



World Bank Administrative Tribunal

2023

Decision No. 698

**HE,
Applicant**

v.

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

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

**HE,
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 6 March 2023. The Applicant was represented by Ryan E. Griffin of James & Hoffman, P.C. The Bank was represented by Amir Shaikh, Lead Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 30 October 2023.
3. The Applicant challenges the decision not to renew her term appointment.

FACTUAL BACKGROUND

The Applicant's appointment

4. The Applicant joined the Bank on 25 March 2019, at the age of 54, on a four-year term appointment as Chief Data Privacy Officer, Grade Level GI. She was recruited from the private sector. At the time of her recruitment, the Applicant was Chief Data Privacy Officer at MoneyGram International, a company she had been with since 2016.
5. The Applicant's pleadings state:

When [the Applicant] was recruited, she was not actively looking for a career change or a job with the World Bank and was initially hesitant to make such a significant change relatively late in her career at age 54. Numerous individuals at

the Bank, however, including the [Human Resources (HR)] representatives [the Applicant] spoke with, reassured her that term contracts were almost always renewed and that there was little likelihood that she would be forced to navigate another job search in her late fifties when her initial four-year term contract expired.

6. On 8 March 2019, the Applicant signed and accepted the terms of her Letter of Appointment (LOA) with the Bank, which stated:

Your appointment will terminate at the end of this four-year period unless it is extended or a new appointment is made. The World Bank has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed in writing at the time of the expiration of the appointment.

Structure and initiatives of the Bank's Data Privacy Office

7. On 2 May 2018, the President of the World Bank, then Jim Yong Kim, sent a memorandum to the Executive Directors of the International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA) and the Directors of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), seeking approval for the proposed creation of a privacy policy for the World Bank Group (WBG). The memorandum specified that “Bank Group management will provide Executive Directors and Directors with a status update on progress in rolling out the Policy by January of 2019 and again in January 2020.”

8. On 30 May 2018, the Boards of IBRD, IDA, IFC, and MIGA and the Secretary-General of the International Centre for Settlement of Investment Disputes jointly issued the WBG Policy titled *Personal Data Privacy* (Data Privacy Policy) “setting forth the core privacy principles governing the Processing of Personal Data by WBG Institutions.” The Data Privacy Policy, which governs “any information relating to an identified or identifiable individual,” is “intended to ensure consistent practices, aligned with recognized international standards, for the Processing of Personal Data by WBG Institutions.”

9. The Bank's Compliance Directive, issued by the President of the Bank on 20 November 2018, created a new Compliance Vice Presidency (Compliance VPU) and defined its “authority,

purpose, organizational independence, reporting, and the Vice President’s responsibilities.” The Compliance Directive established the Compliance VPU as an “Independent Authority” that “performs its Functions free from interference [...] including by Bank entities that Process Personal Data.” The Compliance Directive stated that the Compliance VPU “is established to oversee compliance with the Privacy Policy” and “[r]eports directly to the President concerning its Functions. [...]The Compliance VPU also] investigates processing activities [and for] this purpose, [the Compliance VPU] has access to all records and data (irrespective of classification), property, personnel, and specialized internal or external expertise required to carry out its work.”

10. The Compliance Directive further provided that the Compliance Vice President (VP) is responsible for periodically reviewing the “organizational structure, [...] operations[,] and responsibilities of the [Compliance VPU’s] Function with the President.”

11. Also on 20 November 2018, the President of the Bank issued a procedure, titled *Delegation of Functional Authority from President to Vice President, Compliance* (Delegation Procedure). In the Delegation Procedure, the President delegated his authority to the Compliance VP to create the Bank’s Data Privacy Office (DPO) and to delegate to the Chief Data Privacy Officer, as the director of DPO, the authority “to determine the organizational strategy and identify strategic priorities with respect to data privacy, as well as to ensure implementation of those priorities.”

12. The Applicant began in March 2019 as the Bank’s first Chief Data Privacy Officer and was charged with the initial set-up of DPO, as well as with implementing the Data Privacy Policy. At the point of its creation, DPO was organizationally “housed” under the Compliance VPU, and as such, the Compliance VP served as the Applicant’s supervisor.

The Applicant’s performance

13. In the Bank’s performance portal, the Compliance VP recorded the following evaluation of the Applicant’s work during Fiscal Year 2020 (FY20):

[The Applicant] has made a fantastic contribution to the work of the [Compliance VPU] in her first year as director. She has created a “dream team” and has

conquered many battles. [...] I see a very bright future ahead of [the Applicant] as she demonstrates exceptional leadership skills. She is, in my view, VP ready. She [...] has run the [Compliance VPU] with very little input from me and has built a first class team. In addition she is a real expert in her field both internally and externally. [...]

[The Applicant] is a first class manager and an amazing leader. In my view she is already performing at VP level and is Top Talent within the Bank. She espouses the Bank's values in everything she does. She is also a great role model for young women within the Bank. [...]The Applicant's unique combination of first class technical skills and top flight leadership needs will serve in good stead in the coming year as she steers the [Data Privacy] policy into active mode. She has a very bright future ahead of her.

14. In the Applicant's FY21 performance evaluation, the Compliance VP stated:

To say I am impressed by what [the Applicant] has achieved in the past year would be an understatement. She has built the team and the Data Privacy office from the ground up and has embedded first class data privacy practices into the institution. Like anything new and requiring a lot of work especially with regard to winning hearts and minds, this has not been easy but she had done a superb job and she is very well respected by her clients and peers alike. It would be wrong of me not to note the "organ rejection" that [the Applicant] has faced as someone new to the Bank who has to embed new policies and practices in an atmosphere of resistance. [...]The Applicant] has really shown true leadership qualities in the way she not only weathered "these slings and arrows of outrageous fortune" but managed to stay calm and professional whilst fighting them off. We need more leaders like [the Applicant] in the Bank. [...] I have seen [the Applicant] grow as a leader in this past year and I have seen her develop new skills around bringing people into her vision and communication that will allow her to be the exceptional leader I [k]now she can be. [...] We are very lucky to have her at the Bank and I am very lucky and proud to work alongside her.

[...]

I have no doubt that [the Applicant] is a huge asset to the Bank. [...] She has so many much needed skills and attitudes that I really do hope she makes her career her[e] for some time. [...] They [the Applicant and her team] deliver such excellent work and are crucial to the delivery of our excellent data privacy programme.

15. In August 2021, the Bank received two top international excellence awards for the e-learning course on personal data privacy of which the Applicant led the creation and roll-out.

Third-party contracts

16. In early 2021, the Bank was exploring contracting with the United Nations Electronic Medical Records system (UNEMR) to replace the Bank's electronic medical records system. Under the proposed contract, UNEMR would be a third party processing the personal data and medical records of Bank staff members.

17. In fulfillment of her role as the Chief Data Privacy Officer, the Applicant made inquiries with UNEMR to verify that it had appropriate measures in place to protect the privacy of the personal data it would be processing for the Bank. The Applicant thereafter provided an assessment expressing concerns regarding UNEMR's lack of compliance with the Data Privacy Policy in areas such as data sharing, data retention, and data security. After she advocated to the Health and Services Department and the Managing Director and WBG Chief Administrative Officer (MDCAO) for certain changes to resolve the identified compliance issues, the Applicant's proposed solutions were not accepted, and the contract was finalized.

18. In early 2021, the Bank was also exploring contracting with MedStar to administer COVID-19 testing for Bank staff members. Under the proposed contract, MedStar would be a third party processing the personal data and medical records of Bank staff members.

19. Initially, both DPO and the Office of Information Security (OIS) raised data security and privacy concerns pertaining to the proposed MedStar contract. In April 2021, the Applicant and other DPO colleagues prepared a briefing note for the Compliance VP in preparation for a meeting between the Compliance VP and the MDCAO regarding the MedStar contract. The DPO's briefing note raised concerns that (i) "when the MDCAO asked for swift action, OIS withdrew all of its concerns about Medstar"; (ii) DPO was being accused of delaying the MedStar contract process by doing its due diligence; and (iii) OIS and Information Technology Solutions (ITS) (units previously tasked with data privacy issues prior to DPO's establishment) were posturing as the Bank's "Data Privacy Team" and were being improperly consulted on data privacy issues pertaining to the MedStar contract instead of DPO and at times appeared to oppose relinquishing their previous data privacy roles.

20. In late April 2021, the MDCAO convened a meeting with the Compliance VP and other stakeholders with an agenda covering “Data Privacy Policy Implementation Issues.” The outcome of this meeting was the adoption of an “Expedited Procurement Risk Resolution Mechanism” through which the MDCAO could obtain approval from the Chief Risk Officer Vice President (Risk VP) to move forward with a procurement decision over objections from the Applicant regarding non-compliance with the Data Privacy Policy.

21. Subsequently, the Bank entered into a contract with MedStar on the MDCAO’s timeline over the Applicant’s objections.

Proposals to reorganize DPO

22. On 12 April 2021, the Vice President, Human Resources (HRDVP) sent an email, titled, “Confidential: Proposed Approach Re CRO [Chief Risk Officer Vice Presidential Unit (Risk VPU)] GI” to the MDCAO, Managing Director and WBG Chief Financial Officer (MDCFO), and Risk VP, stating:

Thank you for the productive discussion on Wednesday, April 7, 2021. We arrived at a course of action, summarized below:

- The transfer of the DPO team will take place following the key delivery milestone in October, 2021 [the European Union (EU) Pillar Assessment].
- We agreed to advance the discussion with [the Applicant] to inform her now that when her current appointment ends in March 2023, it will not be renewed at the GI level. At that time, the DPO position will be graded at GH. This will allow her to apply to the Director, Operational Risk that will be advertised shortly. Should she not be selected for a GI position before the end of her appointment March 2023, she may assume the GH DPO position with no impact on current salary at that time.
- HR will discuss with [the Compliance VP] to seek her concurrence on the approach above. After the conversation with [the Compliance VP], [the HRDVP] will send a memo to [the President, then David Malpass] and the SLT [Senior Leadership Team] outlining the approach.
- It is noted that IBRD and IFC, each, have their own DPO function as approved by the Board. The approval had an expectation that in two years’ time the

functions would be merged. Going forward, [the Risk VP] may be able to advance this merger so that the DPO becomes a group function.

23. On 29 April 2021, the Applicant provided the Compliance VP with a briefing note addressing the discussion of organizationally dissolving the Compliance VPU and moving DPO to be housed under the Risk VPU, stating in this email, “I believe this reflects our discussion.” One of the points raised in the briefing note was that it would be a conflict of interest for the Chief Data Privacy Officer position to be subordinate to a Director within the Risk VPU, because the Risk VPU is responsible for guarding against institutional risk, a responsibility which can conflict with DPO’s mandate, namely, protecting the interests of individuals whose personal data were collected or held by the Bank. The briefing note further raised concerns about how the proposed changes in DPO’s reporting lines would negatively affect the EU Pillar Assessment, an audit to establish the equivalency of the Bank’s data protection measures with EU data protection legislation.

24. On 5 May 2021, the HRDVP sent an email to the MDCAO, MDCFO, Compliance VP, and Risk VP summarizing various discussions pertaining to the reorganization of DPO as follows:

I have discussed the proposal to move the DPO to [the Risk] VPU with each of you. I also had a conversation with [the Compliance VP], who was concerned that this arrangement might be an outlier, so we have done a benchmarking study on the organizational structure and level of DPOs in IFIs [international financial institutions] and similar international organisations.

Please find attached the study done by my team which suggests that we are ahead of the curve compared to other organizations. Based on this study, I think our proposal to merge DPO as part of [the Risk] VPU to be led by a GH level manager under the Director of Operational Risk would be aligned with market practice (including in European institutions).

Kindly let me know if you have any questions by **cob [close of business] May 7th**; we can then move forward to finalise the details with respect to the director and staff in the DPO, and the finalization of the ToRs [Terms of Reference] for the Director of Operational Risk and Data Privacy. (Emphasis in original.)

25. On 6 May 2021, the MDCAO and the MDCFO responded to the HRDVP agreeing to the reorganization of DPO and regrading the Chief Data Privacy Officer position as proposed.

26. In June 2021, HR posted a vacancy for the Director of Operational Risk, Grade Level GI, in the Risk VPU.

27. On 8 June 2021, the Applicant wrote to the Compliance VP raising concerns that the TOR for the newly posted Director of Operational Risk position in the Risk VPU included an overlap in functions with her delegated role, explaining:

Per my earlier note, this is a job posting for my role. The job posting is for someone who will, *inter alia*, (i) be responsible for “coordinating implementation of the data privacy policy and [monitoring] data privacy compliance,” (ii) “[]coordinate the [implementation] of the data privacy program including providing oversight on the implementation of the policy across business units,” and (iii) “monitor compliance on data privacy (at present data privacy is the only compliance area); maintain and update the data privacy policy as required and coordinate incidents and complaints associated with privacy and data breaches.” These are my responsibilities.

In the May 2, 2018 Report to the Board, World Bank Management reported that it “has decided to implement the Policy by establishing a Data Privacy Office initially staffed by a new Data Privacy Officer with experience in personal data protection practices and an administrative resource. In order to maintain independence, the Data Privacy Office will report administratively to the Vice President, compliance, a new function which will be occupied by the Senior Vice President and General Counsel. The Data Privacy Officer also may work with World Bank councils or committees, as needed to assist it in establishing and implementing the privacy program.”

Management’s representations to the Board are well documented and established. The Bank Directive establishing the Compliance Vice Presidency states that [the Compliance VPU] is responsible for overseeing Processing of Personal Data in accordance with the Privacy Policy. [The Compliance VPU] is to remain free from interference, and independent. The Bank Procedure delegating functional authority from the President to the Vice President, Compliance, details that [the Compliance VPU], through the Data Privacy Office, oversees Processing of Personal Data by the Bank, establishes and manages the Bank’s Data Privacy Office, and performs any other necessary functions in order to ensure compliance with the Privacy Policy. And the Bank’s Governance Directive sets out the structure for meeting the requirements of the Privacy Policy, with [the Compliance VPU] and DPO responsible for the second line of defense.

This job posting also reveals a foundational misunderstanding by senior management of data privacy at the Bank. The Privacy Policy was adopted by the Board, and cannot be updated by a Director within [the Risk VPU].

This job posting, and senior management's deliberate efforts to undermine my office and the work we are doing to implement the Privacy Policy, is in direct contravention of the establishment of the Compliance Vice Presidency, my office's delegated [authority] from the President, management's representations to the Board, and a breach of my contract with the Bank.

28. On 8 June 2021, the HRDVP emailed the Risk VP, Compliance VP, MDCAO, and MDCFO to inform them that, pursuant to a conversation she had with the Compliance VP, "it appears we still do not have an agreement on the approach for transitioning the DPO and related staff to [the Risk VPU], and to amalgamate risk and compliance. Moreover [the Compliance VP] has now advised that the Board will need to be notified." HR thereafter removed the elements related to data privacy within the TOR from the vacancy posting and reposted the position in the Risk VPU. The next day, an HR Manager emailed her colleagues to inform them of the change and to note that "[the Compliance VP] and [the Applicant] are not ready to commit to [combining DPO into the Risk VPU]."

29. On 10 June 2021, representatives from the Legal Vice Presidency, the Compliance VPU, DPO, the Risk VPU, and HR held a meeting to again discuss the placement of DPO. According to the Compliance VP's talking points for this meeting, the Compliance VP and DPO were of the opinion that moving DPO to the Risk VPU would diminish DPO's independence. According to the Bank, discussions surrounding the placement of DPO continued; however, the SLT could not reach a consensus in 2021.

30. In January 2022, the Compliance VP announced her resignation from the Bank. On 8 March 2022, the Compliance VP left the Bank, to be succeeded on 16 September 2022 by the New Compliance VP.

The non-renewal decision

31. According to the Bank, the decision not to renew the Applicant's appointment was made in September 2022.

32. On 26 September 2022, the Applicant met with the New Compliance VP and inquired about the status of her appointment. The parties' accounts of the meeting differ.

33. According to the Bank, prior to this meeting, the New Compliance VP "reviewed some of the feedback on [the Applicant's] performance including the work she had done in establishing the Data Privacy Office and operationalizing the Data Privacy Policy, culminating in the Privacy Directive." The Bank maintains that, during this meeting, when the Applicant inquired about the status of her appointment, the New Compliance VP responded by telling the Applicant that "[he] knew of no reasons why her term would not be extended, but that [he] would have to check on that, including learning what [...] administrative and management processes would be required for such an extension."

34. According to the Applicant, during the meeting, the New Compliance VP assured her that her work was very impressive, her appointment would "of course" be extended, and he simply needed a little time to complete the requisite administrative steps. The Applicant took contemporaneous, handwritten notes of the meeting. The notes cover several topics of discussion including deadlines, resources, her contract, and administrative questions. The relevant bullet within the notes states, "My Contract/ Great work! No need to look for another position! Of course will extend – admin process."

35. In October 2022, the EU Commission completed its audit to establish the equivalency of the Bank's data protection measures with EU data protection legislation. The outcome of the audit would determine whether the Bank would maintain eligibility to receive and manage EU funding. The EU Commission's independent auditors awarded the Bank's data protection framework a perfect score; the auditors found no weaknesses and had no recommendations for improvement.

36. According to the New Compliance VP, after his meeting with the Applicant he learned that, "[b]y the time of [his] arrival at the Bank, the Senior Management had already made the decision that the DPO should be moved out of the Compliance Vice Presidency and over to [the Risk VPU ...]. In the new organizational structure, the Data Privacy Office would be managed by a Grade GH Manager."

37. On 7 October 2022, the New Compliance VP verbally informed the Applicant that her term appointment would not be renewed. On 8 October 2022, the New Compliance VP summarized this discussion in an email to the Applicant, stating:

As I described in our meeting, the senior management has decided to adjust the role of the leadership of the data privacy function and to cover it with a lower grade level staff. For that reason, the term of your appointment will not be renewed. As [the HR Manager] noted, however, your appointment will be extended through April 14, 2023 in order to provide you with a full six-month notice period.

This decision is not based on – and is not a reflection of – your performance. Instead, the decision is based on a determination that the data privacy function can be managed and administered to the extent considered appropriate for the Bank in a different structure.

Facilitating DPO's reorganization

38. On 10 October 2022, the Applicant emailed the New Compliance VP attaching a memorandum which provided background information on DPO's programs and outlined the impacts she believed the regrading and restructuring decisions could have on "current workstreams." The memorandum also proposed a communication strategy regarding how and when to inform relevant stakeholders of management's decisions. In her email, the Applicant invited the New Compliance VP to an upcoming team meeting so that he could communicate the decisions to the DPO team directly.

39. On 11 October 2022, in an email to the Applicant, the New Compliance VP wrote:

I would urge you not to communicate to staff or other stakeholders any message that suggests that senior management is seeking to undermine the independence of the data privacy office or to diminish the importance of data privacy or the faithful implementation of the policy – simply because any such message would be inaccurate, would cause confusion and probably cause unnecessary consternation or anxiety. Let's work together to manage the transition in the most effective and least disruptive way possible.

40. On 20 October 2022, the New Compliance VP met with DPO staff to communicate the decision to adjust the grade level of the Chief Data Privacy Officer position. During this meeting

he also informed DPO staff of the decision to organizationally move DPO under the Risk VPU. He thereafter summarized the meeting in an email to the Risk VP, stating:

There were many concerns among [DPO] staff, and they were significantly amplified by [the Applicant]. [...]

The overriding concern highlighted by [the Applicant] and underscored by several DPO staff is that the decision [...] will diminish the Bank's commitment to data privacy and undermine its independence and ability to perform its function. [...]

There are a number of issues that have to be sorted out in order to facilitate (1) the continued current operation of the DPO, (2) the transition of the DPO to [the Risk VPU] and (3) the operation of the DPO going forward. [The Applicant] addressed many of these in a memo that she sent me on Oct 10 – attached.

I suggest that you [...] and I meet as soon as possible to start to discuss how to address staff and to manage these phases; how to involve relevant people with expertise ([the Applicant] or others in the DPO) and the assurances we can give staff. We also need to determine messaging and give [the Applicant] clear instructions on messaging. [...]

I met with [the Applicant] again this afternoon and directly asked that we coordinate messaging and that she not convey messages internally or externally that undermine the Bank's messages or determined pathway. I also noted the potential for her to early exit (perhaps with an agreed separation) but she declined.

41. On 23 December 2022, the New Compliance VP sent an email to DPO staff informing them as follows:

I write to follow up on the transition of the Data Privacy Office from the Compliance Vice Presidency to the Chief Risk Officer's Office.

As you know, the move will be effective January 1, 2023. We have now notified the Board yesterday and a Kiosk announcement will be published [...] later this morning.

Ahead of that time, I would like to give you an overview of the new institutional structure for data privacy at the Bank.

While we will dissolve the Compliance Vice Presidency at the completion of the transition, the Data Privacy Office will remain a compliance function. It will be located as a business unit within the Office of the Group Chief Risk Officer, Department for Operational Risk (CROOR). The DPO activities to oversee compliance with the Privacy Policy will remain independent of business activities

of the [Risk VPU]. The DPO will report to the Director, CROOR, but will remain independent on data privacy compliance matters, as well as independent from Bank entities that Process Personal Data relating to data privacy. The DPO will work collaboratively with the Director, Department for Operational Risk, who will support the Chief Data Privacy Officer as necessary to address data privacy compliance matters.

There will be no change to the Bank's Request and Review Mechanisms as a result of this transition.

The search for a new Chief Data Privacy Office[r] will start soon.

Details of the new institutional structure are set out in the revised Bank Directive on Personal Data Privacy Governance, which will be issued by the Managing Director and WBG Chief Administrative Officer (MDCAO) shortly.

42. In January 2023, HR posted a job vacancy seeking a Chief Data Privacy Officer, informing candidates that “[t]he Data Privacy Office will be headed by the Chief Data Privacy Officer who will be responsible for establishing and overseeing the privacy program.” The core responsibilities and selection criteria for the Chief Data Privacy Officer position were included in the job posting.

Administrative leave

43. On 21 October 2022, the New Compliance VP notified the HR Manager via email that a Senior Advisor to a World Bank Executive Director reached out to him seeking an explanation for the decision to reorganize DPO. In this email, the New Compliance VP stated, “[T]his may be the start of a lobbying campaign.”

44. Also on 21 October 2022, the New Compliance VP emailed the Applicant to remind the Applicant of her responsibility not to undermine the objectives of the institution, noting that, “as leaders, we are not free to share all our personal views and perspectives internally or externally, especially if they undermine the objectives of the institution.”

45. On 22 October 2022, the Applicant responded, stating:

Your points are well noted. As I committed to you in our in-person meeting on Thursday, I will remain professional and positive, and will help facilitate this transition in the best possible way.

I do have an obligation to share with internal and external stakeholders Senior Management's decisions, and now that the team is aware I have begun to do that. Again, as I committed to you in our in-person meeting, I will only share the facts of Senior Management's decisions. I haven't been given enough information or agency to share Senior Management's commitment to or intentions for this change to the privacy function so I will defer to you and Senior Management to address this aspect of the transition.

The Applicant also included a list of upcoming scheduled meetings with "global leaders in data privacy," background information for each meeting, and anticipated discussion topics including the "Senior Management's decisions" and the potential implications those decisions might have on the various commitments and collaborations she had with those individuals.

46. On 30 November 2022, the New Compliance VP informed the Applicant during a virtual meeting, later summarized in an email, that "for reasons of efficiency, management has decided to put you on Administrative Leave, effective December 15, 2022." He further revoked the travel approval he had granted two weeks prior for her participation in the Bank's January 2023 Data Privacy Day, an annual event the Applicant organized and led that "brings together leading private sector, public sector, and academic experts on data privacy from around the world" with approximately 15,000 attendees.

47. On 7 December 2022, the New Compliance VP briefed HR colleagues on a meeting he had with the Applicant earlier that day, stating that he "told [the Applicant] that the admin leave decision was taken for the sake of efficiency" and further informing the HR colleagues that "[the Applicant's] tone, tenor and focus throughout the whole meeting reemphasized and justified the need to put her on Admin Leave – she is clearly not going to engage constructively in the required analyses, plans and implementation of the transition."

48. On 15 April 2023, the Applicant's appointment with the Bank ended.

The Application and remedies sought

49. On 6 March 2023, the Applicant filed this Application. In her Application, the Applicant seeks:
- A. Compensation in lieu of reinstatement to a second four-year term as Chief Data Privacy Officer to remedy the wrongful nonrenewal of [her] appointment and truncation of her World Bank career.
 - B. Compensation in an amount deemed just and reasonable by the Tribunal to remedy the extraordinary consequential damage to [the Applicant's] career and professional reputation from the wrongful nonrenewal of [the Applicant's] appointment.
 - C. Compensation in an amount deemed just and reasonable by the Tribunal to remedy the associated emotional distress [the Applicant] suffered as the result of the wrongful nonrenewal of her appointment.
50. The Applicant further seeks legal fees and costs in the amount of \$30,510.00.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The non-renewal decision was an abuse of discretion because it was arbitrary, was improperly motivated, and/or lacked a reasonable and observable basis

51. The Applicant contends that the non-renewal decision lacked any reasonable basis because it was driven by neither performance-related issues nor changing business needs resulting in a mismatch between her skills and the Bank's data privacy needs.

52. In support of this contention, the Applicant points out that there is no evidence of a change in the business needs of the Bank, due to new policies or a reorganization, to justify the non-renewal decision. The Applicant explains, in this respect, that the Privacy Policy did not change, and that "the only thing that changed was the nominal reporting structure of a position that, in [the New Compliance VP's] words, was to remain not only a 'compliance function,' but one

‘independent of the business activities of’ the [Risk VPU].” In the Applicant’s view, the business needs for her former position remain ongoing, as evidenced by the New Compliance VP’s email of 23 December 2022 explaining management’s intention to maintain continuity of the DPO’s compliance function and conceding that the Chief Data Privacy Officer’s role would continue unchanged under the new structure.

53. According to the Applicant, because the change in structure was completely irrelevant to the question of whether the Applicant had the skillset to remain in the substantively unchanged Chief Data Privacy Officer role, the change in structure cannot supply a reasonable basis for the non-renewal decision. The Applicant maintains that there is no plausible connection between where a function sits in the Bank’s organizational structure and whether the incumbent should continue in the position. To the Applicant, her position indisputably continued, and she was indisputably qualified to perform this ongoing work – the VPU in which this work was housed is simply irrelevant. The Applicant contends that, because no other rationale has been suggested, the non-renewal decision lacked any reasonable basis and was therefore arbitrary.

54. The Applicant contends that the mere fact that her position moved to another VPU is insufficient to justify the non-renewal decision; rather, the pertinent question is whether the change necessitated a different set of skills that the incumbent staff member did not have. The Applicant maintains that it is undisputed that she performed well and has the necessary skills to continue as the Chief Data Privacy Officer. The Applicant also points out that being overqualified for a position is not a sufficient justification for a non-renewal decision. In fact, the Applicant points out, Staff Rule 5.06, provides that, where a position is downgraded, the incumbent staff member has the right to (i) remain in the position, with no diminishment of existing net salary, or (ii) elect to separate from the Bank and receive the normal end-of-employment benefits.

55. The Applicant also contends that she was not offered the regraded managerial position of Chief Data Privacy Officer in the Risk VPU as is required by Staff Rule 5.06. According to the Applicant, had management made such an offer, this could have mitigated “the extensive reputational and economic damages [the Applicant] suffered when she was pushed out of a high-

profile role after one term at age 59, a year short of the minimum tenure needed to qualify for benefits under the Staff Retirement Plan.”

56. The Applicant further contends that the non-renewal decision was improperly motivated by an apparent desire among certain senior Bank officials to limit the Chief Data Privacy Officer’s independence and/or a dislike of her principled opposition to the restructuring, based on her legitimate concerns about maintaining the independence of DPO. The Applicant states that the “only rationale [...] ever provided” for the non-renewal decision was the vague “efficiency” justification offered in the Applicant’s final meeting with the New Compliance VP on 7 December 2022. However, in the Applicant’s view, the only apparent “efficiency” interest at stake in both the restructuring decision and the decision to remove the Applicant from her position was the MDCAO’s interest in preventing data privacy concerns from slowing down initiatives like the MedStar contract and the UNEMR agreement that the MDCAO wanted to fast-track.

57. The Applicant explains that, as the Chief Data Privacy Officer, her express mandate with respect to the MedStar contract, the UNEMR agreement, and others was clear: “consult with, advise, and instruct Staff, Process Owners, Privacy Focal Points, Managers, and Heads of Designated Business Units on the obligations under the Privacy Policy, Privacy Directive, and Bank Privacy Program.” The Applicant maintains that her independence within the Compliance VPU was equally clear in the mandate, namely that she “remain free from interference, including by Bank entities that Process Personal Data, relating to data privacy.”

58. The Applicant explains that she acted in precise accordance with her mandate in raising data privacy concerns relating to the processing of staff members’ medical information by outside entities. In the Applicant’s view, senior management deemed her interventions “inefficient” and used the opportunity of her contract coming up for renewal to silence her legitimate concerns. The Applicant maintains that the real reason for the non-renewal decision was that she fulfilled the express mandate she was given, which evidently did not sit well with certain “senior management” officials. The Applicant contends that the non-renewal decision, taken in response to her simply doing her job, and doing it well, can hardly be considered properly motivated.

59. The Applicant maintains that it is clear from the record of the discussion between the HRDVP and MDCAO on 12 April 2021 that their plan was simply to secure the EU's approval and funding by presenting the Bank's original privacy framework and structure under the Applicant's leadership for purposes of the EU Pillar Assessment, before immediately stripping her position of its independent reporting structure by relocating DPO to a VPU with a direct reporting line to the MDCAO.

60. The Applicant contends that the decision to relocate DPO was made in or around April 2021, by some combination of the MDCAO, MDCFO, HRDVP, and Risk VP, without any record of the President or the Board's involvement and behind the backs of the Applicant and the Compliance VP; the decision was thereafter paused because of opposition by the Applicant and the Compliance VP, at which point the MDCAO misled the Applicant into believing the idea had been shelved. The Applicant maintains that, after the Compliance VP's departure from the Bank and the completion of the EU Pillar Assessment, the Bank used the end of her term as an opportunity to terminate her employment despite her stellar performance and the continued need for her position within the Risk VPU. To the Applicant, this timeline leaves little room for doubt that the non-renewal decision was directly motivated by the Applicant's vigorous advocacy for a robust and independent privacy function.

61. In sum, the Applicant contends that the Bank has failed to offer a valid justification for forcing the Applicant out of the Bank after her first term despite the continuation of her position, her undisputed ability to continue performing this role, and her inarguable right to do so under the Staff Rules. The Applicant maintains that the non-renewal decision denied the Applicant another four-year term at her GI-level salary, deprived her of the opportunity to qualify for pension benefits, and left her struggling to find a comparable position at the age of 59 after her high-profile ouster, having been placed on administrative leave, raised questions in the small professional community of high-level data privacy experts.

The Bank's Response

The non-renewal decision was not an abuse of discretion because the appointment came to its natural conclusion, and the decision had a reasonable and observable basis

62. The Bank contends that the non-renewal decision was not an abuse of discretion because the Applicant's LOA states in plain language, "Your appointment will terminate at the end of this four-year period unless it is extended or a new appointment is made." In the Bank's view, the Applicant's appointment came to its natural conclusion in accordance with her LOA.

63. According to the Bank, no extension or concrete promise of an extension of the Applicant's appointment was made to the Applicant. The Bank contends that the New Compliance VP's conversation with the Applicant on 26 September 2022 could not reasonably have been interpreted as a concrete promise or unmistakable implication that the Applicant's appointment would be renewed. The Bank characterizes the New Compliance VP's words as mere "greeting words" and maintains that the meeting of 26 September 2022 was not a formal review of the Applicant's performance or the status of her appointment.

64. The Bank maintains that the non-renewal decision was based on a business determination that the data privacy function could be managed and appropriately administered in a different structure at a lower and more economical grade level. The Bank concludes, therefore, that the non-renewal decision was a valid exercise of managerial discretion as it was not arbitrary and had a reasonable and observable basis.

65. The Bank explains that, during annual workforce planning exercises, positions are regularly reviewed for alignment with evolving work programs and business requirements, and for affordability and efficiency. The Bank maintains that it is not uncommon for positions to be regraded because of changing business needs. The Bank further explains that, in the annual workforce planning exercise for DPO, a change in business requirement was recognized based on the successful delivery of the Data Privacy Policy, the EU Pillar Assessment, and the fact that DPO was "now fully up and running." In the Bank's view, this change in circumstances meant that DPO, going forward, "would comprise of simply continuing training and knowledge management

agenda and monitoring data privacy compliance,” and would not require a separate GI-level position allocated full time to lead the DPO function.

66. According to the Bank, “it was understood” that, as a new function, DPO was likely to change from the way it was initially established. To support this assertion, the Bank points out that the 2 May 2018 memorandum from the President to the Executive Directors and Directors stipulated that management would provide the Executive Directors and Directors “with a status update on progress in rolling out the Policy by January of 2019 and again in January 2020.”

67. The Bank also contends that the Applicant was free to compete for the GI-level Director position that was advertised in the Risk VPU in June 2021, but she did not. The Bank further contends that the Applicant was offered the regraded GH-level Chief Data Privacy Officer position in the Risk VPU, with no impact on her salary, “and again she chose not to accept it.” In the Bank’s view, the Applicant “cannot now claim that [the Bank] did not respect the terms of her appointment because of [the] Applicant’s own personal choices.”

68. According to the Bank, Staff Rule 5.06, the Staff Rule addressing assigning staff to a lower grade position, is not applicable to the present circumstances, because the Applicant’s position was not downgraded; rather, the Applicant’s position no longer exists. The Bank further contends that, in any event, Staff Rule 5.06 applies at the discretion of the hiring manager.

69. The Bank contends that the Applicant was irrefutably provided the true reasons for the non-renewal decision as evidenced by the New Compliance VP’s email of 8 October 2022, which stated, “[T]he senior management has decided to adjust the role of the leadership of the data privacy function and to cover it with a lower grade level staff.”

70. The Bank also maintains that the decision to place the Applicant on administrative leave during the implementation of the reorganization was reasonably based on the Applicant’s repeated critical statements about the Bank’s lack of commitment to privacy and that the Applicant was not harmed financially by this decision.

The Applicant's Contention No. 2

The non-renewal decision was carried out in violation of a fair and reasonable procedure

71. The Applicant contends that the non-renewal decision was carried out in violation of a fair and reasonable procedure because (i) the non-renewal decision lacked transparency and honesty; (ii) the non-renewal decision followed directly from the restructuring decision, which was reached in violation of the applicable Directive requiring the Chief Data Privacy Officer's input into organizational strategy regarding data privacy; and (iii) the MDCAO was heavily involved in the restructuring decision despite a data privacy framework specifically designed to insulate DPO from oversight by the VPUs responsible for processing personal data, which are ultimately headed by none other than the MDCAO.

72. The Applicant maintains that the New Compliance VP failed in his obligation of honesty with respect to any representations he made regarding the Applicant's prospects of an appointment renewal when he reassured the Applicant in their meeting on 26 September 2022 that her appointment would be renewed shortly and that it was simply a matter of completing the necessary administrative steps.

73. According to the Applicant, the short period between the New Compliance VP's representation on 26 September 2022 and the notification of the non-renewal decision but one week later suggests that the eventual non-renewal decision was known at the time of the 26 September meeting such that (i) the New Compliance VP's reassurances on 26 September were knowingly false and (ii) the New Compliance VP breached his obligation to give the Applicant as much warning as possible regarding the possibility of the non-renewal of her appointment.

74. Moreover, the Applicant maintains that the New Compliance VP's explanation of "efficiency" as the justification for the non-renewal decision "fails to pass muster under the 'honest reason' requirement because it is implausible on its face." To support this position, the Applicant points out that the New Compliance VP failed to identify any specific instances of inefficiency in her work that would support the rationale, nor is there any reason to believe that a new Chief Data

Privacy Officer, housed under the Risk VPU and hired to provide the same functions and responsibilities for processing personal data, would be any more efficient.

75. The Applicant also contends that the most egregious procedural impropriety was the New Compliance VP's "ongoing refusal to identify the decisionmaker" who made the non-renewal decision. The Applicant maintains that a staff member whose employment is being ended has, at a minimum, the right to know who made the decision, particularly when their supervisor refuses to take responsibility. The Applicant contends that a non-renewal decision "should not be opaque, especially with respect to a position like the Chief Data Privacy Officer where the independence of the office is critical to its function." According to the Applicant, if the New Compliance VP did not make the decision, he was at the very least obligated to tell her who did so that she could direct any questions or concerns about the decision to the appropriate managerial official. The Applicant contends, in this respect, that she ran into "obfuscation at every turn in trying to understand even the most basic facts about who made the nonrenewal decision, much less the actual reasons behind it" and that "[t]his is a far cry from what this Tribunal's jurisprudence requires."

76. The Applicant further maintains that there is no documentation that the SLT even convened to discuss the question of her appointment renewal. The Applicant points out that the only documentation in the record of the decision to transfer DPO to the Risk VPU and downgrade her Director-level position is the 12 April 2021 email from the HRDVP to the MDCAO, MDCFO, and Risk VP in which the HRDVP summarized the "course of action" they determined with respect to transferring DPO and downgrading her position. To the Applicant, there is no reason why the HRDVP was involved in initiating and leading a discussion of relocating the theoretically independent DPO with the MDCAO and it was inappropriate not to inform or invite the Compliance VP to participate in the relocation discussion until after the MDCAO, MDCFO, Risk VP, and HRDVP arrived at a course of action.

77. The Applicant maintains that the non-renewal decision was inextricably linked to the decision to relocate DPO to another VPU, which was also reached in violation of the applicable Directive requiring her input as the Chief Data Privacy Officer. In the Applicant's view, the Delegation Procedure, conferring authority from the President to the Chief Data Privacy Officer,

invested the Applicant with the authority “to determine the organizational strategy and identify strategic priorities with respect to data privacy.” To the Applicant, dissolving the Compliance VPU and relocating the DPO to the Risk VPU and positioning the Chief Data Privacy Officer under an existing Director-level position in the Risk VPU are inherently matters of “organizational strategy [...] with respect to data privacy.” The Applicant contends that, under the plain terms of the Delegation Procedure, the Applicant’s participation in the discussions surrounding the relocation was required. The Applicant explains that the Delegation Procedure, like all procedures, is mandatory and binding on all staff at whom it is directed, including senior management, and that this particular Delegation Procedure was specifically intended to ensure that the Bank’s organizational strategy on data privacy was being led by an office that was outside of and insulated from the day-to-day operational authority of the MDCAO. The Applicant maintains that, in direct opposition to the Delegation Procedure’s intentions, the privacy agenda was co-opted by the MDCAO and that, as a result, her appointment was not renewed.

78. In sum, the Applicant maintains that the process behind the non-renewal decision was fatally flawed due to a combination of opacity, dishonesty, and a complete disregard by senior management for the binding rules and regulations that are supposed to govern decision-making within the institution.

The Bank’s Response

The Applicant was afforded all due process rights

79. The Bank rejects the Applicant’s contention that the New Compliance VP essentially lied to her and told her an extension of her appointment would occur.

80. According to the Bank, the Applicant was given the requisite full six-month period of notice of the non-renewal decision, and it is unrealistic for the Applicant to expect the New Compliance VP to have reviewed the status of the appointments of all his direct reports within ten days of starting in this new role prior to their “meet and greet” on 26 September 2022. According to the Bank, the New Compliance VP was non-committal in his response to the Applicant’s

inquiries about her appointment during their 26 September 2022 meeting and made no unmistakable promise to the Applicant regarding the renewal of her appointment.

81. The Bank further maintains that the Applicant was provided the true reasons for the non-renewal, namely the regrading and reorganization decisions. According to the Bank, these decisions were well-communicated to the Applicant, as evidenced by the Applicant's participation in advising on the decisions and the New Compliance VP's explicit communication to the Applicant informing her of the basis for the non-renewal decision.

82. To the Bank, the New Compliance VP did not need to satisfy the Applicant's request to "name names" regarding who made the non-renewal decision. The Bank contends that the "Applicant was told, several times, that the decision not to extend her Term appointment was made by the SLT as a team, period." The Bank also maintains that the SLT "is not a decision-making body." The Bank further contends that "the President, who is a member of the SLT, remains the decision-maker [...and he] decided that a Grade GI Director was no longer necessary. He also decided that the non-extension of [the] Applicant's term appointment would best facilitate the reorganization." Simultaneously, the Bank maintains that the Applicant reported directly to the New Compliance VP, and "[a]s such, the decision, ultimately, was [the New Compliance VP's] to make as her supervisor, and he did."

83. With respect to the Applicant's contention regarding an absence of any record of the non-renewal decision being made, the Bank maintains that to "allow free discussion and back and forth, and because of the confidential and sensitive nature of the discussions within the SLT, no minutes or notes of its deliberations and advice are regularly made or preserved."

84. The Bank rejects the Applicant's contention that the reorganization was done behind her back and maintains that the Applicant was aware that there were "consistently robust discussions" about whether DPO should be organizationally housed under the Risk VPU. The Bank further contends that the Applicant was involved in such discussions at least as early as 2021, because the Applicant states that she was "told the reorganization had been shelved" in 2021.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

NON-RENEWAL DECISION

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

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

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

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

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

89. In examining whether the Bank has met the requirement to give honest reasons for a non-renewal decision, the Tribunal must determine whether the Bank provided the Applicant with reasons for the non-renewal decision and whether the reasons are in fact supported by the record. In *GI*, Decision No. 660 [2021], para. 111, the Tribunal emphasized the importance of contemporaneous documentation of managerial decisions to assist the Tribunal in this review,

noting that “later explanations cannot command the same weight as contemporaneous documentation.”

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

Whether there was a change in the business needs of the Bank

91. The Tribunal notes that, on 8 October 2022, the New Compliance VP emailed the Applicant to provide her with the reasons for the decision not to renew her appointment, namely that “senior management [...] decided to adjust the role of the leadership of the data privacy function and to cover it with a lower grade level staff.”

92. The Tribunal observes that the Applicant was hired in 2019 as the Bank’s first Chief Data Privacy Officer, leading DPO, a then-newly created unit. The Tribunal notes that, when the Applicant began her position, she was tasked with the initial set-up of the unit and the Bank’s data privacy framework; and the parties agree that, in the initial few years of her appointment, the Applicant had successfully accomplished those tasks. The Bank avers that, once the unit’s set-up was complete, HR initiated discussions of combining DPO with a larger unit and changing the Chief Data Privacy Officer position to Grade Level GH moving forward.

93. The record demonstrates that, on 7 April 2021, the MDCAO, MDCFO, Risk VP, and HRDVP decided on a “course of action” for reorganizing DPO and regrading the Chief Data Privacy Officer position. The Compliance VP, who was not party to the 7 April 2021 discussion, and the Applicant disagreed with the decided “course of action,” and discussions ensued during the remainder of 2021. In a signed declaration submitted to the Tribunal, dated 26 October 2023, the Compliance VP stated that she “strongly opposed the idea of realigning the DPO function under the Risk Vice Presidency” stating further, “I threatened to resign if the DPO was relocated to the Risk VPU, after which any plans for doing so were tabled for the remainder of my tenure at WBG.” The Tribunal observes that subsequently the Compliance VP resigned, effective March 2022, and that sometime thereafter, but before the New Compliance VP’s arrival in September 2022, a decision was taken to dissolve the Compliance VPU and move DPO to the Risk VPU. The

Tribunal observes that both the Compliance Directive and the Delegation Procedure were in effect at the time the Applicant was notified of the non-renewal decision and remained in effect until the Compliance Directive and Delegation Procedure were retired on 31 December 2022. The Tribunal further observes that the President, as the issuer of the Compliance Directive and the Delegation Procedure, had the sole authority to waive the provisions set forth in these documents.

94. The Tribunal notes that there is no contemporaneous documentation of the President's involvement in the discussions or decisions pertaining to the Applicant's appointment. However, in response to an order from the Tribunal for the production of information and documentation, the Bank provided a letter, dated 19 October 2023, stating, "After discussion and advice from the SLT, the President made the decision that DPO should be moved to [the Risk VPU...]. He also decided that the non-extension of [the] Applicant's term appointment would best facilitate the reorganization."

95. The Tribunal observes nothing in the Bank's policies, directives, or staff rules which explicitly prevents the Bank from taking into consideration the MDCAO's views and priorities when deciding its business needs.

96. The Tribunal also observes that the Applicant provided her input on the discussed reorganization through a briefing note to the Compliance VP.

97. The Tribunal further observes that HR conducted a benchmarking study to determine whether the proposed reorganization and regrading would be outliers compared to the data privacy frameworks and leadership in other international organizations. Based on this benchmarking study, HR determined that the Bank was "ahead of the curve" compared to other organizations.

98. The Tribunal is mindful that it is limited in its review of discretionary decisions. In *Koçlar*, Decision No. 441 [2010], para. 45, the Tribunal explained that

the Bank is free to make changes to its staffing needs in accordance with the Staff Rules. [... The] Tribunal will not review the wisdom of the Bank's assessment of its future staffing needs. Its review is confined to whether the Bank abused its

discretion in arriving at its decision that it would not extend the [a]pplicant's contract of employment or provide her with a new one.

99. The Tribunal is satisfied that the Bank gave due consideration to the appropriateness and benefits of reorganizing DPO and regrading the Chief Data Privacy Officer position, accepts the Bank's determination that there was a change in its business needs, and will not replace the Bank's considered judgment with its own.

Whether the change in business needs provides a reasonable and observable basis for the non-renewal decision

100. The Tribunal will now consider whether the change in business needs provides a reasonable and observable basis for the non-renewal decision. While the Bank has broad discretion to reorganize its workforce and make decisions to respond to changing business needs, it may not implement such changes in an arbitrary manner adversely affecting the rights of a staff member or amounting to unfair treatment of a staff member.

101. Staff Rule 5.06, paragraphs 3.01–3.03, in place at the relevant time, states:

03. Assignments to Lower Level Positions For Reasons Other Than Unsatisfactory Performance or as a Disciplinary Measure Decision to Assign

3.01 A Staff Member is assigned to a Lower-Level Position as a result of:

- i. formal job evaluation as provided in Staff Rule 6.05;
- ii. redundant employment under Staff Rule 7.01;
- iii. mutual agreement;
- iv. medical or other personal reasons; or
- v. other reasons

The decision on reassignment will be made by a Senior Manager responsible for the lower level position in consultation with the staff member and with the concurrence of the Manager, Human Resources Team [...]. The staff member will be notified in writing of the terms and conditions of the new assignment by the Manager, Human Resources Team [...] or designated officials.

Grade and Salary Administration

3.02 A staff member who is assigned to a lower level position under this Section assumes the lower grade and any associated change in title on the effective date of transfer but retains his/her existing net salary. [...]

Separation Option

3.03 At the time of the assignment to the lower level position for Reasons Other Than Unsatisfactory Performance or as a Disciplinary Measure, the Manager, Human Resources Team, for Bank or MIGA staff, or the Director, Human Resources for IFC staff, may agree in writing that the staff member may elect to terminate his/her employment within six months of the assignment to the lower level position.

102. The Bank contends that Staff Rule 5.06 is not applicable in the present circumstances, because the Applicant's position is "not a downgrading situation"; rather, the Bank asserts, the "Applicant's position would no longer exist." The Tribunal rejects this position, observing that (i) the stated basis for the non-renewal decision was that management decided to cover her position "with a lower grade level" position; (ii) the Bank, in its pleadings, refers several times to the decision to "re-grade" the Chief Data Privacy Officer position; and (iii) the Chief Data Privacy Officer position still leads DPO within the reorganized unit.

103. The Tribunal considers that, on its face, Staff Rule 5.06 provides management with the option to offer staff members a lower-level position while retaining their existing net salary; it is not, as the Applicant contends, a requirement for the Bank to make such an offer in circumstances of regrading a position.

104. The Tribunal has recognized that it is the Bank's prerogative to decide "which skillsets adapt best to changing needs." *GF*, Decision No. 602 [2019], para. 90, citing *DW*, Decision No. 556 [2017], para. 70.

105. For example, in *DA*, Decision No. 523 [2015], para. 108, the Tribunal was satisfied that there was evidence to support "the Bank's contention that there was a skills mismatch regarding the [a]pplicant and department in question, such that the non-renewal of her contract was taken for business reasons," finding that the skills mismatch "constitute[d] a reasonable and observable basis for the non-renewal decision."

106. In *DW* [2017], para. 68, the Tribunal was satisfied that the non-renewal decision was not arbitrary because the record supported the Bank's explanation that the changing business needs, specifically changes to its approach to lending in Africa, required a different skillset which the applicant did not possess. In that case, the Tribunal reviewed the documentation of the numerous discussions on the scope of the applicant's experience, including minutes of a management team meeting, during which the Senior Director, Sector Manager, other managers, and an HR representative discussed the skillset needed for the new approach and made the formal decision not to renew the applicant's appointment on the basis of "business and skills mix needs." *Id.*, para. 69.

107. In *EG*, Decision No. 567 [2017], the Tribunal upheld the Bank's decision not to renew the applicant's appointment because the record showed that the decision was in response to a shift in the staffing needs and skills needed in the team. There, the Tribunal observed a contrast between the applicant's experience in traditional safeguards policies and the new skills needed to implement the Bank's reformed framework, and it was satisfied that this demonstrated a reasonable and observable basis for the non-renewal decision. *Id.*, paras. 75–79.

108. In line with its precedent, the Tribunal reviewed the skillset identified by the Bank in its job posting for the GH-level Chief Data Privacy Officer position. Examples of skills sought in this position included "a track record and experience of running and managing a robust Data Privacy and Protection program for a global organization," an "in-depth knowledge including practical implementation experience of regulatory frameworks for data privacy including the EU GDPR [General Data Protection Regulation,]" and a "[p]roven track record in monitoring a company's or organization's ongoing compliance with its data protection and privacy policies and procedures."

109. The Tribunal considers the skills identified in the job posting to be skills that the Applicant demonstrated in her role as the Chief Data Privacy Officer and skills that match those identified in her curriculum vitae.

110. The Tribunal observes, based on the aforementioned job posting, and the New Compliance VP's statement that DPO would maintain its function within the Risk VPU, that there was an

ongoing need for the Chief Data Privacy Officer position, albeit with a different reporting structure and without the GI-level skills needed for building a new data privacy framework.

111. The Tribunal notes that the Bank has not put forward any skills mismatch justifications and that the parties agree that the Applicant performed well in her position as the Chief Data Privacy Officer. The record indicates that the Applicant's work, and the initiatives she led, received awards and recognition from external organizations. The Tribunal further observes the consistent positive performance ratings and glowing feedback the Applicant received throughout her tenure. For example, in the Applicant's annual performance reviews, the Compliance VP praised the Applicant's "first class technical skills" and "exceptional leadership skills"; she further noted, "I have no doubt that [the Applicant] is a huge asset to the Bank. [...] She has so many much needed skills and attitudes that I really do hope she makes her career her[e] for some time."

112. The Tribunal notes the HRDVP's email dated 12 April 2021 to the MDCAO, MDCFO, and Risk VP, in which the HRDVP summarized the planned course of action for the Applicant's appointment, namely, that should the Applicant not be selected for the GI-level Director position in the Risk VPU, posted in June 2021, then the Applicant could assume the GH-level Chief Data Privacy Officer position in DPO with no impact on her salary.

113. In its pleadings, the Bank stated that the "Applicant was [...] offered the re-graded GH level managerial position as Chief Data Privacy Officer – with no impact on her salary – and [...] she chose not to accept it." However, when, during the course of the proceedings, the Tribunal called upon the Bank to provide documentation in support of this assertion, the Bank stated that it was "not aware of any writing which contains a futile formal offer of the GH-level DPO position within the [Risk VPU] to [the] Applicant, or her direct or written refusal of such a formal offer."

114. The Bank's post hoc explanation for not offering the Applicant the regraded position under the process set out in Staff Rule 5.06 is that extending a formal offer of the GH-level Chief Data Privacy Officer position would have been "futile" because the "Applicant made her views known time and time again" that she believed the reorganization would compromise the independence of DPO.

115. The Tribunal rejects the Bank's bare assertion that an offer to maintain the Applicant's appointment at a GH level would have been "futile," especially considering that the Applicant's age of 59 placed her one year shy of qualifying for certain pension benefits. The Tribunal also considers that the Applicant, as Chief Data Privacy Officer, was required to provide the SLT with an assessment regarding the proposed strategy and that she did so, through a briefing note and the provision of information in support of her expert assessment. The Tribunal finds it troubling that the Bank now uses the Applicant's discharge of her professional duties to justify the decision not to renew the Applicant's appointment as the Chief Data Privacy Officer in the restructured DPO.

116. Having determined that (i) the Chief Data Privacy Officer role continued in the reorganized DPO, (ii) the Applicant's skills match the skills identified by the Bank as necessary for the GH-level position, and (iii) the Applicant was a good performer, and noting that no budget-related evidence was put forward by the Bank in support of its decision, the Tribunal is not convinced that the Bank has provided a reasonable and observable basis for the decision not to renew the Applicant's appointment.

117. While the Tribunal determined that the Bank was entitled to exercise its discretion in its decision to reorganize DPO and regrade the Chief Data Privacy Officer position, the Bank failed to provide to the Applicant a reasonable and observable basis for the non-renewal decision, and thereby abused its discretion regarding staffing needs and failed to treat the Applicant fairly. The Tribunal finds the non-renewal decision is therefore a violation of the Applicant's contract of employment or terms of appointment.

ALLEGED VIOLATIONS OF A FAIR AND REASONABLE PROCEDURE

118. The Tribunal will now review the Applicant's claims pertaining to fairness and transparency arising out of the procedure followed in making the non-renewal decision.

Contemporaneous documentation

119. The Tribunal has recognized in *DD*, Decision No. 526 [2015], para. 40, that “it may be ‘exceedingly difficult’ for staff to substantiate an allegation of arbitrariness or lack of fairness amounting to an abuse of discretion.” It is, therefore, incumbent on the Tribunal to require the strict observance of fair and transparent procedures in implementing the Staff Rules, otherwise,

ill-motivated managers would too often be able to pay lip service to the required standards of fairness, while disregarding the principle that their prerogatives of discretion must be exercised exclusively for legitimate and genuine managerial considerations in “the interests of efficient administration.”

Yoon (No. 2), Decision No. 248 [2001], para. 28. *See also EY*, Decision No. 600 [2019], para. 81; *Fidel*, Decision No. 302 [2003], para. 24; *Husain*, Decision No. 266 [2002], para. 50.

120. The importance of contemporaneous documentation, as part of fair and transparent procedures, was further elaborated on in *GI* [2021], para. 111:

The Tribunal cannot but reemphasize the importance of relevant contemporaneous documentation of the basis of managerial actions affecting a staff member. Contemporaneous documents are generally more reliable records of the decision-making process and tend to be more valuable when a decision is challenged. Of course, the IFC can explain during the course of proceedings its reasoning for a decision. But by then the decision-makers may have left the institution or moved on to other departments. Even if they are still there, memories fade, and their belated explanations may be subject to reinterpretation in light of subsequent knowledge or facts. Therefore, later explanations cannot command the same weight as contemporaneous documentation. The Tribunal understands that it could be burdensome to require detailed documentation for every action of management. Still, without any relevant contemporaneous documentation, however minimal, it is difficult to ascertain whether managerial discretion was exercised fairly and transparently.

121. The Tribunal has also stated, in *DB*, Decision No. 524 [2015], para. 103, that

[a] written record of the decision-making process, the underlying rationale and the consultation which has taken place (be it written exchanges or notes of oral exchanges) will not only assist any subsequent review, but also facilitates transparency and assists all parties in ensuring that no abuse of discretion arises in the first place.

122. In the present case, the Tribunal notes that there is no contemporaneous record of the non-renewal decision. The Bank explains that it was purposeful to not take contemporaneous notes of the discussion of the Applicant's appointment renewal "[t]o allow free discussion and back and forth, and because of the confidential and sensitive nature of the discussions within the SLT."

123. As explained in *GI* [2021], the absence of a contemporaneous record, however minimal, impedes the Tribunal's ability to conduct its independent and impartial judicial review of the decision at issue. While the Tribunal recognizes the sensitive nature of the SLT's discussions, it cannot accept that a confidential note or some form of documentation recording a decision could not be kept. To accept that the SLT may provide a belated explanation for its decisions, which may be subject to reinterpretation in light of subsequent knowledge or facts, would make it impossible for staff to have confidence that they have been treated fairly.

124. The Tribunal therefore finds that the absence of any contemporaneous documentation of the decision, however minimal, is a procedural failure for which the Applicant should be compensated.

125. The Tribunal recalls that staff members must be provided with "an honest reason for the non-renewal of a Term appointment" at the time of the non-renewal decision, "which will provide a fair opportunity to the individual to dispute, and possibly to seek rectification of the decision of the Bank." *CS* [2015], para. 77. This is congruent with the Tribunal's observation in *Skandera*, Decision No. 2 [1981], para. 28:

It is in the interest of the Bank that the employment of qualified employees not be terminated on the basis of inadequate facts or ill-founded justifications, and one way to assure this is to furnish the staff member at the time of termination with a specific and true assessment which will provide a fair opportunity to the individual to dispute, and possibly to seek rectification of the decision of the Bank.

126. The Tribunal notes that, in the present case, the Applicant was informed by the New Compliance VP that "the senior management [...] decided to adjust the role of the leadership of the data privacy function and to cover it with a lower grade level staff. For that reason, the term of your appointment will not be renewed."

127. The Tribunal accepts that the Applicant was informed about the decision to regrade the Chief Data Privacy Officer position. However, the Tribunal considers that this did not provide the Applicant with an actual basis for the non-renewal decision. Moreover, the Tribunal observes that nothing in the justification provided to the Applicant explains that the Applicant's appointment would not be renewed because offering her the GH-level position was considered "futile" given that the "Applicant made her views known [...] anything lower than a GI level director seriously compromised the independence of the DPO."

128. In *CS* [2015], para. 101, the Tribunal identified, as an example of a lack of due process, "the [m]anager's failure to alert the [a]pplicant to the possibility that his reluctance to take on certain tasks could be a factor in the renewal of his contract." Here, the Tribunal similarly finds a lack of due process in the Bank's failure to alert the Applicant to the possibility that her reluctance to support the reorganization of DPO and its new reporting line could be a factor in the renewal of her appointment.

129. The Tribunal is also concerned by varying accounts as to the identity of the decision-maker. The Tribunal observes that, even throughout the proceedings, the Bank provided conflicting accounts of the identity of the decision-maker – first, maintaining that the SLT made the decision, later indicating that the New Compliance VP was the appropriate decision-maker, and last pronouncing that the President made the decision.

130. The Tribunal observes that there was no contemporaneous documentation of the decisions regarding the reorganization of DPO, including any contemporaneous documentation that the President was the decision-maker with respect to the Applicant's appointment renewal.

131. The Tribunal finds that this lack of transparency toward the Applicant deprived the Applicant of the opportunity to "dispute and possibly seek rectification of the decision" as contemplated by the Tribunal in *CS* [2015], para. 77. The Tribunal therefore finds that the lack of transparency regarding the identity of the decision-maker is a procedural failure for which the Applicant should be compensated.

132. The Tribunal reviewed the record and the signed statement of the New Compliance VP and does not consider that the New Compliance VP acted dishonestly with respect to the representations he made regarding the Applicant's prospects of appointment renewal during their 26 September 2022 meeting, as the Applicant contends. Other than the timeline of the non-renewal decision being communicated to her very soon after the 26 September 2022 meeting, the Applicant has not put forward any evidence to demonstrate that the New Compliance VP withheld any knowledge of which he was in possession on that day that a decision had already been made with respect to the non-renewal of her appointment, nor has the Applicant put forward a reasonable motivation for the New Compliance VP to knowingly mislead the Applicant into believing her contract might be renewed.

133. Given the absence of contemporaneous documentation of the non-renewal decision, the initial lack of transparency regarding who made the non-renewal decision, and the Bank's failure to alert the Applicant of the possibility that her reluctance to support the reorganization of DPO and its new reporting line could be a factor in the renewal of her appointment, the Tribunal finds that the Bank failed to act with fairness and transparency.

REMEDIES

134. Having found that (i) the non-renewal decision lacked a reasonable and observable basis and (ii) the Bank failed to act with fairness and transparency, the Tribunal will now turn to assess the appropriate remedies to be awarded to the Applicant. In so doing, the Tribunal will seek to award relief that is reasonable and proportionate to the circumstances of the case.

135. Article XII(1) of the Tribunal's Statute provides:

If the Tribunal finds that the application is well-founded, it shall order the rescission of the decision contested or the specific performance of the obligation invoked unless the Tribunal finds that the respondent institution has reasonably determined that such rescission or specific performance would not be practicable or in the institution's interest. In that event, the Tribunal shall, instead, order such institution to pay restitution in the amount that is reasonably necessary to compensate the applicant for the actual damages suffered.

136. In *Bigman*, Decision No. 209 [1999], the applicant held a three-year fixed-term appointment that was not renewed. *Id.*, paras. 2–3. The Tribunal in that case found that the process of reaching the non-renewal decision was vitiated by an abuse of discretion. *Id.*, para. 22. In awarding eighteen months’ net salary instead of reinstatement, the Tribunal acknowledged that, “[w]hile normally a vitiated decision would be quashed by the Tribunal,” the applicant did not request this. *Id.*, para. 23.

137. In *Tange* [2019], the Tribunal awarded compensation for an improper non-renewal decision instead of reinstatement, reasoning that the applicant “held a term appointment so there is no certainty that he would have been employed indefinitely with the Bank.” *Id.*, para. 150. In that case, the Tribunal ordered the Bank to pay the applicant one year’s net salary based on the last salary drawn by the applicant, for the improper non-renewal decision.

138. In *EO*, Decision No. 580 [2018], para. 162, the Tribunal found that the non-renewal of the applicant’s appointment was a failure in the proper exercise of managerial discretion. The Tribunal noted that the applicant held a series of term appointments that had been renewed several times between 2009 and 2018. *Id.*, para. 4. In that case, the Tribunal ordered reinstatement or compensation in the amount of three years’ net salary.

139. Observing that the Applicant in the present case has not requested reinstatement, and in line with the Tribunal’s precedent, the Tribunal has decided that compensation rather than reinstatement is the appropriate remedy.

140. In *Brannigan*, Decision No. 165 [1997], para. 28, the Tribunal also considered in its determination of remedies the financial implications of an applicant being wrongfully separated from the Bank’s employment “ten and a half months before the point in time at which [the applicant] would have become entitled to receive a full pension and other related benefits.” In that case, the Tribunal ordered the Bank to reinstate the applicant, and further decided:

[S]hould the President of the Bank decide not to reinstate the [a]pplicant, he shall be compensated by bridging him from the end of his remunerated employment to such point in time as would enable him to receive a full pension and corresponding

benefits. Such calculations must include the salary lost by the [a]pplicant during such period, less any income net after tax received from other employment.

141. Like the applicant in *Brannigan* [1997], here too, the Applicant experienced considerable financial harm when the Bank failed to treat the Applicant fairly in not renewing her appointment one year shy of her qualifying for pension benefits.

142. In the computation of compensation, the Tribunal further considers any harm suffered with respect to career prospects, reputation, and professional life. *See, e.g., Lysy*, Decision No. 211 [1999], para. 78.

143. Here, the Tribunal observes that, at the time of the non-renewal decision, the Applicant was nearly 59 years old. She was credited with establishing the Bank's annual Data Privacy Day conference. Her sudden removal from a highly visible role in the 2023 conference, with approximately 15,000 attendees, alerted the data privacy community to her tenuous position at the Bank, which was confirmed in April 2023 by her separation from the Bank with the Chief Data Privacy Officer role being filled by another person. The Tribunal considers that, as a consequence of her wrongful separation from the Bank and the ensuing placement on administrative leave, the Applicant's career prospects, reputation, and professional life suffered harm.

144. In the quantum of damages in the present case, the Tribunal also takes into account the four-year term appointment the Applicant held, the Applicant's good performance, and all of the circumstances of the case. The Tribunal is mindful that a term appointment does not provide certainty that a staff member would have been employed indefinitely by the Bank and acknowledges that intervening events are a possibility.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of two years' net salary based on the last regular salary drawn by the Applicant, for the improper non-renewal decision and its implication on her pension benefits;

- (2) The Bank shall pay the Applicant six months' net salary based on the last regular salary drawn by the Applicant, for the Bank's failure to act with fairness and transparency;
- (3) The Bank shall pay the Applicant six months' net salary based on the last regular salary drawn by the Applicant, for the harm to the Applicant's career prospects, reputation, and professional life;
- (4) The Bank shall pay the Applicant's legal fees and costs in the amount of \$30,510.00; and
- (5) 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