



**World Bank Administrative Tribunal**

**2023**

**Decision No. 697**

**HD,  
Applicant**

**v.**

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

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

**HD,  
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 8 February 2023. An amended Application was received on 10 February 2023. The Applicant was represented by Nat N. Polito of the Law Offices of Nat N. Polito, 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 3 November 2023.

3. The Applicant challenges the determination made by the Human Resources Department Vice President (HRDVP) that she committed misconduct and the disciplinary measures imposed therein.

**FACTUAL BACKGROUND**

4. The Applicant is a former Senior Health Specialist, Grade Level GG, at the Bank. She joined the Bank as a consultant in August 2001 and became a health sector task team leader (TTL) in 2010. The Applicant served as the TTL for health programs in Angola from 2016 to July 2021. In August 2019, the Applicant began a country-based assignment in Angola and moved to the country with her daughter.

5. As TTL for the Angola health programs, the Applicant oversaw the World Bank Group (WBG) health sector projects and was responsible for maintaining dialogue with relevant

government authorities, primarily the Minister of Health (MOH), as well as the Minister of State, Minister of Economy, and Minister of Finance. The Applicant also interacted with coordinators and staff of various project implementation units (PIUs) of the WBG-funded health sector projects in the country.

6. While in Angola, the Applicant served as Co-TTL for the Regional Project for the Improvement of Disease Surveillance Systems in Central Africa – Angola Project Phase IV, also referred to as the REDISSE project, which is financed by the Bank. The objective of the project is to (i) strengthen disease surveillance and epidemic preparedness systems, and (ii) provide an immediate and effective response to disease outbreak crises or emergencies. The Angolan Ministry of Health (MyOH) had the general responsibility for the project’s implementation through the PIU, headed by the PIU’s Coordinator (PIU Coordinator).

7. The Applicant led a WBG task team that worked on the REDISSE project.

8. In March 2020, the PIU contracted an epidemiologist, Dr. X, to serve as the Technical Manager of the REDISSE project. Dr. X was appointed to the position for a term of one year, from 1 April 2020 to 2 April 2021. Dr. X’s employment contract, signed by her and the Health System Performance Strengthening Project (PFSS) under the MyOH’s Office of Studies, Planning, and Statistics, was governed by the laws of Angola and provided for a thirty-day termination notice period.

9. Also in March 2020, the Applicant decided to relocate her daughter to the United States to stay with the Applicant’s parents and sister due to the COVID-19 pandemic.

10. Near the end of March 2020, the WBG made available \$15 million to support Angola’s initial COVID-19 response. A request was made by the MyOH for the Bank to urgently pay for three invoices for COVID-19-related equipment and supplies. Under Bank rules, payment could not be made against invoices because contracts were required, but contract information from certain companies was missing. The Applicant and the Country Manager of Angola (Country

Manager) were engaged in explaining the reason for the delay – the preparation of contracts – in response to escalating complaints about bureaucracy.

11. On 31 March 2020, the Applicant emailed the Integrity Vice Presidency (INT) about the COVID-19 contracts, noting that the MOH had previously tried to bully the PIU team and the Applicant. She indicated that the situation was out of control and that the MOH and a MyOH staff member were calling the Applicant late into the night to strong-arm her. The Applicant related her efforts and stated that she did not know what to do in a situation like this or how to properly flag it for the Bank's attention. She asked for advice. The same day, a Senior Investigator in INT informed the Applicant that he would forward the complaint to the Regional Team Leader and encouraged the Applicant to submit the same complaint via a complaint intake form on the intranet.

12. In April 2020, the Applicant also emailed the Country Manager and other WBG colleagues about the MOH's concerning behavior related to the COVID-19 contracts, noting that the situation appeared to be escalating, and raised concerns for safety. She noted that the PIU team was looking to hire private security for certain individuals and had offered to secure the same for her. She again asked for advice.

13. The Applicant scheduled her annual leave for July and August 2020 to spend the summer with her daughter in the United States. However, the Applicant's travel plan was delayed several times for different reasons, one of which was that she was tasked to be the Acting Country Manager between August and September 2020. Eventually, the Applicant rescheduled her leave for October 2020.

14. On 5 October 2020, the Applicant was tested at a MyOH medical facility – the National Institute for AIDS Laboratory – to comply with Angolan COVID-19 testing requirements before her scheduled 7 October 2020 trip to the United States. Dr. X, in her role as Coordinator of the National Public Health Directorate COVID-19 Rapid Response Team (RRT), received the Applicant's test result showing that she tested positive. On the morning of 7 October 2020, the

Applicant was informed by Dr. X over the phone that the test result was positive. Thereafter, the Applicant was advised to self-quarantine at home for two weeks.

15. On 15 October 2020, the Applicant was tested again and was again notified by Dr. X over the phone of a second positive test result on 17 October 2020. According to the Applicant it was around this time that she began to get “really worried” about her test results and her rescheduled travel plans that were now set for 21 October 2020, which she had already rebooked and rescheduled several times.

16. On 19 October 2020, the Applicant took a COVID-19 test at the Luanda Medical Center (LMC) in Luanda, Angola. In a signed declaration, the Applicant recounted the events of 19 and 20 October 2020 as follows:

On October 19, I went to the Luanda Medical Center (“LMC”), a private clinic, to take another COVID-19 test. There were many persons in line at the LMC and while waiting I met [a woman (Ms. C)] and [an independent driver (Driver)]. I began speaking with them and [the Driver] said that he could help to expedite the scheduling of our tests. While I did not understand what he could do to help, we were able to move ahead in line and I was given a PCR [Polymerase Chain Reaction] test that day. I gave [the Driver] money to show my gratitude. He also offered to pick up our test results the next day and deliver them to us. On October 20, [the Driver] delivered the test result to me showing that I tested negative for [COVID-19].

17. On 21 October 2020, the Applicant departed Angola using the test result she received from the Driver.

18. On 22 October 2020, while the Applicant was in transit from Angola to the United States, she wrote to two consultants on the WBG task team, Ms. A and Mr. B, stating that she did not want the government authorities in Angola to know she had left Angola until she arrived in the United States. The email stated in relevant part:

For tomorrow’s meeting, gosh, my flight from Boston (if all goes well) departs Boston at 7h15 and I arrive in [Los Angeles] at 10h30. I think I’ll be on a plane

right when our Friday health team meeting is happening so may not be able to join, sorry about that.

I can catch up with you guys Sunday from California.

([Mr. B] – the Govt nor [PIU] team knows I have traveled and I don't want them to know until I'm in my beloved USA. [Ms. A] knows my story, but I just wanted to let you know that I'm keeping this quiet for now.)

19. While the Applicant was in transit, Dr. X received the Applicant's LMC test result showing that she tested positive.

20. On 23 October 2020, the Applicant arrived at her home in California. That same day, Dr. X texted the Applicant via WhatsApp that the Applicant's COVID-19 test result from LMC was positive. The Applicant responded, informing Dr. X that she had arrived at her home in California safely and that she had received a negative COVID-19 test result from LMC. Thereafter, the Applicant texted Dr. X a photo of the negative LMC test result after Dr. X asked to see the result.

21. On 25 October 2020, following a request from Dr. X to explain the discrepancy, LMC management launched an internal investigation into the circumstances surrounding the Applicant's test and processing. The next day, LMC management confirmed to Dr. X and the National Director of Public Health that the only test result issued by LMC was positive and that the negative test result was not from LMC.

22. On 28 October 2020, the MyOH, through the National Director of Public Health, wrote to the Applicant requesting an explanation of the COVID-19 test result discrepancy. The letter stated:

I have been informed by the Coordinator of the Rapid Response Teams ([Dr. X]) that [the Applicant] was supposed to be followed by the Teams because she had tested positive for SARS-Cov2. I have also been informed of the possible falsification of your RT-PCR test and of your departure outside the country after the LMC Laboratory had informed the Rapid Response Teams of your positive result, the Laboratory having also provided us with the original final report of your results, downloaded directly from the LMC software.

23. The same day, the Applicant wrote to her Practice Manager, Health Nutrition and Population Global Practice, Africa East (Practice Manager) and the Country Manager informing them of the COVID-19 test result falsification allegations by the MyOH and attaching the National Director of Public Health's letter. Later that day, the Applicant took a COVID-19 test in California and tested negative.

24. The following day, on 29 October 2020, after receiving the National Director of Public Health's letter, the Applicant informed the WBG task team that the National Director of Public Health and Dr. X had accused her of having falsified her COVID-19 test result and that she was "truly disappointed in the back-stabbing from [Dr. X]." Some of the members of the WBG task team responded with support for the Applicant and wrote comments such as "I am pretty shocked that they would raise such an accusation against you"; "so much for confidentiality"; "[Dr. X] has such an attitude and sneaky procedure, which is out of ethical behavior, but it is clear that ethics is not a practice for some people"; and "[Dr. X] has broken confidentiality and that is punishable."

25. On 9 November 2020, the MyOH wrote to the Ministry of Foreign Affairs reporting the Applicant's falsification of her COVID-19 test result, copying several governmental agencies as well as the Country Director for the Angola Country Management Unit (CMU) (Country Director). This formal letter stated:

[The Applicant], a health specialist at the World Bank Country Office in Angola assigned to the Health System Strengthening project, requested a SARS-Cov-2 test at the Luanda Medical Center Clinical Laboratory on October 5, 2020, for the purpose of establishing conditions that would allow her to travel outside the country. After we learned of her test result through routine LMC channels, our Rapid Response Team (RRT) entered into ongoing contact with the woman, advising her to remain in isolation. Eight days later she was tested again and the result continued to be positive.

When we learned that the result continued to be positive, the RRT attempted to reach [the Applicant] by telephone, without success. Shortly thereafter, it was possible to establish contact with [the Applicant], who reported that she was outside the country, having received a negative SARS-Cov-2 test [result]. At this point, we contacted the LMC, which confirmed that the test [result] to which [the Applicant] was referring was Positive and not Negative, considering the attached documentary evidence. In light of this fact, and the documentary evidence presented by the

official in question and the evidence presented by the LMC, we can easily conclude that we are looking at Falsification of the [test result].

In short, [the Applicant] traveled outside the country with a positive test result, showing outright disregard for the legal provisions regarding the prevention and combat of COVID-19, placing passengers aboard the airplane at risk, discrediting the many efforts made by the Angola Executive, and, what is more, forging an essential document relating to travel outside the country, thus undermining the credibility of our country abroad.

In light of the above, we are writing now to express our displeasure with this exceedingly disrespectful and repugnant act and to state that we have lost all interest in having [the Applicant] collaborate on any [MyOH] project in Angola. Furthermore, we request the competent authorities to declare that she is Persona Non Grata in our country.

26. On 16 November 2020, the Applicant sent an email to Mr. B of the WBG task team making disparaging comments about Dr. X, stating, “She is a fat, ugly, bitter old woman, so I don’t expect much from her.” The Applicant also expressed concerns about Dr. X’s (i) commitment and time spent working on the REDISSE project and (ii) her professional behavior.

27. On 17 November 2020, the Country Director reported to the Ethics and Business Conduct Department (EBC) that he had received a letter from the MyOH alleging that the Applicant had falsified her COVID-19 test result and presented it to local authorities in order to travel from Luanda, Angola, to the United States. EBC opened a preliminary inquiry into the matter.

28. On 19 November 2020, the Country Director wrote to the Angolan Minister of Foreign Affairs, stating in part:

Your Excellency,

We received on November 17, the letter reference [...] dated November 9 from H.E. the Minister of Health, regarding World Bank staff member [the Applicant].

We have reviewed the allegations set out in the above mentioned letter and are addressing them with the seriousness they deserve. As a result, the Bank will be undertaking its own review of the underlying facts as a matter of urgency and will respond more fully once we have a complete understanding of the circumstances that gave rise to your letter.



In the meantime, we would like to assure you that our engagement in the health sector, including in the Strengthening of the Health System Project in Angola, will continue smoothly during this critical period, the specifics of which we will communicate separately to the Ministry of Health.

As you know, the exclusion of a World Bank Group staff member from a country by a host government is an extraordinary step and is almost without precedent. Any such action should only be considered by Angola in light of its international legal obligations under the International Bank for Reconstruction and Development Articles of Agreement and the Agreement Between the Republic of Angola and the International Bank for Reconstruction and Development/International Development Association, International Finance Corporation and Multilateral Investment Guarantee Agency Regarding the Establishment and Operation of Offices in the Republic of Angola.

29. On 4 and 8 December 2020, EBC interviewed the LMC Medical Director and Dr. X, respectively, as witnesses in connection with its preliminary inquiry into whether the Applicant falsified her COVID-19 test result.

30. On 21 January 2021, EBC provided the Applicant with a preliminary Notice of Alleged Misconduct concerning the falsification of her COVID-19 test result.

31. On 23 January 2021, two days after receiving the preliminary Notice of Alleged Misconduct from EBC, the Applicant sent an email to Mr. B and the WBG task team titled “two contracts for non-renewal - PFSS (P160948) and REDISSE (P167817),” stating:

[Mr. B], I would like to ask for your help to be prepared for contract renewal requests the [MyOH] PIU [...] is processing. I would like to seriously assess whether or not to renew two specific contracts due to non-performance and inappropriate behavior. These are for [another individual] who is the [monitoring and evaluation] specialist (non-performance and behavioral) and [Dr. X] (non-performance and behavioral).

Can you help me with the following information:

- Can you share with me the end date of these contracts so we know when they will end and when they will be coming for renewal?
- Can you help me liaise with [the PIU Coordinator] on ensuring that we have performance reviews conducted on each of these persons[?]
- On the performance reviews, can these include feedback from peers we indicate or even from the Bank?

Also, would you recommend we point to non-performance and behavioral aspects as the reasons for non-renewal or just stick to non-performance[?] My points at present are the following:

[...]

[Dr. X], REDISSE Technical Manager. The REDISSE team has not produced any activity under her leadership to date. [Dr. X] is incapable of leading the team to produce an action plan of activities. There is also a lack of willingness to understand the project and its activities [...]. [...] In addition, she is completely absent from communications with the Bank team and when forced to respond does so in a hostile and aggressive manner. I also feel there is a conflict of interest as she is the Government person responsible for the [COVID-19] response and cannot manage this full time while also being the Bank REDISSE technical manager full time.

32. On 26 January 2021, EBC provided the Applicant with a Notice of Alleged Misconduct stating:

I am writing to inform you that the Ethics and Business Conduct Department (EBC) is currently conducting an investigation into allegations that you may have committed misconduct under the World Bank Group (WBG) rules and policies by falsifying the results of a locally mandated [COVID-19] test administered to you in Luanda, Angola.

It is specifically alleged that you falsified the result of the [COVID-19] test administered to you on or about October 19, 2020 by the Luanda Medical Center (LMC) by altering the test outcome from positive to negative. It is also alleged that you subsequently presented this falsified test result to relevant national and international authorities in the course of international travel from Angola to the United States of America between October 21 and October 25, 2020, despite knowing that the result was false.

33. On the same day, EBC conducted a subject interview with the Applicant.
34. On 28 January 2021, the Applicant provided her response to EBC, with a list of documents to support her version of the events, including a list of potential witnesses, a timeline of the “environment and context” the Applicant was in, and threats the Applicant received while working with the MyOH in the country.

35. On 4 February 2021, the Applicant sent an email to her team titled “[Feedback on positions] - - Information on contract deadlines,” stating:

Two positions at this level for REDISSE are not necessary. The Bank has no objection to the extension of the Operations Officer, in line with the below comments.

- [The PIU Operations Officer] – US\$ 11,000 – this position is not on the salary scale. We recommend changing the title to “Senior Technical Specialist” (“Especialista Senior Técnico”) and submitting a revised TOR [Terms of Reference] with the REDISSE responsibilities to be undertaken.
- [Dr. X] – Technical Manager – US\$ 14,000 – contract expires April 2, 2021, will not be renewed. The individual has competing responsibilities in the Ministry of Health that present conflict of interest and is disengaged from REDISSE day-to-day management and team activities.

36. On 9 February 2021, the Applicant wrote to the PIU Coordinator with recommendations on various changes to the PIU staffing, including the non-renewal of Dr. X’s contract, stating:

[Dr. X] – Technical Manager – US\$ 14,000. The contract expires on 2 April 2021 and will not be renewed. The individual has concurrent responsibilities in the Ministry of Health that pose a time conflict and she is out of touch with daily REDISSE operations and the team’s activities.

37. On 19 February 2021, the Applicant sent an email to a Senior Procurement Specialist working on the REDISSE project, requesting that Dr. X be removed from the Systematic Tracking of Exchanges in Procurement (STEP) system, the online procurement system designed to plan and track procurement activities and an important means of communication between the Bank and the PIU.

38. On 24 February 2021, the Applicant wrote to the WBG task team notifying them that Dr. X’s contract would not be renewed and would terminate on 2 April 2021.

39. According to EBC’s Final Investigation Report, at the time of the Applicant’s email of 24 February 2021, Dr. X was yet to be informed by the PIU that her contract would not be renewed.

40. On 8 March 2021, the Applicant wrote to the WBG task team, saying:

I wanted to share the comments / justification of not renewing the contract of [Dr. X] as technical manager of REDISSE. I tried to be fact-based and not very elaborate for it to be a clear question. I would appreciate your comments if the justification is well formulated or if we need to change the “approach” or how to improve it. The idea is to be able to support [the PIU Coordinator] with technical/concrete/not emotional inputs for her to justify actions related to the contracts of the project consultants. [...]

The contract of the consultant [Dr. X] lasting from April 1, 2020 to April 2, 2021, not renewed. The consultant has competing responsibilities that do not allow full-time engagement as Technical Manager REDISSE. The consultant’s limited engagement is reflected in the lack of completed tasks as required by the Terms of Reference described below. The technical skills of the consultant are recognized as valuable and useful for the project [and] technical capacity for specific project activities in the future.

41. The email also contained a table with a list of tasks from Dr. X’s TOR and the Applicant’s assessment of the degree of fulfillment of each task.

42. On 12 March 2021, the Applicant sent the PIU Coordinator an email titled “Angola REDISSE – Non-Renewal of the Contract,” stating:

Thank you for maintaining close communication with our team on the review of contracts in the [PIU].

As indicated, the World Bank has not approved an extension of the contract for consultant [Dr. X]. Her most recent contract ran from April 1, 2020 to April 2, 2021 and will not be renewed. The consultant has concurrent responsibilities that do not allow for her full-time engagement as REDISSE Technical Manager. The consultant’s limited engagement is reflected in failure to complete the tasks required under the Terms of Reference described below. Her technical skills are recognized to be valuable and useful for the project in a technical capacity for specific project activities in the future. The World Bank would have no objection to contracting [Dr. X] for specific technical consultancies in support of the REDISSE project in the future.

The table below shows the consultant’s tasks as they are described in the Terms of Reference, “Scope of Work” section, and the degree of fulfillment of each of them.

[PIU Coordinator], you can use these elements as input for the [PIU's] evaluation with regard to nonrenewal of the contract.

I am available to provide further information or clarification if needed.

43. The email included the same table of tasks from Dr. X's TOR discussed in the Applicant's 8 March 2021 email to the WBG task team.

44. On 18 March 2021, further to an email from earlier that day from Dr. X submitting the annual REDISSE activities plan to the WBG task team, the Applicant forwarded the email to the PIU Coordinator, stating:

[The PIU Coordinator], I would like to ask if [Dr. X] was already informed that her contract would not be renewed. I'm asking because I hope we won't have a problem with the "30 days [notice period]."

The WB position is the same as with [the Operations Manager of the PFSS portfolio]. The Bank is not going to fund this position, and therefore the contract will not be renewed. That said, the [MyOH] has every right to take over her contract and she can continue to engage with REDISSE.

If there is need for a letter, we can send one signed by [the Regional TTL] and not by me.

I know this is a difficult situation and I can help out with steps to facilitate the process.

45. That evening, the PIU Coordinator responded to the Applicant via email stating:

Procurement was to deliver the letter today; with all this confusion, I ended up not knowing if it was delivered.

From her reaction, I'm assuming that she has not seen the letter, because otherwise she would have already said something to me...But now, in the evening, I saw many calls from Dr. [X]....

Tomorrow I'm going to have a look at this situation, calmly....

But you will need a letter from [the Regional TTL], as backup. I still don't know if the Minister also wanted to talk about this...because there was a lot of confusion all around....

46. Later that evening, the Applicant emailed the WBG task team, stating:

I wanted to let you know that today, the [PIU] gave a letter notifying the consultant of the nonrenewal of contract. Due to this situation, I would suggest to maintain our polite engagement such as confirming receipt of the report and indicating the team will review and come back to the REDISSE team. I would suggest though to not commit to any further actions with her.

47. On 19 March 2021, EBC requested that the Applicant mail by post the original test result from the COVID-19 test she received from LMC, i.e., the allegedly falsified COVID-19 test result.

48. Also on 19 March 2021, the MyOH issued a letter to Dr. X, titled “Notice of Contract Expiration,” stating, “Dear Madam, [w]e are writing to inform you that your contract dated March 20, 2020 will end on April 2, 2021. We take this opportunity to thank you for your collaboration during the period of the contract.” The letter was signed by the PIU Coordinator.

49. That same day, after receiving the non-renewal letter, Dr. X wrote to EBC alleging possible retaliation for being “involved in the investigation of the World Bank’s TTL for the country.” Thereafter, EBC opened a preliminary inquiry into the retaliation allegations.

50. The PIU Coordinator told EBC that, some days after she informed Dr. X of the termination of her contract, she offered her a consultancy position with the REDISSE project, but that Dr. X did not respond to the offer for over a month as she was really hurt and upset about her termination.

51. On 23 March 2021, the Applicant responded to EBC’s request for the original COVID-19 test result she received from LMC, stating that she could no longer locate the original test result and might have misplaced the document.

52. On 29 March 2021, the Applicant wrote to a Senior Health Specialist on the WBG task team (Senior Health Specialist) to assist with drafting a letter that would be sent to the PIU Coordinator and signed by [the Regional TTL]. The email stated:

The letter would need to say that the position of [Technical Manager] is no longer needed as the technical design phase of the project is over and we are now in the phase of coordination and implementation, functions that will be carried out by the [PIU] Operations Manager in her capacity as program coordinator and REDISSE Operations Officer in his role as the person responsible for implementation.

53. On 31 March 2021, the Senior Health Specialist reverted to the Applicant with a draft letter stating that Dr. X's position as the Technical Manager was no longer needed because the REDISSE project was entering a new coordination and design phase.

54. Later that day, the Regional TTL reviewed the draft letter. He requested that the draft letter reflect the context in which the WBG task team came to the decision that the Technical Manager position would no longer be required. He clarified his request to the Applicant, stating:

This is a letter from the Bank to [the PIU Coordinator] about one of her staff. We as the Bank cannot just come from the air and decide to send her a mail to say the services of one of her staff are no longer needed at this stage. What was the Bank doing before realizing that this is the situation? Was it during a supervision mission, was it during xxxx, this needs to be clearly spelt out to set the scene of the letter.

I hope that this clarifies my ask.

55. The Applicant responded that day, stating, "Thanks [Regional TTL]. We can just manage it." However, the Applicant never reverted to the Regional TTL on his request.

56. On 2 April 2021, Dr. X's position as the REDISSE Technical Manager officially ended.

57. On 4 August 2021, EBC shared the transcript of its interview with the Applicant for her comments due on 18 August 2021. EBC did not receive any comments from the Applicant on her transcript.

58. On 27 August 2021, EBC received approval to conduct a search of the Applicant's electronic records. Relevant electronic records were received on 15 September 2021.

59. Based on EBC’s review of the emails and documents recovered from the electronic records accessed, the emails and documents provided by Dr. X and witnesses, and the statements of Dr. X, EBC found sufficient basis to proceed to an investigation regarding the allegations of retaliation. Accordingly, on 12 October 2021, EBC provided the Applicant with a supplemental advance notification of the additional allegations made against her.

60. On 22 October 2021, EBC provided the Applicant with a Final Supplemental Notice of Alleged Misconduct stating:

1. Further to the Ethics and Business Conduct Department (“EBC”) ongoing investigation into allegations that you may have committed misconduct under the World Bank Group (“WBG”) rules and policies by falsifying the results of a locally mandated [COVID-19] test administered to you in Luanda, Angola, as per our previous Notice of Alleged Misconduct dated January 26, 2021, I am writing to inform you that EBC is additionally investigating allegations that you may have committed misconduct under the WBG rules and policies by allegedly retaliating against and or abusing your authority over staff of a project implementation unit (“PIU”) of a project funded by the WBG.
2. Specifically, it is alleged that you
  - (i) abused your authority by interfering in the management of the PIU of REDISSE IV project in Angola (“REDISSE IV”), and
  - (ii) abused your authority and or retaliated against Dr. [X] (former technical manager of the PIU for REDISSE IV)[...]

by recommending to, influencing and or directing the [PIU Coordinator] for [...] REDISSE IV [...] to not renew the contract of Dr. [X] upon its expiration in April 2021.

3. It is further alleged that your said recommendation, direction and or influence resulting in the non-renewal of the contract of Dr. [X] by the PIU was based in part on your belief and/or knowledge that Dr. [X] reported to the Angolan Ministry of Health, concerns that you may have falsified the results of a locally mandated [COVID-19] test. Based on Dr. [X’s] report, the Angolan Ministry of Health reported the alleged falsification of [COVID-19] test results to the WBG.

61. On the same day, EBC conducted a second subject interview with the Applicant.



62. Meanwhile, according to the Bank, Dr. X was reinstated to her position as the Technical Manager of the REDISSE project in Angola in early 2022.

63. On 12 May 2022, EBC provided the Applicant with a draft copy of EBC's investigation report for her review and requested her comments by 26 May 2022. Thereafter, the Applicant was granted an extension and submitted her comments on 10 June 2022. As part of her comments, the Applicant reiterated her disagreement with EBC's finding of facts and conclusions to the extent they suggested or found that she was untruthful, retaliated against Dr. X, or violated the terms of her employment with the Bank or any Staff Rules.

64. On 23 June 2022, after incorporating the Applicant's comments and additional explanations, EBC submitted its Final Investigation Report to the HRDVP for a determination on misconduct.

#### *EBC Final Investigation Report findings*

##### COVID-19 test result falsification

65. EBC concluded that the Applicant falsified the result of the COVID-19 test administered to her on 19 October 2020 by LMC and knowingly presented the falsified test result to "relevant national and international authorities" in the course of international travel from Angola to the United States between 21 and 25 October 2020 in violation of Angolan law and International Health Regulations (IHR).

66. EBC concluded that, by falsifying her COVID-19 test result and presenting the falsified test result to "international travel authorities" in the course of travel, the Applicant's actions amounted to (i) a willful misrepresentation of facts to be relied on and (ii) a failure to observe obligations relating to health and safety in general, and in particular to comply with the WBG COVID-19 Travel Guidance, which noted that some countries or airlines may require proof of a negative COVID-19 test result before a traveler is allowed to enter a country or board a flight.

67. Based on the totality of the evidence, including the fact that the government of Angola sought to have the Applicant declared *persona non grata* in Angola, EBC concluded that the Applicant's actions were in conflict with her obligation as a WBG staff member to avoid situations and activities that might adversely reflect on the WBG. EBC also concluded that by her actions the Applicant did not conduct herself in a manner befitting the status of an international civil servant.

### Retaliation

68. Based on the evidence and analysis presented in its report, EBC concluded that the Applicant took the decision to not renew the contract of Dr. X and directed the PIU Coordinator to not renew Dr. X's contract with the PIU based in part on her belief and/or knowledge that Dr. X reported to the MyOH the allegations that the Applicant falsified her COVID-19 test result and traveled out of Angola using the falsified test result. EBC did not find sufficient evidence to demonstrate that Dr. X's contract would otherwise not have been renewed were it not for her report to the MyOH.

69. EBC also concluded that the Applicant's report to the WBG task team of Dr. X's report elicited negative reactions against Dr. X from some members of the WBG task team, negatively affected the professional interactions between at least one member of the WBG task team and Dr. X, and resulted in intense scrutiny of Dr. X's deliverables. EBC did not find evidence to demonstrate that the Applicant would otherwise have reported Dr. X to the WBG task team were it not for Dr. X's report to the MyOH.

70. Based on the foregoing, EBC concluded that (i) Dr. X engaged in a protected activity, i.e., reported an allegation of possible COVID-19 test result falsification against the Applicant to the MyOH and the allegation was eventually reported to the Bank; (ii) the Applicant was aware of the protected activity, i.e., the report by Dr. X to the MyOH; and (iii) because of Dr. X's protected activity, the Applicant engaged in actions detrimental to Dr. X (e.g., the non-renewal decision).

71. Accordingly, EBC found sufficient evidence to substantiate the allegations that the Applicant retaliated against Dr. X “(i) [by] taking the decision to not renew her contract as Technical Manager for the PIU; and (ii) in directing [the PIU Coordinator] to not renew [Dr. X’s] contract.” EBC concluded that the Applicant’s report of Dr. X to her team was retaliatory because, as a result of this report, Dr. X suffered adverse employment actions by facing intense scrutiny from the WBG task team based on the belief and/or knowledge that she reported allegations of the falsification of a COVID-19 test result by the Applicant.

#### Abuse of authority

72. Based on the totality of the evidence, particularly evidence of the Applicant having taken the decision to not renew Dr. X’s contract – a matter EBC stated was within the sole authority of the PIU – and having directed the PIU Coordinator to not renew Dr. X’s contract, EBC determined that the Applicant interfered with the PIU’s management of the contract of its staff and thereby abused her authority.

#### Acts or omissions in conflict with general obligations of staff in Principle 3 of the Principles of Staff Employment

73. EBC noted that the MyOH challenged the WBG on the non-renewal of Dr. X’s contract and that Dr. X also challenged her termination in an arbitral tribunal action against the MyOH citing the Applicant’s actions. EBC noted that the Applicant’s actions “contributed to a strained relationship between the WBG and its client counterpart.” EBC further noted that the Applicant’s successor testified that, by the time he had taken over as TTL for REDISSE, the relationship between the Bank and the Angolan government had “virtually collapsed.” EBC concluded, based on the totality of the evidence, that the Applicant’s actions were in conflict with her obligation as a Bank staff member to avoid situations and activities that might adversely reflect on the Bank. EBC also concluded that by her actions the Applicant did not conduct herself in a manner befitting her status as an international civil servant.

Failure to observe generally applicable norms of prudent professional conduct

74. EBC concluded, based on the totality of the evidence, particularly given that it had determined that the Applicant breached several WBG practices and processes in the course of taking the decision to not renew Dr. X's contract, that the Applicant's actions amounted to a failure to observe generally applicable norms of prudent professional conduct.

75. EBC noted the following as mitigating factors:

- No prior disciplinary proceedings against the Applicant;
- The Applicant completed 20 years of service to the WBG;
- The Applicant was described by her Country Manager as a committed, devoted, and professional staff member who contributed beyond her expected duties in the Angola Country Office; and
- The Applicant was separated from her adolescent daughter as a result of the pandemic and was unable to visit her for months due to work-related obligations.

*The HRDVP's decision*

76. On 3 November 2022, the HRDVP wrote to the Applicant to notify her of the HRDVP's decision with regard to the misconduct allegations. The letter stated that, following "a careful and thorough review" of EBC's Final Investigation Report, the HRDVP determined that there was sufficient evidence to support a finding that the Applicant had engaged in misconduct, as defined under the following:

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

- 1) Paragraph 6.01 (a) - Abuse of authority; failure to observe obligations relating to health and safety;

- 2) Paragraph 6.01 (b) - Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; willful misrepresentation of facts intended to be relied upon; failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the WBG;
- 3) Paragraph 6.01 (c) - Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3, “General Obligations of Staff Members,” of the *Principles of Staff Employment*, including the requirements that staff avoid situations and activities that might reflect adversely on the Organization (*Principle 3.1*) and conduct themselves at all times in a manner befitting their status as employees of an international organization (*Principle 3.1(c)*);
- 4) Paragraph 6.01 (g) - Retaliation by a Staff Member 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 Internal Justice Services, including retaliation with respect to reports of misconduct to which Staff Rule 8.02, “Protections and Procedures for Reporting Misconduct (Whistleblowing)” applies;

Staff Rule 8.02, paragraph 5.01, “Prohibition of Retaliation Against Outside Parties”: As provided in Staff Rule 3.00, “Office of Ethics and Business Conduct (EBC),” and reiterated in paragraph 2.04 of this Rule, retaliation by a Staff Member against any person who provides information about suspected misconduct is expressly prohibited and shall subject a staff member to proceedings under Staff Rule 3.00, “Office of Ethics and Business Conduct (EBC).” This prohibition is not limited to retaliation against other Bank Group Staff Members. The prohibition includes retaliation against Bank Group contractors and their employees, agents or representatives, and any other persons engaged in dealings with the Bank Group; and

WBG [COVID-19] Travel Guidance: Note that some countries or airlines may require travelers to present proof of a negative COVID-19 test [result] completed within a certain time period (e.g., 3 or 4 days) before entering a country or boarding a flight.

77. In this letter, the HRDVP further noted:

In its Final Report, EBC found sufficient evidence that you falsified the result of your COVID-19 test administered to you on October 19, 2020 by the LMC, and knowingly presented the falsified test result to relevant national and international authorities in the course of travel from Angola to the United States, in violation of Angolan law and International Health Regulations. In doing so, your actions

amounted to (i) a willful misrepresentation of facts intended to be relied on, and (ii) a failure to observe obligations relating to health and safety in general, and in particular, to comply with the WBG [COVID-19] Travel Guidance. Additionally, and considering the fact that the Angolan government sought to have you declared as *persona non grata*, EBC concluded that your actions were in conflict with your obligation as a WBG staff to avoid situations and activities that might reflect adversely on the WBG, and that you did not conduct yourself in a manner befitting your status as an international civil servant.

Additionally, EBC found sufficient evidence to substantiate the allegations that you retaliated against the Technical Manager by (i) taking the decision to not renew her contract for the REDISSE PIU, and (ii) directing the [PIU Coordinator] to not renew the contract. EBC determined that you took these actions based on your belief, or knowledge, that the Technical Manager reported you to Angola's Ministry of Health for allegedly falsifying your COVID-19 test result.

Based on my review of the investigative record, I concur with EBC's findings. I note, in particular, that the physicians at the LMC detailed the [COVID-19] testing procedure and results process, which leaves virtually no room for human error as everything is automated. They confirmed that there was no record in their system that your test result had been changed at any point before being recorded automatically and validated. Furthermore, the LMC has a very specific protocol as to how test results can be obtained. Specifically, only the person who takes the test or a third party with formal written authorization and proper identification may pick up test results. Therefore, your claim in this regard that a third-party driver, having no such authorization, picked up and delivered your test result to you is not credible, nor was it corroborated by your colleagues' experiences in obtaining their test results from the LMC.

As to other parties you say were trying to denigrate you, including the Minister of Health and the Technical Manager who reported the allegations against you, there was no evidence to prove that they were somehow involved in maligning you. On the other hand, the record indicates your eagerness to travel to the United States to see your daughter, as you had already rescheduled your flight after testing positive for COVID-19 twice, preceding your test at the LMC. Although your test result in California was negative, it was administered days after you tested at the LMC, and therefore, does not disprove that you falsified the LMC COVID-19 test result.

Moreover, your efforts and actions against the Technical Manager, resulting in her non-renewal are unsettling, particularly in light of the WBG's zero-tolerance policy against retaliation. The documentary evidence collected by EBC reveals how you took deliberate steps to derail the job of the Technical Manager. In one instance, you requested that her access to the Operational Procurement System (STEP) be removed after learning that she reported you for falsifying your [COVID-19] test result. You, then, proceeded to accuse her of "backstabbing" you to the WBG task

team. In addition, two days after being informed by EBC that it was reviewing the allegations against you, you wrote to a colleague regarding the non-renewal of the Technical Manager's contract. From that point, you continued to advocate for her non-renewal to the task team and the [PIU] Coordinator of the REDISSE project until, ultimately, she was informed, on March 19, 2021, that her contract would not be renewed. Despite the fact that only the PIU had authority to conduct formal evaluations on staff performance and make decisions on contract renewals, you actively took steps to affect the non-renewal of the Technical Manager's contract contrary to proper due process. In addition, you claim that the basis for the non-renewal decision was the Technical Manager's poor performance but there is no record to corroborate this.

78. The HRDVP considered the mitigating factors cited in EBC's report, as set out in paragraph 75 above, and the proportionality factors mentioned in Staff Rule 3.00, paragraph 10.09, before imposing the following disciplinary measures on the Applicant: (i) termination effective 11 November 2022; (ii) ineligibility for future WBG employment; (iii) an access restriction to the WBG premises; and (iv) written censure to remain in the Applicant's personnel file.

*The present Application and remedies sought*

79. On 10 February 2023, the Applicant filed the present amended Application with the Tribunal. The Applicant challenges the HRDVP's decision of 3 November 2022 to terminate her employment and impose other disciplinary measures, claiming that (i) she did not falsify her COVID-19 test result, (ii) she did not retaliate against Dr. X, (iii) she was not afforded a fair and impartial investigation in violation of her due process rights, and (iv) the sanctions imposed were disproportionate.

80. The Applicant requests the following relief:

- Immediate suspension of termination;
- Reinstatement of the Applicant's employment;
- Eligibility for future WBG employment;
- Removal of any access restriction to the WBG premises;
- Removal of any written censure in the Applicant's personnel file;
- Economic damages assessed at five years' compensation of salary; and

- Relief deemed fair and appropriate by the Tribunal for loss of reputation, career prospects, and physical and emotional stress.

81. The Applicant claims legal fees and costs in the amount of \$59,930.00.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

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

#### *The Applicant did not falsify her COVID-19 test result*

82. The Applicant contends that “there is no credible proof of [the Applicant’s] falsification or even an explanation as to how she accomplished the alleged fraud.” The Applicant contends that EBC summarily dismissed her account without a reasonable inquiry by finding that the Applicant made up the fact that she met Ms. C and the Driver at LMC. According to the Applicant, EBC failed to make reasonable efforts to locate and interview these witnesses “who were able to exonerate [the Applicant].”

83. The Applicant contends that there is nothing untoward about the series of events she narrated to EBC regarding her COVID-19 test at LMC and that “there is no basis to find a violation of the Staff Rules, fraud, or misconduct.” According to the Applicant, she questioned and doubted the two positive test results she received from the MyOH in early October 2020 and was denied when she asked to see proof of the actual results. She was then denied another test opportunity and believed that she was being misled by the MyOH, leading her to go to LMC. According to the Applicant, she took measures that she believed were necessary to protect her body and health and the health of others. The Applicant contends that this was a personal choice having nothing to do with her employment in order for her to travel on personal leave. The Applicant contends that, when the Driver delivered the negative COVID-19 test result to her on 20 October 2020, and having no symptoms, she reasonably believed that she was COVID-19 negative and that it was safe to travel.



84. The Applicant contends that she did not violate the WBG COVID-19 Travel Guidance or the Bank's health and safety guidelines. The Applicant further submits that the Bank in its pleadings concedes that the "Travel Guidance is not compulsory."

***The Bank's Response***

*The Applicant's egregious acts to falsify a COVID-19 test result legally amount to misconduct*

85. The Bank contends that there is substantial proof that the Applicant falsified her negative COVID-19 test result. The Bank contends that EBC reasonably concluded, based on the totality of the evidence, that the Applicant falsified her negative COVID-19 test result and traveled with it from Angola to the United States – a conclusion that fully satisfies the standard of proof.

86. The Bank contends that the following key evidence, among other evidence, comprises the totality of the circumstances that ensures that the Bank met its standard of proof: (i) LMC, as a reputable medical establishment that maintained strict test processing and test result notification and pickup protocols, confirmed that the Applicant's test result was positive; (ii) the Applicant confirmed that she never gave the Driver an authorization letter or identification to pick up her test results, which was contrary to LMC's collection protocol and the collective experiences of the Applicant's colleagues; (iii) when the Applicant was in transit to the United States, she explicitly directed her WBG task team colleagues not to inform the government of her departure from Angola; (iv) the Applicant urgently wanted to get back to her daughter in the United States; and (v) the Applicant told EBC that she misplaced the original of her negative test result from LMC when EBC requested it in March 2021 despite telling EBC in January 2021 that she was in possession of the document and was comfortable sharing it with EBC.

87. The Bank further contends:

[The] Applicant is asking the Tribunal to believe that [the] Applicant, a senior health specialist in the midst of a global pandemic, trusted a total stranger, on the day of her scheduled trip, to pick up the COVID-19 test result, a vital travel document, without providing any authorization letter or identification to this stranger as required by LMC's test result pick-up protocols, despite the fact that

[the] Applicant had her own trusted driver, and was desperate to leave the country after rescheduling the trips multiple times. The only explanation [the] Applicant provides in her submissions is that [the Driver] seemed familiar with the “going[s] on” at LMC.

88. The Bank contends that there is substantial proof that the Applicant failed to observe obligations relating to health and safety protocols and WBG COVID-19 Travel Guidance. With respect to the Applicant’s assertion that the WBG COVID-19 Travel Guidance was just guidance and not compulsory and that her actions therefore did not violate any staff rule or obligation, the Bank contends that staff members have an obligation to comply with their personal legal obligations and the fact that the Applicant was on a personal trip is irrelevant. The Bank asserts that staff members’ obligations do not end when they are off duty.

89. The Bank contends that the Applicant’s behaviors resulted in a political fallout that adversely reflected upon the reputation and integrity of the institution in violation of Principle 3 of the Principles of Staff Employment.

90. The Bank contends that it has raised legitimate concerns over the authenticity of the sworn statements from Ms. C and the Driver that the Applicant produced as part of her Application.

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

*The Applicant provided truthful assessments of Dr. X’s performance and did not perpetrate retaliation*

91. The Applicant contends that the Bank has failed to offer facts to substantiate a claim of retaliation by the Applicant. The Applicant contends that evidence indicates that the Applicant’s concerns about Dr. X’s performance were truthful and therefore there was a rational basis for non-renewal of Dr. X’s contract.

92. Second, the Applicant contends that, even if her feedback about Dr. X was untrue, the Applicant did not have the authority to unilaterally decide Dr. X’s employment and thus was not in a position to retaliate against her by initiating an adverse employment action. The Applicant

contends that in this case Dr. X was not a WBG employee and therefore the Applicant did not have the authority to renew her contract.

93. Finally, the Applicant contends that Dr. X's contract was renewed, so Dr. X did not suffer an adverse employment action.

### ***The Bank's Response***

#### *The Applicant's egregious acts to retaliate against Dr. X legally amount to misconduct*

94. The Bank contends that, based on "the abundant and substantial factual support and in accordance with Tribunal jurisprudence," the elements to demonstrate retaliation are present in this case. In summary, the Bank contends that the evidence shows that (i) Dr. X participated in a protected activity; (ii) as a result of the Applicant's actions, Dr. X's contract was not renewed; and (iii) there was a direct link between the protected activity and the adverse outcome. To the Bank, the Applicant's actions are even more egregious because the Applicant was twice given explicit instructions and warnings not to retaliate against Dr. X.

95. With regard to Dr. X's reinstatement as Technical Manager of REDISSE, the Bank contends:

Later, the decision to reinstate Dr. [X] to her original post was made collectively within an extended WBG task team, which included the legal department and the procurement team at the Bank, at the request of the MyOH of Angola, noting that the way the non-renewal decision was made without adhering to the contractually required notice period and without giving a reason was "fishy" and lacked due process. [...] [The] Senior Counsel for [the] Angola CMU [...] testified that upon her review of the matter, there was no performance related issue brought to the forefront or documented by the PIU that would have justified the non-renewal decision. [...] The record shows that the decision to reinstate Dr. [X] was not reached until early 2022, many months after the end of Dr. [X's] original position as the REDISSE Technical Manager on April 2, 2021.

96. Finally, the Bank contends that the Applicant abused her authority by orchestrating the non-renewal decision.

***The Applicant's Contention No. 3***

*EBC violated the Applicant's due process rights by failing to conduct a reasonable, balanced, and impartial investigation*

97. The Applicant contends that, by failing to interview key witnesses and refusing to act as a neutral factfinder, EBC did not comply with its due process obligations. The Applicant asserts that EBC failed to interview the two witnesses who could corroborate the Applicant's explanation of her COVID-19 test from LMC, even though the Applicant provided their contact information.

98. The Applicant avers that EBC's investigation made little to no attempt to conduct a balanced and neutral investigation as required or to even credit the Applicant and her witnesses. As for the retaliation allegation, the Applicant contends that the Bank without justification or reasonable basis dismissed all evidence of Dr. X's lack of performance, including testimony provided by the WBG team – all of which mirrored the Applicant's valid concerns and much of which predated the COVID-19 test result accusations.

***The Bank's Response***

*The requirements of due process were observed*

99. The Bank contends that the only argument the Applicant raises with respect to the alleged violation of her due process rights is that EBC failed to interview two witnesses proposed by the Applicant. The Bank notes that EBC does not have the power to compel witness testimony, nor can it issue a subpoena. The Bank avers that the process is purely voluntary and that external witnesses can refuse to cooperate with an EBC investigation or simply cease to respond to the EBC investigator's messages, as one of the witnesses did in this case.

100. The Bank submits that EBC took reasonable efforts in reaching out to the two witnesses with information provided by the Applicant. However, the Driver ceased communicating with EBC for an unknown reason. In addition, the Bank contends that EBC tried to contact the second witness, Ms. C, at the details the Applicant provided. However, Ms. C never responded.

101. Last, the Bank submits that

EBC interviewed an impressive twenty-three witnesses, some of which were suggested by [the] Applicant. [The] Applicant was afforded the opportunity to comment on her transcripts, which she did. [The] Applicant was also provided the opportunity to submit any evidence that she deemed relevant to her case. And she did. Finally, [the] Applicant was provided with a copy of the draft [investigation] report for her comments – and she provided comments that were incorporated into the [Final Investigation Report]. At all times, [the] Applicant was treated fairly, [the] Applicant’s due process rights were respected, and [the] Applicant was presumed innocent throughout the investigations.

***The Applicant’s Contention No. 4***

*The termination sanction is disproportionate to the alleged misconduct and fails to consider the totality of the circumstances*

102. The Applicant contends that the decision to terminate her employment was disproportionate to the alleged offenses. The Applicant avers that EBC and the HRDVP failed to consider the situation of the Applicant as required by Staff Rule 3.00, paragraph 10.09, and Tribunal precedent. According to the Applicant, there was no consideration of the difficult circumstances that she faced in Angola. The Applicant submits that she was “threatened and pressured for months before leaving Angola.” She states that she reported the issues to INT but that no action was taken to protect her or make sure that she was not put in situations where she could be pressured. Instead, the Applicant asserts that she appeared alone at meetings where she faced pressure from the MOH.

103. The Applicant contends that the COVID-19 pandemic added to her anxiety and desire to return to the United States because she reasonably feared that she would be stuck in Angola during the pandemic. The Applicant submits that she made sure her 11-year-old daughter returned to the United States months ahead of her and that she was anxious to reunite with her family.

104. The Applicant submits that her record should not be ignored. She asserts that she was employed by the WBG for over 20 years with a history of excellent performance. Other than the

issue before the Tribunal, the Applicant contends that she has no history of misconduct or reprimand.

***The Bank's Response***

*The disciplinary measures imposed are proportionate given the seriousness of the Applicant's offenses*

105. The Bank asserts that the disciplinary measures imposed on the Applicant are provided for in the Staff Rules. The Bank submits:

[The Bank] has provided abundant legally significant evidence to substantiate its claims that [the] Applicant's falsification of her COVID-19 test result and traveling with it from Angola to the U.S. in the midst of [a] global pandemic constitutes misconduct including among others, willful misrepresentation and failure to observe health and safety standards and the WBG [COVID-19] Travel Guidance, and that despite clear and explicit warnings and instructions not to retaliate, [the] Applicant actively took steps over a period of more than half [a] year to derail Dr. [X's] employment because of Dr. [X's] good faith and rightful reporting of [the] Applicant's discrepancies, which the Tribunal has recognized as an act of retaliation and abuse of authority.

106. Moreover, the Bank avers that the Applicant's actions adversely affected the relationship between the Bank and the client country, jeopardizing the reputation and the mission of the institution.

107. To the Bank, even if the Tribunal were to find in favor of the Applicant on the disproportionality of the sanctions related to the willful misrepresentation of facts and related misconduct findings, the sanctions imposed are still proportionate given the finding of retaliation and abuse of authority.

***The Staff Association's Amicus Curiae Brief***

*The Applicant's rights as a staff member were violated when her employment was terminated for misconduct*

108. The Tribunal granted the Staff Association's request to act as *amicus curiae* and received its submission of a brief in support of the Application.

109. The Staff Association notes that the present case concerns the right to fair treatment in the investigation and punishment of alleged misconduct and supports the Applicant's contention that the Bank has failed to substantiate claims of falsifying a COVID-19 test result and perpetrating retaliation against a counterpart in the MyOH.

110. According to the Staff Association, the conclusions reached by EBC and the HRDVP regarding the Applicant's alleged falsification of her COVID-19 test result are based on conjecture and a reliance on select and incomplete facts. The Staff Association contends that EBC credits all of the testimony of the Applicant's accuser without taking account of the previous harassment concerns and threats that had been raised by the Applicant to INT.

111. The Staff Association asserts that the conclusions reached regarding alleged retaliation are also not supported by the facts. According to the Staff Association, for example, in determining whether the Applicant had legitimate, non-retaliatory concerns about her accuser's performance, the Bank focuses entirely on statements made concerning the Applicant's accuser shortly after the Applicant was accused of falsifying her COVID-19 test result but ignores the concerns that had been raised about her performance earlier, concerns raised not just by the Applicant but also by the WBG task team.

112. Furthermore, the Staff Association asserts that there is every reason to conclude from the evidence that precisely the same actions would have been taken with respect to the accuser's contract had there been no allegation against the Applicant at all.

113. Based on the foregoing, the Staff Association requests that the Tribunal overturn the decision to terminate the Applicant’s employment and order her reinstatement.

## THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

### THE SCOPE OF THE TRIBUNAL’S REVIEW IN DISCIPLINARY CASES

114. The scope of the Tribunal’s review in disciplinary cases is well-established. In *Koudogbo*, Decision No. 246 [2001], para. 18, the Tribunal stated that

its scope of review in disciplinary cases is not limited to determining whether there has been an abuse of discretion. When the Tribunal reviews disciplinary cases, it “examines (i) the existence of the facts, (ii) whether they legally amount to misconduct, (iii) whether the sanction imposed is provided for in the law of the Bank, (iv) whether the sanction is not significantly disproportionate to the offence, and (v) whether the requirements of due process were observed.” (*Carew*, Decision No. 142 [1995], para. 32.)

*See also FA*, Decision No. 612 [2019], para. 138; *EZ*, Decision No. 601 [2019], para. 67; *CH*, Decision No. 489 [2014], para. 22.

115. The Tribunal has held that the burden of proof in misconduct cases lies with the respondent organization. It has also stipulated on several occasions that “there must be *substantial evidence* to support the finding of facts which amount to misconduct.” (Emphasis added.) *FQ*, Decision No. 638 [2020], para. 88. *See also FG*, Decision No. 623 [2020], para. 67; *EZ* [2019], para. 69. In other words, the standard of evidence “in disciplinary decisions leading [...] to misconduct and disciplinary sanctions must be *higher than a mere balance of probabilities*.” (Emphasis added.) *Dambita*, Decision No. 243 [2001], para. 21.

116. The Tribunal has also stated that its role is to “ensure that a disciplinary measure falls within the legal powers of the Bank.” *M*, Decision No. 369 [2007], para. 54. This, however,

does not mean that the Tribunal is an investigative agency. The Tribunal simply takes the record as it finds it and evaluates the fact-finding methodology, the



probative weight of legitimately obtained evidence, and the inherent rationale of the findings in the light of that evidence. *Id.*

117. The present case will be reviewed in light of these standards.

118. Based on EBC's findings, the HRDVP determined that the Applicant committed two main types of misconduct: (i) the Applicant falsified her COVID-19 test result and knowingly presented the falsified test result to "national and international authorities" for travel purposes, and (ii) the Applicant retaliated against Dr. X in the process of the non-renewal of Dr. X's employment contract. The Tribunal will address these misconduct findings in turn.

WHETHER THE APPLICANT FALSIFIED HER COVID-19 TEST RESULT AND KNOWINGLY PRESENTED  
THE FALSIFIED TEST RESULT TO NATIONAL AND INTERNATIONAL AUTHORITIES FOR TRAVEL  
PURPOSES

119. Falsification of any document is a serious allegation against a staff member of the Bank. It is more so when falsification involves using a false COVID-19 test result for travel purposes in the midst of a global pandemic as was ongoing in October 2020. The seriousness of the offense allegedly committed by the Applicant is described by the Bank as follows:

[The] Applicant's willful misrepresentation of facts, her failure to observe health and safety standards and WBG [COVID-19] Travel Guidance, the falsification of her [COVID-19] test result for self-gain, and traveling while having tested positive for [COVID-19] from Angola to the [United States] in the midst of [a] global pandemic were extreme and constituted blatant disregard of her obligations under the Staff Rules, in violation of local laws, and in contravention of the IHR, not to mention the moral obligation that comes with being a member of the global community. As a senior health official of the Bank, [the] Applicant's reckless actions endangered every single person she encountered during her trip and the communities she served.

120. The Bank's disciplinary proceedings, however, are subject to certain principles including the following. First, a staff member has a right to a presumption of innocence. *World Bank Group Directive/Procedure: Conduct of Disciplinary Proceedings for EBC Investigations* (2016) guarantees presumption of innocence as a staff right. It states in Section III, "Throughout the

course of disciplinary proceedings, subject staff members are presumed innocent until all facts and circumstances have been obtained and a decision on the evidence has been made by the World Bank Group Human Resources Vice President.”

121. Second, the burden of proof is on the Bank and “there must be *substantial evidence* to support the finding of facts which amount to misconduct.” (Emphasis added.) *FQ* [2020], para. 88. And such a standard of evidence leading to disciplinary sanctions “must be *higher than a mere balance of probabilities*.” (Emphasis added.) *Dambita* [2001], para. 21. *See also FG* [2020], para. 67; *EZ* [2019], para. 69.

122. Finally, if evidence is inconclusive then the benefit of the doubt goes to the staff member accused of misconduct. This principle is expressly endorsed by INT, an independent unit within the World Bank whose core function involves investigating fraud and corruption in World Bank–financed projects. The current *INT Guide to the Staff Rule 8.01 Investigative Process* (Fourth Edition) (2016) states at page 5, “If the evidence is inconclusive or insufficient to meet the WBG’s standard of proof, the allegations are considered to be unsubstantiated, in which case the benefit of the doubt goes to the staff member accused of misconduct.” The International Labour Organization Administrative Tribunal (ILOAT) has applied this principle in misconduct cases. *See V. v. FAO*, ILOAT Judgment No. 3880 (2017).

123. Generally, misconduct allegations can be substantiated by admission, documentary or testimonial evidence, or circumstantial evidence, or can be based on the totality of evidence in the record. As mentioned above, the applicable standard of proof here must be *higher than a mere balance of probabilities*. The Tribunal will now examine the different types of evidence presented in the record and review if they individually or collectively met the substantial evidence standard and the applicable standard of proof to determine the Applicant’s culpability regarding falsification of her COVID-19 test result.

124. At the outset, however, the Tribunal wishes to emphasize that, in the Notice of Alleged Misconduct, EBC was specific about how the Applicant falsified the COVID-19 test result. The

Notice stated, “It is specifically alleged that you falsified the result of the [COVID-19] test administered to you on or about October 19, 2020 by the Luanda Medical Center (LMC) by *altering* the test outcome from positive to negative.” (Emphasis added.) However, at the end of the investigation in the Final Investigation Report, EBC concluded simply that the Applicant “falsified the result of the [COVID-19] test administered to her on October 19, 2020.” The Final Investigation Report does not specify the evidence upon which the Bank relied to determine that the Applicant herself had falsified the test result. Nor does the conclusion specify the evidence upon which the Bank relied to conclude that the Applicant knowingly presented a false test result for travel purposes. For allegations as serious as these, it is incumbent on the Bank to provide evidence supporting the conclusions reached with respect to each specific allegation leveled by the Bank.

125. The Tribunal will now examine the evidence presented in the record to determine whether the Bank satisfied its burden to prove with substantial evidence meeting the requirement of higher than a mere balance of probabilities that the Applicant falsified her COVID-19 test result and that she knowingly presented the falsified test result for travel purposes.

#### *Admission*

126. A misconduct finding can be upheld when a valid direct or indirect admission is made by the subject accused of committing misconduct. The record shows that the Applicant has consistently denied the allegation during the EBC investigation and in her subsequent filing with the Tribunal. Below is an excerpt of EBC’s interview of the Applicant during which EBC asked direct questions regarding the falsity of the COVID-19 test result:

[EBC]: And just so I ask some questions directly, I don’t know if I asked you before, but did you have any reason to believe that the test results that you received from [the Driver] was falsified –

[The Applicant]: No.

[EBC]: Or tainted or not what the Luanda Medical Center – was not from the Luanda Medical Center?

[The Applicant]: No.

[EBC]: At any point in time did you discuss with [the Driver] about assisting you to get a [COVID-19] test result that was not from Luanda Medical Center?

[The Applicant]: No.

[EBC]: Okay. Did you have any discussions or understanding with [the Driver] or anyone that you would – that you were provided with test results purportedly from Luanda Medical Center that were not from Luanda Medical Center?

[The Applicant]: I didn't understand the question.

[EBC]: Did you have discussions or did you have any understanding at any point in time that you would receive test results that were purportedly from Luanda Medical Center, but not actually issued by Luanda Medical Center?

[The Applicant]: No.

[EBC]: Okay. Did you make enter into any arrangements to falsify or fabricate the test results from the Luanda Medical Center?

[The Applicant]: No.

[EBC]: Did you have any reason to believe that the test results that you first traveled with were fake?

[The Applicant]: No, I did not.

127. The EBC Final Investigation Report noted that the Applicant “denied falsifying her [COVID-19] test result or presenting a falsified [COVID-19] test result in the course of travel.”

128. The Tribunal is satisfied that in this case there is no direct or indirect admission by the Applicant that she falsified the COVID-19 test result.

129. The essence of the Applicant's version of the events of 19 and 20 October 2020 is summarized, in a declaration filed by the Applicant before the Tribunal, as follows:

On October 19, I went to the Luanda Medical Center (“LMC”), a private clinic, to take another [COVID-19] test. There were many persons in line at the LMC and

while waiting I met [Ms. C] and [the Driver]. I began speaking with them and [the Driver] said that he could help to expedite the scheduling of our tests. While I did not understand what he could do to help, we were able to move ahead in line and I was given a PCR test that day. I gave [the Driver] money to show my gratitude. He also offered to pick up our test results the next day and deliver them to us. On October 20, [the Driver] delivered the test result to me showing that I tested negative for [COVID-19].

130. When EBC interviewed the Applicant, she described the same version of events as stated above. The record also includes some communications between the Applicant and Dr. X as well as a memorandum the Applicant sent to her management that briefly mentioned the COVID-19 test result discrepancy. There is nothing in the record that EBC has referenced to show there is a discrepancy in the Applicant's version of core events of 19 and 20 October 2020 described above. There is nothing in the record to suggest that there was a direct or indirect admission by the Applicant about falsification nor is there any material inconsistency in the Applicant's statements to any individual or to EBC or to the Tribunal regarding the core events that happened on 19 and 20 October 2020.

*Documentary evidence*

131. The Tribunal observes that there is conflicting documentary evidence in the record regarding the Applicant's COVID-19 test result. The record shows that the Applicant and the Bank (through LMC) each produced documentary evidence in the form of a single result from a COVID-19 test of the Applicant administered on 19 October 2020 at LMC. The Applicant's version indicates negative, and LMC's version indicates positive.

132. The Tribunal notes that there was no expert testimony in the record as to whether the COVID-19 test result had, in fact, emanated from LMC. Nor, indeed, was there any expert evidence as to whether the test result, albeit in photographic or scanned format, had been altered.

133. The Tribunal notes the testimony of the LMC Medical Director regarding the two versions of the test result. The LMC Medical Director described the negative test result provided by the Applicant as being exactly the same as that issued by LMC, with the only difference being the

words “negative” and “positive.” The LMC Medical Director added, “It was a very – if I saw that test [result] without the context, for me it was a very credible and authentic test [result], yes.” The LMC Medical Director further stated that the Applicant’s negative test result “was so perfect that we were scare[d] that somebody here [at LMC] was altering results for money.”

134. The record shows that, on 25 October 2020, the LMC Medical Director requested an internal investigation into the processing of the Applicant’s COVID-19 test. The next day, the investigation report confirmed that the Applicant’s test was processed on 20 October 2020 and that the test result was positive and was never changed to “negative” in the LMC system. The investigation report stated, “Since most of this process is automated, the margin for human error is minimal. [...] [T]he chance the mistake occurred in the lab is negligible.”

135. The Tribunal observes that, in the LMC Medical Director’s testimony, she told EBC that the alteration of a test result “can be easily done on pdf editor” and that LMC had “at least two more cases like this” where COVID-19 test results had been altered from positive to negative in order to fly out of the country. She added, “They – they have had a pdf editor, we send it by email, and they can do whatever they want with that. So [...] it’s a problem that we are working on.”

136. The Tribunal observes that the LMC Medical Director testified that LMC had no records of informing the Applicant of the outcome of her test by email. EBC did not conclude that the Applicant received the electronic version of the COVID-19 test result via email. According to the LMC Medical Director, the COVID-19 test result can be changed through “pdf editor.” However, the possibility that the Applicant somehow changed the result using “pdf editor” is unsustainable as there is no evidence that the Applicant received the test result via email.

137. In sum, the Tribunal finds that the documentary evidence in the record is inconclusive and on its own is not dispositive of the Applicant’s culpability in altering or otherwise falsifying her COVID-19 test result.

*Testimonial evidence*

138. The record shows that EBC conducted twenty-three witness interviews during its investigation of the Applicant. Out of those twenty-three interviews, six witnesses provided testimony relating to the falsification allegations, providing testimony as to LMC's test result notification and pickup protocols. The remaining seventeen witnesses testified to issues relating to the retaliation allegations and other miscellaneous issues.

139. The record shows that the LMC Medical Director and LMC Chief Epidemiologist testified as to LMC's test processing, notification of results, and test result pickup protocols. Moreover, both testified that LMC's protocols regarding the notification of results and test result pickup were not always followed. In view of the testimony of the LMC witnesses as to inconsistencies in the observance of LMC's protocols, the plausibility of the Applicant's claim that a third-party driver picked up her result from LMC without her written authorization or identification is not undermined.

140. The LMC Chief Epidemiologist further testified that per LMC's internal protocol, when a patient tested positive for COVID-19, the laboratory sent the result to the Epidemiological Surveillance Team (EST) within LMC. That team was then tasked with reporting data on positive COVID-19 cases to the MyOH. According to the LMC Chief Epidemiologist, as head of the EST, he would then call the patients to inform them of the positive test outcome and provide them with guidelines for care and follow-up with the MyOH relating to the patients' care.

141. The Tribunal observes that the LMC Chief Epidemiologist notably admitted during his testimony to EBC that it was not until February 2021 that the EST started keeping records of the outcome of calls made to patients to inform them of positive test outcomes – four months after the Applicant's test at LMC. Further, as discussed above, although the LMC Chief Epidemiologist confirmed that the EST received the positive outcome of the Applicant's test on 22 October 2020 and reported the positive result to the MyOH on 23 October 2020, he could not remember if he called the Applicant to inform her of the outcome of her test and what the outcome of the call was.

142. The LMC Medical Director testified to EBC that she had no records of informing the Applicant of her test result via email, did not have any records of how the Applicant's test result was collected, and could not rule out a third party picking up the Applicant's test result without the Applicant's authorization.

143. The Tribunal notes the following considerations made by EBC regarding the testimony of the LMC Medical Director and the LMC Chief Epidemiologist:

EBC weighed the testimonies of [the LMC Medical Director] and [the LMC Chief Epidemiologist] regarding the [COVID-19] testing process and the outcome of the [COVID-19] test administered to [the Applicant] which they both confirmed was positive. [The LMC Medical Director] emphasized that the test result was never negative and that her examination of the protocol surrounding the outcome of testing (which was shared with EBC) showed that [the Applicant's] test result was and had always been positive.

144. From these testimonies it cannot be concluded that the Applicant was culpable or was otherwise involved in the altering or changing of the test result. Neither the LMC Medical Director nor the LMC Chief Epidemiologist observed anything that implicated the Applicant in the act of falsifying the COVID-19 test result. They testified that LMC had strict protocols but also testified that they could not be sure if these protocols were always followed.

145. The record shows that three of the Applicant's colleagues who testified to being tested at LMC all experienced different test result notification and pickup protocols. The Tribunal observes that the Applicant's three colleagues testified as follows:

- One of the Applicant's colleagues, an Economist, testified that his test result from LMC was negative, and he received the test result by email.
- Another colleague, a Social Protection Specialist, testified that she and her spouse took tests at LMC at the same time in October 2020. She told EBC that LMC notified her and her spouse that their test results were ready for pickup by text to her spouse's phone. Her spouse thereafter physically collected both test results from LMC. According to the Social Protection Specialist, her spouse was required to show their proof of identification (in their case, passports) before he was allowed to pick up the test results.



- The Senior Health Specialist testified that his negative test result was initially communicated to him by a nurse at LMC who assisted with his testing. He told EBC that this nurse, who was also his friend, initially sent him the test result via WhatsApp. In his first interview, he told EBC that he later physically picked up the original document from LMC. He told EBC that he was not required to show any identification before picking up his test result. He testified that his test result was given to him after he presented the receipt of payment for the test and provided his phone number and name. In his second interview, he told EBC he did not physically pick up his test result as “what was most important was the result if it was negative or positive.”

146. Bearing in mind the charge alleged against the Applicant, the Tribunal observes that none of the testimonies provided by the Applicant’s colleagues implicated her or suggested that she had been involved in the falsification of the document. The Tribunal observes that the Bank seeks to rely upon these testimonies. However, the Tribunal considers that such testimonies corroborated LMC’s not entirely consistent notification and pickup protocols. None of these colleagues’ testimonies implicated the Applicant in the involvement of falsification. There is no evidence in the record that shows that these colleagues – or anyone else – saw, heard, or observed anything suggesting that the Applicant engaged in the act of altering or changing the COVID-19 test result. Further, there is no evidence in the record that the Applicant discussed with these colleagues, or anyone else, the possibility of finding an improper way to get a negative test result from LMC.

147. Finally, the Tribunal observes that Dr. X in her testimony to EBC did not accuse or otherwise directly or indirectly implicate the Applicant in the act of falsifying or otherwise altering the test result document. She informed the MyOH of the discrepancy, per her obligations as Coordinator of the RRT. In fact, the record shows that Dr. X explicitly told the Applicant that she was not accusing her of altering or falsifying the COVID-19 test result.

148. The Tribunal observes that, in a 28 October 2020 WhatsApp exchange between Dr. X and the Applicant after the Applicant received a letter asking her to clarify the test result discrepancy, Dr. X stated:

[The Applicant,] [I] was not the one who wrote the letter, and I cannot even accuse you, I just have to justify the coordination. [I] only informed [...] because the laboratories are connected in network [...] and when a positive case leaves the country [it] is necessary to inform [...] because if the state of California notifies Angola of your entry being positive [...] Angola would have to justify.

149. Based on the above, the Tribunal concludes that there was no testimonial evidence in the record to support a finding that the Applicant falsified her COVID-19 test result.

*Circumstantial evidence*

150. The record shows that EBC relied on mostly circumstantial evidence to conclude that the Applicant engaged in falsification of her COVID-19 test result.

151. The Tribunal first notes that EBC found it “implausible” that the Applicant would enter into a verbal agreement with a “total stranger,” a third-party driver, to pick up and deliver her COVID-19 test result in the midst of a pandemic.

152. In her interview with EBC, the Applicant explained the circumstances of meeting and arranging for the pickup of the test result with the Driver as follows:

[EBC]: And if you could tell us what you discussed with the driver, that would be helpful. First of all, who is this driver?

[The Applicant]: His name is [the Driver].

[...]

So he’s a driver that was there at the Luanda Medical Center. And the reason I met him is because I saw him trying to communicate with a woman that spoke French. And she was in a similar situation, not sick, but she was also kind of in an urgency for getting the test. And she only spoke French, he only spoke Portuguese, so I helped them, I was translating. And then he asked me what are you here for, and I explained my case. And then he said I can help you bring you your results, so you don’t have to come back if you give me a tip. I said, sure, that would be great. And then I – and then he said if you help translate for her, but then I – basically he said if you help me translate for her, I’m happy to help you with your test result and getting it because I’m going to be trying to get hers. I said, sure, that would be great.

And then that's when he said if you could just, you know, give me a tip, that would be great. I said, yeah, no problem.

[EBC]: And did you give him a tip?

[The Applicant]: I did, yes, when he came to my house to deliver the test results.

[EBC]: So, [your] understanding was that [the Driver] is a driver working for what establishment?

[The Applicant]: He's an independent driver from what I understood.

[EBC]: Oh. So, now if you could just clarify a bit. So, he's an independent driver. When you say he's a driver, what does – I mean, does he run a cab company or when you just say he's a driver?

[The Applicant]: Yeah. To be honest with you, this is a system in Angola. There's drivers. It's just a common thing that they have in different institutions, drivers. So, he was one of the people that was at the Luanda Medical Center when we got there. And he was accessing the center. He was going there, you know, when we were in line. He said, okay, the line's going to take this long. I would see him communicate with this woman who was speaking French. And then, you know, they were hand signaling. He's like, oh, one hour, uma hora. And so I started to help translate. And then I didn't really explore much. I just – you know, he was there, he's a driver. And I said, yeah, if you could help me, that would be great. But I don't know his affiliation. I think like many of the drivers in Angola, he's a gentleman that drives and does these kind of activities or services for his own fee to get – to make a living.

[EBC]: So, help me understand and I just need some clarification. Did you get the impression that he worked for the Luanda Medical Center?

[The Applicant]: I didn't think he worked for the Luanda Medical Center, but I think he was familiar with the fact that there were many people getting tests and he was doing like an entrepreneurial service where many people are getting tested and he's offering to people his services, I can come pick up your test result and bring it to you. That's the impression I got from him.

[EBC]: Okay. So, okay. So, at what point did you, you know, arrange with [the Driver] to help you deliver your test result?

[The Applicant]: That happened when – as we were in the line. As soon as we got into the first point to pay, that's when – he was able to go inside, so he saw that we were inside and it's an open lobby area, so he saw that we finally reached the first point, this French lady and me. And he said – and he would actually tell us things. He would say after this make sure you get to the registry line because then from

there – okay, okay. And so then it was when we were in that – when we came in – we were outside of the Luanda Medical Center in line and when we passed to the lobby, which is the first point where you pay, that’s when I asked. So, I said, so, you’re going to be able to pick up these results from here and take it to us? He said, yes, yes, I’m going to wait for you guys outside and we’ll confirm the delivery and all that. I said okay. So, then I didn’t see him anymore after that. We went to the first point to pay, the second point to get registered, and then we did the actual test. And then the lady and I stuck together because I was kind of helping her with the translation. Then we both came out and then, you know, we said – he said, okay, great, you’ve had your test, so I’m going to be around here checking on it. And we just gave him our names. And, you know, we keep – he wrote them down and he said I’ll be checking to make sure we can get them as soon as possible. And he even said to us I’m going to push to try and get it earlier because he explained to me the other lady had an issue where they had held her passport at the airport, so she needed her results sooner to get it back. And I said okay. So, that was what we agreed after we got our actual test and we went outside.

153. EBC sought further explanation as to why the Applicant was comfortable asking the Driver to deliver her test result, and the Applicant explained as follows:

[EBC]: And this was the first time you were meeting [the Driver]?

[The Applicant]: Yes, I had never met him before.

[EBC]: I’m just puzzled, and maybe you can help me, why were you comfortable asking him to deliver your [test results] to you?

[The Applicant]: Yeah, I – to be honest, I didn’t doubt it in any way because, I mean, I know it’s hard to – when I tell it back, but this is how things are done in Angola. There’s a lot of people that are out of work. You see in all the sights, even at the supermarkets, you have people there offering their services, entrepreneurial-type people. And, you know, I could see him going in and out of the center, so I just thought, yeah, and I wasn’t – yeah, I thought – to be honest with you, I didn’t – I trust – I didn’t have a doubt. I just went, yeah, that’s fine.

154. The Applicant also added that, while she was waiting in line at LMC, with the help of the Driver, she was able to move ahead in line and was given a COVID-19 test that day.

155. The Tribunal recognizes that, at least in some countries, it is not unusual for ad hoc arrangements or transactions to be negotiated whereby third-party handlers are paid to expedite a service.

156. EBC noted in the Final Investigation Report that “EBC could not corroborate [the Applicant’s] narrative from [the Driver] or [Ms. C] (both strangers [the Applicant] met for the first time outside LMC) as they could not be reached on the telephone numbers [the Applicant] provided. EBC could not corroborate the existence of [the Driver] or [Ms. C]. [The Driver] was not an employee of LMC and LMC did not have any records of someone named [Ms. C] taking a COVID-19 test on October 19, 2020.”

157. The Tribunal is not clear about EBC’s statement that EBC could not corroborate the existence of the Driver. The EBC record includes a picture of the Driver with a phone number and at least one exchange of a message between EBC and the Driver. EBC noted that the Driver “was not an employee of LMC.” But the Applicant herself made it clear to EBC that the Driver was not an employee of LMC; rather, he provided services through unofficial channels. The record shows that a person with the same name as the Driver had one communication with EBC and then he stopped responding to EBC. But that may be understandable given that a person who provides unofficial services for a fee may not want to entangle himself in an investigation. The fact that the Driver did not wish to communicate with EBC does not mean he did not exist.

158. The Tribunal observes that, in finding the Applicant’s version of events not credible, EBC took into account the following factors: (i) LMC is a reputable medical establishment, (ii) LMC followed its reporting protocols for positive COVID-19 test results when handling the Applicant’s test, (iii) the Applicant did not inform LMC that a third party would be collecting her test result, and (iv) the collection arrangement the Applicant described was contrary not only to LMC’s collection protocol but also to the collection experiences of the Applicant’s colleagues.

159. The Tribunal notes that the existence of protocols at LMC does not, necessarily, mean that LMC observed, invariably, its own protocols as a matter of practice. Indeed, the record shows that the LMC Medical Director could not rule out the possibility of a lapse in protocol observance. The LMC Medical Director stated that “we have this protocol in place [...] I cannot say it will happen for sure.” The LMC Medical Director also noted that “we don’t have a way to find out how [the Applicant] got her result [...] at that time we didn’t have a record on how the results were

delivered.” In view of the foregoing, the Tribunal considers that the Applicant’s account of having had a driver pick up her test results from LMC is not altogether implausible.

160. The Tribunal observes that, in rejecting the Applicant’s version of events, EBC took into account the Applicant’s email to colleagues while she was in transit to the United States telling them not to inform their colleagues in the Angolan government that she was traveling to the United States. In reviewing the record, the Tribunal does not find this statement indicative of guilt given the documented hostility and tensions that existed between the Applicant and the MyOH. The record contains an INT case filing by the Applicant against the MOH in March 2020 and other correspondence between the Applicant and her management and security in which she complained of bullying and aggressive treatment of her by the MOH and other officials. The Tribunal finds that this issue provides context for the Applicant’s actions in taking a COVID-19 test at LMC and offers an alternative reason for the Applicant to tell her colleagues not to inform the government of her travel to the United States.

161. As circumstantial evidence, EBC also took into account the fact that, when EBC asked the Applicant for the original test result she received from LMC, the Applicant stated that she could no longer locate the original test result. On 19 March 2021, EBC sent an email requesting that the Applicant send to them the original COVID-19 test result. On 23 March 2021, the Applicant responded as follows:

Thanks for your message and letting me know the status of the investigation.

I am well thanks and hope you are too.

I received your message on Friday and spent the weekend through yesterday looking for the original [COVID-19] test result and I do not have it. I was under the impression I had it when we spoke in January, but as I have been living between three houses, it may have been misplaced in this shuffle. My apologies and thank you for your understanding.

162. The Applicant’s failure to locate the original test result, approximately five months after taking the test, must also be understood in a broader context. When, on 24 October 2020, Dr. X via WhatsApp asked the Applicant to send her a photo of the test result, the Applicant sent a photo

to her immediately – within minutes. During her first interview with EBC in January 2021, EBC asked the Applicant if she was comfortable sharing with them the original test result and the Applicant said, “Sure.” EBC told the Applicant that it would send her the logistical details so that she could send it via mail. Two months later, EBC sent those details to the Applicant, and four days after receiving this message the Applicant responded that she had looked for the original for several days and had been under the impression she had it in January 2021 but that it may have been misplaced as she was living between three houses. EBC did not controvert that she changed residences during this period. It is possible that a document from October 2020 could be misplaced by March 2021 given the Applicant’s change of residences.

163. Last, the Tribunal observes that in making its findings EBC considered the Applicant’s eagerness to see her 11-year-old daughter in the United States after several months of being separated. In the Tribunal’s view, this is a normal feeling that parents would have after being separated from their children and is not in itself dispositive of culpability for altering or falsifying a COVID-19 test result to use to travel.

#### *Conclusion on falsification allegation*

164. In conclusion, based on the Tribunal’s analysis of the foregoing documentary, testimonial, and circumstantial evidence in the record, the Tribunal finds that the Bank did not meet its burden of presenting substantial evidence meeting the requirement of higher than a mere balance of probabilities to prove that the Applicant altered or falsified the result of her COVID-19 test taken on 19 October 2020. In the Tribunal’s view, the evidence is inconclusive. The Tribunal acknowledges the discrepancy between the Applicant’s COVID-19 test results. However, it is not convinced that the evidence in the record, relied upon by the Bank, individually or collectively meets the requirement of higher than a mere balance of probabilities to prove the serious accusation of falsification of the COVID-19 test result by the Applicant. Consequently, the Bank has not met its burden of proof with substantial evidence that the Applicant falsified her COVID-19 test result and knowingly presented the falsified test result for travel purposes. Accordingly, the Tribunal sets aside the finding of falsification of the COVID-19 test result.

165. The Tribunal notes that, based on the HRDVP's finding that the Applicant falsified her COVID-19 test result, the HRDVP also found other forms of misconduct as stated in her decision letter:

In its Final Report, EBC found sufficient evidence that you falsified the result of your COVID-19 test administered to you on October 19, 2020 by the LMC, and knowingly presented the falsified test result to relevant national and international authorities in the course of travel from Angola to the United States, in violation of Angolan law and International Health Regulations. In doing so, your actions amounted to (i) a willful misrepresentation of facts intended to be relied on, and (ii) a failure to observe obligations relating to health and safety in general, and in particular, to comply with the WBG [COVID-19] Travel Guidance. Additionally, and considering the fact that the Angolan government sought to have you declared as persona non grata, EBC concluded that your actions were in conflict with your obligation as a WBG staff to avoid situations and activities that might reflect adversely on the WBG, and that you did not conduct yourself in a manner befitting your status as an international civil servant.

166. Since the Tribunal has set aside the HRDVP's misconduct finding that the Applicant falsified her COVID-19 test result and knowingly presented the falsified test result to national and international authorities for travel purposes, the consequent findings that flowed therefrom are also set aside.

#### WHETHER THE APPLICANT RETALIATED AGAINST DR. X

167. The essential facts relating to the Applicant's various actions regarding Dr. X are well documented as set out below.

168. According to EBC, between 24 and 28 October 2020, Dr. X notified the National Directorate of Public Health in Angola of the possible falsification by the Applicant of her COVID-19 test result. Based on that notification, on 28 October 2020, the National Director of Public Health wrote to the Applicant informing her that the National Public Health Directorate (within the MyOH) had received a report from Dr. X, in her capacity as Coordinator of the RRT, of "possible falsification" of the Applicant's COVID-19 test result and departure from Angola



following a positive test result. The letter requested an explanation of the discrepant test result and informed the Applicant that the purported actions would constitute violations of Angolan and international law, and as such the National Public Health Directorate would be required to report these actions to the relevant authorities.

169. Later that day, the Applicant wrote to her Practice Manager and Country Manager informing them of the MyOH's COVID-19 test result falsification allegations and attaching the National Director of Public Health's 28 October 2020 letter.

170. The next day, on 29 October 2020, the Applicant wrote to her task team colleagues expressing her disappointment in Dr. X and accused her of "back-stabbing":

I wanted to keep you updated on how things continue to "devolve" with the Ministry of Health. Today, I received this letter from [the National Director of Public Health] and [Dr. X] pretty much accusing me of having falsified my [COVID-19] negative result and somewhat threatening to tell their authorities and my authorities. [...] I expect this sneakiness from [the National Director of Public Health], but I'm truly disappointed in the back-stabbing from [Dr. X].

171. The Tribunal observes that Dr. X testified that, after the COVID-19 test result falsification allegation was made against the Applicant by the MyOH, Dr. X's work product was subject to excessive and repeated review and rejection by the Applicant and her team, and that she believed there was a "movement" against her.

172. On 16 November 2020, in correspondence with Mr. B of the WBG task team, the Applicant made disparaging statements about Dr. X and raised concerns about Dr. X's commitment to the project:

She is a fat, ugly, bitter old woman, so I don't expect much from her. I dunno... I have seen her behave just as aggressively with the [PIU] staff. I've sometimes thought of mentioning it to [the PIU Coordinator], because this rude and disrespectful behavior is unacceptable. But right now I don't want to say anything because later it will look like I am being spiteful. But I think that this feedback on [Dr. X's] behavior should be made known to [the PIU Coordinator] – that it is not ok. [...]

Another point that I mentioned to [a WBG task team member] this week is that I'm concerned about the "commitment" and time [spent on the project] by [Dr. X]. She's the [MyOH] officer responsible for the [COVID-19] rapid response team; she's the technical manager for REDISSE; she's in charge of the Contingent Emergency Response Component (CERC) of the Health System Performance Strengthening Project Program (HSPSP/PFSS), and who knows what else. I told [the WBG task team member] that I didn't want to look petty and vindictive – in other words, she hurt me and I'm striking back. But I think she is the only technical person in Angola who could handle REDISSE. [The PIU Operations Officer] doesn't have the technical skills, but he is good for coordinating. [The WBG task team member] told me to wait and see the plan they've developed. If it's OK, then we can go forward. If it's not, he will give us the elements for raising concern about the commitment and time spent by [Dr. X] and understanding the roles of the [PIU] REDISSE team.

173. The next day, on 17 November 2020, in response to a letter received from the MyOH alleging the falsification of a COVID-19 test result by the Applicant, the Country Director reported the falsification allegations against the Applicant to EBC, and EBC thereafter opened a preliminary inquiry into the matter.

174. On 8 December 2020, EBC interviewed Dr. X as a witness in connection with its inquiry into whether the Applicant falsified her COVID-19 test result.

175. On 21 January 2021, EBC provided the Applicant with a preliminary notice of the allegations made against her. Two days later, on 23 January 2021, the Applicant wrote to her task team colleagues about not renewing Dr. X's contract, stating in part:

I would like to seriously assess whether or not to renew two specific contracts due to non-performance and inappropriate behavior. These are for [another individual] who is the [monitoring and evaluation] specialist (non-performance and behavioral) and [Dr. X] (non-performance and behavioral).

Can you help me with the following information:

- Can you share with me the end date of these contracts so we know when they will end and when they will be coming for renewal?
- Can you help me liaise with [the PIU Coordinator] on ensuring that we have performance reviews conducted on each of these persons[?]

- On the performance reviews, can these include feedback from peers we indicate or even from the Bank?

Also, would you recommend we point to non-performance and behavioral aspects as the reasons for non-renewal or just stick to non-performance[?] My points at present are the following:

[...]

[Dr. X], REDISSE Technical Manager. The REDISSE team has not produced any activity under her leadership to date. [Dr. X] is incapable of leading the team to produce an action plan of activities. There is also a lack of willingness to understand the project and its activities as she continues to claim that under her leadership, REDISSE has implemented the US\$15 million the Bank provided for [COVID-19]. She does not understand that this financing of US\$15 million came from PFSS and not REDISSE, despite this having been explained to her multiple times. The REDISSE team has only processed one activity (the purchase of ventilators) which was an activity guided by the World Bank. In addition, she is completely absent from communications with the Bank team and when forced to respond does so in a hostile and aggressive manner. I also feel there is a conflict of interest as she is the Government person responsible for the [COVID-19] response and cannot manage this full time while also being the Bank REDISSE technical manager full time.

176. On 4 February 2021, the Applicant wrote to the WBG task team requesting feedback on her preliminary assessment of the PIU contracts. Regarding Dr. X's contract, the Applicant wrote, "contract expires April 2, 2021, will not be renewed."

177. On 9 February 2021, the Applicant wrote to the PIU Coordinator recommending various staffing changes to the PIU, including the non-renewal of Dr. X's contract, stating:

[Dr. X] – Technical Manager - US\$ 14,000. The contract expires on 2 April 2021 and will not be renewed. The individual has concurrent responsibilities in the Ministry of Health that pose a time conflict and she is out of touch with daily REDISSE operations and the team's activities.

178. On 19 February 2021, the Applicant wrote to the Senior Procurement Specialist working on the REDISSE project specifically asking that Dr. X be removed from STEP, the online procurement system of the WBG designed to plan and track procurement activities and an important means of communication between the Bank and the PIU.

179. On 24 February 2021, the Applicant again wrote to her task team colleagues informing them that Dr. X's contract would not be renewed and would terminate on 2 April 2021.

180. On 12 March 2021, the Applicant wrote to the PIU Coordinator stating that the WBG had not approved the extension of Dr. X's contract and that her contract would consequently not be renewed. In the email, the Applicant wrote that the reason for the non-renewal was that Dr. X's competing responsibilities did not allow her full-time engagement as Technical Manager of the REDISSE project.

181. In a further email to the PIU Coordinator, dated 18 March 2021, the Applicant stated in part:

[The PIU Coordinator], I would like to ask if [Dr. X] was already informed that her contract would not be renewed. I'm asking because I hope we won't have a problem with the "30 days [notice period]."

The WB position is the same as with [the Operations Manager of the PFSS portfolio]. The Bank is not going to fund this position, and therefore the contract will not be renewed. That said, the [MyOH] has every right to take over her contract and she can continue to engage with REDISSE.

If there is need for a letter, we can send one signed by [the Regional TTL] and not by me.

I know this is a difficult situation and I can help out with steps to facilitate the process.

182. The record shows that the Applicant testified to EBC that the context of her 18 March 2021 email above was as follows:

[We] [the Applicant and PIU Coordinator] were trying to find different channels through which to have [Dr. X's] contract end and [...] not engage her in a new contract that would not hurt her so much. So even though, as I explained, it was sequential, it was based on non-engagement, non-performance, other people having to step in and do her work. Based on that, you know, [the] real grounds for not renewing or not putting the new contract with her was because of the non-performance. But we didn't want to say that because we were afraid of what the

backlash would be from her and the Minister of Health. So we said we could find other ways to say that it's based on the fact that the position is no longer needed and, you know, to not be offensive. The Ministry of Health is welcome to keep the position but to finance it themselves. And we had used that approach before with the Ministry of Health because they are very difficult. So that's why I said that.

183. The Tribunal notes the PIU Coordinator's response, dated 18 March 2021, stating in part, "But you will need a letter from [the Regional TTL], as backup. I still don't know if the Minister also wanted to talk about this...because there was a lot of confusion all around..."

184. The Tribunal notes that, in reviewing the PIU Coordinator's 18 March 2021 email to the Applicant, the Practice Manager testified to EBC that, while the WBG could have an opinion about whether a contract should be renewed, the government and or the PIU should have made a formal request (either by email or through STEP) not to renew the contract and then the WBG could have given a no-objection to the request not to renew the contract. The Practice Manager told EBC that, if no request had been made by the PIU, the email suggested that it was a unilateral decision of the WBG, which is problematic.

185. The Tribunal observes that the Practice Manager explained the normal non-renewal protocol further, stating:

The Bank can have an opinion about whether the contract should be renewed or not. Right? But the request has to come from the government. [...] So, if a request had been made already by the government, this would not be as problematic. If it had not been made, this is very problematic. [...] Because it's like the Bank has decided that this contract shouldn't be extended. If the Bank – if the task team was concerned about the performance, they should discuss it with the government. And, like I said, the government should then either verify or not verify and say, World Bank, you need this information. We'll deliver it to you. How it's delivered should not be your concern. Right? So, if you have a concern in your daily interactions, it shouldn't be telling the government, no, don't renew this person's contract. Your discussions should be against deliverables. If the government is providing you with the deliverables, then you have no stance to be saying somebody should not be extended.

186. The Tribunal further observes the Practice Manager's testimony to EBC regarding who within the government such a request should come from:

Because [the PIU Coordinator] is a contractor – the government contracted this person to play this role. He’s not a civil servant. Let’s say, if for instance, the Director of Planning was the Project Coordinator, then that’s fine. But because of this particular case, I would – I, as a TTL, would say that I want the request to come from either the Director of Planning or from the Minister. Right? So, basically, the PIU gives information to the Director and the Minister, and they send the request for no-objection to not extend the contract to the Bank. Right? Or even if it comes from the PIU, those people should be copied so that we are aware that they are aware. I would expect that in this particular case because [the PIU Coordinator is] a consultant to the project. Right? She’s not a civil servant, per se, like a director of planning that you can then send to the Minister, but your Director sent this to us. In this case, it’s their consultant. Right? And their consultant is doing things on their behalf. But they need to be aware of it. Before you do something on somebody’s behalf, the person has to know that you’re doing it on their behalf. Right?

187. The Tribunal notes that in the Country Director’s interview with EBC, in describing the decision to not renew positions of PIU staff, he explained that PIU staff are normally recruited and terminated by the government with a no-objection from the WBG’s TTL. The Country Director added that, if the Applicant’s 18 March 2021 email to the PIU Coordinator is authentic, it would seem the TTL “probably did something she should not have done.”

188. The Tribunal notes that, on 19 March 2021, the MyOH wrote to Dr. X informing her that her contract would not be renewed.

189. On 29 March 2021, the Applicant wrote to the Senior Health Specialist to assist with drafting a letter justifying Dr. X’s non-renewal that she intended to send to the PIU Coordinator. In the Applicant’s email to the Senior Health Specialist, the Applicant stated, “The letter would need to say that the position of [Technical Manager] is no longer needed as the technical design phase of the project is over and we are now in the phase of coordination and implementation.” The record shows that the Applicant planned to have a final draft of the letter signed by the Regional TTL.

190. The record shows that the Senior Health Specialist completed the draft justification letter on 31 March 2021. That same day, the Regional TTL reviewed the draft letter and requested that

the Applicant revise the letter to reflect the context in which the WBG task team came to the decision that the Technical Manager position would no longer be required. When the Applicant asked for clarification, the Regional TTL clarified his request, stating:

This is a letter from the Bank to [the PIU Coordinator] about one of her staff. We as the Bank cannot just come from the air and decide to send her a mail to say the services of one of her staff are no longer needed at this stage. What was the Bank doing before realizing that this is the situation? Was it during a supervision mission, was it during xxxx, this needs to be clearly spelt out to set the scene of the letter.

I hope that this clarifies my ask.

191. The Applicant responded the same day, stating, “Thanks [Regional TTL]. We can just manage it.” The Tribunal observes the Regional TTL’s testimony to EBC that the Applicant never reverted to him on his request.

192. On 2 April 2021, Dr. X’s position as the REDISSE Technical Manager officially ended.

193. The Tribunal observes that, according to the Bank, Dr. X was reinstated to her position as the Technical Manager of the REDISSE project in Angola in early 2022.

194. Based on the foregoing mostly documentary evidence as well as testimonial evidence in the record highlighted above, the Tribunal finds that the following facts are established:

- Between 24 and 28 October 2020, Dr. X notified the National Directorate of Public Health in Angola of the discrepancy in the Applicant’s COVID-19 test result.
- Based on that notification, on 28 October 2020, the National Director of Public Health wrote to the Applicant informing her that the National Public Health Directorate (within the MyOH) had received a report from Dr. X, in her capacity as Coordinator of the RRT, of “possible falsification” of her COVID-19 test result and departure from Angola following a positive test result.
- The next day, on 29 October 2020, the Applicant wrote to her task team colleagues expressing her disappointment in Dr. X and accusing her of “back-stabbing.”

- On 16 November 2020, in correspondence with Mr. B of the WBG task team, the Applicant made disparaging statements about Dr. X and raised concerns about Dr. X's commitment to the project.
- On 17 November 2020, in response to a letter received from the MyOH alleging falsification of a COVID-19 test result by the Applicant, the Country Director reported the falsification allegations against the Applicant to EBC, and EBC thereafter opened a preliminary inquiry into the matter.
- On 21 January 2021, EBC provided the Applicant with a preliminary notice of the allegations made against her. Two days later, on 23 January 2021, the Applicant wrote to her team about not renewing Dr. X's contract.
- Subsequently, the Applicant took several steps to orchestrate the non-renewal of Dr. X's contract, including informing the PIU that the WBG would not fund Dr. X's contract renewal and removing Dr. X from STEP, ultimately resulting in the non-renewal of Dr. X's contract as Technical Manager of the REDISSE project.
- Dr. X's contract was not renewed and terminated on 2 April 2021.
- Dr. X was reinstated to her position as the Technical Manager of the REDISSE project in early 2022.

195. The next question before the Tribunal is whether, based on the above established facts, it could be concluded that the Applicant engaged in retaliation against Dr. X.

196. Staff Rule 3.00, paragraph 6.01(g), expressly refers to retaliation as a form of misconduct that is investigated by EBC. It states that EBC's mandate includes investigation of

[r]etaliatio[n] by a Staff Member 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 Internal Justice Services, including retaliation with respect to reports of misconduct to which Staff Rule 8.02, "Protections and Procedures for Reporting Misconduct (Whistleblowing)" applies.



197. Staff Rule 8.01, paragraph 2.03, expressly prohibits retaliation, stating, “Retaliation by a staff member against any person who provides information about suspected misconduct under this Rule is expressly prohibited and shall subject the staff member to proceedings under Staff Rule 3.00.”

198. Staff Rule 8.02, paragraph 2.04, states:

**Prohibition Against Retaliation.** Managers and other Staff Members are expressly prohibited from engaging in any form of retaliation against any person for reporting suspected misconduct under this Rule, or for cooperating or providing information during an ensuing review of allegations under Staff Rule 3.00, “Office of Ethics and Business Conduct (EBC),” or investigative process under Staff Rule 8.01, “Disciplinary Procedures.” [...] This prohibition against retaliation extends also to retaliation against any person because such person was believed to be about to report misconduct or believed to have reported misconduct, even if such belief is mistaken. For purposes of this Rule, retaliation shall mean any direct or indirect detrimental action recommended, threatened, or taken because an individual engaged in an activity protected by this Rule. A Staff Member who believes s/he has been retaliated against in violation of this provision may seek relief in accordance with Section 3 of this Rule. A Staff Member who engages in such retaliation shall be subject to proceedings under Staff Rule 3.00, “Office of Ethics and Business Conduct (EBC).”

199. The Tribunal has confirmed that retaliation is prohibited under the Staff Rules. In *Bauman*, Decision No. 532 [2016], para. 95, the Tribunal held:

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.

200. EBC’s publication *Retaliation: What Staff and Managers Need to Know* (March 2021) defines retaliation as follows: “Retaliation is any direct or indirect detrimental action threatened or taken because a person engaged in a protected activity.”

201. The same publication also clarifies that individuals outside of the Bank are also protected from retaliation by a Bank staff member. It further clarifies that the following individuals are protected from retaliation: “All staff members, including consultants and temporaries, regardless of appointment type or duration of employment; and Contractors, their employees, agents, or representatives and any other persons engaged in dealings with the Bank Group.” Therefore, outside individuals like Dr. X who are connected with Bank projects are also protected from retaliation by Bank staff members under the Bank rules.

202. Based on the above publication of EBC, the following three elements must be present to constitute retaliation:

- The victim of retaliation engaged in an activity protected by Staff Rule 8.02 or 3.00.
- The alleged offender was aware of the protected activity.
- The protected activity can be linked to the alleged retaliation.

*Whether Dr. X engaged in an activity protected by Staff Rule 8.02 or 3.00*

203. EBC’s publication on retaliation provides that the victim of retaliation must be engaged in at least one of the following protected activities:

Reports to management, the Integrity Vice Presidency (INT), or the Ethics and Business Conduct [Department] (EBC) an allegation of misconduct that may threaten the operations or governance of the World Bank Group, or serves as a witness in a related investigation (see Staff Rule 8.02);

Reports any other allegation of misconduct to management, INT, or EBC, or serves as a witness in a related investigation (see Staff Rule 3.00); [or]

Uses any of the resources of the World Bank Group Internal Justice Services (IJS), which includes Ombuds Services, the Office of Mediation Services, and Peer Review Services (see Staff Rule 3.00).

204. In the present case, the record shows that Dr. X, in her role as Coordinator of the RRT, reported to the MyOH the Applicant's discrepant COVID-19 test result and her subsequent travel to the United States. The record further shows that, based on the review of Dr. X's report, the National Director of Public Health wrote to the Applicant on 28 October 2020 on behalf of the MyOH requesting an explanation of the COVID-19 test result discrepancy. The letter identified Dr. X as the person who informed the National Director of Public Health of the Applicant's possible falsification of her COVID-19 test result and departure from Angola.

205. The Tribunal observes that, on the same day, the Applicant forwarded the letter to her Practice Manager and Country Manager to inform them of the COVID-19 test result falsification allegations. The Applicant wrote a memorandum dated 30 October 2020 to her Country Director, with a copy to her Country Manager, providing her account of the events as requested by the MyOH letter of 28 October 2020. The Tribunal further observes that the MyOH wrote to the Ministry of Foreign Affairs on 9 November 2020, copying other ministries and the Country Director, reporting the Applicant's falsification of her COVID-19 test result and requesting that the Applicant be declared *persona non grata* in Angola. The record shows that on 17 November 2020 the Country Director reported the allegation of misconduct by the MyOH against the Applicant to EBC.

206. The Tribunal notes that the Country Director's report to EBC was directly based upon the MyOH letters of 28 October 2020 and 9 November 2020 regarding the possible COVID-19 test result falsification, which were in turn based on Dr. X's report of which the Applicant was aware. The Applicant's 30 October 2020 memorandum to her Country Director establishes that she understood the seriousness of the implications of the MyOH letters for both herself personally and the WBG. On this basis, the Tribunal finds that the first element of retaliation is satisfied, namely, that Dr. X engaged in an activity protected by Staff Rule 8.02 or 3.00 as set out in the EBC publication.

*Whether the Applicant was aware of Dr. X's protected activity*

207. As noted above in its consideration of the first element of retaliation, the Tribunal finds that the Applicant was aware of the protected activity. Specifically, the Applicant was aware of the report by Dr. X to the MyOH, which was eventually brought to the attention of the Bank by both the Applicant and the MyOH. In her testimony to EBC, the Applicant admitted to receiving a letter from MyOH on 28 October 2020, which she forwarded to her Practice Manager and Country Manager on the same day. Additionally, in the following exchange during her EBC interview, the Applicant testified to her knowledge of Dr. X's report of her possible misconduct to the MyOH and why she was disappointed by it:

[EBC]: And you said that you are truly disappointed in the back stabbing from [Dr. X]. I think my first question is why were you disappointed and what would you have expected? Why were you disappointed?

[The Applicant]: Right. As I mentioned before, [Dr. X] was part of the PIU so we worked with her and we always had a cordial relationship except with that incident where she was a bit snappy and rude to me. And as I mentioned to you, she had been to my house for dinner. I mean I didn't really socialize with her, but she had been to my house for dinner once. And you know, we were – I was TTL when she came on board the project, we were supportive of her. And we always had an open dialogue in that sense. And I didn't expect her – I was disappointed, yeah, that she did that. I thought she would contact me or – I mean I know she did try to reach me and I sent her the results, but then she immediately ran those over to [the National Director of Public Health], so who everybody knows that [the National Director of Public Health] and the Minister were always against me and trying to attack me. And she gave her these elements to attack me. And that's why I was disappointed.

[EBC]: You said she gave her these elements to attack you. What do you mean by these elements?

[The Applicant]: This element, the allegation that I falsified my [COVID-19] test [result].

208. Based on the above, the Tribunal finds that the second element is also satisfied, namely, that the Applicant was aware of Dr. X's protected activity.

*Whether there is a link between the protected activity and the Applicant's efforts to not renew Dr. X's contract*

209. The Tribunal finds that, because Dr. X engaged in a protected activity, the Applicant engaged in deliberate and retaliatory actions against Dr. X resulting in the adverse action of the non-renewal of her employment contract. These actions, as recounted above, include (i) informing the WBG task team of Dr. X's report, thereby creating a negative perception of Dr. X's professionalism and integrity among her team; (ii) informing the PIU Coordinator that Dr. X's position would not be funded by the WBG; (iii) removing Dr. X from STEP; and (iv) taking several actions above and beyond the non-renewal protocol with the PIU, including unsuccessfully attempting to get the Regional TTL to sign a letter justifying Dr. X's non-renewal, to ensure the non-renewal. The Tribunal finds that all these actions resulted in the non-renewal of Dr. X's contract on 2 April 2021 and that the Applicant's actions are linked to Dr. X engaging in the protected activity. From the Applicant's own testimony and written correspondence with others, it is clear that the Applicant was disappointed by the protected activity of Dr. X and concluded that such reporting by Dr. X amounted to backstabbing her.

210. Based on the above, it can be concluded that the third and final element is also present, namely, that there was a link between the protected activity and the Applicant's efforts to not renew Dr. X's contract.

211. The Tribunal notes the Applicant's contention that she did not engage in retaliation because she raised valid issues as to Dr. X's non-performance. However, the Tribunal does not find evidence in the record to support this contention. The Applicant claims that she produced a series of emails predating October 2020 – the month Dr. X reported the Applicant's possible misconduct – that show that the task team complained about Dr. X's alleged poor performance in delivering the REDISSE project work plan. However, the record shows that none of these emails explicitly expressed any dissatisfaction about Dr. X's job performance. The record further shows that the Senior Counsel responsible for Angola testified to EBC that there was no documented evidence of poor performance by Dr. X prior to her contract not being renewed.

212. Furthermore, when the PIU Coordinator requested a letter from the task team to clarify its rationale for the non-renewal decision, the Applicant directed the Senior Health Specialist on the WBG task team to draft a letter which made no mention of Dr. X's alleged poor performance but rather stated that Dr. X's position was no longer necessary. The Tribunal notes that, when the Applicant was questioned about the basis of this justification letter by the Regional TTL (as the designated signatory of the letter), the Applicant never provided him with an explanation and as a result the letter was never sent.

213. The Tribunal also considers EBC's reasoning in concluding that the Applicant acted in bad faith and with retaliatory intent in deciding not to renew Dr. X's contract:

Given that (a) there was neither a performance evaluation of Dr. [X] nor records evidencing a history of poor performance by Dr. [X]; (b) [the Applicant], an experienced TTL, did not follow WBG practice and processes to effect the nonrenewal of Dr. [X's] contract; (c) [the Applicant's] actions were not transparent as she actively tried to conceal the reason for the nonrenewal decision from MyOH and her [Regional] TTL; (d) [the Applicant] was disappointed and felt betrayed by Dr. [X's] role in the allegations against her; (e) the timing of the change of approach in addressing the delays in the PIU's deliverables and [the Applicant's] complaints about Dr. [X's] limited availability on the REDISSE project arose shortly after the [COVID-19] test result falsification allegations by the MyOH; and (f) [the Applicant's] claim that the PIU did not want to renew Dr. [X] and made the decision to not do so is not supported by the evidence; EBC determined that [the Applicant's] decision to not renew Dr. [X's] contract was not made in good faith, but was made with retaliatory intent.

214. Even if there were some issues of performance and the Applicant had valid concerns about Dr. X, the issue is whether the Applicant would have taken these various steps regarding her contract if Dr. X had not engaged in the protected activity in question. Based on the record, the answer is convincingly in the negative. Moreover, the Tribunal's jurisprudence is clear that retaliatory animus as a contributing factor in an adverse action is sufficient to legally constitute retaliation. In *Bauman* [2016], para. 111, the Tribunal stated:

[F]or a finding of retaliation under Staff Rule 8.02, paragraph 3.01, the retaliatory animus must be a contributing factor in the adverse employment action: it need not be the *sine qua non*. The Tribunal finds that the Country Director reacted to hearing about the [a]pplicant's alleged discussions with a DRC [Democratic Republic of

Congo] Government official in a precipitous manner, contrary to Bank Rules. On the basis of the record before it, including (a) the deteriorating relationship between the [a]pplicant and the Country Director and, in particular, (b) the [a]pplicant's forwarding of the DRC Government official's letter to his line managers just a few days earlier, the Tribunal concludes that the Country Director's retaliatory animus was, at the very least, a contributing factor in this regard. The termination of the [a]pplicant's contract resulted directly from this action by the Country Director.

215. The Tribunal finds that the Applicant's retaliatory animus was a contributing factor in the non-renewal of Dr. X's contract. The evidence is compelling in this respect.

216. The Applicant further contends that, even if the Applicant's feedback about Dr. X was untrue, the Applicant did not have the authority to unilaterally decide Dr. X's employment and thus was not in a position to retaliate against her by initiating an adverse employment action. If the Applicant did not have the authority to make the decision regarding non-renewal, the question arises as to why she told her team and the PIU Coordinator that Dr. X's contract would not be renewed. Her retaliatory animus was evident in the various actions she took in engineering the non-renewal of Dr. X's contract.

217. The Tribunal acknowledges that contractually Dr. X was employed by the PIU and that the Applicant *per se* did not have sole authority to make the decision to not renew Dr. X's contract. However, the record shows that it was the Applicant who emailed her task team colleagues on 4 February 2021 informing them that Dr. X's contract would not be renewed. The Applicant also wrote to the PIU Coordinator on 9 February 2021 with recommendations on various changes to the PIU staffing, including the non-renewal of Dr. X's contract.

218. In addition, the Tribunal observes that the PIU Coordinator testified that she never communicated to the Applicant or the WBG task team that she did not want to renew Dr. X's contract and that the decision to not renew was entirely the Bank's decision. Accordingly, considering the aforementioned factors and the entirety of the record, the evidence shows that the Applicant played the key role in the non-renewal decision by actively taking measures on multiple fronts to ensure the non-renewal of Dr. X's contract, despite the fact that she was not the proper authority and that she was provided explicit warnings not to retaliate. In this regard, the Tribunal

takes note of its jurisprudence in *Bauman* [2016] where the Tribunal found that it is irrelevant if the ultimate retaliatory decision of termination was not taken by retaliator himself. It is sufficient if retaliatory termination resulted from the direct action of the retaliator, or he was instrumental in it.

219. In *Bauman* [2016], para. 112, the Tribunal observed:

The [a]pplicant contends that for the purposes of his retaliation claim it is “irrelevant” that the Country Director did not take the termination decision himself but rather requested that the [a]pplicant’s Manager do so. According to the [a]pplicant, his Manager “acted only upon [the Country Director’s] request, and thus was [the Country Director’s] ‘instrumentality’ in his retaliation.” In the specific circumstances of the present case, where the decision-maker acted in response to an implied direction from a senior staff member (the Country Director), the Tribunal agrees.

220. Finally, the Tribunal notes the Applicant’s contention that Dr. X’s contract was subsequently renewed and that therefore Dr. X did not suffer an adverse employment action. In support, the Applicant maintains that Dr. X’s LinkedIn profile does not reveal any change in employment between 2015 and the present and submitted an employment contract by Dr. X and the MyOH on a project unrelated to REDISSE purportedly signed in January 2022 – long after the non-renewal decision of April 2021.

221. The above contention by the Applicant is beside the point that she took steps to retaliate against Dr. X. The record shows that Dr. X challenged the non-renewal decision through an arbitral tribunal to protect herself. The fact that corrective measures were ultimately taken by others to reverse the Applicant’s improper actions does not make those actions less retaliatory.

222. Based on the foregoing, the Tribunal is satisfied that (i) Dr. X engaged in a protected activity, (ii) the Applicant was aware that Dr. X had engaged in a protected activity, and (iii) because Dr. X engaged in a protected activity, the Applicant took deliberate retaliatory actions against Dr. X resulting in an adverse employment action – the non-renewal of Dr. X’s employment contract. Consequently, the Tribunal is satisfied that the Bank has met its burden of proof and that



there is substantial evidence, higher than a mere balance of probabilities, to support a finding that the Applicant committed misconduct by engaging in retaliation against Dr. X.

WHETHER THE REQUIREMENTS OF DUE PROCESS WERE OBSERVED

223. The next issue for the Tribunal to address is whether the Bank observed the requirements of due process.

224. In *AJ*, Decision No. 389 [2009], para. 120, the Tribunal stated that claims related to an alleged lack of due process “must be examined bearing in mind that the Bank’s disciplinary proceedings are administrative rather than criminal in nature.” In *Kwakwa*, Decision No. 300 [2003], para. 29, the Tribunal observed that the Bank is not required to accord a staff member accused of misconduct “the full panoply of due process requirements that are applicable in the administration of criminal law.”

225. The Applicant contends that, by failing to interview key witnesses in connection with the allegation of falsification of her COVID-19 test result and by refusing to act as a neutral factfinder, EBC did not comply with its due process obligations. As for the retaliation allegation, the Applicant contends that the Bank, without justification or reasonable basis, dismissed all evidence of Dr. X’s lack of performance, including testimony provided by the WBG task team – all of which mirrored the Applicant’s valid concerns and much of which predated the COVID-19 test result accusations.

226. The Bank submits that EBC took reasonable efforts in reaching out to the two key witnesses suggested by the Applicant with information provided by the Applicant; however, the Driver ceased communicating with EBC for an unknown reason and the other witness, Ms. C, never responded.

227. The record shows that, after the Applicant’s first interview, she provided EBC with the telephone numbers of the Driver and Ms. C. According to EBC, the investigators tried

unsuccessfully to contact Ms. C, receiving a response that the number dialed was not in service. As stated by EBC, the investigators contacted the Driver by text on WhatsApp; however, after the initial introduction and request to speak with him, the investigators received no further responses. EBC provided a screenshot of its WhatsApp messages with the Driver in its report and stated that all attempts to speak with him were unsuccessful.

228. The Tribunal agrees that the Driver was an important witness. EBC having demonstrated several efforts to communicate with the Driver, the Tribunal does not find any violation of the Applicant's due process rights.

229. Furthermore, the Tribunal observes that EBC interviewed twenty-three witnesses during the investigation, some of whom were suggested by the Applicant. The Tribunal notes that the Applicant was afforded an opportunity to comment on her transcripts and submit any evidence that she deemed relevant to her case, both of which she did. The Tribunal further notes that the Applicant was provided with a copy of the draft investigation report for her comments, whereby she provided comments, which were then incorporated into the Final Investigation Report.

230. Based on the foregoing, and considering the entire record, the Tribunal is satisfied that the Applicant's due process rights were not violated.

#### SANCTION AND REMEDY

231. The Tribunal notes that the HRDVP's letter found two main types of misconduct committed by the Applicant. The HRDVP agreed with EBC and concluded that the Applicant falsified her COVID-19 test result and knowingly presented the falsified test result to national and international authorities for travel purposes. Based on this finding, the HRDVP concluded that the Applicant engaged in other forms of misconduct as quoted in paragraph 165 above.

232. Since the Tribunal has set aside the finding that the Applicant falsified her COVID-19 test result and knowingly presented the falsified test result to national and international authorities for travel purposes, the consequent findings that flowed therefrom are also set aside.

233. The Tribunal has upheld the HRDVP's finding of misconduct of retaliation. Accordingly, a new determination of sanction by the HRDVP is warranted based solely on the misconduct finding of retaliation. The Tribunal does not condone the Applicant's act of retaliation in any form. However, given the factors of proportionality mentioned in Staff Rule 3.00, paragraph 10.09, and considering the specific circumstances of this case, the Tribunal considers termination of the Applicant's employment with the Bank disproportionate.

234. As for the appropriate remedy in this case, the Tribunal is guided by its approach in *Kim (No. 1 and No. 2)*, Decision No. 448 [2011], paras. 82–83:

By leaking confidential information to the journalist, the [a]pplicant committed a serious breach of the Staff Rules, for which he must be held accountable. Nevertheless, the Tribunal is mindful of the circumstances in which the [a]pplicant committed these acts – a period of turmoil consistently characterized by witnesses and counsel appearing before the Tribunal as an exceptional time in the Bank's history. Confidential information was being leaked at all levels at the Bank, yet, as far as the Tribunal has been informed, investigations were not undertaken, during that time, into other such leaks of confidential information. In this particular case, INT contented itself with pursuing the [a]pplicant, and did not undertake an investigation into the initial source of the leaked information.

In the circumstances, the Tribunal considers that termination of employment, which is the most severe sanction available to [the HRDVP], is disproportionate. The Tribunal therefore decides that, with effect from the date of this judgment, the [a]pplicant shall be reinstated as a staff member of the Bank. [The HRDVP] may decide to impose a sanction contemplated by Staff Rule 8.01, paragraph 3.03 (other than termination of employment) – for example, reassignment to a position where the [a]pplicant would not be entrusted with confidential or sensitive information, assignment to a lower level position, or demotion without assignment to a lower level position.

235. Accordingly, the Tribunal decides that the Applicant shall be reinstated as a Bank staff member and that the HRDVP may decide to impose any disciplinary sanction contemplated by Staff Rule 3.00, paragraph 10.06, or a combination thereof, other than termination of employment.

#### DECISION

- (1) With effect from the date of this judgment, the Applicant shall be reinstated as a staff member of the Bank;
- (2) The Bank may impose any disciplinary measure, or a combination of disciplinary measures, contained in Staff Rule 3.00, paragraph 10.06, short of termination;
- (3) The Bank shall contribute to the Applicant's legal fees and costs in the amount of \$30,000.00; 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