds Services, with the subject line “Contemporaneous notes July – September 2021” in which the Applicant recounted the incident with the Colleague and the 23 September 2021 meeting with the Manager.

23. According to the Applicant, on 27 September 2021, she had a phone call with the Colleague at the Manager’s instruction to “resolve the issues between them.”

24. On 28 and 29 September 2021, Mediation Services followed up with the Manager via email regarding her 23 September 2021 request for guidance. On 29 September 2021, the Manager responded via email and stated:

I had the possibility to meet the staff in person last week and I talked to them bilaterally.

I’m very pleased to let you know that after that they could talk, discuss their main concerns and they both reported they decided to move on and communicate more frequently and openly in the future to avoid misunderstandings.

I don’t think we would need mediation for the time being.

25. According to the Applicant, following her meetings with the Manager and the Colleague, “she began to perceive a level of hostility from [the Manager] in her day-to-day work,” such as “excluding her from meetings,” as well as “leaving her off of email,” and also “encouraging junior colleagues to perform some of [the Applicant’s] core tasks.”

26. On 14 December 2021, the Manager finalized the Applicant’s fiscal year 2021 (FY21) Annual Review.

27. In the “Overall Contributions” section of the Applicant’s FY21 Annual Review, the “Staff’s Comments” stated:

I am known inside the WBG and the UN [United Nations] as well as other IFIs [international financial institutions] as a key liaison who is sought out for advice, recommendations and review, including on issues of complexity and sensitivity. Since the large majority of my professional experience comes from working inside the UN, I enable others in the WBG to understand the UN and its entities, contexts in which they are working with the UN, and provide advice to them for results. I take the lead on FCV [Fragile, Conflict and Violence] and Climate portfolios – high level and priority areas for WBG positioning. In support of this, I constantly explore, invest in, and maintain relationships with external partners, internal stakeholders [...], and various Bank teams, including FCV, SD, the Regions and Energy. I continuously build networks across the WBG and as part of external professional networks.

[...]

I have led on the UN High Level Political Forum for three years now, including organizing side events and following the Member State negotiations on the declaration.

28. In the “Overall Contributions” section of the Applicant’s FY21 Annual Review, the “Supervisor’s Comments” stated:

[The Applicant] had a good year. She takes the work of her portfolio seriously, actively seeks opportunities to position the WBG and our Management in UN fora, and delivers on briefing, input and readout requests. She ensures that UN-related events falling under her portfolio are covered and provides detailed readouts. She has also built and maintained a solid network within the WBG and in the UN system and could use them successfully to secure WBG positioning or get valuable intel as

needed. Her contributions on the UN High Level Political Forum, the climate and FCV agendas are highly appreciated by the team and manager.

29. The “Supervisor’s Comments” further stated:

On the development side, I discussed with [the Applicant] the need to work better as part of the larger integrated team and break out of silos. We noted this is more challenging in a remote working environment and requires extra outreach efforts from all of us. It will be important that she integrates more into the team, strengthening her relationships with colleagues so that we are able to maximize our impact. I would encourage her to strengthen daily communication with the rest of the team, help step in to cover other portfolios when needed and seek feedback from others to jointly brainstorm on issues related to her portfolio. Given the fast-paced environment and diverse portfolio of the NY office and the flexibility that this requires, these behaviors would help [the Applicant] grow on the team, broader [*sic*] her knowledge of the portfolios, and provide further career development opportunities. This year, as part of her development, [the Applicant] completed the World Bank-Annenberg Summer Institute on Reform Communication: Leadership, Strategy and Stakeholder Alignment. I also encouraged [the Applicant] to further discuss with her manager future steps and career opportunities and seek guidance so that the manager can help her develop professionally.

30. The Applicant received a Salary Review Increase rating (SRI) of 3 for FY21. Pursuant to the Bank’s Talent Review process, the Applicant was flagged as “Attention Needed” by ECR management for FY21. According to the Manager:

At the time, [the] Applicant’s performance was satisfactory, and she possessed an adequate skill set overall and performed some things well, while lacking in other areas, as reflected in her Overall Performance Evaluation (“OPE”) as well as her Structural Salary Increase (“SRI”) of “3” – the lowest grade in the New York [O]ffice. However, the Management Team felt that, although her technical skills were adequate, she lacked certain competencies required by her role, specifically, her ability to work well with others and communication skills. I shared this feedback with [the] Applicant during her FY21 OPE virtual discussion on August 3, 2021, and we discussed the need for her to communicate better with the team, and to collaborate with her colleagues in the New York Office. The same issues persisted in FY22, and [the] Applicant again was flagged as “attention needed”, reflected in her OPE with an SRI of 3.

31. On 11 January 2022, the Applicant emailed the Ombudsman with the subject line “Contemporaneous notes July 2021 – January 2022” and stated:

On September 27, I called [the Colleague] and said I could get past his comment to me that I don't listen to him because of his ethnicity and sex. He said he does not think I am racist or sexist and that he doesn't remember what he said. On December 14, my boss logged in the system under my performance review that I need to strengthen relationships with the team. On December 22, my boss placed [the Colleague] as Acting Special Rep to the UN.

32. On 12 January 2022, the Ombudsman responded and stated:

Received. Thank you for the update. Hopefully, now that you and [the Colleague] have spoken about the matter, the relationship issue won't come up again. Of course, it's always helpful to get ongoing feedback about how things are going to ensure they tell you if they see an issue and you have a chance to deal with the situation. That also avoids surprises.

33. On 19 January 2022, the Applicant again emailed the Ombudsman and stated:

Thank you, [Ombudsman], for your counsel. The thing that worries me the most is that my boss defended this, despite knowing it was not a genuine comment from him. The whole situation amounts to bullying and I have started to look for new roles.

34. On 19 January 2022, the Ombudsman responded:

I'm sorry to hear you're considering moving because of this. Short of that, perhaps you would reconsider an intervention by me or the Anti-harassment Coordinator? (This is only an offer for your consideration – not a strong suggestion.) Let me know if you'd like to discuss.

35. From 2 March 2022 to 4 March 2022, the Applicant took two days of sick leave.

36. On 16 March 2022, the Applicant texted the Manager and stated, "Hi [Manager]! Welcome back from your leave. I wanted to give you a heads up I'm waiting on the outcome of a final round for a [GG-level position] with [the International Finance Corporation] team and I'd appreciate your support." The Manager responded via text and stated, "Hi! Thanks! Good luck!"

37. On 25 April 2022, the Applicant took a half day of sick leave.

38. The Applicant states that “[t]eam meetings became very stressful [...] as a result of the perceived hostility from [the Manager]” and that “[t]his stress had a detrimental effect on [the Applicant’s] health.” The Manager states that “[i]n the spring of 2022 [the] Applicant became increasingly disengaged and stopped communicating with [the Manager] entirely at the end of April 2022.”

39. On 27 April 2022, the Applicant and Manager met while the Manager was at the United Nations in New York. According to the Bank, “[d]ue to the busy schedule that day, the Manager did not have an opportunity [to] discuss the expiry of [the] Applicant’s term appointment and the Manager’s intention not to offer [the] Applicant a renewal of [the] Applicant’s term.”

40. On 28 April 2022, the Manager emailed the Applicant and stated, “We are all in the team meeting. Are you joining?” The record does not indicate that the Applicant replied to this email.

41. On 30 April 2022, HR Operations sent the Manager “an automatically-generated HR Reminder email,” with the Applicant in copy, indicating that the Applicant’s appointment would expire in approximately six months. The email further stated, “At this stage, 6 months prior to the expiration date of current appointment, a Manager must provide written notice to staff member on whether the appointment is to be extended or not.”

42. On 2 May 2022, the Manager emailed the Applicant and stated:

I wanted to check if you are OK. As expressed earlier, I wanted to know if you need any help given the medical appointments you have been mentioning lately. Anything I or the team could do to help you? I’m concerned about your medical situation. It would be good to talk to understand the situation so we can plan together work delivery accordingly.

Please let me know when it is a good time to have a brief call.

Hope you are fine.

Best,

[The Manager]

43. The record does not indicate that the Applicant responded to the Manager’s 2 May 2022 email.

44. On 3 May 2022, the Applicant requested sick leave, retroactively from 2 May 2022 and until 6 May 2022.

45. On 6 May 2022, the Applicant emailed the Ombudsman and stated:

Thank you for the catch up today. It is helpful for me to keep track of the evolution of things since last Summer. As we discussed, the tactics that amount to bullying have continued since my boss's reaction in September. We also spoke about that today (May 6) a GG position was posted for recruitment in our NY office.

46. On 9 May 2022, the Applicant emailed the Manager and stated that she "need[ed] to take medical leave for another week for now, and [had] submitted this in the system. Please text me on how to back me up if needed."

47. From 9 May 2022 until 12 May 2022, the Applicant took four days of sick leave.

48. On 9 May 2022, the Manager emailed the Applicant and stated:

I hope you recover soon. As I wrote to you last week I'm very concerned about your health and this situation. I'd appreciate a phone call, as I requested last week at your earliest convenience.

As you know we are in the peak of work given upcoming [...] trip of the President and follow ups, so I'd appreciate if you could give more clarity on your estimated leave in advance to plan accordingly.

49. On 13 May 2022, the Manager again emailed the Applicant and stated:

Just saw in the system that today you were not on leave.

I hope you are feeling better.

I'm traveling but will reach out to find a time to talk soon.

50. On 16 May 2022, the Applicant returned to work. She emailed the Manager and stated, "Thank you for your messages. I am just seeing them now. I was also out on Friday last week, the system didn't allow me to submit sick leave on an AWS [Alternative Work Schedule] day. Wishing you good and safe travels."

51. The record indicates that on 31 May 2022 the Manager sent a Microsoft Teams meeting invitation to the Applicant with the subject line “catch up.” The Applicant responded that day via email to the Manager and stated, “I have been accompanying Energy team since this afternoon and still in meeting with them.” According to the Bank, the Applicant did not join this virtual team meeting in which “the Manager waited for over an hour” and which had been scheduled to discuss the non-extension of the Applicant’s appointment.

52. On 2 June 2022, the Applicant took medical leave.

53. On 3 June 2022, the Applicant emailed the Manager and stated that she had “been advised by [her] physician to take time off for medical leave, starting with immediate effect.”

54. On the same day, the Manager responded and stated that she hoped the Applicant was well and that the Applicant should enter the sick leave request in the system, which the Manager stated that she would approve. The Manager further stated, “I reiterate my availability to talk and please let me know if we can help somehow. I hope you recover soon!”

55. Also, on 3 June 2022, the Manager emailed HR representatives with reference to the Applicant and sought “guidance on this case.” The Manager had a meeting with HR representatives regarding the Applicant on 3 June 2022.

56. On 6 June 2022, the Manager emailed the HR representatives and stated:

Thanks a lot for the meeting on Friday and for your guidance. I wanted to follow up on next steps.

Today [the Applicant] did not work either. I held a 2-hour team meeting and she didn’t come. She texted someone at the office saying she is taking medical leave also today.

She didn’t enter any leave request in the system. I have no idea of how long her leave will last.

I wrote to her on Friday as agreed this email [...]: “*Dear [the Applicant], I really hope you are well. Please send the sick leave request through the system which I will of course approve.*

I reiterate my availability to talk and please let me know if we can help somehow. I hope you recover soon! Kind wishes, [the Manager]”.

Should I write to her today checking how she is? Should I text her?

Also, please send me the email I should send on the contract termination when you can.

Thanks a lot!

[The Manager]

57. On 8 June 2022, the Manager emailed the Applicant and informed her that she did not intend to extend the Applicant's term appointment "beyond the end of this calendar year, December 31, 2022." The Manager stated:

As you know from my many prior emails and for quite a while now, I think it is reasonable to say it has been extremely difficult to connect with you and this unreliability within the team remains less than optimal and even borderline satisfactory. I want to outline and share specific examples that I have been wanting to share with you in person on many previous and unsuccessful occasions:

- You have not attended meetings I call, including team meetings. And the team is likewise disrupted when they do not get timely responses from you. It is very hard to plan and distribute the workload given our small team and this degree of uncertainty. I am also aware of situations where you did not respond to other colleagues either.
- We are also missing important inputs you used to provide in a timely manner, such as Security Council updates/meetings; or HLPF [High Level Political Forum] contributions/planning.
- You also remain disengaged with the team. We have been discussing this since last year: how important it is to be integrated with the team and be able to support each other, and of course to deliver on your own portfolio. I remain concerned at your continued lack of engagement (especially noticeable in the past months), which is also concerning for colleagues on the team and beyond who have come to me in private.
- Last week, I noticed and (reluctantly) approved your annual leave request (June 27-July 15). I say reluctantly because your leave coincides with the days before and during HLPF, your main UN engagement in the last years. (Emphasis in original.) I approved given your plans, but it would have been good to discuss beforehand to ensure coverage for this important engagement. In fact, I had asked the team for updates on leave plans, and you did not provide yours. We are a very small team, so it is really important to plan and distribute the workload well in advance if not merely a common professional courtesy.

- I also wanted to remind you about the way we engage other parts of the Bank. We have discussed the importance of only sharing BNs cleared by me. I wrote you about this based on what I noticed with the FCV engagement.

In a nutshell, your lack of availability is affecting our work and team for a while. I am really concerned about your availability to work and communicate with me and the team and to perform as expected to deliver in the highly relevant portfolio you manage in the NY office. We have discussed this many times before. Clearly, we have been overdue for a conversation for some time, and this has been postponed, in part, for valid reasons, e.g., most recently your sick leave and then my mission. Nonetheless prior to your sick leaves and my last mission, I have written to you on a number of occasions for us to meet so we could discuss your future and so that I can better understand your situation and how best I can support you and address any impacts on the work of the team. I have yet to hear from you. Again, regarding your sick leave, I really hope you are well and I reiterate my offer to support you as needed.

As you know, our discussion on your term appointment also has been pending for quite some time and so far, and you seem to have been avoiding this as well. Better than anyone, you know your term appointment is due to end in almost 5 months. We had discussed in our check-in some months ago that you are applying to different GG positions and that you wanted to grow your WBG career *outside* the NY office. (Emphasis in original.) I mentioned I would support your further career plans and also noted there was plenty of growth potential if only you wanted to remain in the team and engage and deliver at a higher more reliable level. At this point, I really do not know what your current professional plans are beyond your text to me asking for support for the IFC GG position to which you had applied a while ago. I have not heard anything else from you in this regard and please know I really would like to continue supporting your career development aspirations.

As we had discussed previously, and given the past disengagement I have noticed, it is clear you wish to move on and not continue in the NY team. I will be restructuring the team and will change the portfolios to some extent but it will remain NY/UN focused obviously. I would have liked to discuss this with you as well, as we did last year, but again you have not been available for those conversations and for quite some time.

Given all this and current business needs, I do not intend to extend your term appointment beyond the end of this calendar year, December 31, 2022 (almost 7 months from now). Please let me know your thoughts, I'd be willing to discuss this with you, as I've always been.

I would have liked to have had a conversation with you, but you have not been available or responsive to my invitations and requests. I will be in NY on Thursday, and I would be available to catch up in person. I'll send you a meeting invite to

discuss the above, and hope you are feeling OK and can make it in person, if not, we can meet virtually. We can also talk today or on Friday if you are available.

58. On 8 June 2022, the Applicant sent the Manager a sick leave request for a total of 14 days for the period 2 June 2022 to 23 June 2022.

59. On 8 June 2022, the Manager emailed the Applicant with the subject line “catch up,” and stated:

I hope that you are well. I wanted to check how you are doing.
As you know I’ll be tomorrow in NY. I’d like to catch up with you.
Please let me know if you can meet in person or we can have a call.
Please confirm.
Feel free to text me to coordinate if it’s easier.
Thank you very much.

60. The record does not indicate that the Applicant responded to the Manager’s 8 June 2022 emails.

61. On 13 June 2022, the Manager responded to the Applicant’s 8 June 2022 sick leave request and stated:

Upon checking with HR as to what is necessary for me to approve your sick leave requests, I learned you already had applied for Short-Term Disability (STD) with Broadspire and your STD claim will be evaluated accordingly.

[...]

Only when you are ready, please reach out and get on my calendar so that we may discuss my June [8] email and the non-extension of your term appointment beyond December 31, 2022.

62. On 14 June 2022, the Applicant was approved for Short-Term Disability benefits with a “Disability Duration” from 2 June 2022 until 30 September 2022.

63. According to the Manager, “[a]s [the] Applicant was on STD at the time of the FY22 OPE cycle, we did not have an OPE discussion.”

64. On 13 July 2022, the Applicant emailed the Vice President, External and Corporate Relations (ECRVP) requesting a meeting “to discuss my case.”

65. On 22 July 2022, the Applicant spoke with the ECRVP. On 25 and 27 July 2022, the Applicant and the ECRVP exchanged emails regarding their discussion and the Applicant’s interest in “job openings in other teams.” Specifically, the Applicant stated that she

requested to be reassigned to a different team, with a corresponding renewal. I have identified the opening External Affairs Officer position in London which is compatible with my needs and allows continuity in the organization I am still motivated by. This would be a natural fit given my previous responsibilities and a way to resolve things amicably.

66. On 28 July 2022, the ECRVP emailed HR “[f]lagging the staff member’s unusual request to be reassigned into a role she likes,” and, on 4 August 2022, the HRBP emailed HR management seeking advice regarding the Applicant. The HRBP stated:

I spoke to [the Applicant] yesterday [...]. In a nutshell she has said that unless [the ECRVP] reassigns her into a position of her choice she will take her case up.

67. On 3 October 2022, the Applicant applied to the External Affairs Officer position in London but was not selected. During the course of the Applicant’s employment with the New York Office, she applied to a total of eleven WBG positions outside of the New York Office.

68. On 3 October 2022, the Applicant’s Short-Term Disability benefits were extended until 31 December 2022.

69. On 16 November 2022, the Bank advertised a Grade Level GF External Affairs Officer position with ECR in the New York Office.

70. On 8 December 2022, the Applicant’s Short-Term Disability benefits were extended until 31 March 2023.

71. On 30 December 2022, the Applicant filed this Application with the Tribunal, which was received on 3 January 2023.

72. On 31 December 2022, the Applicant's appointment ended due to non-renewal.

73. In her Application, the Applicant states that she is contesting "[t]he decision not to renew her term appointment as communicated by her manager via email on June 8, 2022."

74. In her Application, the Applicant states that she seeks

- i. [Rescission] of the disputed nonrenewal decision.
- ii. Reappointment to a mutually agreeable position for a term of no less than three years or appropriate compensation in lieu thereof.

In addition to the above, the Applicant states that she seeks

compensation in an amount deemed just and reasonable by the Tribunal to remedy the damage to [the Applicant's] career and professional reputation and the emotional distress caused by the nonrenewal of her appointment[] and the events leading up to that decision as described in this Application.

75. The Applicant requests legal fees and costs in the amount of \$19,900.00.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The non-renewal decision was improperly motivated and retaliatory

76. The Applicant asserts that the non-renewal decision was improperly motivated by the Applicant's permissible use of medical leave in May and June 2022. Specifically, the Applicant submits that, in the email of 8 June 2022, the Manager articulated concerns regarding the Applicant's "availability" as her primary basis for the non-renewal decision only three business days after the Applicant had alerted the Manager that she would need to take additional medical leave after having taken nine days of medical leave in May. The Applicant avers that the Manager's

repeated references to “availability,” along with the timing of her decision, strongly suggest that her decision was motivated in substantial part by [the Applicant’s] June 3 notice that she was taking additional medical leave.

77. The Applicant contends that “[t]his is indisputably an improper basis for nonrenewal,” and the Applicant asserts that “[t]he availability of sick leave to be used in support of a staff member’s medical needs is a core benefit of staff employment.” The Applicant submits that a staff member’s use of sick leave “should not have any bearing on a nonrenewal decision because that would create, at a minimum, the appearance that the decision was taken in retaliation for the staff member using the leave to which he or she was entitled.” In the Applicant’s view, “the timing of [the Manager’s] June 8 nonrenewal decision and ‘availability’ explanation indicate a clear causal connection,” and the Applicant underscores that her use of medical leave “constitutes an improper motivation for nonrenewal regardless of whether it constitutes protected conduct within the meaning of the antiretaliation provisions of Staff Rules 3.00 and 8.01.”

78. The Applicant disputes that the Manager’s assertions of ongoing issues in her 8 June 2022 email suggest that the non-renewal decision pre-dated the Applicant’s 3 June 2022 notice regarding additional medical leave, and the Applicant submits that the Manager’s assertions lack credibility. Specifically, the Applicant contends that, while the Manager references problems with the Applicant “since last year” in her email, “there is little overlap in tone or in substance between [the Manager’s] generally positive FY21 review of [the Applicant’s] performance and her June 8, 2022, nonrenewal email.” To the Applicant, any such problems with the Applicant would have been reflected in her FY21 Annual Review, which the Manager finalized in December 2021. Further, the Applicant submits that, had the Manager been considering not renewing the Applicant’s appointment “for quite some time” as suggested in her 8 June 2022 email, then presumably she would have made that decision in April so as to provide six months’ notice in respect of the original October expiration date for the Applicant’s term appointment. The Applicant stresses that the Manager said nothing about non-renewal at that time.

79. The Applicant also refers to the incident with the Colleague and contends that the non-renewal decision was improperly motivated by the Manager’s disapproval of the Applicant’s “unwillingness to simply let [the Colleague’s] accusations go without any sort of meaningful

resolution.” The Applicant submits that the Manager’s view of the Applicant “appears to have changed during the September 23 meeting.” The Applicant purports that the Manager “turned on” her, “suggest[ed] that she could see why [the Colleague] might see her as uncollaborative,” and “claimed that she had received similar reports from other of [the Applicant’s] colleagues.” The Applicant states that the Manager directed the Applicant “to resolve all issues between her and [the Colleague] and insinuated that failing to do so would adversely affect [the Applicant’s] chances of renewal.”

80. The Applicant contends that she “had an obvious interest in defending herself and in setting the record straight,” and submits that the Manager wished to deny her this opportunity. More specifically, the Applicant asserts that when she showed an unwillingness to go along with the Manager’s wish “to make the entire issue go away as quickly and quietly as possible [...] it appears that [the Manager] decided she might no longer want [the Applicant] on her team.”

81. The Applicant asserts that, pursuant to the Staff Rules, retaliation against any staff member who uses the Internal Justice Services (IJS) is expressly prohibited. She submits that she suggested both Ombuds Services and Mediation Services to the Colleague with respect to addressing his allegations. The Applicant submits that IJS “indisputably includes” both of these offices, and that she “specifically alerted” the Manager of her interest in seeking resolution through IJS. The Applicant contends that she “engaged in a core form of protected activity when she invoked IJS services,” and claims that the Manager “turned against [the Applicant] after she expressed an intent to continue seeking outside help in resolving [the Colleague’s] unfounded allegations.”

82. The Applicant submits that she has made *prima facie* showings that the non-renewal decision was improperly motivated at least in part by her use of medical leave and her efforts to address the allegations by the Colleague. The Applicant avers that the Bank “fails entirely” to meet its burden of showing an alternative basis for the non-renewal decision which satisfies the reasonable and observable basis standard.

The Bank's Response

The Applicant's sick leave was unrelated to the non-extension decision, and the Applicant has failed to establish a prima facie case of retaliation

83. The Bank submits that “the record does not show a causal connection between [the] Applicant’s use of sick leave and the non-extension decision.” Rather, to the Bank, the record demonstrates that the non-extension decision “had nothing to do with [the] Applicant’s sick leave,” and in fact shows that the Applicant and the Manager “had discussed [the] Applicant’s unavailability to work and communicate with the team and the Manager on numerous occasions, long before [the] Applicant began her sick leave.”

84. The Bank asserts that the Applicant’s FY21 Annual Review refers to the “Applicant’s disengagement and difficulties working with the team, as well as her struggles with communication,” and the Bank submits that the FY21 Annual Review was finalized in December 2021, “long before [the] Applicant’s sick leave.” Further, the Bank submits that the 8 June 2022 email from the Manager indicates that the Applicant’s disengagement was an issue for much longer than the previous month when the Applicant was on sick leave, and the Bank submits that the Applicant’s disengagement began in FY21 and continued into FY22. The Bank submits a written statement by the Manager, dated 11 April 2023, in which the Manager states, “I am aware that [the] Applicant claims that I did not offer her a renewal of her term appointment because she had taken sick leave. This is absolutely incorrect.”

85. The Bank avers that “taking sick leave does not relieve the Staff Member from communicating their absence with their manager, the minimum expectation or courtesy, if not a requirement.” The Bank submits that the Applicant failed to do so, and failed to attend scheduled meetings even on days she was working. In the Bank’s view, the “Applicant made no efforts to address the renewal of her term with the Manager, as she was in fact intent on pursuing her career outside the New York Office.”

86. The Bank claims that the Applicant’s contention that her appointment was not renewed due to her illness is inconsistent not only with the record but also with the Applicant’s own actions.

The Bank highlights that, immediately before and after the Applicant was on sick leave in May 2022 and before she requested sick leave on 8 June 2022, she was “(i) working, (ii) in touch with colleagues, (iii) attending meetings in the office, [and] (iv) [...] in touch with the Manager via email.” The Bank submits that during this time the Applicant was aware that her appointment was coming to an end on 28 October 2022 yet avoided all of the Manager’s attempts to speak with her. The Bank further asserts that, in July 2022, while the Applicant was on Short-Term Disability, the Applicant had a meeting with the ECRVP and “demanded a new position in the London Office, under threat of escalating her case.”

87. The Bank also asserts that the Applicant has failed to make a *prima facie* case of retaliation “by establishing facts which provide for a direct link in motive between her actions, and the decision not to renew her term appointment.” (Emphasis added by the Bank.) With reference to the incident with the Colleague, the Bank submits that “there is simply no evidence that the Manager’s treatment of [the] Applicant changed because of the incident.” Rather, in the Bank’s view, “[t]he record is entirely inconsistent with [the] Applicant’s account of an alleged mistreatment by the Manager”; and, to the Bank, “the record shows that the Manager continued to support [the] Applicant’s career by helping her seek alternative positions within the WBG and trying to support her during her sick leave.”

88. Moreover, the Bank contends that the Applicant does not refer to any protected conduct which she may have engaged in which might form the basis for improper retaliation. The Bank submits that the use of medical leave does not fall within the definition of a protected activity pursuant to the Staff Rules and the Tribunal’s case law. Further, to the Bank, the “Applicant’s professed ‘interest in defending herself and in setting the record straight with [the Colleague]’, which she claims the Manager ‘wishes to deny her’ is not a protected activity.”

89. The Bank contends that the Applicant submits that “a mere suggestion that a conflict be referred to mediation or to Ombuds services constitutes a protected activity.” (Emphasis added by the Bank.) The Bank stresses that the record shows that, while the Manager indeed reached out to Mediation Services, mediation became unnecessary because the Applicant and the Colleague resolved the issue with the Manager’s intervention. To the Bank, “[t]here was no intake meeting,

there was no mediation,” and, in the Bank’s view, “there is no protected activity on which to base a claim of retaliation.”

90. With respect to Ombuds Services, the Bank avers that it is confidential “by its very nature,” and the Bank asserts that there is no record that, prior to the 8 June 2022 communication of the non-extension decision, the Manager was aware of the Applicant’s communications with Ombuds Services. To the Bank, because the Applicant has not demonstrated that the Manager had knowledge of her use of Ombuds Services, “there is no factual basis underpinning her claim of retaliation.”

The Applicant’s Contention No. 2

The non-renewal decision lacked a reasonable and observable basis

91. The Applicant contends that the rationales provided by the Manager for the non-renewal decision – that the Applicant was “disengage[d] with the team” and that “current business needs” required “restructuring the team and [...] chang[ing] the portfolios to some extent” – fail to supply a reasonable and observable basis for the non-renewal decision. The Applicant submits that there is no evidence that the changing business needs rationale is true, and she asserts that the Manager “did not specifically identify any changing business needs.” The Applicant further contends that there was not “any relevant restructuring of the team or reshuffling of portfolios that occurred after the nonrenewal decision was made.”

92. The Applicant refers to the Manager’s 11 April 2023 written statement and takes issue with the Bank’s claim that the Applicant’s background did not support the changed focus articulated by the Manager with respect to needing “a staff member with a strong climate background” and with “stronger expertise in the UN Sustainable Development Goals.” The Applicant also highlights that she “received fully satisfactory performance ratings throughout her appointment, including while performing [...] climate-related tasks.”

93. Further, the Applicant contends that the changing business needs rationale “falls flat” because the vacancy announcement used to fill the Applicant’s position did not identify climate or

the UN Sustainable Development Goals as areas of required knowledge and because the duties and responsibilities and selection criteria “are largely identical” to those stated in the 2019 position for which the Applicant was hired. The Applicant underscores that the 2019 position “actually identified climate and sustainable development knowledge as one of the selection criteria.”

94. With respect to the Manager’s claim of the Applicant’s disengagement, the Applicant contends that this “is simply not credible in light of the consistent peer feedback [the Applicant] received throughout her tenure.” The Applicant notes that this feedback described her as a “team player,” an “excellent collaborator,” and an “exceptional colleague.” The Applicant suggests that had colleagues viewed her as disengaged then this would have been reflected in the peer feedback comments. Moreover, the Applicant asserts that, “[i]f ‘disengagement’ [...] was truly a longstanding issue of sufficient concern to ultimately justify nonrenewal, surely [the Manager] would have expressly raised this concern in her FY21 evaluation of [the Applicant’s] performance.”

95. Further, the Applicant contends that there is no contemporaneous evidence that the Manager considered the Applicant’s applications for other positions as evidence of “disengagement” or as a basis for nonrenewal. In the Applicant’s view, even if the Manager’s “disengagement” perspective was driven by the Applicant’s application to other positions, “this would be an improper and unfair basis for the nonrenewal decision.” The Applicant submits:

Management should not be allowed to have it both ways: if it is going to insist that Term staff’s continued employment is precarious, then it is entirely reasonable for such staff to keep their options open by applying to other positions, and management should not be permitted to hold that against the staff member when making a renewal decision.

96. With respect to the Bank’s claim of the Applicant’s lack of availability, the Applicant submits that this “availability” rationale “was impermissibly directed at [her] use of medical leave in May and June 2022 to deal with health issues relating to the stress caused by her work situation,” and the Applicant avers that the non-renewal decision is not defensible on the basis of this rationale. The Applicant challenges the Bank’s claim that the Manager’s concerns regarding the Applicant’s availability pre-date June 2022, and the Applicant maintains that the record indicates that the Manager began voicing this concern only after the Applicant began using sick leave.

97. Further, to the Applicant, the only evidence given by the Bank for her alleged lack of availability which “had been ‘affecting our work and team for a while,’” is the FY21 Annual Review which the Applicant asserts “was overwhelmingly positive.” The Applicant highlights that the Manager said that the Applicant “had a good year” in the FY21 Annual Review, and contends that the Bank focuses on the Manager’s comments concerning behaviors and skills to develop which, in any event, do not “remotely suggest[] a concern over [the Applicant’s] purported lack of availability.” Accordingly, the Applicant submits that the Bank fails to demonstrate a contemporaneous reasonable and observable basis for the non-renewal decision.

The Bank’s Response

The non-renewal decision had a reasonable and observable basis and was not arbitrary

98. The Bank asserts that, pursuant to the Applicant’s LOA, her fixed term appointment reached “its natural conclusion,” and the non-extension decision was reached in a fair and non-arbitrary manner and had a reasonable and observable basis. The Bank contends that the Applicant signed and accepted the terms of her appointment per her LOA on 27 October 2019, and the Bank submits that the “Applicant does not cite any promise of an extension or argue any unusual circumstances that would provide justification why the terms of [the] Applicant’s LoA should not control this case.” The Bank avers that the record fails to support the existence of a legitimate expectation that the Applicant’s appointment would be renewed, or a promise by the Bank to such effect.

99. The Bank also contends that the non-extension decision was not performance based and submits that the record shows that the decision “was made purely based on the business needs and functioning of the New York Office.” The Bank submits that the 8 June 2022 email from the Manager “explained in detail” the non-extension decision, which was “based on [the] Applicant’s disengagement with the team and the Manager, as well as [the] Applicant’s unreliability and unavailability to work.” To the Bank, the Applicant had a “dismal level of communication with her team and the Manager.” The Bank submits that the record demonstrates that the issues highlighted in the 8 June 2022 email affected the functioning of the New York Office for some

time and that the Applicant was aware of her disengagement, as these issues were highlighted to her in contemporaneous feedback throughout FY21 and FY22.

100. Further, the Bank submits that the Applicant was aware, via her Annual Review and feedback from the Manager, of the concerns regarding her disengagement, and the Bank claims that the Applicant did not express interest in her term appointment being extended. To the Bank, the Applicant did not make it clear to the Manager that she wished to continue to work in the New York Office; rather, the Bank avers, the record indicates that the Applicant communicated her intention to work elsewhere in the Bank, at a higher grade level. The Bank highlights that the Applicant applied to eleven positions outside of the New York Office but did not apply for a Grade Level GG position in the New York Office, which was advertised in May 2022.

101. Additionally, the Bank submits that the Applicant's background did not support the portfolios that management agreed it would need of a staff member going forward. Specifically, the Bank asserts that, "[w]ith the Bank's increasing focus on climate, ECR management determined that [...] they would need a staff member with a strong climate background" and "stronger expertise in the UN Sustainable Development Goals [...] to support that agenda." The Bank submits that the Manager explained to the Applicant that she planned to restructure the team and change existing portfolios. The Bank avers that the Tribunal has concluded that "it is purely a function of management to identify the necessary skills needed and who is the most suitable staff member to perform these tasks."

102. Further, the Bank submits that the 2022 context was completely different from the 2019 context when the Applicant was hired, and the Bank asserts that "UN counterparts and leadership [required] much more expertise in climate and SDGs [Sustainable Development Goals] than what was required in 2019 (and what [the] Applicant could provide)." The Bank submits that the Applicant did not have sufficient experience in these areas and notes, "[b]y way of example," that the Bank "in December 2021 alone [...] came under fire twice for its inaction on climate."

103. The Bank stresses that management needed someone with more experience and that the Manager engaged in "targeted outreach to get the experts needed." The Bank also notes that a

Short-Term Consultant was hired in the New York Office in February 2023 “with extensive experience in the UN and climate change arena.” The Bank cites *Chaturvedi*, Decision No. 644 [2021], para. 94, and submits that “[t]he Tribunal recognized, ‘that it is the prerogative of the Bank to identify which skill sets are required by a position and to determine which staff member is suitable for the position.’”

The Applicant’s Contention No. 3

The Manager failed to adequately inform the Applicant of the possibility of non-renewal or to afford the Applicant a meaningful opportunity to address any issues

104. The Applicant submits that her FY21 Annual Review was finalized by the Manager in December 2021 and, to the Applicant, if the Manager was concerned that non-renewal was a possibility, “she had an obligation to clearly present those issues in order to give [the Applicant] a meaningful opportunity to address them,” but did not do so. The Applicant avers that nothing in her FY21 Annual Review suggests that the Manager was considering non-renewal.

105. Further, the Applicant contends that, if the Manager concluded that performance-related non-renewal of the Applicant’s appointment “was becoming likely, the appropriate step would have been to schedule a midyear conversation or other meeting specifically dedicated to addressing performance-related matters and to make clear to [the Applicant] that nonrenewal was a possibility notwithstanding her solid FY21 Review.” The Applicant asserts that the Manager did not do so.

106. The Applicant contends that the Manager “tries to shift the blame” to the Applicant in the 8 June 2022 email, and the Applicant stresses that “[i]t is the manager who has responsibility for alerting a staff member about issues that may lead to a nonrenewal decision.” To the Applicant, the Manager had a duty to ensure that any such issues were brought to the Applicant’s attention notwithstanding any scheduling challenges.

107. Further, the Applicant posits that, even if the Manager had met with the Applicant in May 2022, this would not have been sufficient to satisfy the requirements of due process. The Applicant submits that, by this time, there were less than six months remaining on the Applicant’s term

appointment and “ECR management had allegedly already decided not to renew her appointment.” Accordingly, the Applicant submits that a May 2022 meeting would not have given the Applicant “any meaningful opportunity to ‘defend [her]self or take steps to remedy any deficiencies.’”

108. Moreover, the Applicant refers to the Bank’s claims that the Applicant lacked the necessary climate-related skills and asserts that this suggests that the non-renewal decision was motivated by the Applicant’s skill set. The Applicant submits that “the record is completely devoid of any indication that [the Manager] ever alerted [the Applicant] that there was a question about whether she was capable of handling climate-related matters.” The Applicant contends that the possibility of non-renewal due to an alleged lack of skills should have been brought to her attention.

109. In sum, the Applicant asserts that, pursuant to the Tribunal’s jurisprudence, it is not acceptable from a due process perspective that in December 2021 she received a positive performance review and in June 2022 she received notice of the non-renewal of her appointment without any intervening notice from the Manager that her employment was at risk.

The Bank’s Response

The non-extension decision was procedurally sound, and the Applicant was treated fairly and in accordance with the applicable rules and was afforded all due process rights

110. The Bank asserts that the non-extension decision was made in accordance with the Staff Rules. The Bank stresses that, in order for the Applicant’s appointment to have been extended, the Bank would have had to explicitly offer her a new term appointment. The Bank asserts that the Applicant received seven months’ notice of the Manager’s intention not to renew the Applicant’s appointment, and that she was offered an opportunity to discuss such with the Manager. The Bank submits that “the record demonstrates that when the Manager wanted to discuss [the] Applicant’s appointment, [the] Applicant avoided the Manager.” The Bank contends that the Manager made “numerous attempts” to discuss the end of the Applicant’s term appointment with the Applicant, but the Applicant “failed to respond” and “rejected every offer to meet with the Manager.”

111. To the Bank, the Applicant's contentions regarding notice are "misplaced," and the Bank avers that "the requirement to alert a Staff Member about serious concerns regarding performance, especially where the non-extension of the Staff Member's appointment is a possibility, relates to cases where performance or skills mismatch is the basis for the non-extension." The Bank submits that "[t]his is not the case here." The Bank asserts that, in the instant case, "the Manager took a holistic approach and had to decide, whether [the] Applicant's interests and skills were the right fit for the New York office." The Bank submits:

Considering [the] Applicant's lack of engagement with the team and her work, the fact that Management needed someone with more experience, and [the] Applicant's indication to the Manager that she wanted to grow her career outside the NY office, management decided not to offer [the] Applicant an extension of her term appointment.

112. The Bank invokes Principle 5.1 of the Principles of Staff Employment and states that "the changing demands on the Organizations require that they adapt to meet evolving needs and circumstances." The Bank refers to the Tribunal's jurisprudence on the non-extension of term appointments, and it submits that the question before the Tribunal is simply whether the non-extension decision was a legitimate use of managerial discretion. To the Bank, it was.

113. Finally, with respect to the Applicant's requests for relief, the Bank submits that, between January and June 2023, the Applicant served as a Short-Term Consultant with the Bank and received a total of \$8,148.50, while also receiving Short-Term Disability payments. The Bank further notes that the Applicant has another Short-Term Consultancy for FY24 and that, in August 2023, the Applicant's LinkedIn profile indicated that she would be starting a new job outside of the Bank. The Bank "asks the Tribunal to take [this] information into consideration" should the Tribunal find in the Applicant's favor.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

WHETHER THE NON-EXTENSION DECISION WAS AN ABUSE OF DISCRETION

114. Principle 2.1 of the Principles of Staff Employment provides that the Bank “shall at all times act with fairness and impartiality and shall follow a proper process in [its] relations with staff members.” Principle 9.1 further provides that “[s]taff members have the right to fair treatment in matters relating to their employment.”

115. Staff Rule 7.01, paragraph 4.01 regarding the expiration of a term appointment, provides, “A Staff Member’s appointment expires on the completion of an appointment for a definite term, as specified in the Staff Member’s letter of appointment, or as otherwise amended.”

116. The Tribunal observes that the Applicant’s LOA of 24 October 2019 stated:

Your appointment will terminate at the end of this 3 years 0 months period unless it is renewed or a new appointment is made. The World Bank Group has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if the interests of the World Bank Group require it and it is agreed in writing. Your appointment is subject to a probationary period of one year, which may be extended for up to one additional year, subject to the length of your appointment.

117. The Tribunal has consistently held that there is no right, absent unusual circumstances, to the extension or renewal of temporary appointments. *See e.g., CP*, Decision No. 506 [2015], para. 36. “Even so, the decision not to extend a Fixed-Term contract, like all decisions by the Bank, must be reached fairly and not in an arbitrary manner.” *FK*, Decision No. 627 [2020], para. 60, citing *Tange*, Decision No. 607 [2019], para. 111.

118. The Tribunal has held that, even where the “circumstances of the case do not warrant any right to a renewal of a fixed-term contract, the Bank’s decision not to renew the contract at the expiration of its predetermined term, however discretionary, is not absolute and may not be exercised in an arbitrary manner.” *Carter*, Decision No. 175 [1997], para. 15. *See also Barnes*, Decision No. 176 [1997], para. 10.

119. As the Tribunal stated in *AK*, Decision No. 408 [2009], para. 41,

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

See also ET, Decision No. 592 [2018], para. 91; *DO*, Decision No. 546 [2016], para. 33.

120. The Tribunal has made clear that, with respect to the non-renewal of a term appointment, the Bank must provide reasons for the non-renewal decision and those reasons must be honest rather than pretextual. *See Tange* [2019], para. 129; *CS*, Decision No. 513 [2015], para. 77.

121. In examining whether the Bank has met the requirement to give honest reasons for a non-renewal decision, the Tribunal must determine whether the Bank provided the Applicant with reasons for the non-renewal decision and whether the reasons are in fact supported by the record. In *GI*, Decision No. 660 [2021], para. 111, the Tribunal emphasized the importance of contemporaneous documentation of managerial decisions to assist the Tribunal in this review, noting that "later explanations cannot command the same weight as contemporaneous documentation."

122. The Tribunal observes that the Manager emailed the Applicant on 8 June 2022 and communicated her intention not to renew the Applicant's appointment. The Manager explained her rationales for the non-extension decision in this email, which were stated as the Applicant's "unreliability," "lack of availability," and "disengagement," as well as "current business needs" and that the Manager "[would] be restructuring the team."

123. The Tribunal finds that the Bank provided thorough reasons for the non-renewal decision. The Tribunal will now consider whether the reasons provided to the Applicant were honest and not pretextual and whether the non-extension decision otherwise constituted an abuse of discretion.

Changing Business Needs of ECR New York

124. In its non-renewal decision, the Bank states that it relied in part on the changing business needs and a restructuring of the New York Office. The Tribunal notes that the Bank refers to the Manager's written statement of 11 April 2023 and filed with the Tribunal wherein she stated, "With the Bank's increasing focus on climate, ECR management was aware of the need to reinforce staffing on that portfolio and the need to hire someone with strong expertise in that area, which [the] Applicant did not have." The Bank further submits that "ECR Management agreed that stronger expertise in the SDG to support that agenda, including the UN High Level Political Forum [...] would be beneficial," and the Bank asserts that the "Applicant's background did not support these two portfolios."

125. The Tribunal notes that, on 16 November 2022, the Bank posted Requisition 20028 for the position the Applicant held. The Tribunal observes that there is no mention of climate-related skills or SDG expertise in the selection criteria for this position. The Tribunal acknowledges the Bank's explanation that the position description and selection criteria were for the same role and were substantially similar, but it reminds the Bank of the importance of publicly advertised selection criteria. *See e.g., Perea*, Decision No. 326 [2004], para. 74. The Tribunal further notes that no evidence has been presented showing the occurrence or outcome of internal discussions or communications, content of targeted outreach, interview questions, or otherwise. Nonetheless, the Tribunal also takes note of the general statements and correspondence regarding media articles critical of the Bank's position on climate. The Tribunal observes that the backgrounds of the individuals hired to succeed the Applicant support the Bank's claim that climate-related skills and SDG expertise were determined to be essential for the role. Considering the totality of the evidence presented in this case, the Tribunal accepts that the need for stronger climate expertise existed.

126. The Tribunal now turns to the Bank's claim that the Applicant herself fell short of the changed skills needed in the New York Office.

127. The Tribunal observes that the Applicant's FY21 Annual Review was finalized in December 2021, approximately six months before the non-renewal decision was communicated to

her on 8 June 2022. The Tribunal recalls that, in the Applicant's FY21 Annual Review, the Manager stated in her comments regarding the Applicant:

[The Applicant] had a good year. She takes the work of her portfolio seriously, actively seeks opportunities to position the WBG and our Management in UN fora, and delivers on briefing, input and readout requests. She ensures that UN-related events falling under her portfolio are covered and provides detailed readouts. She has also built and maintained a solid network within the WBG and in the UN system and could use them successfully to secure WBG positioning or get valuable intel as needed. Her contributions on the UN High Level Political Forum, the climate and FCV agendas are highly appreciated by the team and manager.

128. The Tribunal considers the Manager's statements that the Applicant "had a good year," that she "takes the work of her portfolio seriously," and that her "contributions on the UN High Level Political Forum, the climate and FCV agendas are highly appreciated by the team and manager" to be relevant to its inquiry. Specifically, the Tribunal finds that these statements do not indicate that the Applicant was deficient in the area of climate-related skills or expertise.

129. Although the Tribunal has concluded that there was sufficient evidence in the record to establish that changing business needs existed in the New York Office, there is no evidence in the record to establish that the Applicant lacked such expertise as is now contended by the Bank in its submissions. The Tribunal finds this specific evidentiary omission to be uncured by either the Manager's statement of 11 April 2023 or the information provided about the attributes of the Applicant's successors.

Disengagement and Unavailability

130. The Tribunal will next turn to the Bank's contention that the non-extension decision was also, in part, "based on [the] Applicant's disengagement with the team and the Manager, as well as [the] Applicant's unreliability and unavailability to work."

131. The Tribunal recalls the Manager's email of 8 June 2022 and observes that the Manager describes the Applicant's "unreliability within the team," the Applicant's "disengagement," and the Applicant's "lack of availability." The Tribunal considers that, notwithstanding the Bank's

submission in its pleadings that the non-renewal decision was not performance-based, the rationales and examples provided by the Manager in fact relate to issues of performance.

132. Issues such as “lack of availability [which] is affecting our work and team,” “not attend[ing] meetings,” “missing important inputs,” and “continued lack of engagement,” among others stated in the Manager’s email of 8 June 2022, all relate to the Applicant’s overall performance in her role. Indeed, the Manager explicitly states, “I am really concerned about your availability to work and communicate with me and the team and to perform as expected to deliver in the highly relevant portfolio you manage in the NY office.” On review of the content of the Manager’s email, therefore, the Tribunal finds that the Manager was indeed articulating issues with the Applicant’s performance, which encompasses both technical and behavioral components, and which the Manager concluded justified her intention not to renew the Applicant’s appointment.

133. The Tribunal observes that the Staff Rules provide the mechanisms for addressing performance issues with a staff member. Specifically, the Tribunal notes that, pursuant to Staff Rule 5.03, paragraph 5.01:

If a Manager or Designated Supervisor determines that a Staff Member’s performance (which includes professional and work-place behavior) is not satisfactory, the Manager or Designated Supervisor may do the following:

- a. Consider reassignment to another position under Rule 5.01 or assignment to a lower level position under Rule 5.06.
- b. Discuss and Document Opportunity to Improve Unsatisfactory Performance. Discuss and share with the Staff Member in writing:
 - i. the aspects of performance that are not satisfactory,
 - ii. guidance on what improvement is expected and by when, and
 - iii. the possible consequences of failure to improve.
- c. Health Assessment: Request a health assessment under Rule 6.07, paragraph 3.03 if performance problems are believed to be health-related.

134. The Tribunal considers that it is entirely conceivable that over the course of a staff member’s employment with the Bank such staff member may have periods during which performance suffers, potentially for a variety of reasons. The Tribunal observes that Staff Rule

5.03, paragraph 5.01, envisions a path forward in such instances, whereby staff members may be reassigned, given an opportunity to improve, or assessed for health-related problems. In this respect, the Tribunal recalls that, in *CX*, Decision No. 517 [2015], para. 97, it found:

Indeed the [a]pplicant was not entitled to an automatic extension of his term contract. *See CA*, Decision No. 475 [2013], para. 50. However, as was held in *BY*, Decision No. 471 [2013], para. 49, “where the real issue is management’s dissatisfaction with the [a]pplicant’s performance, notice and the opportunity to improve are required prior to an adverse decision.” Such an opportunity would usually take the form of an Opportunity to Improve Unsatisfactory Performance Plan (OTI).

135. The Tribunal finds that the record establishes that there were instances on the Applicant’s part of disengagement with the team, unreliability, and unavailability to work. Therefore, the Tribunal accepts that the reasons given were in fact supported by the record. However, the Tribunal finds that, despite displaying patience with and empathy for the Applicant, the Manager made the decision not to renew the Applicant’s appointment rather than to address these issues, which were in substance matters of performance, through the appropriate performance management mechanisms. The Tribunal finds that the Bank failed to address the performance issues of unavailability and disengagement in accordance with the appropriate procedures, and it finds that such failure amounts to a violation of the Bank’s obligation of fairness to the Applicant pursuant to Principle 2.1 of the Principles of Staff Employment.

136. Additionally, the Tribunal takes note of the Bank’s references to the Applicant’s applications to “eleven positions outside the New York Office during her appointment.” The Tribunal is unpersuaded by the Bank’s contention that the Applicant’s application to posts outside the New York Office is evidence of disengagement with that office. The Tribunal considers that staff members on term contracts will necessarily keep their options open and may seek promotion and advancement elsewhere within or beyond the Bank. Even staff members on open-ended appointment are not prohibited from pursuing opportunities elsewhere within the Bank or outside the Bank. The Tribunal notes that the Bank has not cited any rules or policies which the Applicant may have violated in respect of her job applications, and the Tribunal considers that such professional pursuits do not necessarily negate a staff member’s commitment to their current position or give way to a presumption of non-renewal of their appointment.

137. In summary, the Tribunal has found, based on the totality of the evidence, that the Bank established that there were changing business needs in the New York Office related to climate expertise but that the Bank failed to establish that it had determined at the relevant time that the Applicant's skills were insufficient to meet them. The Tribunal has also found that, as of the date the non-renewal decision was communicated to the Applicant, the Applicant's performance exhibited issues with disengagement from the team, unreliability, and unavailability to work. However, the Tribunal finds that these were matters of performance which the Bank had failed prior to that date to address through the appropriate performance management mechanisms.

138. In view of the foregoing discussion, the Tribunal finds that the non-extension decision constituted an abuse of discretion.

139. Pursuant to *AK* [2009], para. 41, decisions which are "improperly motivated" also constitute an abuse of discretion. In the instant case, the Applicant contends that the decision not to renew her term appointment was improperly motivated by her use of sick leave and by her attempts to resolve the incident with the Colleague. The Tribunal will next consider each of these claims in turn.

Sick Leave

140. Under Staff Rule 6.06, paragraph 4.01, a staff member is entitled to sick leave. Specifically, Staff Rule 6.06, paragraph 4.01, provides:

Sick leave is taken when a Staff is incapacitated by sickness or injury, when undergoing examination or treatment for physical (medical, dental, optical) or mental illness, or when, because of exposure to contagious diseases, the presence of the Staff at work would jeopardize the health of others.

141. The Tribunal first notes that the record indicates that, in 2022, the Applicant took sick leave in March, April, May, and June, and ultimately qualified for Short-Term Disability benefits in June 2022. The Applicant asserts that "[t]he availability of sick leave to be used in support of a staff member's medical needs is a core benefit of staff employment," and she submits that a staff member's use of sick leave "should not have any bearing on a nonrenewal decision." In the

Applicant's view, "the timing of [the Manager's] June 8 nonrenewal decision and 'availability' explanation indicate a clear causal connection," and the Applicant underscores that her use of medical leave "constitutes an improper motivation for nonrenewal."

142. The Bank contends that the record demonstrates that the non-extension decision "had nothing to do with [the] Applicant's sick leave." The Bank submits that the issues identified by the Manager in her email of 8 June 2022 pre-date the Applicant's use of sick leave in May 2022, thereby dispelling any connection between the lack of availability rationale for the non-renewal decision and the Applicant's use of sick leave.

143. In the Tribunal's view, a staff member's legitimate use of sick leave is an entitlement pursuant to the Bank's rules and, accordingly, cannot be used to inform or motivate a non-renewal decision. The Tribunal observes that, in the instant case, the parties dispute whether the record shows a causal connection between the Applicant's use of sick leave and the non-renewal decision. The Tribunal will determine whether the record indicates that the non-renewal decision was improperly motivated by the Applicant's use of sick leave.

144. To support its contention that the justifications provided by the Manager for the non-renewal decision were unrelated to the Applicant's use of sick leave, the Bank submits documents to demonstrate the Applicant's lack of availability and disengagement. On review of the record, the Tribunal is satisfied that the Bank has provided some evidence of the Applicant's lack of availability and disengagement in March, April, May, and June of 2022.

145. More specifically, the Tribunal notes that the Bank points out that the Applicant took only two days of sick leave in March and one day in April and yet during these months was unresponsive to emails from the Manager, failed to attend a team meeting, and "was further disengaged." The Bank further notes that, when the Applicant was not on sick leave on 31 May 2022, she "failed to show up to a virtual meeting that was scheduled [...] to discuss the non-extension decision." Thus, in the Bank's view, the Applicant's disengagement and unavailability as issues apart from her use of sick leave have been proven.

146. The Tribunal is satisfied that the factual record supports the Bank's assertions that the Applicant's unavailability and disengagement also occurred on days when she was not on sick leave. The Tribunal considers, however, that it is difficult to determine the extent to which the Applicant's health and use of sick leave in support of her health may have affected her performance – in terms of her availability and engagement – and/or the Manager's perception of the Applicant's performance during these months and which the Tribunal has found underpins the non-renewal decision.

147. For instance, the Bank highlights that on 1 March 2022, while the Applicant was not on sick leave, the Applicant "asked a colleague to cover her work portfolio." But the Tribunal observes that the Applicant took sick leave on the following two days, 2 and 3 March 2022. Similarly, the Bank stresses that the Applicant did not attend a virtual meeting with the Manager on 31 May 2022, a day when the Applicant was not on sick leave. The record indicates that the Applicant responded to the Manager's meeting invitation the same day stating, "I have been accompanying Energy team since this afternoon and still in meeting with them." And, in this instance too, the Tribunal observes that the Applicant took sick leave shortly thereafter on 2 June 2022, ultimately being approved for Short-Term Disability benefits retroactive to that date.

148. The Tribunal notes that the most substantial periods of the Applicant's sick leave occurred in May and June 2022. It is the timing of these specific absences and the non-renewal decision and "availability" rationale communicated on 8 June 2022 that the Applicant contends is indicative of improper motive.

149. It is clear from the record that the Applicant took nine days of sick leave in May and then further sick leave on 2 June 2022, culminating in the Applicant's transition to Short-Term Disability pursuant to the Bank's rules. On 3 June 2022, the Applicant emailed the Manager and stated that she had "been advised by [her] physician to take time off for medical leave, starting with immediate effect." On 8 June 2022, the Manager informed the Applicant via email of her intention not to renew the Applicant's term appointment and cited the Applicant's disengagement and lack of availability as rationales for the decision.

150. The Tribunal recalls that, in her written statement of 11 April 2023, the Manager states that she saw the Applicant on 27 April 2022 at the UN in New York but that “[t]he busy schedule of the day [...] did not allow for time to discuss the expiry on [the] Applicant’s term appointment and my intention not to offer [the] Applicant a renewal of her term.” The Tribunal observes that the Manager therefore claims that the non-renewal decision had been made by late April 2022. However, the Tribunal observes that the Manager did not take action on the Applicant’s appointment at that time, even though she was also alerted via automated email from HR on 30 April 2022 that the Applicant’s contract was due to expire in six months. The Applicant contends that, had there truly been ongoing or long-standing issues with her availability and engagement, the Manager would have made the decision not to renew her appointment at the six-month mark.

151. The Tribunal considers that the Manager’s failure to act in April 2022 combined with the timing of the Applicant’s sick leave in May/June and that of the non-renewal decision could lead the Applicant to infer that her use of sick leave informed the Manager’s lack of availability and disengagement rationales which formed the basis for the non-renewal decision. Without more, however, the Tribunal is not persuaded that the timing of the Applicant’s use of sick leave in May and June on the one hand, and the Manager’s 8 June 2022 communication of her intention not to renew the Applicant’s term appointment and the rationales stated therein on the other hand, is indicative of an improper connection between the two occurrences.

152. Rather, the Tribunal is of the view that the Manager identified performance issues with the Applicant regarding availability and engagement, which should have been addressed through the appropriate performance management mechanisms as the Tribunal has already explained.

153. In the instant case, the Tribunal is satisfied that the non-renewal decision was not improperly motivated by the Applicant’s use of sick leave.

Incident with the Colleague

154. The Tribunal observes that retaliation is expressly prohibited under the Staff Rules. Staff Rule 8.02, paragraph 3.01(a), provides:

Where a [s]taff [m]ember has made a *prima facie* case of retaliation for an activity protected by this Rule (i.e., by showing that the [s]taff [m]ember reported suspected misconduct under this Rule and has a reasonable belief that such report was a contributing factor in a subsequent adverse employment action), the burden of proof shall shift to the Bank Group to show—by clear and convincing evidence—that the same employment action would have been taken absent the [s]taff [m]ember’s protected activity.

155. Further, in *Bauman*, Decision No. 532 [2016], para. 95, the Tribunal stated:

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

156. The Tribunal has also established that “[i]t is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person” (*AH*, Decision No. 401 [2009], para. 36), and has recognized that, “[a]lthough staff members are entitled to protection against reprisal and retaliation, managers must nevertheless have the authority to manage their staff and to take decisions that the affected staff member may find unpalatable or adverse to his or her best wishes” (*O*, Decision No. 337 [2005], para. 49).

157. The Tribunal has recently confirmed that, once an applicant has established a *prima facie* case or has pointed to facts “that suggest that the Bank is in some relevant way at fault,” then “the burden shifts to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner.” *GL (Merits)* Decision No. 677 [2022], para. 102, quoting *de Raet*, Decision No. 85 [1989], para. 57. *See also FH (No. 2) (Merits)*, Decision No. 680 [2022], para. 84.

158. The Applicant submits that she has made *prima facie* showings that the non-renewal decision was improperly motivated at least in part by her efforts to address the allegations from the Colleague. She contends that she “engaged in a core form of protected activity when she invoked IJS services,” and she claims that the Manager “turned against [the Applicant] after she

expressed an intent to continue seeking outside help in resolving [the Colleague's] unfounded allegations." The Applicant avers that the Bank "fails entirely" to meet its burden of showing an alternative basis for the non-renewal decision which satisfies the reasonable and observable basis standard.

159. The Bank submits that "there is simply no evidence that the Manager's treatment of [the] Applicant changed because of the incident." Moreover, to the Bank, because the Applicant has not demonstrated that the Manager had knowledge of her use of Ombuds Services, "there is no factual basis underpinning her claim of retaliation."

160. The Tribunal notes that the Applicant states that, after discussing the incident with the Colleague with her Manager in September 2021, "she began to perceive a level of hostility from [the Manager] in her day-to-day work," and the Tribunal observes that this perceived hostility is documented in her emails with the Ombudsman. Further, the Tribunal observes that the Manager states that she was aware of the incident between the Applicant and the Colleague and had discussions with them regarding the incident.

161. The Tribunal notes the Bank's contention that the record does not show that the Manager was aware of the Applicant's use of Ombuds Services prior to the non-extension decision. The record shows that the Manager herself contacted Mediation Services regarding the incident, ultimately explaining to Mediation Services via email communication of 29 September 2021 that she "had the possibility to meet the staff in person last week," and further stating, "I don't think we would need mediation for the time being." The Manager was also aware, via the forwarded email exchange from the Applicant of 9 September 2021, that, on 3 August 2021, the Applicant stated to the Colleague, "I am inviting you to speak about this with me as I would like to understand and I propose that we meet, the two of us in person. If you would prefer a mediator present, we can have an ombuds professional join us."

162. Regardless of the extent of the Manager's awareness of the Applicant's use of IJS, the Tribunal observes that the Applicant has not offered any evidence to support her claim that the non-renewal decision was taken in retaliation for the fact that she "invoked IJS services," and the

Tribunal considers that the Applicant's contentions in this regard are purely speculative. The Tribunal considers that the record does not reveal any connection or "causal nexus" between the Applicant's efforts to resolve the incident with the Colleague and the non-renewal decision as taken by the Manager so as to support a claim of improper motivation or retaliation. *See DW*, Decision No. 556 [2017], para. 88. Accordingly, the Tribunal is satisfied that the Manager's decision not to renew the Applicant's appointment was not an act of retaliation.

WHETHER THERE WAS A VIOLATION OF DUE PROCESS

163. The Tribunal has stated that due process "guarantees refer precisely to adequate warning about criticism of performance or any deficiencies that 'might result in an adverse decision being ultimately reached,' and the corresponding opportunity for the staff member to defend himself." *B*, Decision No. 247 [2001], para. 21. *See also Tange* [2019], para. 136.

164. In assessing the potential due process violations in this case, the Tribunal first recalls the requirement on the Bank to furnish an honest and not pretextual reason for the non-renewal decision. *See CS* [2015], para. 77. The Tribunal has found that the Bank's changing business needs rationale is substantiated in the record. However, the Bank did not provide evidence that it considered whether the Applicant lacked the expertise necessary to meet those changing business needs. The Tribunal finds that this constitutes a due process violation.

165. Further, the Tribunal has explained that the record indicates that the non-extension decision was also partly driven by performance-related issues. Accordingly, the Tribunal finds that, by extension, the Applicant should have been afforded the due process protections in place, pursuant to the Staff Rules, for performance-related employment issues. In particular, the Tribunal recalls the option of placement on an Opportunity to Improve plan pursuant to Staff Rule 5.03, paragraph 5.01(b). As the Bank failed to afford the Applicant such process, the Tribunal finds a due process violation.

166. The Tribunal next observes the FY21 and FY22 Talent Reviews in which the Applicant was flagged as “Attention Needed.” The Tribunal recalls that the Applicant’s SRI rating for FY21 was a 3, which is defined as fully meets expectations, and notes that the Bank explained:

While all unsatisfactory performers must be assigned “Attention Needed” talent category, not all staff in “Attention Needed” category are unsatisfactory performers. Staff tagged as “Attention Needed” may: i) Have performance or/and behavioral issues, ii) Be a poor fit for their current role, iii) Experience difficulties settling into a current role, or iv) Be affected by specific personal circumstance and therefore need additional support.

The Bank further explained:

During a Talent Review, management teams meet to review the assessments of staff across the department and identify actionable areas of development for them. This may include on-the-job development opportunities, coaching, mentoring, training, or a change in roles. Information from talent reviews [is] used to inform business decisions such as mobility, learning interventions, workforce planning, talent acquisition and succession. Although Talent Reviews are not typically shared with staff members, the result of the review is discussed with staff members as part of their overall performance assessment.

167. The Tribunal takes note of the “FY23 Talent and Performance Review Implementation Guidelines” provided by the Bank and which the Bank states are consistent with previous years. The Tribunal observes that, pursuant to these guidelines, “[a]ll Attention Needed staff must have an action plan in place to address gaps.” The Tribunal observes that, despite the Applicant’s flagging as “Attention Needed” for two consecutive years, there is no indication in the record that an action plan was in place for the Applicant.

168. Further, the Tribunal recalls that, in *GF*, Decision No. 602 [2019], para. 128, the Tribunal explained:

The Tribunal is not persuaded that the information in the FY16 and FY17 Talent Reviews, which turned out to have very serious consequences for the [a]pplicant’s employment, was shared with the [a]pplicant through the “overall feedback discussions.” The Tribunal is troubled by the Bank’s repeated reliance on Talent Reviews that are inconsistent with performance evaluations but which are relied upon by the Bank to make staffing decisions.

169. In *GF* [2019], para. 126, the Tribunal “urge[d] the Bank to be more candid about a staff member’s need to obtain or demonstrate certain skills and the consequences of the failure to do so,” and found that “[t]he Bank’s lack of candor in this case was unfair to the [a]pplicant and warrants compensation.” Likewise, in the instant case, the Tribunal finds that the Bank’s lack of candor and transparency with the Applicant about the outcome of the Talent Review process as it related to her, as well as its failure to adhere to its own procedure regarding Talent Review, was unfair to the Applicant and warrants compensation.

170. Finally, the Tribunal recalls that, in *Chaturvedi* [2021], para. 120, it stated that “it is the obligation of the Bank to unambiguously inform its staff members of any concerns with their continued employment.” The Tribunal agrees that the Applicant avoided speaking with her Manager and notes that HR could have been more helpful to the Manager in supporting her in dealing with an employee whose performance required attention, especially given the Manager’s futile attempts to meet with the Applicant. Nevertheless, the Tribunal cannot but conclude that the Bank failed to unambiguously inform the Applicant of the Bank’s concerns with her continued employment.

171. In view of the above due process violations, the Tribunal determines that the Applicant must be compensated.

REMEDIES

172. Having found that (i) the non-renewal decision was an abuse of discretion and (ii) the Bank failed in its due process obligations to the Applicant, the Tribunal will assess the appropriate remedies to be awarded to the Applicant.

173. Article XII(1) of the Tribunal’s Statute provides:

If the Tribunal finds that the application is well-founded, it shall order the rescission of the decision contested or the specific performance of the obligation invoked unless the Tribunal finds that the Respondent institution has reasonably determined that such rescission or specific performance would not be practicable or in the institution’s interest. In that event, the Tribunal shall, instead, order such institution

to pay restitution in the amount that is reasonably necessary to compensate the applicant for the actual damages suffered.

174. The Tribunal notes that the Applicant has requested rescission of the non-renewal decision and “[r]eappointment to a mutually agreeable position for a term of no less than three years or appropriate compensation in lieu thereof.” The Applicant further requests “compensation in an amount deemed just and reasonable by the Tribunal to remedy the damage to [the Applicant’s] career and professional reputation and the emotional distress caused by the nonrenewal of her appointment[] and the events leading up to that decision as described in this Application.”

175. In *Bigman*, Decision No. 209 [1999], the applicant held a three-year fixed-term appointment that was not renewed. The Tribunal in that case found that the process of reaching the non-renewal decision was vitiated by an abuse of discretion. *Id.*, para. 22. In awarding 18 months’ net salary instead of reinstatement, the Tribunal acknowledged that, “[w]hile normally a vitiated decision would be quashed by the Tribunal,” the applicant did not request this. *Id.*, para. 23.

176. In *EO*, Decision No. 580 [2018], the Tribunal found that the non-renewal of the applicant’s appointment was a failure in the proper exercise of managerial discretion. In that case, the Tribunal ordered reinstatement or compensation in the amount of three years’ net salary.

177. In *Tange* [2019], where the applicant was promised that he would be appointed to an Abidjan-based Senior Economist position on a three-year term appointment but where his appointment was for two years instead of three, the Tribunal awarded compensation for an improper non-renewal decision instead of reinstatement, reasoning that the applicant “held a term appointment so there is no certainty that he would have been employed indefinitely with the Bank.” *Id.*, para. 150. In that case, the Tribunal ordered the Bank to pay the applicant one year’s net salary based on the last salary drawn by the applicant, for the improper non-renewal decision. The Tribunal explained that “[r]egarding the nonrenewal decision, which was an abuse of discretion and lacked due process, the remedy would normally be compensation equivalent to the remainder of the contract. In this case, the [a]pplicant had one year remaining, assuming a three-year contract, as promised.” *Id.*, para. 162.

178. In *GC*, Decision No. 650 [2021], the Tribunal found that the non-extension decision was an abuse of discretion and a breach of the requirement of good faith and fair dealing, and that there were violations of due process. *Id.*, paras. 86, 102. The Tribunal awarded the applicant (i) a conversion of her Short-Term Consultant contract to a one-year term appointment as a rescission of the non-extension decision; (ii) two years' net salary, minus the payments received during her Short-Term Consultant appointments; (iii) six months' net salary to account for lost benefits and medical expenses; and (iv) six months' net salary for the violations of due process.

179. As is evident from the above cases, the amount of compensation is not the same in every instance of wrongful non-renewal of an appointment. As the Tribunal explained in *CK*, Decision No. 498 [2014], para. 101, “[i]n assessing compensation the Tribunal considers the gravity of the irregularity, the impact it has had on an applicant and all other relevant circumstances in the particular case.”

180. In this case, the Tribunal notes that the Applicant has held Short-Term Consultancy contracts with the Bank since the end of her term appointment and that the record indicates that she has received \$8,148.50 in earnings. The record also indicates that the Applicant has assumed a new role outside of the Bank. The Tribunal further recalls that the Applicant was approved for Short-Term Disability benefits prior to the end of her term appointment, and the Tribunal notes that the Applicant was approved for Short-Term Disability benefits after separating from the Bank through 30 September 2023.

181. The Tribunal also recalls the Manager's email of 8 June 2022 in which the Manager describes the Applicant's unreliability within the team, disengagement, and lack of availability. The Manager expounded on these issues, describing, for instance, the Applicant's unresponsiveness and failure to attend meetings, and the Tribunal notes that these issues with the Applicant are further supported in the record. The Tribunal considers that compensation cannot be the same for the wrongful non-renewal of the appointment of a staff member who has clearly fallen short with respect to certain aspects of professional behavior and whose professional behavior has contributed to the non-renewal decision, as is the case here, as compensation awarded for the

wrongful non-renewal of the appointment of a staff member who did not fall short in professional behavior contributing to the non-renewal decision.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of nine months' net salary based on the last regular salary drawn by the Applicant for the improper non-renewal decision;
- (2) The Bank shall pay the Applicant six months' net salary based on the last regular salary drawn by the Applicant for violations of due process;
- (3) The Bank shall pay the Applicant's legal fees and costs in the amount of \$19,900.00; and
- (4) All other claims are dismissed.

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

/S/ Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 10 November 2023