



**World Bank Administrative Tribunal**

**2024**

**Decision No. 706**

**HP,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

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

**HP,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Janice Bellace (President), Seward Cooper (Vice-President), Lynne Charbonneau (Vice-President), Ann Power-Forde, Thomas Laker, and Raul C. Pangalangan.

2. The Application was received on 22 November 2023. The Applicant was represented by Ryan E. Griffin and Charlotte H. Schwartz of James & Hoffman, P.C. The International Finance Corporation (IFC) was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 23 April 2024.

3. The Applicant challenges the decision not to renew her term appointment, the decision of the Ethics and Business Conduct Department (EBC) to close its preliminary inquiry, and the alleged failure of the IFC to comply with the recommendations of the Performance Management Review (PMR) process.

#### FACTUAL BACKGROUND

4. The Applicant joined the IFC in 2012 and served as a Grade Level GG1 Country Officer. Throughout her career with the IFC, the Applicant received Salary Review Increase ratings (SRIs) ranging from 3 to 4.

5. According to the Applicant:

For the past four years, [the Applicant] has been dealing with serious medical ailments, including severe inflammation issues, liver lesions, a suspicious breast mass, loss of vision in the left eye, Hepatitis B, TB, ruptured ovarian cysts, GERD

(gastroesophageal reflux disease), fibromyalgia and accompanying psychiatric issues including severe depression, insomnia and anorexia. Some of her ailments remain unexplained, and she has been seeking medical treatment from a variety of specialists to deal with these issues.

6. In 2020, the IFC posted Requisition No. 6765 for a Grade Level GG Country Officer position. The posting was a “Local Recruitment,” and the location for the position was listed as “Nairobi, Kenya.”

7. The Requisition No. 6765 job posting stated, in part:

IFC is recruiting a Country Officer who will promote and coordinate IFC’s investment and advisory activities for Kenya, and East Africa in general. The Country Officer, under the guidance of the Country Manager, will assist in leading, overseeing and monitoring performance of [IFC’s] entire program in Kenya, and East Africa in general, to create an environment attractive to private sector investment and that results in sustainable development impact and support the supervision of staff under the guidance of the Country Manager.

The role requires close interaction at a high level with the private sector, government, and international development organizations, as well as key counterparts in the World Bank Group (WBG) to develop new business and support the structuring and negotiation of deals.

The position is based in Nairobi, Kenya and reports to the IFC Country Manager.

8. The “Duties and Accountabilities” for the Requisition No. 6765 Country Officer position included the following:

- Together with the Country Manager, oversee IFC’s activities and program in the country and East Africa in general;
- Promoting and coordinating IFC’s investment and advisory activities, and developing and maintaining relationships with IFC stakeholders, [WBG], counterparts, governments, and private sector clients to develop IFC business;
- Supervision of staff as assigned by and in collaboration with the Country Manager;
- Mentor and coach junior staff and share experiences.

9. The Applicant applied and was selected for the Country Officer position. Her Letter of Appointment (LOA), dated 4 December 2020, stated:

The International Finance Corporation is pleased to offer you a reassignment to a Term appointment for a period of 3 years 0 months as Country Officer, Level GG, in the IFC Office – Nairobi (CAFE1) unit. [...]

Your official duty station will be Nairobi, Kenya. Your reassignment will be effective on the day you report for duty, which will be on 12/16/2020 [...] or on a mutually agreed date.

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

10. On 10 January 2021, the Applicant signed and accepted the LOA. Additionally, on 15 January 2021, the IFC issued the Applicant a “Memorandum of Permanent Transfer per Procedure on Localization Plus Mobility Support for IFC Staff” (MOA), which stated that it “sets out the terms and conditions of your permanent transfer from Washington DC, USA to Nairobi, Kenya in the CAF-Sub-Saharan Africa Department (CAFE1).”

11. The IFC explains that in the context of the COVID-19 pandemic it “implemented a temporary remote work-only policy [...] known as the Telecommuting Emergency.” The IFC states that the “Applicant, like other new staff, was not required to travel to begin an overseas assignment while this emergency response was in place.” According to the Applicant, due to the Telecommuting Emergency in place in January 2021 when she was appointed as Country Officer, she “initially worked remotely from Washington, DC, the location of her prior position and where she had been undergoing treatment for several health issues for about two years.”

12. On 21 January 2021, Human Resources (HR) emailed the Applicant and confirmed that she was eligible to receive a Scarce Skills Premium (SSP) at a rate of 11% of her salary. The email stated that the “premium will be paid until June 30, 2021, or until you relocate to your official duty station; whichever comes first.” It further stated that “Management will consider an extension of the premium beyond June 30, 2021 if the working arrangements in your official duty station do not permit you to relocate safely before June 30, 2021.” The Applicant states that,

when [the Applicant] accepted a position with the Kenya Country Office, her salary was converted from U.S. Dollars (USD) to Kenyan Shillings (KES). Due to the significantly higher cost of living in the United States and depreciation of the KES against the dollar, however, she was also given a Scarce Skills Premium (SSP) equal to 11% of her salary. [...] And, in order to help offset the costs associated with exchanging her salary in the United States, the organization was supposed to provide [the Applicant] with a salary advance while she continued to telecommute.

13. According to the IFC, in 2021, the Applicant's Manager, who began her tenure as Country Manager in the Country Office in Kenya in March 2021, inquired several times as to when the Applicant would relocate to Kenya. According to the IFC, in January 2022, the Applicant informed the Manager of her preference to remain in Washington, D.C., due to health issues.

14. On 5 May 2022, the Manager sent an email to "IFC Kenya Staff" regarding "Nairobi Office Moving to Tier 1 – Guidance on telecommuting and office access." The Manager's email provided guidance on the IFC's shift to Tier 1, effective on 9 May 2022. According to the IFC, the shift to Tier 1 effectively ended the Telecommuting Emergency which was in place during the COVID-19 pandemic. The Manager's email of 5 May 2022 stated:

**Telecommuting.** This was provided by management to enable staff [to] have flexibility to address personal and professional needs during the pandemic. With the improved conditions in Kenya and the move to Tier 1 on May 9th, 2022, those on Telecommuting – Emergency will be triggered for the 28-day return period, requiring you to return to Nairobi by June 5th. Please note that you will be unable to request Telecommuting – Emergency after the return period ends. Upon returning to duty station, you should End your Telecommuting – Emergency in myHR Self-Service. In some cases, it may then be relevant to initiate a Home-Based Work or Remote Work request in LARS [Leave and Attendance Records System], in consultation with your manager/supervisor.

Some of you may be eligible to extend Telecommuting – Emergency beyond the 28-day return period for up to an additional two months. You should request an extension of Telecommuting – Emergency in myHR Self-Service if one of the following applies to you:

- Having an acute illness or injury;
- Inability to travel due to travel limitations between the Telecommuting Location Country and Duty Station Country; or
- Relocating for a new assignment or appointment that may require additional preparations; or
- Having dependents enrolled in school in the Telecommuting Location.

The extension request will go to your manager and manager's manager for their approval.

If you take no action during the 28-day return period, i.e., you do not return to Nairobi or request an extension, you will be automatically transitioned to Telecommuting – Standard and any remaining mobility benefits will be suspended. Some of you may wish to transition to Telecommuting – Standard purposefully, in order to continue working outside of Kenya. Please discuss this with your manager and, if agreed, end your Telecommuting – Emergency and initiate Telecommuting – Standard in myHR Self-Service.

15. On 30 May 2022 and 3 June 2022, the Human Resources Business Partner (HRBP) sent emails to the Applicant regarding “Return to Duty Station and Guidance on Telecommuting” and inquiring about the Applicant’s intentions with respect to telecommuting.

16. On 3 June 2022, the Applicant responded to the HRBP’s emails and stated that she had “been waiting for the doctor to send a letter [...] before submitting the request. I will submit the request as I wait for him. It is likely I may have a procedure done this month.” According to the Applicant, “[b]ecause [she] was still experiencing and seeking treatment for various health ailments, her doctor would not clear her for travel to Kenya at that time. She therefore sought to extend her emergency telecommute status to accommodate her medical needs.”

17. According to the IFC, the “Applicant did not provide a response with the necessary requirements to transition to an extension of the Telecommuting Emergency,” and her “status as an IFC staff member became irregular, as she was expected to relocate to the IFC Country Office as required by the LOA and the MOA [...], but at the same time, she did not request an extension of the Telecommuting Emergency.” The IFC further states:

Due to [the] Applicant’s failure to take any action after being requested to choose to transition to an extension of the Telecommuting Emergency, or to relocate to the IFC Kenya Country Office, [the] Applicant’s salary (calculated and paid in Kenyan currency) had to be disbursed by requesting salary advances via *MyHR*, or reaching out to *AskAccounting* via email [...]. These requests, in turn, would be sent to [the] Applicant’s Manager for approval.

18. On 24 June 2022, the Applicant emailed a Health and Safety Directorate (HSD) Regional Medical Advisor–Eastern Africa and shared a “medical note” from her primary physician. In the

email of 24 June 2022, the Applicant also stated that she would “reach out to [the Manager] and request for telecommute extension.” Per the “medical note,” dated 22 June 2022, the Applicant’s physician stated:

I have had the pleasure of treating [the Applicant] since May 2021 as her primary physician. There are a couple of diagnoses that are being worked-up and the results so far have necessitated further investigation and surveillance. I have also engaged other specialists whose inputs are still pending. It is highly likely that the work-up and management of her conditions will require close follow up. As a result, I have advised her to postpone her travel plans until she is cleared. I hope to address all her medical needs by the end of summer and transfer her care to a physician in Nairobi where she is planning to be stationed.

19. According to the Applicant, “[n]otwithstanding [the Applicant’s] efforts to extend her medically necessary remote work arrangement, her telecommuting status remained up in the air,” and, as a result, she was not paid her salary for several months in 2022 and, in July 2022, stopped receiving the SSP. The Applicant states that she “went into significant debt and delayed important medical treatment.”

20. On 7 July 2022, the Applicant began seeing a psychologist in the Mental Health and Wellbeing Unit of HSD. The Applicant was referred by the Regional Medical Advisor–Eastern Africa.

21. The Applicant states that, in July 2022, she and the Manager had a performance review discussion. According to the Applicant, during this discussion the Applicant explained to the Manager that her doctor had not cleared her to return to Kenya and that she needed to continue telecommuting as a reasonable accommodation. The Applicant states that, in response, the Manager “became visibly angry and demanded that [the Applicant] share the details of her medical conditions.”

22. The IFC states that the Applicant reported directly to a Principal Country Officer (Supervisor) from 23 August 2022 until the expiration of her term appointment. According to the IFC, in September 2022, the Manager relocated the Supervisor to the Kenya Country Office. The IFC states that this relocation of the Supervisor occurred for the purpose of having “a second-in-

command” for the Manager, “in order to perform all the duties of a Country Officer.” Further, according to the IFC, “managing [the] Applicant had become complicated due to the personality mismatch and disagreements [the] Applicant had with [the] Manager on various topics.” The IFC states that, as such, the Supervisor began managing the Applicant as the “Manager was trying to ensure that [the] Applicant received supervision without the conflict [the] Applicant was having with [the] Manager.”

23. On 22 September 2022, the Applicant’s emergency telecommute was extended to 30 September 2022. As explained in a 9 September 2022 email from the HRBP to HR Operations, “the staff member is still unable to return to Nairobi due to their medical condition and have been asked to remain in their current location until September 30<sup>th</sup> 2022 as per guidance from HSD.” In a 14 September 2022 email to HR Operations, the HRBP further stated, “[T]he Regional Director and the Country Manager [...] have approved the additional month until September 30<sup>th</sup> 2022 in collaboration with HSD due to medical reasons to ensure that [the Applicant] is well supported.”

24. The Applicant received an SRI of 3 for Fiscal Year 2022 (FY22). In the Applicant’s FY22 Annual Review, dated 30 September 2022, the Manager stated, in the “Supervisor’s Comments” section:

This has been the first full year of [the Applicant] in her role as Kenya CO [Country Officer]. During this time she has had to deal with remote work as she chose to work from DC, multiple health challenges and the complication of not fully knowing the team she is part of. This has not prevented her from putting in effort particularly in areas related to IDD’s [Integrity Due Diligence] and on corporate initiatives [...] where she was a key part of the team. She has a good understanding of the market and local dynamics and is able to tie those in to our strategy and provide input to teams.

[The Applicant’s] approach is data driven as that is one of her core competencies. She needs to step beyond this and work on her market and client facing role as well as step up to the other demands that a CO position requires. [The Applicant] has not been able to develop market presence or integrate well within the cluster team and this may be due to the remote working. She was unable to play a full role in the key visits [...] that took place in Kenya which would have been beneficial for her growth and learning. She also needs to learn the investment and advisory cycles in IFC and the processes around those. [...]



A CO role extends beyond reading IDD's or concept notes sent by teams and requires engagement on multiple fronts as well as the ability to look at things from a program development perspective. Business development is a key part of the job and this is not where [the Applicant] has been able to show results.

I am looking forward to having her on the ground when she may be able to address these areas more effectively and contribute to the business development and relationship building in Kenya.

25. In the "Staff's Comments" section of the Applicant's FY22 Annual Review, the Applicant stated:

I respectfully disagree with the manager's feedback. My self-evaluation has articulated the work that she incorrectly states I have not achieved. It is for this reason I would like to seek review independently. Like most of IFC offices, Kenya was mainly a virtual office until it went to Tier 1 mid-September 2022. Before I took this role and at the beginning of the role, I had a candid discussion with the HR Business Partner and was very transparent about the medical issues that I have been handling. I will seek advice on workplace culture as the issues I have referenced in the self-evaluation have resulted in a rather hostile work environment and not to mention the last time I received my paycheck for May 2022. I also note that in this specific PEP [Performance Evaluation Plan] evaluation, the supervisor's manager is the same as the supervisor, I would like to share a copy with the director who is the supervisor's manager.

26. On 27 October 2022, the Manager emailed the WBG Anti-Harassment Coordinator and stated, "There is an ongoing issue with one of my team and I wanted to reach out for some support."

The Manager further stated:

I am feeling targeted and harassed by one of my team members, [the Applicant,] who was hired by my predecessor as the Country Officer for Kenya prior to my joining the Kenya team. [...]

When we moved to Tier 1 and she had to change her telecommute, she went to HSD to ask for a medical emergency telecommute till end Sept 2022 which was granted. At the time I had spoken to the Occupational Health Officer on her case and asked if they thought [the Applicant] would need to extend the medical beyond Sept 2022 and they were quite clear that the issues (undisclosed to me of course) were such that they would be sorted by end Sept. However, since then [the Applicant] has given no indication of when she will return even though HR, her supervisor and even our Reg Dir have asked her.

In the meantime, I had a conversation with [the Applicant] on her FY performance and gave her feedback that she did not receive well. Frankly her 3 rating was generous and I was erring on the side of being generous and giving her the benefit of the doubt given she was working remotely and that may have affected her delivery. The performance conversation deteriorated rather fast with [the Applicant] accusing me of creating a “hostile work environment” and being biased against her. To make sure that there was not a personality issue that was making it difficult for her, I changed her reporting line from myself to the newly hired Principal Country Officer for Kenya.

She was clearly implying a bias I was carrying because I am “brown / South Asian” against her because she is African. She seems not to remember that the entire team I supervise here is African. And we do not have any issues there. But honestly this has just become a ridiculous situation where I feel she is using the race card to target me and deflect from her own performance issues. The situation is completely unworkable where she refuses to respond to any emails or [messages] that I send. How is that a workable situation I cannot understand.

I have never experienced direct harassment this way throughout my long career [...] and the last 10 years at IFC working in 3 different regions. Before I came to Africa I had heard many people complain about reverse harassment in some of our Africa offices but I am truly shocked at what I am being subjected to. It has come to the point that I feel bullied by a poor performing member of my team.

[The Applicant] has indicated that she will surface her issues with [the] Staff Association. Beyond me, she also has complaints about her salary, SSP decisions by the institution etc. I have made sure she knows that all those options are available to her.

I do not want to give more fuel to this fire but am working in a high pressure role and this is definitely affecting my ability to deliver for the institution as well as leaving me feeling a bit battered.

27. On 17 November 2022, the HRBP emailed the Applicant and informed her that HR Operations had automatically transitioned the Applicant to the standard telecommute from 7 October 2022 to 6 November 2022. The HRBP further stated:

You will need to extend your standard telecommute (TLO) in the system in order to indicate your current location, Washington DC while away from your duty station, Nairobi, Kenya. Please discuss and agree with management in copy regarding the dates and duration of your standard telecommute extension to account for the period you will be working from Washington DC.

28. On 22 November 2022, the Applicant responded to the HRBP's email and stated, "I have already started the discussion with [the Supervisor]."

29. On 26 November 2022, the Applicant sought Administrative Review (AR) of her FY22 performance evaluation and performance rating. She stated that she sought "a fair and objective review of my contribution, activities performed, and outcomes obtained against my agreed work program for FY22."

30. On 5 December 2022, the Applicant emailed the Supervisor and stated:

We have been speaking about my telecommute arrangements throughout the month of November. Our last conversation was on 24th November, where I mentioned I was ready to update the information required but [the HRBP] needed to update the systems for eperformance [the WBG's performance portal] and HR. You mentioned [...] that I should work with [the HRBP] to make sure the systems are updated. I reached out to her and I am yet to get the clarifications from her.

31. On 14 December 2022, the Applicant filed a complaint against the Manager with EBC. The Applicant explained in her complaint to EBC that the Manager "has continued to pressure me to move to Kenya despite the fact that I am currently handling some medical issues which I kept her and the [HRBP] in the loop." She claimed that "there is a pattern of discrimination across the various aspects" and that she had "been excluded from communication flow and collaborative efforts of the work program I am responsible for in my role." The Applicant requested EBC "to investigate these issues regarding exclusion and discrimination especially on information flow throughout the course of my role." She further stated, "It is worth noting there has been an uncomfortable distance with some of my colleagues whom I work with very closely as there has been cases of retaliation on them because they are perceived to be influenced by me. I invite the investigations team to look into this matter."

32. Additionally, in her complaint to EBC and with reference to her FY22 performance discussion with the Manager, the Applicant stated that "[t]here was undue pressure to disclose more details on my health issues to a hostile manager who had during the year been not supportive of the health issues I was going through." She also asked EBC "to investigate why the telecommute

arrangement approval took so long to be approved and in turn created such a huge delay in my salary.”

33. On 21 December 2022, the Applicant emailed the Supervisor and stated:

I wanted to update you on the following and we can discuss further when we connect:

I have not heard from [the HRBP] with regard to the issue I sought clarifications on reporting lines. So I have escalated on this too, as it has implications on salary, telecommute and FY23 objectives.

34. On 9 February 2023, the Applicant filed a Request for Review with Peer Review Services (PRS). She identified the “Disputed Employment Matter(s)” as “SSP Benefit associated with Emergency Telecommute that I had been receiving since I transited to the Kenya team was not honored from July 1, 2022, to September 30, 2022 while I was still on emergency telecommute arrangement.”

35. By early March 2023, IFC management had begun to consider the abolition of the Applicant’s position. A confidential “Proposed Staff Redundancy” memorandum was prepared and signed by the Line Director and Line Vice President, which stated in part:

In order to meet the Africa regions evolving business needs, management would like to abolish this position in order to repurpose and reposition the role into the Somalia Country Management Unit in the capacity of Country Officer – Somalia. Although the responsibilities of the role of Country Officer will be similar, the change in scope and country coverage will have a primary focus on Somalia which is significantly different from Kenya. With the inclusion of this new position, the structure of the Somalia CMU [Country Management Unit] will include the Kenya Cluster Country Manager, Country Officer – Somalia and an Operations Analyst.

Important to note is that the Kenya Country Office CMU currently has a staff member in the role of Principal Country Officer at grade H1 based in Nairobi, Kenya. This staff member will continue to support the Kenya CMU’s portfolio following the abolishment of the Country Officer Kenya position.

There are no opportunities to reintegrate [the Applicant] into the Kenya CMU in a different capacity, therefore management would like to proceed with the redundancy effective March 1st 2023.

Please note that the Africa regions management team have revised the scope of work and responsibilities for several Country Officer roles across the region. These positions will be advertised at grade G1 and open for staff to apply. In alignment with this exercise the Somalia Country Officer position will also be advertised at grade G1 with these new responsibilities and will be opened for staff to apply competitively.

36. On 10 March 2023, the HRBP emailed the Applicant regarding “Initiation of Standard Telecommute.” The HRBP stated that HR Operations “confirmed that we cannot initiate the telecommute extension HR action bypassing the tagged Manager. Therefore you will still need to initiate the extension of your standard telecommute through the [myHR] self-service portal.”

37. Also on 10 March 2023, the Manager sent an email to the Applicant, stating:

I have tried to meet with you on a number of occasions. You have failed to show up for these meetings that have been scheduled well ahead of time, nor have I received any explanation for your inability to attend, which strongly suggests refusal to attend.

I would have preferred to do this in person but you leave me no other choice than to notify you in writing that your position as a Country Officer will be declared Redundant. Please find attached your Notice of Redundancy, effective March 16<sup>th</sup> 2023.

I will be happy to discuss the above with you at any time. My door is always open.

Am copying [the HRBP], to keep her in the loop and in case you have any HR-related questions. Your immediate supervisor is also copied here.

38. Attached to the email was an Office Memorandum regarding “Notice of Redundancy” from the Vice President – Africa. The Notice of Redundancy stated that the Applicant’s “employment will become redundant with effect from March 16<sup>th</sup>, 2023 [...] in accordance with Staff Rule 7.01, paragraphs 9.02 (b. A specific position or set of functions performed by an individual in an organizational unit must be abolished) and 9.03.” The Notice of Redundancy further stated that the Applicant would be placed on administrative leave beginning on 16 March 2023.

39. The Applicant was approved for Short-Term Disability benefits from 21 March 2023. According to the Applicant, her “health conditions worsened as a result of workplace-related stress

and her inability to afford appropriate medical care due to the IFC's failure to timely pay her salary and denial of her SSP benefits.”

40. On 5 April 2023, the Administrative Reviewer emailed the Regional Director, Eastern Africa, with the Administrative Reviewer's findings and recommendations in respect of the Applicant's 26 November 2022 request for AR. The Administrative Reviewer “found that the assignment of performance rating of ‘3’ is within managerial discretion.” The Administrative Reviewer recommended “that the manager's write-up be revised to reflect a more balance[d] assessment of [the Applicant's] contributions,” further noting that, “[a]s it stands, the manager's comments are in stark contrast to those provided by the feedback providers.”

41. On 10 April 2023, the Regional Director, Eastern Africa, responded to the Administrative Reviewer's email with her decision and stated that she accepted the recommendation to maintain the performance rating of 3 and accepted the recommendation to add to the write-up to acknowledge the input from feedback providers. Specifically, the Regional Director, Eastern Africa, stated that the FY22 write-up would include the following: “Other than direct supervisor assessment provided above, the staff has reached out to several feedback providers – 1 Peer, 1 Client and 5 Others – as selected by her, and received positive feedback from them. These providers provided a positive assessment of [the Applicant's] contributions.”

42. On 15 April 2023, the IFC posted Requisition 22222 for a Country Officer position. The posting was a “Local Recruitment” and listed the location as “Nairobi, Kenya” and the required languages as “English, Somali.” The job posting stated:

IFC is recruiting a Country Officer to promote and coordinate IFC's investment, upstream, advisory activities and implement tools relevant to Fragile and Conflict Affected Situations (FCS) in Somalia. The role requires close interaction at a high level with the private sector, government, and international development organizations, as well as key counterparts in the World Bank Group (WBG) to develop new business and to support implementation of new/existing investment, upstream and advisory projects the structuring and negotiation of deals. The position will be based in Nairobi, Kenya until a resident mission is opened in Somalia and reports to the Country Manager for the Kenya Cluster (covering Kenya, Rwanda, Somalia, [...] and Uganda).

43. On 5 May 2023, the Applicant sought PMR of her FY22 performance evaluation, noting, “I agree with the recommendations from the AR process but disagree with the response from the director on how to implement the recommendations.”

44. On 12 May 2023, the HRBP consulted with the Manager, Corporate Operations, stating: “It has been flagged that [the Applicant] maybe going on STD [Short-Term Disability]. I wanted to ask what the impact would be on the redundancy if she transitions to STD. Does this suspend the redundancy or does the redundancy remain active allowing the staff member to proceed on STD in parallel, through to her exit date of September 16<sup>th</sup> 2023?”

45. On 12 May 2023, the Manager, Corporate Operations, replied, in part, “If as and when she goes on STD (often declared retroactively), we would suspend the admin Leave/redundancy and STD takes precedence. Essentially, we are not kicking staff when they’re down, and some may qualify for and terminate under LTD [Long-Term Disability] and there is no redundancy.”

46. On 30 June 2023, the Applicant received an email from the Manager regarding the non-extension of the Applicant’s term appointment. The Manager stated:

Dear [the Applicant],

I understand that you have been approved for STD from **March 21<sup>st</sup> 2023 to September 1<sup>st</sup> 2023**. (Emphasis in original.) Given this, your Redundancy and the associated Administrative Leave are suspended. Please note, however, your placement on STD does not extend your Term appointment in any event beyond its current expiration date of January 15, 2024, and you are hereby notified that we will not extend your term appointment for the reason that your position has come to an end.

I wish you a swift and full recovery and all the very best.

47. Also on 30 June 2023, the Vice President – Africa emailed the Applicant providing her with a copy of the PMR recommendation with respect to her request of 5 May 2023. The Vice President – Africa stated that “the PMR Reviewer found that the AR Decision-Maker’s modified write-up in response to the AR Reviewer’s recommendation does not represent a fair assessment

of your performance in FY22 and recommended that the write-up should be modified to give more weight to positive feedback.” Specifically, the PMR Reviewer stated:

Based on the documentation received and interviews I held, I conclude that [the Applicant’s] performance evaluation write-up and the AR Decision-Maker’s proposed revision to the text do not adequately reflect [the Applicant’s] contributions/achievements in FY22 and positive feedback from her colleagues. The text, as per the AR Decision, acknowledges that there is feedback provided by people selected by [the Applicant] and that it is positive but does not incorporate it into the staff’s assessment. There is solid documentation supporting [the Applicant’s] contributions as well as only positive feedback from feedback providers on several of her skills. [...] With respect to [the Manager’s] comments on negative feedback received on [the Applicant’s] alleged shortfalls, I received no documentation that would support such feedback was provided and, thus, did not find a reasonable and objective basis for [the Manager’s] evaluation of [the Applicant’s] performance other than [the Manager’s] own judgment, which I am in no position to assess. Management did not exercise its right to request feedback from potential providers nor documented any feedback provided to [the Applicant] during FY22, except for that given during the Mid-Year Conversation. [The Manager] asserts she provided informally direct feedback to [the Applicant] on several occasions during the year, but [the Applicant] claims that no feedback was provided except for that during the Mid-Year Conversation.

In his email of 30 June 2023, the Vice President – Africa informed the Applicant that he accepted the PMR recommendation.

48. On 19 September 2023, EBC informed the Applicant by email that it had closed its preliminary inquiry into her complaint of 14 December 2022. The email stated:

I am writing to keep you informed of the outcome of the matter that you reported to EBC regarding a hostile work environment and discrimination based on your health by [the Manager].

After a careful review, which included interviewing relevant staff involved (your current supervisor and colleagues as well as the Senior Medical Officer in the Nairobi Country Office), EBC has determined that [the Manager’s] behavior did not rise to the level of formal misconduct. As a result, EBC has closed its preliminary inquiry of the matter.

49. On 22 November 2023, the Applicant filed this Application with the Tribunal.



50. In her Application, the Applicant states that she is contesting the following:

The June 30, 2023, decision not to renew [the Applicant's] term appointment beyond January 15, 2024.

The September 19, 2023 decision that [the Manager's] behavior did not rise to the level of formal misconduct.

The ongoing failure of the IFC to comply with the recommendations in the PMR decision issued June 30, 2023, to substantially modify [the Applicant's] FY22 performance evaluation.

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

- i. Removal from [the Applicant's] FY2022 performance evaluation of all negative comments provided by her supervisor, [the Manager].
- ii. [Rescission] of the disputed nonrenewal decision.
- iii. Reappointment to a mutually agreeable position for a term of no less than three years or appropriate compensation in lieu thereof.

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

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

52. The Applicant requests legal fees and costs in the amount of \$26,950.00.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

*The Applicant's Contention No. 1*

*The non-renewal decision was substantively unfounded, improperly motivated, and procedurally flawed*

Substantively unfounded

53. The Applicant asserts that the non-renewal decision “had no legitimate basis,” and the Applicant stresses that “the only reason the IFC ever provided for the nonrenewal decision was [...] ‘we will not extend your term appointment for the reason that your position has come to an end.’” In the Applicant’s view, the initial redundancy decision was not based on any legitimate goal, and she claims that, “prior to June 2023, [she] was never informed that her position might be terminated, or that there was any review underway, or that there was any concern that there were inefficiencies in the Kenya Office.”

54. With reference to the Somalia Country Officer position, the Applicant asserts that, shortly after she received notice that her position was redundant, the IFC advertised for someone to fill her position, and the Applicant submits that the non-renewal decision was therefore not based on the elimination of her role. Thus, in the Applicant’s view, the decision to eliminate her position “was not ‘genuine.’” The Applicant also submits that “[t]he job duties and qualifications are largely the same as what was listed in the job position to which [she] originally applied,” and the Applicant avers that, accordingly, the non-renewal decision was not based on changing business needs.

55. Further, the Applicant contends that the emphasis on Somalia in the new role “does not make it a distinct position from [the Applicant’s],” and she submits that her “role had always been to cover the East Africa region, which includes Somalia.” The Applicant claims that she was never told that her position was declared redundant due to a need to focus more on Somalia, and, in the Applicant’s view, “the ‘repurposing’ of [the Applicant’s] role toward Somalia was pretext for [the IFC’s] discriminatory decision not to renew [the Applicant’s] appointment because of her medical

need to telecommute.” Further, the Applicant disputes the IFC’s contention that her role was rendered redundant due to the Supervisor’s relocation to the Kenya Office, and she asserts that this contention is not supported by the Proposed Staff Redundancy memorandum.

56. Additionally, the Applicant avers that the non-renewal decision was not based on any performance issues. The Applicant submits that she had no performance issues and that she received “glowing performance evaluations and ratings,” and she notes that “[t]he only negative feedback she has received in the past several years is [the Manager’s] comments chastising [the Applicant] for needing to telecommute.” To the Applicant, therefore, “the notion that [her] need to telecommute in any way negatively affected her performance is false.”

#### Improperly motivated by discrimination and hostility

57. The Applicant next asserts that the non-renewal decision was improperly motivated by discrimination and hostility toward her for her need of reasonable accommodation for her medical condition. She claims that the lack of a legitimate explanation for the non-renewal decision “raises the question as to what the real reason was,” and the Applicant submits that the Manager’s “history of discriminatory comments and conduct strongly suggest that her disapproval of [the Applicant’s] telecommuting as a reasonable accommodation for documented health issues was the real reason for the nonrenewal.” To the Applicant, “discrimination based on a staff member’s medical condition or need for a reasonable accommodation is an impermissible motivation for a nonrenewal decision.” She stresses that “the absence of any legitimate, nondiscriminatory reason for not renewing [her] appointment strongly suggests that this is what occurred.”

58. The Applicant asserts that the 30 June 2023 email regarding the elimination of her position “came after over a year of [the Manager] making discriminatory comments about [the Applicant’s] need to telecommute.” The Applicant claims that the Manager “chastised [the Applicant] for telecommuting at nearly every opportunity” and implied that the Applicant “was feigning illness.” The Applicant further submits that the Manager’s negative comments about the Applicant’s performance “related almost entirely to her need to telecommute,” and the Applicant highlights that the Manager referred to the Applicant’s “‘cho[ice]’ to work remotely.” The Applicant further

alleges that the Manager made “concerted efforts to exclude [the Applicant] from communications related to her job.”

59. The Applicant cites *FM (Merits)*, Decision No. 643 [2020], para. 117, and submits that, if the Manager believed that the Applicant’s telecommuting was affecting the Applicant’s performance, “she had an obligation to engage in a ‘good faith interactive process’ with her ‘to identify reasonable accommodations’ to allow her to perform her work.” The Applicant highlights that both the Administrative Reviewer and PMR Reviewer concluded that the Manager’s negative comments regarding the Applicant’s performance were unfounded. To the Applicant,

[the Manager’s] negative comments about [the Applicant’s] work performance can only be attributed to her personal animosity or bias, which, given that her comments were almost universally related to [the Applicant’s] telecommuting, appear to have been based on [the Applicant’s] medical conditions.

60. The Applicant also avers that the IFC attempted to evade its obligation to “engage in a good faith interactive process” and “to identify reasonable accommodations” by pretending that the Applicant had no such need. The Applicant disputes the IFC’s claim that she first informed the IFC of her need to telecommute due to health reasons in January 2022. Instead, she submits that she communicated with the IFC as early as 2020 about her medical issues and how these issues might affect her relocation to Kenya, and she avers that the IFC had “plenty of time to engage in the interactive process.”

61. The Applicant asserts that the Manager appears to have claimed that the Applicant’s position was being eliminated as a pretext for the true reason for the non-renewal, which the Applicant contends is the Manager’s hostility toward the Applicant due to her need to telecommute. The Applicant submits that the IFC “effectively confirms” the Applicant’s suspicion of discriminatory and/or retaliatory motive “by admitting that the real reason for its non-renewal decision was *not* that [the] IFC’s need for [the Applicant’s] position had ceased, but rather her manager’s refusal to consider accommodating [the Applicant’s] medically necessary telecommuting” due to the business needs for a Country Officer in the field. (Emphasis in original.) To the Applicant, this amounts to discrimination and unfair treatment.

62. Moreover, the Applicant submits that the IFC's position that the Applicant's job required in-person presence is not supported by the facts. She highlights that the entire office had been working remotely for two years due to the pandemic by the time she sought to telecommute as a reasonable accommodation. Further, she notes that, under the WBG office reopening guidelines, there was still "hybrid flexibility" for staff. The Applicant disputes the IFC's claim that Kenya lacks the technological capacity for remote working, and she contends that Kenya is in fact the "technology hub of East Africa."

63. The Applicant further contends that the IFC fails to acknowledge her need to telecommute on the basis of her medical conditions, and she avers that the IFC "repeatedly mischaracterizes this as a 'preference' to work from D.C." The Applicant submits that her "strong preference was to work in Kenya," and she notes that she "is from Kenya, studied there, worked in the private sector there from 2006 to 2012, and was eager to return to be closer to family after eight years of working abroad."

64. Further, the Applicant disputes the IFC's contention that she failed to request telecommuting as a reasonable accommodation and submits that she did attempt to have her telecommute extended following 30 September 2022, "but was unable to because [the Manager] was still listed as her supervisor in the personnel system." The Applicant contends that, "[f]ollowing September 2022, [her] requests to extend her telecommute status were never approved again," and she asserts that this is because her requests required the Manager's approval which was never given.

65. Finally, the Applicant submits that her performance record demonstrates that she was able to perform her job remotely, and she states that it is false that the IFC offered her a different job in Washington, D.C., or any other accommodation for her medical conditions.

#### Improperly motivated by retaliation

66. The Applicant contends that the non-renewal decision was improperly motivated by retaliation for her AR, PMR, PRS, and EBC cases. More specifically, the Applicant asserts that

the Manager's notice to the Applicant that her position was being eliminated "closely followed [the Applicant's] proactive efforts to hold [the Manager] accountable for her discriminatory conduct and remedy the effects of that conduct on [the Applicant's] work and benefits." To the Applicant,

absent [any] legitimate explanation for the nonrenewal decision, the timing of [the Applicant's] resort to internal justice system processes, coupled with the timing of [the Manager's] decision not to renew [the Applicant's] contract, strongly suggest that the decision was improperly motivated at least in part by retaliation.

67. The Applicant also references the 27 October 2022 email from the Manager to the Anti-Harassment Coordinator and contends that this email shows that the only basis for the Manager's "feeling" of harassment" was the Applicant's complaints of harassment against the Manager and her requests to work remotely. To the Applicant, it would be retaliatory for the Manager "to treat [the Applicant] poorly or to decide not to renew her appointment because she had complained." The Applicant submits that the Manager's complaint to the Anti-Harassment Coordinator "appears motivated by nothing more than a desire to preempt [the Applicant's] attempts to complain about [the Manager's] conduct," and the Applicant notes that the Manager's email "suggests racial bias as well." The Applicant points to the Manager's statements of the Applicant "using the race card" and of "reverse harassment" in "some of our African offices" and contends that the Manager's statements in her email indicate a "belief in pernicious racial stereotypes, which may also have affected her nonrenewal decision."

#### Procedurally flawed

68. The Applicant asserts that she was "actively misled" by management regarding the reasons for ending her employment and that, as such, the non-renewal decision should not stand. She highlights that she first received a Notice of Redundancy on 10 March 2023, which was later withdrawn via email of 30 June 2023 due to her Short-Term Disability leave. The Applicant submits that, in this 30 June 2023 email, the Manager informed her that her term contract would not be extended, stating, "[W]e will not extend your term appointment for the reason that your position has come to an end." The Applicant contends that this reason was "false" and "pretextual," since "the IFC had already been advertising for her very same position," and the Applicant

contends that this is inconsistent with the Tribunal's precedent which requires that honest reasons be provided for a non-renewal decision.

69. Further, the Applicant submits that if, as stated in the non-renewal email, her role was no longer needed, it cannot also be true that the Applicant's on-the-ground presence in Kenya could have been essential to the IFC's operations as the IFC now contends. To the Applicant, the non-renewal decision should be set aside because management misled the Applicant about what the IFC now claims was the basis for the non-renewal decision. Moreover, the Applicant contends that, if management did require a shift in the Applicant's role toward a greater focus on Somalia, the IFC was obligated to at least consider whether the Applicant was able to fill such role before seeking to replace her. The Applicant submits that, pursuant to Tribunal precedent, the IFC also had an obligation to inform her ahead of time.

70. Finally, the Applicant contends that the IFC cannot justify its decision on the basis of any issues with her performance. The Applicant asserts that the IFC would have been required to state such performance issues to the Applicant under its duty to provide an honest reason for the non-renewal decision, and, pursuant to Tribunal precedent, if there were any issues with her performance, the Manager was required to adequately inform the Applicant and to give the Applicant an opportunity to defend herself. The Applicant submits that she in fact had no performance issues and that the Manager's negative comments "were unfounded and unsupported."

### ***The IFC's Response***

*The non-extension of the Applicant's term appointment had a reasonable and observable basis, the nature and details of the Applicant's health status were not known to the IFC, and the Applicant never requested telecommuting*

### **Reasonable and observable basis**

71. The IFC submits that its decision not to grant the Applicant an additional term appointment was reasonable and had an observable basis in the business needs of having a Country Officer in the field carrying out their duties. The IFC submits that these needs are evident in the job posting

and the Terms of Reference. The IFC submits that the Applicant knew that the job required her to be based in Kenya and, further, that “the duties, responsibilities, selection criteria and business needs required her to be in the field.” The IFC stresses that the MOA and LOA clearly required the Applicant to be based in Nairobi.

72. The IFC cites the job posting and notes that it stated the position was based in Nairobi, Kenya, and that it included the following language:

The role requires close interaction at a high level with the private sector, government, and international development organizations, as well as key counterparts in the World Bank Group (WBG) to develop new business and support the structuring and negotiation of deals.

73. The IFC further notes the “duties, accountabilities, and strategy functions” as stated in the job posting and submits that these required the Country Officer to have close coordination with the Country Manager, to provide input to the IFC’s country strategy, to oversee strategy implementation in Kenya and the region, and to maintain good relationships with existing clients.

The IFC avers:

All these functions necessarily required the presence of the Country Officer in the country, particularly to perform three (3) functions: (i) assist the Country Manager in the performance of the duties pertaining to the operation of the IFC country [office] in the region; (ii) maintaining good relationships with clients from the private sector and Kenyan government; and (iii) assist the Country Manager in the administration of the Country Office. None of the functions listed would be effectively performed by [the] Applicant from Washington, D.C., to the extent required by the institution for the operational and administrative support that [the] Applicant was supposed to lend to the Country Manager in the performance of her duties.

74. To the IFC, the position of Country Officer required the Applicant to be full time in Kenya. The IFC submits that, while technological advancements do allow for remote meetings, “the close interaction, networking and building of personal relationships with the team that [the] Applicant was coming into required her to be in the field and maintain face to face interactions with the Country Office staff, to execute her role effectively.” The IFC further avers that the role of Country Officer “requires close interaction, at a high level” with the private sector, government, and other



international development organizations in Kenya, in order to develop new business and support deals. To the IFC, the “close interaction” of the role “could not be effectively done from a distance” because “the rapport and networking required personal interactions on a one-on-one basis.”

75. The IFC highlights that the Country Officer is “the second most relevant IFC staff member on the ground after the Country Manager,” and submits that full-time presence on the ground is required in order to develop and maintain a good understanding of the country. Specifically, the IFC submits that “[t]he decentralization of IFC staff seeks to achieve close cooperation with, and availability for, clients to improve on the delivery of the mandate of the WBG, including of the IFC, by having a presence on the ground.”

76. The IFC asserts that technological tools and remote connections would not sufficiently allow for the Country Officer to carry out duties and responsibilities without being on the ground in Kenya. The IFC notes, for instance, that “[i]ncreasing permanently with members of the Kenyan government entities, private sector, civil society and local stakeholders that, due to the development of the country itself, did not have available technological means to connect remotely” was a Country Officer duty that required presence in the country.

77. The IFC avers that, pursuant to the Tribunal’s jurisprudence, “changing business needs” is a basis for the non-extension of a term contract. To the IFC, in the instant case, “the Applicant was not able to match the business need of having a person based in Nairobi,” and, as such, “there was no business justification for offering her an additional term.” Further, the IFC stresses that, once the Supervisor, a Principal Country Officer, was relocated to Kenya in order to support the Manager, the Country Officer position was no longer needed as the IFC’s business needs “did not require two people performing the same job.”

78. The IFC further submits that it “should not have to create a position for [the] Applicant in order to offer her a new term appointment,” and the IFC avers that, pursuant to the “functional justification” methodology, “staff of international organizations should serve the purposes of the multilateral institution—not the other way around.” In the IFC’s view, its

business needs are dictated by its development mission. [The] IFC's mission to eradicate poverty, per the Global Mobility Framework, requires staff members to be present in member countries to help the institution deliver more efficiently on its mandate. Consequently, if a staff member concerned is not available to move to the country in which her job needs to be performed, as was the case with [the] Applicant, then she does not meet the requirements of her position.

79. To the IFC, the Applicant accepted the requirement as stated in her LOA and MOA to relocate to Kenya. Further, the IFC asserts that, "in the exercise of its authority to execute its mandate and mission, [it] determined that the duties and responsibilities required for the recruitment of the Country Officer, per the Job Posting and as with every other country officer in every other IFC country office, would be performed by a person on the ground in Kenya." The IFC submits that the Applicant's "later inability to move to Kenya provides a reasonable, observable, and non-discriminatory basis for the non-extension of her term appointment."

80. Additionally, the IFC challenges the Applicant's contention that she could perform her duties remotely, and it further asserts that the Applicant would not have been qualified for the new Somalia position because she "lacked Somalia-related skills." The IFC submits that the "Applicant was not in charge of any Somali project or program and [...] did not engage directly with any of the business initiatives the IFC country team had for Somalia."

81. Moreover, the IFC contends that "a Country Officer role is local by design, and does not usually lend itself to remote work." The IFC submits that its Kenya office is "an active hub office" and that "the portfolio of duties is hectic, requiring real-time responses to unforeseen conditions and circumstances, and requiring hands-on effort and local presence." With respect to the COVID-19 pandemic period of remote work, the IFC submits that

a remote country officer was often a compromise solution that was somewhat practicable without requiring risky travel and exposure. Nevertheless, this changed entirely as the COVID pandemic shutdown ended and [the IFC's] clients, government partners and staff returned to work in their offices and expected [the IFC] to provide the full range of local activity as before the shutdown.

82. While the IFC "acknowledges that the [Manager's] notification could have included further details informing the Manager's decision," to the IFC, "those reasons had been communicated

extensively to [the] Applicant and she had acknowledged them since applying for the Job Posting, accepting the terms of the MOA, and [in] her own allegations in the Application.” The IFC avers that there is no basis for the Tribunal to interfere with the IFC’s decision that the Country Officer position “could only be adequately performed by someone physically present in Kenya,” and the IFC asks that the Application be dismissed “for lack of a basis to contest the decision.”

83. Additionally, the IFC submits that the Application should be dismissed because the Applicant “effectively impeded the implementation of a solution satisfactory to all: for [the] Applicant to stay in Washington, D.C., in a position that [did not] require her to move to Kenya.” The IFC claims that it offered the Applicant alternatives which would have helped her to stay in Washington, D.C., “in a different position, with a salary and benefits corresponding to the location, including a medical insurance with coverage in the United States,” but that the Applicant did not accept such alternatives.

#### The Applicant’s health issues were not known to the IFC

84. The IFC takes issue with the Applicant’s claim that the non-renewal decision was discriminatory in that it was based on the Applicant’s need to extend telecommuting for medical reasons. The IFC contends that the non-renewal decision was not based on the Applicant’s health but rather on the IFC’s business needs which were that “there was no need for an additional Country Officer in the same Country Office, after [the IFC] made a business decision to relocate the Supervisor, a Principal Country Officer, to provide for all the business needs that a position like [the] Applicant’s was meant to cover.”

85. The IFC claims that, other than hearing general comments from the Applicant regarding “health issues,” or her needing to attend medical appointments while in Washington, D.C, it was not aware of the details of the Applicant’s health status or of her medical needs at any point of her employment in the Kenya Country Office. The IFC submits that the Applicant’s comments did not portray the extent of her health issues or any impact her health may have had on her performance. The IFC asserts that the Manager abided by the Staff Rule 2.02 obligation not to request confidential health information and avers that, while the Applicant had a “right to preserve the

privacy of her health information, [...] she thereby deprived [the IFC] of any opportunity to accommodate her health conditions.”

86. Further, the IFC submits that it was only on 25 May 2023, when it was notified by the Claims Administrator of the Applicant’s approval for Short-Term Disability benefits, that it became aware that the Applicant’s health might impact her ability to perform her position duties. To the IFC, the fact that the redundancy notice was dated 10 March 2023 makes it clear that the Applicant’s health played no part in the redundancy decision and, moreover, management rescinded the redundancy upon learning of the Applicant’s transition to Short-Term Disability status.

Telecommuting is not a reasonable accommodation, and the Applicant never requested such

87. The IFC avers that the Applicant never requested to extend her telecommute status despite the IFC’s engagement with her regarding the need to do so in the myHR system. The IFC submits that it “cannot process, much less impose, a telecommuting arrangement without a specific formal request from a staff member.” The IFC avers that the Applicant never regularized her situation by requesting Telecommute – Standard, and states that she remained in this irregular status through the end of her appointment. To the IFC, there is no decision which the Applicant can challenge with respect to telecommuting.

88. The IFC avers that telecommuting for personal reasons is a form of “Alternative Work Location Arrangements,” pursuant to Staff Rule 5.09, rather than a reasonable accommodation as the Applicant contends. The IFC submits that “Telecommuting – Standard” refers to “an approved work arrangement that allows an individual Staff to work from outside their Duty Station Country due to personal reasons,” and the IFC asserts that the Applicant would have needed to comply with the applicable processes to obtain such.

89. The IFC distinguishes its Directive on “Disability Inclusion,” which defines “Reasonable Accommodation,” and submits that it is unrelated to the telecommuting arrangement sought by the Applicant. To the IFC, “unlike a reasonable accommodation, telecommuting is not a right to which

[the] Applicant was entitled to receive due to her (unknown to [the IFC]) health issues, but an agreement to be sought between the Applicant and [the IFC] to determine a different location to execute her job.” The IFC stresses that the “Applicant did not rely on any disability to justify her desire to continue telecommuting,” and the IFC emphasizes the “important normative distinction” between its Directives on “Disability Inclusion” and on “Alternative Work Locations Arrangements” as a matter of “different implementations, eligibility, authorization criteria and policy goals.”

90. Additionally, the IFC submits that, even if the Applicant’s desire to stay in Washington, D.C., was processed as a request for a reasonable accommodation, the IFC was not required to offer her a new term contract as doing so would constitute an “undue burden” given that her position was being covered by the Supervisor.

91. Finally, with respect to the Applicant’s claim for damages due to late salary disbursements, the IFC submits that this is a result of the Applicant’s own failure to request Telecommuting – Standard, which led to her employment becoming irregular and the need to request salary advances. The IFC submits that it complied with all such requests and, further, claims that in October 2022 the Applicant asked that her salary arrears not be processed pending the disbursement of her SSP payments.

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

*The IFC failed to implement the PMR recommendation without any valid justification or explanation*

92. The Applicant contends that her FY22 performance evaluation has not been revised in accordance with the PMR recommendation to “give more weight to the positive feedback and her contributions.” She claims that the IFC has not complied with the PMR recommendation and has added only the “limited statement” that was recommended pursuant to the AR process. The Applicant submits that she has not received an explanation from the IFC for its failure to revise her FY22 performance evaluation. She asserts that the Tribunal should order the IFC to comply with the PMR recommendations.

***The IFC's Response****The IFC is working to implement the PMR recommendation*

93. In its Answer, the IFC disputes the Applicant's claim that it failed to implement the PMR recommendation. The IFC avers that the PMR recommendation was implemented on 10 October 2023. Specifically, the IFC submits that an addition was made to the Applicant's FY22 performance review "to attest that [the] Applicant had reached out to several feedback providers (1 peer, 1 client and 5 others) as selected by [the] Applicant, and received positive feedback from them, reflecting a positive assessment of [the] Applicant's contributions."

94. In its Rejoinder, however, the IFC acknowledges that, "due to issues in the HR system pertaining to the modification of staff annual reviews and the length of time it took to resolve the matter, [the IFC] has concluded that it did not implement the PMR Recommendation." The IFC submits that it "is working actively to address this problem" and to modify the Applicant's FY22 Annual Review in compliance with the PMR recommendation.

***The Applicant's Contention No. 3****The Applicant was subject to unfair treatment preceding the non-renewal decision, and EBC's decision to close its preliminary inquiry was ill-founded*

95. The Applicant alleges that, for two years preceding the non-renewal decision, the Manager "continually made negative comments about [the Applicant's] need to telecommute," and the Applicant submits that the Manager's "derisive comments" were documented in the Applicant's FY21 performance evaluation, FY22 mid-year conversation, and FY22 performance evaluation. Further, the Applicant claims that the Manager excluded her from relevant work communications including those concerning major events. The Applicant also alleges that, while the Applicant followed the appropriate steps to make the IFC aware of her health conditions by working with the Regional Medical Advisor, the Manager "pressured [the Applicant] to provide confidential details about her health conditions." The Applicant submits that she requested EBC to investigate her work environment and contends that the EBC decision to close its preliminary inquiry was "ill-founded based on [the Manager's] documented history of discriminatory statements and conduct."

96. Additionally, the Applicant contends that management obstructed her ability to get the necessary support for her reasonable accommodation, including financial support. Specifically, the Applicant submits that the IFC delayed approving her request to extend her telecommute status, stopped paying her SSP benefits, and “significantly delayed responding to [her] pleas that she be timely paid her delayed salary and salary advances.” The Applicant avers that the “constant delays and denials only exacerbated [her] health problems, as she was forced to delay seeking critical medical care due to lack of funds.”

97. To the Applicant, the unfair treatment she suffered warrants an appropriate remedy separate from and in addition to invalidating the non-renewal decision.

### ***The IFC’s Response***

*The EBC decision not to open a formal investigation was valid, and the Applicant’s allegations are not supported by evidence; the Applicant failed to exhaust internal remedies regarding the SSP*

98. With reference to the Applicant’s allegations of retaliation, harassment, and discrimination and her 14 December 2022 complaint to EBC regarding these allegations, the IFC submits that, pursuant to its preliminary inquiry, EBC interviewed witnesses including the Supervisor, colleagues in the Country Office, and the Senior Medical Officer in the Kenya Country Office. The IFC avers that “EBC’s decision not to proceed to a formal investigation was sound due to lack of evidence to support [the] Applicant’s misconduct claims regarding [the] Manager’s behavior towards her.” The IFC further submits that “EBC felt that there was no evidence tending to indicate that any Staff Rules may have been violated.” In the IFC’s view, “[t]he Application does not allege any specific facts of the harassment or retaliation other than referring to the EBC complaint,” and the IFC avers that the Applicant’s claims of discrimination, hostility, and abuse of authority are baseless and should be dismissed.

99. The IFC refers to the Applicant’s PRS Request for Review in which she requested review regarding her SSP payments and submits that this request “remains pending, and therefore, there is no decision by [the IFC] that may be challenged at this time.” The IFC notes that PRS has not

issued a report and recommendation in respect of this matter and that management has not yet made a decision about this claim. The IFC invokes Article II(2)(i) of the Tribunal's Statute and requests that the Applicant's claims regarding the SSP be dismissed for failure to exhaust internal remedies.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

### WHETHER THE NON-EXTENSION DECISION WAS AN ABUSE OF DISCRETION

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

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

102. The Tribunal observes that the Applicant's LOA, dated 4 December 2020 and signed on 10 January 2021, stated:

The International Finance Corporation is pleased to offer you a reassignment to a Term appointment for a period of 3 years 0 months as Country Officer, Level GG, in the IFC Office – Nairobi (CAFE1) unit. [...]

Your official duty station will be Nairobi, Kenya. Your reassignment will be effective on the day you report for duty, which will be on 12/16/2020 [...] or on a mutually agreed date.

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



103. 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.

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

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

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

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

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

#### *Duty to provide reasons*

107. In examining whether the IFC has met the requirement to give honest reasons for its non-renewal decision, the Tribunal must determine whether the IFC provided the Applicant with reasons for the non-renewal decision and whether the reasons are in fact supported by the record. *See HC*, Decision No. 694 [2023], para. 121. 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.”

108. The Tribunal observes that the Manager emailed the Applicant on 30 June 2023 regarding the non-extension of the Applicant’s term appointment. The Manager stated:

I understand that you have been approved for STD from **March 21<sup>st</sup> 2023 to September 1<sup>st</sup> 2023**. (Emphasis in original.) Given this, your Redundancy and the associated Administrative Leave are suspended. Please note, however, your placement on STD does not extend your Term appointment in any event beyond its current expiration date of January 15, 2024, and you are hereby notified that we will not extend your term appointment for the reason that your position has come to an end.

109. The Tribunal observes that the Manager states the reason for the non-renewal decision as “your position has come to an end.” The Tribunal notes that the IFC “acknowledges that the [Manager’s] notification could have included further details informing the Manager’s decision.” The Tribunal recalls that, in *CS* [2015], para. 77, the Tribunal stated:

[T]he Bank must give an honest reason for the non-renewal of a Term appointment. This is congruent with the Tribunal’s observation in *Skandera*, Decision No. 2 [1981], para. 28, that:

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.

110. The Tribunal observes that, in its submissions before the Tribunal, the IFC articulates two main reasons for the non-renewal decision. Specifically, the IFC contends that the Kenya Country Officer position required full-time physical presence in Kenya and the Applicant was unable to meet this business need, and, further, that the Applicant’s position of Kenya Country Officer was no longer needed because the Supervisor, a Principal Country Officer, had been relocated to Kenya. The Tribunal observes, however, that these details were not provided in the Manager’s 30 June 2023 email to the Applicant informing her of the non-renewal decision.

111. The Tribunal recalls that, on 10 March 2023, the Applicant received an Office Memorandum regarding “Notice of Redundancy” from the Vice President – Africa. The Notice of Redundancy was withdrawn on 30 June 2023 in the same email in which the Manager informed the Applicant of the non-renewal “for the reason that your position has come to an end.”

112. The Tribunal notes that Staff Rule 7.01, paragraph 9, sets forth the process by which positions are proposed for redundancy. Staff Rule 7.01, paragraph 9, contains obligations to redundant staff members such as access to career counseling services and retraining, along with severance payments. In the current circumstances, the Applicant was not afforded the benefits of Staff Rule 7.01, paragraph 9, and, instead, the Manager substituted for the redundancy process a non-renewal decision. The Tribunal recalls that the Manager withdrew the Notice of Redundancy in response to the Applicant’s approval for Short-Term Disability.

113. The Tribunal also recalls that the IFC itself acknowledged that the Manager could have included further details regarding the decision not to renew the Applicant’s appointment. Doing so would have enabled the Applicant a fair opportunity to respond to the non-renewal by reference to the IFC’s changing business needs. The Tribunal finds no evidence in the record that indicates that the withdrawal of the Notice of Redundancy was done in bad faith. However, since the Applicant was not eligible for the entitlements provided by Staff Rule 7.01, paragraph 9, due to the withdrawal, the Tribunal considers that the IFC was required to provide some information to the Applicant to permit her to understand the reasons for the non-renewal decision. Consistent with the Tribunal’s reasoning in *CS* [2015], para. 77, and *Skandera* [1981], para. 28, the Tribunal finds that the Manager’s 30 June 2023 email to the Applicant does not meet the requirement to provide sufficient reasons for the non-renewal decision.

114. The Tribunal will now determine whether the reasons for the non-renewal decision provided by the IFC in the Tribunal proceedings were honest and not pretextual.

*Reasons must be honest*

115. The Tribunal notes the IFC's explanation that the Applicant's Country Officer position required full-time physical presence in Kenya and that the Applicant was unable to meet this business need. The IFC further explained that the Applicant's position of Kenya Country Officer was no longer needed because, in September 2022, the Supervisor, a Principal Country Officer, had been relocated to Kenya precisely "to provide for all the business needs that a position like [the] Applicant's was meant to cover," and it "did not require two people performing the same job."

116. The Tribunal finds that the IFC's position is supported by the record. The Tribunal observes that the Requisition No. 6765 job posting for which the Applicant applied and was ultimately selected listed the position location as "Nairobi, Kenya," and the Applicant's LOA indicated a duty station of "Nairobi, Kenya." Accordingly, the Tribunal considers that the IFC's clear intention was to have a Country Officer located in Nairobi. The Tribunal also observes that the March 2023 "Proposed Staff Redundancy" memorandum refers to the Principal Country Officer at Grade Level H1 currently being in the Kenya Country Office CMU and notes that he would continue to support the Kenya CMU's portfolio, as follows:

Important to note is that the Kenya Country Office CMU currently has a staff member in the role of Principal Country Officer at grade H1 based in Nairobi, Kenya. This staff member will continue to support the Kenya CMU's portfolio following the abolishment of the Country Officer Kenya position.

117. Based on its review of contemporaneous documentation in the record, the Tribunal finds that the reason given for the non-renewal decision, namely "your position has come to an end," while lacking sufficient detail as found above, was honest and not pretextual.

118. Having accepted as true the IFC's reason for the non-renewal decision, the Tribunal will next turn to whether the non-renewal decision otherwise constituted an abuse of discretion.

*Abuse of discretion*

119. The Tribunal will examine whether the non-renewal decision was an abuse of discretion in light of the Applicant's claim that she provided a sufficient justification for her inability to meet the IFC's business need so as to excuse her physical presence in Kenya.

120. The Tribunal observes that World Bank Group Procedure, Telecommuting – Standard, paragraphs 3.01–3.02, provides the following:

3.01 Telecommuting – Standard temporarily supports Staff to more flexibly manage their professional and personal responsibilities by working outside of their Duty Station Country.

**Request for Telecommuting – Standard**

3.02 Staff request Telecommuting – Standard for personal reasons, such as, and not limited to:

- a. Self or family needs.
- b. Accompanying a spouse or Domestic Partner on a new work-related assignment outside of the Staff's Duty Station Country.
- c. Educational purposes.

3.03 Staff request Telecommuting – Standard for a defined period of time in the HR System.

121. The Tribunal recalls that the IFC submits that the Applicant never properly requested to extend her telecommute status in myHR as she was advised to do by the HRBP on 10 March 2023. The Tribunal observes that the record indicates that the Applicant was in discussions with the Supervisor and the HRBP concerning telecommuting arrangements up to 10 March 2023. Further, on review of the record, the Tribunal finds no evidence that the IFC denied a request from the Applicant to telecommute due to her health.

122. Moreover, the Tribunal recalls *GY*, Decision No. 688 [2023], a case in which the applicant challenged the non-confirmation of her appointment, as relevant to the instant case. In *GY* [2023], para. 153, the Tribunal stated:

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

123. The Tribunal considers that, pursuant to its jurisprudence, the Applicant had a duty to communicate with the Manager to inform the Manager of the Applicant's health-related issues that may affect delivery, albeit "without necessarily providing details of the particular health issue." *GY* [2023], para. 153.

124. The Tribunal considers that it was not permissible for the Applicant to make her own determination that health issues prevented her from relocating to Kenya and, accordingly, entitled her to telecommute at her option. The Tribunal additionally notes that there is no evidence in the record that the Applicant sought accommodation under the WBG Directive on "Disability Inclusion." The Tribunal considers that, to the extent any IFC rules allowed for the Applicant to be excused from relocating to Kenya, the Applicant should have properly invoked such rules by initiating the necessary HR requests and actions in a timely manner, which she did not. In this regard, and in these circumstances, the Tribunal finds no reason to conclude that the non-renewal decision amounted to an abuse of discretion related to her health issues.

125. The Tribunal next notes that the Applicant disputes that the non-renewal decision was based on the elimination of her role and, in this respect, asserts that the Somalia Country Officer position advertised on 15 April 2023 was not distinct from the Kenya position which she held.

126. The Tribunal observes that there are notable differences in the job postings of the two positions. First, the Somalia position listed the required languages as "English, Somali," while the Kenya position which the Applicant held stated the required languages as "English." Second, the Kenya job posting stated that the "IFC is recruiting a Country Officer who will promote and

coordinate [the] IFC's investment and advisory activities for Kenya, and East Africa in general," while the Somalia job posting stated that the "IFC is recruiting a Country Officer to promote and coordinate [the] IFC's investment, upstream, advisory activities and implement tools relevant to Fragile and Conflict Affected Situations (FCS) in Somalia." Moreover, the Somalia job posting referenced the intention to "be based in Nairobi, Kenya until a resident mission is opened in Somalia."

127. Given the distinctions in the two job postings related to language requirements, the intention to open a new resident mission in Somalia, and the Somalia Country Officer's focus on Fragile and Conflict Affected Situations, the Tribunal is satisfied that the IFC was indeed creating and advertising for a new position in its Requisition 22222 Somalia Country Officer position rather than filling the Applicant's post. Accordingly, the Tribunal finds that the Applicant's contention that her position did not end because the IFC advertised "for someone to fill her very role" is without merit.

128. Pursuant to *AK* [2009], para. 41, decisions which are "discriminatory" or "improperly motivated" also constitute an abuse of discretion. The Tribunal will next turn to the Applicant's contention that the decision not to renew her term appointment was improperly motivated by discrimination, hostility, and retaliation.

#### *Improper motivation*

129. Principle 2.1 of the Principles of Staff Employment provides that the IFC "shall not differentiate in an unjustifiable manner between individuals or groups within the staff."

130. The Applicant claims that the non-renewal decision was improperly motivated by the Manager's alleged discrimination and hostility toward her, and the Applicant submits that the Manager's "history of discriminatory comments and conduct strongly suggest that her disapproval of [the Applicant's] telecommuting as a reasonable accommodation for documented health issues was the real reason for the nonrenewal." The IFC contends that the non-renewal decision was based on business needs and not on the Applicant's health and, further, that it was not aware of the

details of the Applicant's health status or of her medical needs at any point during her employment in the Kenya Country Office.

131. In respect of the Applicant's claims that discrimination and hostility from the Manager motivated the non-renewal decision, the Tribunal recalls that on 14 December 2022 the Applicant brought a complaint against the Manager to EBC. The record indicates that EBC conducted a preliminary inquiry, which opened on 31 January 2023 and closed on 19 September 2023, in which EBC reviewed the Applicant's allegations of discrimination and a hostile work environment. The Tribunal notes that EBC closed the preliminary inquiry "due to insufficient evidence to substantiate the allegations."

132. On review of the record before it, the Tribunal is not convinced that the non-renewal decision was improperly motivated by discrimination or hostility toward the Applicant. Instead, the Tribunal has found that the non-renewal decision was based on the IFC's business needs which required a Country Officer physically present in Kenya. The Tribunal considers that the Applicant's inability to meet that need was determinative, and the non-renewal decision was not improperly connected to the Applicant's health vis-à-vis some other reason which may have prevented the Applicant from being physically present in Kenya per the job requirements which the Applicant accepted upon signing the LOA.

133. Therefore, the Tribunal is satisfied that the non-renewal decision was not improperly motivated by discrimination or hostility.

#### *Retaliation*

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

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



that the same employment action would have been taken absent the [s]taff [m]ember's protected activity.

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

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

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

137. The Tribunal has confirmed that, once an applicant has established a *prima facie* case or has pointed to facts “that suggest that the Bank is in some relevant way at fault,” then “the burden shifts to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner.” *GL (Merits)* Decision No. 677 [2022], para. 102, quoting *de Raet*, Decision No. 85 [1989], para. 57. *See also* *HC* [2023], para. 157; *FH (No. 2) (Merits)*, Decision No. 680 [2022], para. 84.

138. The Applicant contends that the non-renewal decision was improperly motivated by retaliation for her AR, PMR, PRS, and EBC cases. To the Applicant,

absent [any] legitimate explanation for the nonrenewal decision, the timing of [the Applicant's] resort to internal justice system processes, coupled with the timing of [the Manager's] decision not to renew [the Applicant's] contract, strongly suggest that the decision was improperly motivated at least in part by retaliation.

139. The Tribunal notes that the Applicant did not take her claims of retaliation to EBC. The Tribunal recalls that, in *Sekabaraga (Preliminary Objection)*, Decision No. 494 [2014], para. 42, it explained that “[r]etaliation is one of the more serious forms of staff misconduct,” and further that

there are good grounds for having EBC undertake a review of allegations of retaliation before such allegations are considered by PRS or by the Tribunal. EBC is the unit with the primary mandate and the resources to review allegations of retaliation, and review by EBC could make an important contribution to a proper consideration of the often complex factual background against which retaliation is alleged.

*See also GX (Preliminary Objection)*, Decision No. 687 [2023], paras. 66–67; *ET* [2018], para. 145.

140. In reviewing the Applicant’s claim of retaliation, the Tribunal considers that it has accepted that the IFC has provided a legitimate explanation for the non-renewal decision. Further, the Tribunal observes that the Applicant has not offered any evidence to support her claim that the non-renewal decision was taken in retaliation for her use of various internal justice services. The Tribunal finds that the Applicant’s claims are speculative and do not present a *prima facie* case of retaliation as the record does not disclose any connection or “causal nexus” between the Applicant’s AR, PMR, PRS, or EBC processes and the non-renewal decision as taken by the Manager. *See DW*, Decision No. 556 [2017], para. 88. Accordingly, the Tribunal is satisfied that the Manager’s decision not to renew the Applicant’s appointment was not an act of retaliation.

#### WHETHER THE NON-RENEWAL DECISION WAS PROCEDURALLY FLAWED

141. The Tribunal has stated that due process “guarantees refer precisely to adequate warning about criticism of performance or any deficiencies that ‘might result in an adverse decision being ultimately reached,’ and the corresponding opportunity for the staff member to defend himself.” *B*, Decision No. 247 [2001], para. 21, citing *Samuel-Thambiah*, Decision No. 133 [1993], para. 32. *See also Tange* [2019], para. 136.

142. The Tribunal recalls its findings that, while the IFC failed to meet its obligation to provide the Applicant with sufficient details of its reason for its non-renewal decision, the reason was honest and not pretextual and the non-renewal decision was not otherwise an abuse of discretion. There is no evidence in the record that the non-renewal decision was based on criticism about the Applicant's performance.

143. The Applicant having chosen to not properly invoke the rules by initiating the necessary HR requests and actions in a timely manner, which may have excused her from relocating to Kenya or otherwise provided reasonable accommodations, the Tribunal finds that she bears some responsibility for her own circumstances. The Tribunal also notes that the record shows evidence of some unresponsiveness by the Applicant to her Manager's communications. In the circumstances of this case, the Tribunal finds that not specifically advising the Applicant of the consequences of her failure to relocate to Kenya did not constitute a due process violation for which compensation is warranted.

#### WHETHER THE PMR RECOMMENDATION HAS BEEN IMPLEMENTED

144. The Tribunal will now consider the Applicant's claim that the IFC has failed to implement the PMR recommendation which was accepted by the Vice President – Africa on 30 June 2023 and, further, that the IFC has failed to provide a reason for its failure to implement the PMR recommendation.

145. The Tribunal observes that, while the IFC asserts in its Answer that it has implemented the PMR recommendation, the IFC acknowledges in its Rejoinder that, "due to issues in the HR system pertaining to the modification of staff annual reviews and the length of time it took to resolve the matter, [the IFC] has concluded that it did not implement the PMR Recommendation."

146. The Tribunal considers that the IFC has explained the reasons why it has failed to implement the PMR recommendation and has acknowledged the need to modify the Applicant's FY22 Annual Review in line with the PMR recommendation and its intention to do so. The Tribunal is satisfied that the IFC's explanation for its failure to implement the PMR

recommendation is reasonable, and it urges the IFC to implement the PMR recommendation without further delay.

#### WHETHER THE APPLICANT WAS SUBJECTED TO UNFAIR TREATMENT

147. The Tribunal will now consider the Applicant's challenge to the EBC determination that the Manager's "behavior did not rise to the level of formal misconduct" as communicated to the Applicant on 19 September 2023. The Applicant claims that she was subjected to unfair treatment preceding the non-renewal decision and that the Manager repeatedly made negative comments about the Applicant's need to telecommute, excluded her from relevant work communications, and pressured the Applicant to provide confidential details about her health. The Applicant further claims that she suffered financially because the IFC delayed approving her telecommute extension request, which caused delays in her salary, and ceased paying her SSP benefits.

148. The IFC contends that the Applicant's allegations of unfair treatment are not supported by evidence, and the IFC submits that the EBC preliminary inquiry found a lack of evidence to support any misconduct on the part of the Manager. The IFC further submits that the Applicant's claims regarding SSP are pending before PRS and that the Applicant has therefore failed to exhaust internal remedies. Further, the IFC submits that the salary delays are due to the Applicant's own failure to request a Telecommuting – Standard arrangement and claims that it complied with all requests for salary advances from the Applicant.

149. At the outset, the Tribunal notes that it will not address any claims regarding the Applicant's SSP as these claims are not ripe given that the PRS process is not yet exhausted.

150. Staff Rule 3.00, paragraph 6.01, provides:

EBC reviews and assists in the resolution of allegations of misconduct. Misconduct does not require malice or guilty purpose, and it includes failure to observe the Principles of Staff Employment, Staff Rules, Code of Conduct, other Bank Group policies, and other duties of employment, including the following acts and omissions:

- a. Failure to observe obligations relating to health and safety, personnel information, disclosure of non-public information, information security, and the unauthorized use of Bank Group offices, equipment, computer resources or Staff; abuse of authority; absence from duty without justifiable cause; or abuse or misuse of Bank Group funds related to travel, benefits, allowances (including tax allowances), P-Card, petty cash, or property; [...]
- e. Harassment; contributing to a hostile work environment; Sexual Harassment; or wrongful discrimination, including on the basis of age, race, color, sex, sexual orientation, gender identity, national origin, religion or creed.

151. The Tribunal observes that the Applicant took her allegations of misconduct to EBC and that EBC proceeded to a preliminary inquiry. As it has previously explained with respect to EBC, the Tribunal “does not micromanage the activity of investigative bodies.” *HA (Merits)*, Decision No. 696 [2023], para. 77, quoting *Houdart*, Decision No. 543 [2016], para. 112. On review of the EBC “Case Closing Memo” provided to the Tribunal for its *in camera* review, the Tribunal is satisfied that the appropriate institutional investigative body conducted a thorough review of the Applicant’s claims of a hostile work environment and of discrimination on the basis of health, and is satisfied that EBC’s decision to close its preliminary inquiry due to insufficient evidence to substantiate the Applicant’s allegations was reasonable and is supported by the record. As the Tribunal has previously explained, “[t]he fact that the EBC investigators formed a different conclusion than what the [a]pplicant wished for does not mean that the investigators ignored or misrepresented the [a]pplicant’s version of the events.” *HA (Merits)* [2023], para. 86.

152. The Tribunal next observes that the record indicates that, in 2022, the Applicant experienced delays in receiving her salary, and the Tribunal notes that the Applicant claims that she delayed medical treatment due to the financial hardship attendant to her delayed salary. The Tribunal observes that the Applicant’s claim of delayed medical treatments due to financial reasons is documented in the notes of the Applicant’s psychologist.

153. The Tribunal finds that the record does not contradict the IFC’s claim that the salary delays experienced by the Applicant were due to the unsettled telecommuting arrangements, and the Tribunal finds that the record does not support the Applicant’s claim of unfair treatment warranting compensation.

## REMEDIES

154. Having found that that the IFC failed in its obligation to provide the Applicant with sufficient reasons for the non-renewal of her term appointment, and having dismissed all other claims, the Tribunal finds that the Applicant should be awarded three months' net salary based on the last regular salary drawn by the Applicant.

## DECISION

- (1) The IFC shall pay the Applicant three months' net salary based on the last regular salary drawn by the Applicant;
- (2) The IFC shall contribute to the Applicant's legal fees and costs in the amount of \$5,000.00; and
- (3) All other claims are dismissed.

/S/Janice Bellace

Janice Bellace  
President

/S/ Zakir Hafez

Zakir Hafez  
Executive Secretary

At Washington, D.C., 3 May 2024