



World Bank Administrative Tribunal

2024

Decision No. 707

**HQ,
Applicant**

v.

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

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

**HQ,
Applicant**

v.

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

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

2. The Application was received on 29 January 2024. The Applicant was represented by Nat N. Polito of the Law Offices of Nat N. Polito, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 10 October 2024.

3. The Applicant challenges the determination made by the Vice-President, Human Resources (HRVP) that he committed misconduct and the disciplinary measures imposed therein.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in 1998 as a consultant. He became an Information Analyst in 2002, a Financial Officer in 2002, and a Senior Financial Officer in 2005, working for different financial units of the Bank. From July 2016, the Applicant held the position of Senior Financial Officer, Level GG, with the Market and Counterparty Risk Unit (CROMC). The Applicant, an Indian national, is based in Washington, D.C., has a G4 visa, and is married to a Bank staff member also based in Washington, D.C.

5. The Applicant visited the Singapore Country Office on mission approximately 43 times between 2011 and 2019.

6. On 24 February 2022, the Director of the Singapore Office, Director E, emailed the Ethics Helpline to “seek advice on an alleged harassment case in the past in Singapore Office.” On 10 March 2022, the Office of the Anti-Harassment Coordinator referred the matter to the Business Integrity Review Unit, stating in the referral that Director E reported that four staff members in the Singapore Office – Ms. F, an administrative support staff; Ms. G, a Program Assistant; Mr. H, an Information Technology (IT) Officer; and Mr. I, a Senior Resource Management Officer – informed him that, for several years during his missions to the office, the Applicant engaged in “inappropriate and sexually harassing behavior (verbal and physical) towards them and/or others, including former bank staff and vendor staff (hotel employee).”

7. On 24 March 2022, the Ethics and Business Conduct Department (EBC) conducted an intake interview with Director E. In his intake interview, Director E explained that, in response to a travel clearance request from the Applicant for a mission to the Singapore Office, several members of the front office, including an administrative support staff, Ms. F, brought up concerns with the Applicant’s behavior toward Ms. F and others.

8. On 28 March 2022, EBC conducted an intake interview with Ms. F, an administrative support staff, described beginning at paragraph 10 below.

9. On 4 April 2022, EBC’s investigative team traveled to Singapore. Between 6 and 11 April 2022, EBC conducted in-person interviews with staff in the Singapore Office, as well as staff from the Shangri-La Hotel in Singapore.

10. In her intake interview and subsequent in-person interview with EBC, Ms. F, an administrative support staff, stated that she had experienced incidents in the office on each of the Applicant’s missions to Singapore, alleging that the Applicant touched her in an inappropriate manner, looked at her body “[f]rom top to bottom,” and made comments about her physical appearance, such as “you look hot”; “[o]h, you look so sexy”; “[y]our body is really perfect”; “oh, nice outfit”; “you look nice”; “oh [...] you gained weight”; “oh, you lost weight”; and “ you look fat.” When describing how the Applicant touched her, Ms. F demonstrated the Applicant “patting”

her hand and “rubbing” her forearm without releasing her hand, and stated that he would give her hugs that were longer than a hug given among friends.

11. Ms. F further stated that the Applicant’s comments and behavior made her uncomfortable such that she would avoid seeing him after she helped him settle into the Singapore Office. Ms. F also stated that she never told the Applicant that his behavior made her uncomfortable, but she also stated that, around 2019, she told Director D, who was Director of the Singapore Office from 2018 to 2021, that she was uncomfortable with the Applicant.

12. Ms. F also stated that around 2014 a young temporary receptionist “cried” and told her about an incident with the Applicant. Ms. F did not recall the details but stated that the temporary receptionist told her the Applicant had “asked her to go out” and that the temporary receptionist later resigned from the Bank. Ms. F could not remember the name of the temporary receptionist during the interview but sent a follow-up email to EBC with a name; EBC was unable to contact the temporary receptionist. Ms. F told EBC that she heard that the Applicant also asked out Ms. J, a Receptionist/Team Assistant with the International Finance Corporation, when she worked for the Bank. Ms. F also told EBC that the Applicant had never asked her out. Ms. F further told EBC that Mr. H, the IT Officer, had told her that the Applicant had asked him to take the Applicant to an “[a]dult bar” with prostitutes.

13. Ms. F also stated that, in or around 2012, she was contacted by the then–Senior Manager at the Shangri-La Hotel, Ms. Q, regarding an incident between the Applicant and a female hotel employee. Ms. F stated that she told the then–Country Director of the Singapore Office, Country Director B, and that he told her to “just handle it.” Ms. F did not have any communications on this matter in her records.

14. EBC next interviewed Ms. G, a Program Assistant. In her interview, Ms. G stated that (i) the Applicant was “very cordial” and “friendly” and explained that sometimes he was “too friendly” and “touchy-touchy friendly,” which made her feel “uncomfortable”; (ii) for several years Ms. F, an administrative support staff, would tell her and other front office staff that she was “irritated” with how the Applicant touched and held her hand; (iii) in or around 2016, Ms. J, the

Receptionist/Team Assistant, told her that the Applicant had said something to her that made her “uncomfortable” and may have been of a “sexual nature” or a “sexual insinuation”; (iv) during Country Director B’s tenure, the then–Senior Manager of the Shangri-La Hotel, Ms. Q, told her that the Applicant had said something to a female employee that made her feel “uncomfortable”; and (v) around seven years ago, Ms. F, an administrative support staff, told her that the Applicant had made a former receptionist uncomfortable.

15. Mr. H, the IT Officer, stated in his interview with EBC that (i) since 2011 “every time” the Applicant was in Singapore on a mission he held his hand and “massaged” and “squeezed” it for about ten or fifteen seconds while greeting him; (ii) he was “surprised,” “shock[ed],” and “uncomfortable” because of the hand massaging; (iii) he did not feel that it was offensive or harassing; (iv) on one occasion the Applicant hugged him in a way that made him uncomfortable; (v) in or around 2012, the Applicant asked him if he knew places that provided massages and sexual services; (vi) since approximately 2011, Ms. F, an administrative support staff, would tell him about her discomfort and “unhappiness” when the Applicant would plan a mission to Singapore; and (vii) he also believed Ms. G, a Program Assistant, was “uneasy” with the Applicant.

16. Mr. I, the Senior Resource Management Officer, stated in his interview with EBC that (i) in or around 2018 Ms. F, an administrative support staff, told him she was “very uncomfortable with [the Applicant’s] presence, and he touches [her] very inappropriately” by “[r]ubbing [her] on the arm”; (ii) Ms. G, a Program Assistant, told him that the Applicant behaved “inappropriately” toward Ms. J, the Receptionist/Team Assistant, and that she did not like the Applicant; and (iii) Mr. H, the IT Officer, told him that the Applicant had asked about a “red light area.”

17. Ms. J, the Receptionist/Team Assistant, stated in her interview with EBC that (i) around July 2014, when she first joined the Singapore Office as a receptionist, the Applicant invited her to his hotel for drinks and dinner, but that she told him she had family plans; (ii) the Applicant’s invitation made her uncomfortable and she told Ms. F, an administrative support staff, who was her supervisor at the time; (iii) on at least three subsequent missions between 2015 and 2016, the Applicant made comments to her such as “I know you are busy over the weekend. Otherwise, I would have invited you over for dinner” when passing by her desk; (iv) the first time she shook

hands with the Applicant she was uncomfortable because he put his second hand on top of her hand and held her hand for “about two minutes”; and (v) she noticed the Applicant held hands for a long time with everyone else he met, and she assumed it was how he greeted everyone.

18. Ms. L, a Financial Officer, stated in her interview with EBC that (i) in 2012, when she was new at the Bank, the Applicant introduced her to other colleagues on various occasions telling them that he and she were “very close,” which made her uncomfortable; (ii) Ms. L said she spoke out on one occasion and said, “No, we are not close,” noting that she felt “very scared” to say so, but that the Applicant stopped saying they were close afterward; (iii) she had the impression that the Applicant was a “friend to everyone in the office,” including Ms. F, an administrative support staff; (iv) during her first year at the Bank, the Applicant would pat her hand and lower arm, which made her feel uncomfortable until a colleague in a different office told her the Applicant was like “Santa Claus,” which made her feel relieved; and (v) on various occasions, the Applicant told her she looked “beautiful,” but she did not feel uncomfortable as she believed it was a respectful compliment.

19. Ms. M, a Valuation Officer, stated in her interview with EBC that (i) in or around 2013, a former staff member told her that the Applicant “sometimes hugs female colleagues” in the front office and that they did not like it; (ii) Ms. L, a Financial Officer, told her that the Applicant was “talking like, inappropriately in front of other colleagues. Like making other – how shall I put it? It’s like making others feel like they have a closer relationship. [...] [I]t makes people feel like they’re very close personally”; (iii) Ms. L told her about this behavior on many occasions between 2012 and 2019 and that she “was not happy about it” and “tries to stay away” from the Applicant; (iv) Ms. F, an administrative support staff, and Ms. P, an Operations Assistant, would try to “avoid” and “[s]tay away” from the Applicant, making comments to her like “[w]e tried to put his office as far away as possible from us”; (v) the Applicant never touched her or made inappropriate comments to her; and (vi) she tries to avoid the Applicant because she is an “introvert” and she heard comments that he hugs female colleagues, noting that “to me he seems a bit overwhelming sometimes [...] It’s like he is trying to talk about something that I’m not really interested in. Like when he stays in a hotel, what happens. So, I can’t remember the exact details, but like those things that you’re not really interested in. And he kind of like, trying to talk to you.”

20. Ms. N, a Financial Officer, stated in her interview with EBC that (i) the Applicant never made any comments about her physical appearance; (ii) in or around 2012, during a trip to Chennai, the Applicant made a sexual comment about the “boys” who cleaned his hotel room, but that she could not remember the exact words; (iii) the Applicant never engaged in any type of physical contact that made her uncomfortable; (iv) the Applicant is someone who tries to engage in non-work-related conversations and “wants to get close,” but she kept her distance from him; and (v) she never heard other colleagues expressing concerns about the Applicant making inappropriate or sexual remarks to them.

21. Ms. O, a Program Assistant, stated in her interview with EBC that (i) around 2014 or 2015 she met the Applicant in the pantry area of the office and he asked her to go to his office where he told her, “You look good” and asked if she was married and other non-work-related questions; (ii) this interaction made her uncomfortable because the Applicant looked at her “up and down” and rubbed his hands when he told her she looked good; (iii) she had no other incidents with the Applicant; (iv) Ms. J, the Receptionist/Team Assistant, told her that the Applicant had asked her out when she was new at the Bank around 2015, and that Ms. J was “squeamish” and “uncomfortable” when the Applicant was in the office afterward; (v) Ms. F, an administrative support staff, and Ms. G, a Program Assistant, would make statements like “I don’t want to be here [...] I don’t want to be seen by him” when the Applicant was on mission in Singapore.

22. Ms. P, the Operations Assistant, stated in her interview with EBC that (i) sometime in 2012 to 2016, Ms. F, an administrative support staff, and Ms. G, a Program Assistant, told her that the Applicant made them “uncomfortable” because of his handshakes during which the Applicant held their hands and patted and rubbed the top of their hands; (ii) in or around 2017, Ms. F told her that she would prefer to take annual leave when the Applicant was on mission in Singapore because he made her feel uncomfortable with his handshakes; (iii) Ms. J, the Receptionist/Team Assistant, told her that she would prefer not to be in the office when the Applicant was there because he had asked her out, which made her “uncomfortable”; and (iv) the Applicant never touched her or made any inappropriate comments to her.

23. EBC also interviewed Ms. K, the Shangri-La Hotel Senior Manager, and Ms. Q, the former Shangri-La Hotel Senior Manager, regarding the alleged incident between the Applicant and a hotel employee. Ms. Q stated that she did not recall any specific issues with the Applicant's behavior toward female hotel employees, and that any such incident would have been captured in the guest notes. Ms. K checked hotel records and with her supervisor, who did not recall any incidents with the Applicant, noting that they did not have access to incident reports from "so long ago."

24. On 25 April 2022, EBC provided the Applicant with a Notice of Alleged Misconduct. The Notice of Alleged Misconduct provided:

It is alleged that for several years during your missions to the Singapore Country Office (approximately between 2012 to 2020), you engaged in sexually harassing behavior (physical and verbal) towards other Bank staff by touching them in an inappropriate manner and making remarks and offensive comments of a sexual nature. It is further alleged that your behavior created a hostile work environment for Bank personnel in the Singapore Country Office.

Specifically, Ms. [F, an administrative support staff,] [...] alleged that you touched her in an inappropriate manner and made comments about her physical appearance, such as "you are hot"; "you look sexy"; "oh you gained weight"; and "you are fat." Additionally, Ms. [F] stated that in or about 2013, the Singapore Country Office received a complaint from Shangri-La Hotel that you engaged in sexually harassing behavior towards a female hotel employee.

25. The same day, the Applicant was interviewed by EBC regarding the allegations. In his interview, the Applicant stated that (i) he denied the allegations of Ms. F, an administrative support staff, that he touched her inappropriately and made comments to her about her physical appearance; (ii) he shook hands with Ms. F only "sporadically" and the handshake was "one second" and "up and down" as a typical professional or business handshake; (iii) he denied "rubbing" or massaging the hand of Mr. H, the IT Officer, or holding his hand for 15 seconds during a handshake; (iv) he did not remember if he ever hugged Mr. H, but that he did not "do that usually"; (v) he never asked Mr. H about places in Singapore that provide sexual services; (vi) he never asked out Ms. J, the Receptionist/Team Assistant, and noted that he did not remember her name; (vii) he never asked out any receptionist to go for drinks or dinner at his hotel; (viii) he did not know Ms. O, a Program Assistant, and never asked her, or anyone else, questions such as "[a]re

you married?” or “[a]re you still single?”; (ix) his interactions with Ms. N, a Financial Officer, were “always day-to-day interactions, work related stuff. There is nothing personal”; (x) all his interactions with Ms. L, a Financial Officer, were “professional” and he never made comments about her hair or physical appearance; (xi) he interacted with Ms. M, the Valuation Officer, on only one or two occasions and never had long conversations about non-work-related matters; (xii) he never shook, rubbed, or held the hand of Ms. G, a Program Assistant, and he greeted her only verbally; (xiii) he did not interact with Ms. P, the Operations Assistant, and they saw each other only in the corridors; (xiv) Mr. I, the Senior Resource Management Officer, is a “[v]ery professional, and a very nice person” and that he never had any problems with him; and (xv) he never had any issues or incidents with a hotel employee, and no incidents were ever brought to his attention.

26. The Applicant further stated that he “strongly 100 percent disagree[d]” with the allegations against him and noted, “This is not me, sir, and this not reflecting my character. This is not what I am with 25 years in the Bank, married for 25 years, and having a kid, living a responsible life and a wonderful organization and working with a wonderful group of staff members.”

27. Following the interview, EBC provided the Applicant with the interview transcript and the Applicant submitted his written comments to the Notice of Alleged Misconduct and the transcript on 9 June 2022. In his written comments, the Applicant reiterated his denials of both allegations and included attachments regarding his membership status at the Shangri-La Hotel in Singapore. The Applicant emphasized that his interactions with Ms. F, an administrative support staff, were limited to “Meet and Greet” and that he never made any comments to Ms. F or anyone else about their physical appearance or engaged in inappropriate physical contact as alleged.

28. On 4 August 2022, EBC emailed the Applicant with a status update on the investigation. The Applicant replied the same day, thanking the team for the update and also discussing his need to travel to Singapore for pending projects. EBC replied to the Applicant on 11 August 2022, noting that the Applicant’s question regarding mission travel should be directed to his line management, as “[i]t is within management’s discretion to decide whether or not to authorize [his] request for mission travel.”

29. The Applicant emailed EBC again on 2 September 2022, requesting that EBC “expedite the process.” The Applicant further wrote:

Once again please, I completely deny both the allegations 100%. I strongly believe and fully trust in this wonderful Institution, mission and the integrity processes in running the day to day affairs. My family and I sincerely thank EBC [...] for the extraordinary efforts and a thorough due-diligence process till date. (Emphasis in original.)

During our in-person interaction on April 25, 2022 and my response to the transcript on June 9, 2022, **I mentioned my contributions to the WBG [World Bank Group] Internal Justice System for many years.** (Emphasis in original.) Please see the attached pictures and the e-mail threads to the Senior Management Team (President, MD [Managing Director], VPs [Vice-Presidents] and Directors across WBG and IJS [Internal Justice Services] leads). You may kindly take these into considerations in gauging my character and ethical integrity as a Staff member who has given close to 25 years of service to the mission of the World Bank Group.

30. The Applicant had a large network of relationships developed during his tenure with the Bank, including with senior Bank officials. The perceptions arising from the Applicant’s cultivation of his network were noted in his Fiscal Year 2017 Staff Annual Review, where his manager stated under “Areas of Development (skills or behaviors to change)”:

[The Applicant’s] exceptionally extensive relationship network may make him look very unusual to the point of inspiring concern. We have talked this point over the years and I consider [the Applicant] has become much more aware of the impression he could give and made a lot of progress on that front. But he has to remain vigilant.

31. On 6 September 2022, EBC interviewed Director D, the Director of the Singapore Office from 2018 to 2021. Director D stated in her interview with EBC that (i) when Ms. F, an administrative support staff, received a notification that the Applicant was visiting Singapore on mission, she became “really upset” and told her that the Applicant “acts very familiar” with the front office staff and that his handshakes “linger[] a little bit longer”; (ii) she told Ms. F to inform her if the Applicant “misbehav[e]d” during his visit; (iii) she believed she advised the Applicant to be “careful” with his behavior with the female staff; and (iv) Ms. F did not return to her with

any further complaint and that, when Director D checked in following the Applicant's visit, Ms. F told her that it was "a lot better" and the Applicant was "behaving himself."

32. On 5 October 2022, EBC sent a draft investigation report to the Applicant for his review and comment. After having received an extension from EBC, on 3 November 2022, the Applicant emailed EBC his response to the draft report. In his response, the Applicant reiterated his denials of both allegations and urged EBC "to do more due diligence on the first allegation." The Applicant claimed that the "motive" of Ms. F, an administrative support staff, in making the allegations had become clear to him and that she was retaliating against him for "not fulfilling personal favors (and career advancement help)" and for his not recognizing her "self-assumed superior authority." Specifically, the Applicant noted that Ms. F had asked him to bring luggage from Washington, D.C., where her relatives resided. He wrote that he did so "4 or 5 times" and eventually declined the request due to inconvenience toward the "end of 2015 or early 2016 onwards," claiming that he was not sure if she understood his difficulties with transporting the luggage for her. The Applicant claimed that, from the moment he declined her personal requests and favors, Ms. F's attitude and behavior changed for the worse, and she became "very arrogant and yelled at [him] many times," made fun of him, and mocked him. He also claimed that he was subjected to managerial harassment by Director E, the Director of the Singapore Office who brought the matter to the Office of the Anti-Harassment Coordinator and EBC. The Applicant denied that he discussed adult entertainment with Mr. H and stated that this topic was raised instead by Mr. H in the context of a discussion of the cost of living in Singapore.

33. Additionally, the Applicant claimed in his written response to the draft EBC report that (i) EBC's process was "unfair" and "did not respect [his] staff rights"; (ii) EBC did not interview all the heads of the Singapore Office who were there during the period covering the allegations; (iii) EBC mischaracterized a previous misconduct investigation related to his employment of a G5 domestic employee; (iv) until the start of the EBC investigation, he was "completely unaware" of the allegations involving his "style of greeting" and interactions with others; and (v) "[i]t appears to [him] (almost sure) that the witnesses were choreographed and planned well by Ms. [F] in advance." The Applicant also requested that EBC should conduct a "[c]haracter assessment or

reference check” with “250+ people” with whom he has interacted and worked in Washington, D.C., Singapore, and Chennai.

34. On 9 and 11 November 2022, EBC interviewed two of the witnesses proposed by the Applicant: the Country Director of the Singapore Office from 2011 to 2014 (Country Director B) and the Program Director of the Singapore Office from 2009 to 2013 (Program Director A). EBC also interviewed the Country Director of the Singapore Office from 2015 to 2017 (Country Director C).

35. Country Director B stated in his interview with EBC that

there was one issue [...] [the Applicant] was a hugger and he hugged everybody and at some point one staff said that she was uncomfortable with that. And so, I had to at some point tell him, [...] no hugging in the office. And that’s the only incident where I think I said I had to sort of correct him on a behavioral issue. Mind you this was, you know, was 2012, 2013 this was before a lot of things happened in the World Bank in terms of the, you know, issues of harassment.

36. Country Director B explained that it was Ms. F, an administrative support staff, who told him she was uncomfortable with the Applicant’s hugging, but he stated that he did not recall the details of why she was uncomfortable and that the way she raised the issue “was not dramatic.” Country Director B noted that the Applicant’s hugs toward him were “like a hug among friends or colleagues.” Country Director B further stated that, after he advised the Applicant to stop hugging, the issue was not raised again by Ms. F or anyone else.

37. Program Director A stated in his interview with EBC that (i) he never heard any concerns from staff about the behavior of D.C.-based staff on mission in Singapore; (ii) the Applicant was “extremely courteous, very polite, very professional”; and (iii) neither Ms. F nor anyone else ever told him that they felt uncomfortable with the Applicant’s behavior.

38. Country Director C stated in his interview with EBC that (i) he recalled that Ms. F, an administrative support staff, was “deeply uncomfortable” with the Applicant’s behavior but that he did not recall the nature of her concerns; (ii) he also recalled that Ms. F sometimes asked not to

be in the office when the Applicant was visiting Singapore on mission; (iii) Ms. F told him that she had received a past complaint from a hotel that the Applicant harassed a hotel employee, but that no one could locate the alleged victim; (iv) he did not recall the details of physical contact with the Applicant but stated, “You just felt like your space was being occupied by him when he was with you because of I think this level of engagement that was extraordinarily personal and pointed every time you met with him”; and (v) he received a lot of pressure from various high-ranking Bank officials to hire the Applicant to a post in the Singapore Office.

39. Between 5 November 2022 and 20 January 2023, EBC received “64 emails from current and former staff,” as well as from Ms. R, an intern at the Bank, providing character references for the Applicant. EBC noted in its Final Investigation Report (Final Report) that the character references “all provided favorable and positive comments about [the Applicant’s] character, professionalism, and integrity.” Many of the additional witnesses proposed by the Applicant provided character references, and

EBC determined that the information contained in the [...] character reference letters about [the Applicant’s] character was sufficient and reliable for the purposes of the investigation. Therefore, EBC relied on the feedback these [...] individuals provided in [the Applicant’s] character letters and did not deem it necessary to interview these individuals.

40. On 17 November 2022, EBC emailed the Applicant, writing:

It has come to our attention that you are requesting current and former staff members to provide a character reference for you in connection with the above referenced investigation. Since November 5, 2022, EBC has received approximately 29 character references, which will become part of the evidentiary record in this case.

We have received a confidential report that some staff members may feel obliged and uncomfortable in complying with your request. We kindly advise you to ensure that any individual you approach feels comfortable in providing a reference for you. We also take this opportunity to remind you of the confidential nature of these proceedings and to not disclose details about the case.

The Applicant responded the same day, writing, “Yes – I understand your message very well. Will ensure and assure you/EBC please.”

41. On 29 November 2022, EBC sent the Applicant a revised draft investigation report for his review and response.

42. On 17 December 2022, Country Director B sent EBC an email titled “Follow up on interview: RETRACTION and CLARIFICATION.” In his email, Country Director B wrote:

I was interviewed by some of you last month to discuss my experience as director Singapore in the context of a complaint against [the Applicant].

I want to clarify a few points here in light of what I understand how my statements are being used in your process:

1. I should not have called [the Applicant] a “hugger.” As the rest of the interview shows, I could actually not recall specific instances of me observing [the Applicant] hugging any other staff except myself. So I must retract this characterization.

2. As for me, as expressed in the interview, I considered a hug as a greeting of a colleague perfectly fine, and well within the norms prevailing at the time in the world bank. I know times have changed, but at the time a hug or even kisses on the cheek between colleagues was considered fine.

3. I did raise with [the Applicant] the fact that [Ms. F, an administrative support staff,] had expressed her discomfort with [him] hugging her. This was not a formal complaint (and certainly not in writing) so I raised it also in an informal manner with him. Since there was no repeated expression of discomfort, I considered the matter as resolved. I also note that my impression was that the relationship between [Ms. F] and [the Applicant] was a good and collegial one.

43. EBC replied to Country Director B on 19 December 2022, thanking him for his clarifications and writing:

Could you kindly clarify what is the basis of your understanding of how your testimony is being used in the EBC investigative process?

Specifically, could you inform us whether [the Applicant] (i) provided you a copy of the transcript of your interview with EBC; (ii) provided you a copy of [...] any document written by EBC with your testimony; (iii) discussed with you the testimony you provided to EBC on November 9, 2022; and (iv) asked you to clarify the testimony you provided to EBC on November 9, 2022.

After multiple follow-up emails by EBC, Country Director B replied on 16 February 2023, writing, “Thank you for your emails. I have nothing further to add.”

44. After receiving an extension from EBC, on 5 February 2023, the Applicant provided his response to the revised draft investigation report, along with documents including emails between himself and the witnesses. In his response, the Applicant repeated his denials of the allegations, stating, “I have not hugged or touched anyone inappropriately in the WBG Singapore office, Washington, and Chennai offices. I have not had any inappropriate verbal chats with anyone in WBG offices, except asking about family, health and well-being of their children, spouse, and parents.” The Applicant reiterated his denials of the behaviors alleged in the witness testimonies, adding:

I therefore strongly request EBC to conduct a face-to-face meeting between myself and each of the witnesses, in the presence of EBC and the office of mediation (and HR [Human Resources]) to determine the truthfulness of allegation 1. This will help EBC substantially in deciding the conclusions of allegation 1 and bring full transparency to the entire investigation process **which is currently being described using a “he says, she says” mode of evidence, while I have provided enormous material evidence earlier and now.** (Emphasis in original.)

45. The Applicant further repeated his assertions that the allegations by Ms. F, an administrative support staff, were in retaliation for his not fulfilling personal favors for her, describing the history of their working relationship, and stating that Ms. F, following his 2022 travel request to Singapore, “would have gotten irked and become visibly insecure and jealous about the connections [he] had. She then would have started her style of bringing her Indonesian gang (plus [Mr. I, the Senior Resource Management Officer]) against [him] so that [he] would not get any opportunities in the front office again.” The Applicant also wrote:

This is nothing but [Ms. F] showing her 100% enmity towards me from day one of my visit to Singapore office. [...] As [Ms. F] could not find any way to overbear me and my reputation, she used the “Sexual Harassment Vehicle” to reputationally challenge and tarnish my name, making malicious allegations and choreographing the witnesses to accomplish her long pending wish. (Emphasis in original.)

The Applicant concluded:

For all the factual reasons stated in this detailed document, I kindly request EBC to treat this as my formal complaint of the unprofessional and unwelcome behavior of [Ms. F] towards me since 2011. I therefore request EBC to kindly initiate appropriate due diligence and official inquiry on her conduct. (Emphasis in original.)

46. On 13 February 2023, the Office of the Anti-Harassment Coordinator referred a new matter to EBC regarding the Applicant's conduct toward Ms. R, the intern at the Bank. On 14 February 2023, EBC interviewed Ms. R. In her interview, Ms. R stated that (i) she met the Applicant in September 2022 during her first week as an intern when he approached her in the hallway, introduced himself, and offered to meet with her for a "networking coffee"; (ii) during their coffee meeting on 13 September 2022, the Applicant told her he wanted to be her mentor; (iii) she did not want to accept the Applicant's offer, but she did not decline because she was 24 years old and did not want "to be rude"; (iv) the Applicant had a strong stare that made her uncomfortable; (v) she thereafter sent the Applicant calendar invites for monthly meetings; (vi) on 17 November 2022, the Applicant made her uncomfortable by entering her office without her permission and closing the door, after which he asked her to write a character reference to EBC because an "older lady" filed a false allegation of sexual harassment against him; (vii) she did not recall exactly how she responded to the request, and the Applicant showed her two character references written by female employees for him and then "dictated" to her what to write in the reference; (viii) she decided to write the character reference for the Applicant because he was "nice" by offering to give her guidance on the Bank; (ix) she wondered whether she had done the right thing after she provided the character reference; (x) during their meeting in December 2022, the Applicant asked "intrusive" questions about her romantic life, like "what does [her] boyfriend do" which made her uncomfortable; (xi) she realized she made a mistake in providing a character reference when, on or around 23 January 2023, the Applicant made comments to her that made her "very uncomfortable," such as "you are really the full package" while looking at her in a "flirty" way and something like stay in touch "until the day I die"; (xii) after this incident she did not feel "safe" in her office because she was afraid of the Applicant stopping by her office, so she canceled the remaining coffee meetings and reported the incident to her manager; and (xiii) during her holiday break, she was stressed and did not want to return to the Bank because of the Applicant and because

she did not want to leave her home country. EBC noted that Ms. R “became emotional and cried during her interview when describing the behavior she experienced from [the Applicant].”

47. On 15 February 2023, Ms. R emailed EBC screenshots and images regarding her meetings with the Applicant. Ms. R wrote:

Please find a picture of notes of what [the Applicant] had dictated during the third ‘Catch-up’ meeting on 11/17/2022, written down by myself in my internship notebook [...]. During our meeting, he asked me to cc him in the character reference. Since the character reference email had been sent 2h44 [minutes] after the beginning of the meeting, I had filled gaps based on my memory of what he had dictated and with what I believed would make a good character reference. I want to mention that this was during a time of high stress for me as it was five days before my master thesis deadline, working full time, and discussing a potential external job offer. I deeply regret to have sent the character reference without more thought, and I would like to withdraw the character reference made on 11/17/2022. (Emphasis in original.)

The handwritten note reads:

I have met [the Applicant] four months ago and introduced myself asked about backgrounds, place of work [(illegible)], job description I have atm [(at the moment)]. I requested for a meeting to discuss [(illegible)] about the bank and possible opportunities. Once a month we meet, spend 1 hour explaining the bank [(illegible)], more about the bank. Meeting him on a weekly b [(basis)] [(illegible)]. Mentor and guide to me. Gives me the right advice for the future. Talks about family, guides me in the right way, advised me on take good, mentor career advisor, felt protected & safe with him as mentor. Please feel free to contact me personal email.

48. On 20 March 2023, EBC sent the Applicant its final revised draft investigation report for his review and response. On 3 April 2023, the Applicant emailed EBC his reply to the final draft investigation report. In his reply, the Applicant repeated his denials that he engaged in a pattern of inappropriate behavior that was sexual in nature and created a hostile work environment.

49. The Applicant also responded to the interview with Ms. R, the intern, providing his version of their interactions and denying that he engaged in any behavior that would make Ms. R uncomfortable. The Applicant stated that (i) Ms. R asked him to be her mentor and to meet on a monthly basis; (ii) from “September 2022 to January 2023, Ms. [R] and [he] would have met

around 7 times. First meeting at the MC-Atrium, 3 meetings in the corridor and 3 meetings in [his] office with the door open”; (iii) their interactions were “like a father and daughter conversation” and there was “no sign of any discomfort at all from both sides”; and (iv) he asked Ms. R to provide a character reference but told her she did not have to do it if she was not comfortable and never dictated any notes to her.

50. The Applicant added that he was “truly shocked and surprised to read the testimony of Ms. [R]” and requested a “face-to-face” meeting with Ms. R and EBC through the Office of Mediation. The Applicant added further, in part:

These type of behaviors from Ms. [R] and analysis by EBC needs full correction please. Ms. [R] is just starting her professional career and it is the responsibility of all of us to correct her for her misstatements (if she has really done so intentionally). Otherwise, we are setting a wrong template for the future professional world.

[...]

Has anyone advised Ms. [R] to contact EBC? How come Ms. [R] turned against me all of a sudden? I get a very serious doubt now about the overall details mentioned in the testimony and in EBC summary report. This requires a very detailed investigation please. Extremely suspicious.

[...]

By reading her testimony, I could sense that Ms. [R] has been terrified by EBC’s questions and formal interview setting. In fact, for that matter, anyone who is of that age would have succumbed to forceful pressures and would definitely change the answers to please the investigators. I strongly believe that this is what has happened here.

Was Ms. [R] worried about her future job prospects at WBG thinking of this EBC interview process?

Why Ms. [R] fooled me with her double standard behavior? If she did not want to meet, why did she continue to meet at the cost of my time? I have spent enormous amount of my own time, treated her like my daughter and helped her with lots of information about professional career. What is her intention behind coming to the meetings if she says she was uncomfortable? What was she looking for other than the knowledge that I have shared? What is the reason for Ms. [R] to go against me?

I have been extremely nice to everyone in my professional life. Going above and beyond all the time to help people in all possible ways. That is how I was brought

up by my parents and by my own family. Please see the e-mail attachments for your kind perusal. I always give orientation to many staff about WBG and provide them with sound foundational knowledge of Finance and Operations. I did exactly the same orientation to Ms. [R] too.

51. EBC submitted its Final Report to the HRVP on 18 May 2023. EBC concluded in its Final Report:

Based on a careful review of the totality of the evidence gathered, including the interviews of [Ms. F], [the Applicant] and sixteen relevant witnesses (including current and former staff as well as vendor's personnel), this Office has determined that: (i) there is sufficient evidence to substantiate [Ms. F's] allegations that [the Applicant] engaged in sexual harassment towards her; and (ii) there is insufficient evidence to substantiate the allegations that [the Applicant] sexually harassed an employee of the Shangri-La Hotel in Singapore.

Based on EBC's findings that [the Applicant's] conduct amounted to sexual harassment, EBC determined that [the Applicant's] overall conduct also amounted to: (i) a reckless failure to observe applicable norms of prudent professional conduct; and (ii) a conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment including the requirement that staff conduct themselves at all times in a manner befitting their status as employees of an international organization.

52. The Bank states that the HRVP "carefully considered the investigative report and met with [the] Applicant to provide him a final opportunity to provide his position." According to the Bank, on 3 October 2023, the HRVP and other staff members met with the Applicant and, during the meeting, the "Applicant became quite emotional at the prospect that [the HRVP] would accept the facts found by EBC, and again vehemently denied ever having done anything wrong."

53. On 17 October 2023, HR staff members met with the Applicant again "to inform him that the HRVP was inclined to accept the facts found by EBC, and that she felt that they warranted a misconduct finding." The Manager, HR Corporate Operations (HRDCO), present at this meeting, documented the meeting in an email to the HRVP on 19 October 2023:

I introduced [the Applicant] to [a Bank security staff member] and we all sat down. I told [the Applicant] that [the HRVP] accepts all the findings against [the Applicant] in the EBC Report. I advised [the Applicant] this will mean a misconduct sanctions letter that will include:

1. Termination of employment (in one (1) week's time from the date of the letter);
2. Bar to rehire;
3. Bar to access WBG premises worldwide;
4. Letter to remain permanently in his personnel file; and
5. Submittal of the outcome of this case to the UN [United Nations] Clear Check system.

As a matter of compassion given [the Applicant's] behaviors and statements of self-harm made in [the HRVP's] October 3rd meeting with [the Applicant] – she would not issue her decision letter until next week after her return from Europe. In the meantime, [the Applicant] was free to consider resignation on his own with the proviso and knowledge all other sanctions (2-5) would still apply. [The Applicant] had until COB [close of business] Friday to submit his resignation.

I advised [the Applicant] his remedies to contest this decision remains with the World Bank Administrative Tribunal.

[The Applicant] was about to start into his defense asking on what basis [the HRVP] had concluded he had committed misconduct. I cut him off to say this was not a discussion and [the HRVP's] reasons would be outlined in her letter. I also let [the Applicant] know we had briefed his manager [...] and kept his spouse, [another Bank staff member], advised. [The Applicant] was to leave the premises immediately and turn in his badge to [the Bank security staff member] for disabling. [The Applicant's manager] would allow [him] to work from home, and I specifically asked [the Applicant] that he cease his writing campaign(s) which have been and are disruptive to many. Otherwise, he would be placed immediately on Administrative Leave and his WBG electronic systems access would be revoked.

54. Following the 17 October meeting, on 18 October 2023, the Applicant emailed the Manager, HRDCO, writing:

I am writing to you with folding hands to rethink this extreme of extreme punishment. I have never ever even heard or imagined in my wildest possible scenario that I will get a judgement like this. [My wife] and I have been talking the whole night. Let me also sincerely apologize that I became over emotional on Oct 3rd meeting with all of you at [the HRVP's] office. I spilled some words and that was interpreted as "Self-Harm". I just expressed how my life was during the last about 2 years in going through the EBC case. It was an emotional outburst in-front of all of you. I have never ever thought or will have any intention to perform any "Self-Harm" actions. My family and WBG is my life. Having spent 25 1/2 years in

WBG, I cannot imagine the 25 minutes of yesterday's time and the bombshell judgement from you. I honestly and truly deserve mercy and consideration from you please. For innocence – God is the evidence, and I am seeing GOD through you. Please and kindly understand.

55. On 19 October 2023, the Applicant emailed the HRVP, the Bank's General Counsel, and the Manager, HRDCO, repeating his requests for "justice and mercy" and writing, in part:

I have been in service for the past 25 years without a single remark either about my work or about my personal conduct. I was and will always be honest because that is of my nature and is who I want to be. To my knowledge I have never deviated from the path of virtue, even on a single occasion. I wanted to sincerely apologize to the World Bank Group for the current situation and how matters are unfolding.

56. The Manager, HRDCO, replied to the Applicant's email the same day, writing that he was responding with the permission of the General Counsel and HRVP, recalling the meeting of 17 October 2023, and informing the Applicant:

As a matter of compassion given your behaviors and statements made in [the HRVP's] October 3rd meeting with you – she would not issue her decision letter until next week after her return from Europe.

In the meantime, you were free to consider resignation on your own with the proviso and knowledge all other sanctions would still apply. I specifically asked that you cease your writing campaign(s) which have been and are disruptive to many. Otherwise, you would be placed immediately on Administrative Leave and your WBG electronic systems access be revoked. Your remedy to contest these decisions remains with the World Bank Administrative Tribunal.

In light of your continued campaign to elicit others to intercede on your behalf in this misconduct matter, and after consultation with your manager, effective immediately, I believe it in the best interests of you and the WBG that you be placed on Administrative Leave in accordance with Staff Rule 6.06, Leave, paragraph 10.10, and your access to WBG systems and premises is hereby revoked.

57. The General Counsel also replied to the Applicant the same day, writing that he and the Deputy General Counsel, Institutional Affairs, would meet with him the next day and further stating:

Please understand from the outset that our call is not an opportunity to discuss the facts of the case or to reconsider the process or outcomes to date. As you know, the

Bank has well-established processes for these matters and for staff's concerns and grievances in the event staff does not believe the processes were correctly followed or implemented. The call is an exceptional accommodation to try to ensure that you have clarity on the processes.

58. The Applicant replied to the General Counsel on 20 October 2023, writing that he had spoken to the Manager, HRDCO, and would prefer to wait until after speaking with the HRVP to meet. The Manager, HRDCO replied to this email, writing, “[The Applicant], we did just speak. I advised you that [the HRVP] has given you until Sunday midnight. In the meantime, [the Applicant], I urged you to prepare for your meeting at noon with [the General Counsel] – a meeting understand at the request of EXC [Office of the President].”

59. The meeting between the Applicant and the General Counsel took place the same day.

60. On 23 October 2023, the HRVP issued her Decision Letter:

After a careful and thorough review of the Final Report, and after our meeting together, I have determined that there is sufficient evidence to support a finding you engaged in misconduct, as defined under Staff Rule 3.00:

(i) Paragraph 6.01 (e): Harassment; contributing to a hostile work environment.

(ii) Paragraph 6.01 (b) – Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct.

(iii) Paragraph 6.01 (c) – Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3.1 (c) of the Principles of Staff Employment, including the requirements that staff avoid situations and activities that might reflect adversely on the Bank Group (Principle 3.1) and conduct themselves at all times in a [manner] befitting their status as employees of an international organization (Principle 3.1 (c)).

(iv) Code of Conduct: Living Our Values: Sexual Harassment – “Sexual harassment is any unwelcome sexual advance, request for sexual favor, or other verbal, nonverbal or physical conduct of a sexual nature that interferes with work, is made a condition of employment, or creates an intimidating, hostile, or offensive work environment.”

61. The HRVP further noted in the Decision Letter:

In its Final Report, EBC determined that your conduct amounted to sexual harassment. The EBC record shows that for several years you engaged in a pattern of unwelcome inappropriate behavior of a sexual nature, and your conduct had a negative impact on the staff members in the Singapore Country Office.

EBC further determined that your overall conduct also amounted to: (i) reckless failure to observe applicable norms of prudent professional conduct; and (ii) a conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment including the requirement that staff conduct themselves at all times in a manner befitting their status of employees of an international organization.

EBC did not find sufficient evidence to substantiate the allegations that you sexually harassed a hotel employee.

I note your contention that the female staff member filed the complaint as retaliation because you declined to do personal favors for her. EBC notes that your claim of retaliation does not fall within WBG's legal framework for retaliation, in any of the protected activities under Staff Rule 8.02.

Considering your senior role to the staff members in the Singapore Country Office, it was incumbent upon you to ensure that your conduct was professional and met the expectations of your position. In this regard, as early as 2013, two former Country Directors brought to your attention that your conduct was unwelcome and making the Country Office staff members feel uncomfortable.

I find your inappropriate behavior over the course of time gives rise to serious concerns with respect to the standards of conduct which are expected of staff. I find your conduct very disturbing and completely unacceptable, and constituting of sexual harassment and, consequently, creating an unsafe working environment.

62. Noting that the Applicant had prior adverse disciplinary findings in 2018, the HRVP imposed the following sanctions, effective 1 November 2023:

- 1) termination of [the Applicant's] Bank Group employment;
- 2) loss of future employment and contractual opportunities with the Bank Group;
- 3) restrictions on access to the Bank Group's premises; and
- 4) written censure to remain in [the Applicant's] personnel file.

The HRVP also determined that,

[i]n addition, [the Applicant] will be placed on the United Nations' Screening Database System, Clear Check, which will flag [his] misconduct to organizations within the United Nations system.

63. The Applicant chose to resign before the HRVP's Decision Letter went into effect. On 24 October 2023, the Applicant informed his manager that he had decided to resign from the Bank, and his manager accepted the resignation. The Applicant states that HR

advised him that his resignation would only affect his termination and that the other punishments contained in the termination letter would remain in effect and could be appealed to the Tribunal. [The Applicant] understands that he has not waived his right to challenge [1) loss of future employment and contractual opportunities with the Bank Group; 2) restrictions on access to the Bank Group's premises; and 3) written censure to remain in the personnel file] and the placement in Clear Check before the Tribunal, including the proportionality of the punishment and other claims, and this was explicitly agreed upon by HR.

64. The Applicant's last day of employment was 31 October 2023.

65. On 7 December 2023, the Applicant filed a request for provisional relief with the Tribunal, requesting reinstatement. On 22 January 2024, the Tribunal denied the Applicant's request, noting that, as an application had yet to be filed, the Tribunal considered that its jurisdiction had not yet been seized in the matter.

The present Application and relief sought

66. The Applicant filed the present Application with the Tribunal on 29 January 2024 challenging the finding that he committed misconduct and the sanctions imposed.

67. The Applicant requests the following relief: "immediate reinstatement to the position he held upon termination, and in the alternative, damages for loss of career opportunity." The Applicant further seeks "compensation for the reputational damage as a result of defamatory accusations, inconvenience, emotional distress, and physical/mental stress, assessed as five year's net salary, and such other and further relief as this Tribunal deems just and appropriate under the circumstances." The Applicant also requests "that the Bank removes his name from the list of Staff

that have been blacklisted as a result of termination,” “that he be removed from the UN clear check screening database,” and “that his personnel file reflect that there is no finding of sexual harassment or sexual misconduct.”

68. The Applicant claims legal fees and costs in the amount of \$60,921.00.

69. The Applicant also requested provisional relief in his Application, requesting immediate reinstatement. On 21 February 2024, the Tribunal, noting that Rule 13 of its Rules provides for the suspension of the contested decision “in a case in which the execution of the decision is shown to be highly likely to result in grave hardship to the applicant that cannot otherwise be redressed,” denied the Applicant’s request, finding that the Applicant “failed to show that his request meets the terms and purpose of Rule 13.”

70. The Applicant renewed his request for provisional relief on 29 May 2024. On 30 May 2024, the Tribunal denied the request, noting that it was not persuaded that there was any basis for reconsidering its 21 February 2024 decision.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant’s Contention No. 1

The burden of proof for misconduct has not been satisfied, and, in the alternative, the allegations of misconduct fail to meet the definition of sexual harassment

71. The Applicant contends that the Bank has not met its burden of proof for misconduct. In this respect, the Applicant notes the Bank’s contention that the Tribunal should apply a preponderance of the evidence standard based on 2023 amendments to the Principles of Staff Employment. The Applicant submits that “this is a misconduct case resulting in termination of employment” and that the Bank “should have to do more than meet a preponderance of the evidence standard to prove misconduct.” The Applicant thus submits that the Bank “must prove, through substantial evidence and beyond a mere balance of probabilities, that the alleged conduct did in fact occur.”

72. The Applicant contends that the evidence uncovered in the EBC investigation does not satisfy the substantial evidence burden of proof. The Applicant submits that there is “simply no contemporaneous documentation of the alleged complaints such as an email, text message, correspondence, or other writing” and that the only evidence uncovered was the “memory of Bank Staff and Managers dating back in some instances ten (10) years.” The Applicant avers that, even if the burden of proof could be satisfied “based purely on the witness’s verbal accounts that rely on memory alone,” the testimony in the EBC Report “does not amount to ‘substantial evidence’ of misconduct.”

73. The Applicant submits that, in the complaints of Ms. F, an administrative support staff, to Country Director B and Director D, the term “sexual harassment” was not used or documented. In the Applicant’s view, these managers “were in the best position to determine if sexual harassment resulting in a hostile work environment existed” and “determined that the behavior was not at all an issue.”

74. Further, the Applicant submits that the “remaining evidence is a hodgepodge of recollections of perhaps inappropriate office behavior but falls well short of substantial evidence of misconduct.” To the Applicant, the “timeliness of the reporting, the total contradictory testimony in the EBC report, and the lack of documentary proof raises very serious concerns as to whether the alleged behavior actually occurred or whether the alleged incidents are now being exaggerated and overblown for some ulterior motive.” The Applicant submits that the Bank’s evidence “relies on the verbal account of Ms. [F, an administrative support staff],” but he contends that the Bank “neglects to consider evidence which shows that Ms. [F’s] behavior was inconsistent with that of a victim of sexual harassment, and that her story and report changed significantly once the EBC became involved.”

75. The Applicant next contends that the adverse credibility finding against him was “unjustified and does not prove that the conduct occurred, or that it was sexual harassment.” The Applicant asserts that what the Bank claims was his “mischaracterization” of his previous misconduct finding relating to his employment of a G5 domestic employee “is completely

independent” of the current matter and does not affect his credibility. Further, the Applicant contends that his “initial denial of the alleged conduct does not render him incredible” as “it is simply human nature to deny everything when confronted by an opposing party.” To the Applicant, his “understandable denial does not make it any more likely that the conduct occurred.”

76. The Applicant also contends that the allegations that he harassed Ms. R, the intern, after the start of the EBC investigation do not prove that “he has engaged in a pattern of sexual harassment.” The Applicant denies “any inappropriate conduct” with Ms. R, and states that “[h]e may have crossed a line, but that does not mean that he should face adverse employment action.” The Applicant submits that Ms. R’s behavior “is inconsistent with a person who was being harassed by [him],” referencing their connection on LinkedIn and use of networking contacts. The Applicant further submits that it is “unfathomable” that EBC would have entertained Ms. R’s claim had he not been under investigation and that her allegations do not “prove that [the Applicant] engaged in sexual harassment years ago in Singapore.”

77. In the course of his pleadings, the Applicant states that he received an anonymous note (the Note) via the Staff Association entitled “Confess Note.” The Applicant acknowledges that the contents of the Note have not been verified nor has its author been identified. The Applicant contends that the Note “is from one of the accusers, is an apology for giving false information to the EBC investigators and explains how [Ms. F, an administrative support staff,] and the front office bullied the accusers to provide this information.” To the Applicant, the Note “undermines the claims of sexual harassment and misconduct made by [Ms. F] and the other accusers.”

78. In the alternative, the Applicant contends that, even accepting the allegations as true, they do not amount to sexual harassment. The Applicant submits that the main allegations against him are that he would “shake hands, pat arms and hands, hug, and ask about home and family life.” To the Applicant, “[t]his behavior is not of a sexual nature especially when compared with the behavior in other cases of sexual harassment.” Moreover, the Applicant submits, the Final Report does not establish how his conduct was “sexual in nature.” The Applicant notes that there was witness testimony claiming he was “annoying” or “a strange character,” but he contends that “[b]eing strange or annoying does not mean that there is sexual harassment.”

The Bank's Response

The facts clearly establish misconduct

79. The Bank contends that it has satisfied its burden of proof to establish that the Applicant committed misconduct. The Bank submits that, in May 2023, the Principles of Staff Employment were amended such that Principle 8.3 provides for a preponderance of the evidence standard of proof in misconduct cases. The Bank acknowledges the Tribunal's previously established standard of proof – the substantial evidence standard – but contends that, as the HRVP decision was made after the revision to the Principles of Staff Employment, the Tribunal should apply the preponderance of the evidence standard consistent with the Principles of Staff Employment. The Bank avers, though, that the Decision Letter does not specify a specific standard and that, “given the overwhelming amount of quality evidence against [the] Applicant, the HRVP's decision was justified under any standard of proof that might be applied.”

80. The Bank submits that the Tribunal has found that misconduct allegations can be substantiated by “admission, documentary or testimonial evidence, or circumstantial evidence, or can be based on the totality of evidence in the record.” The Bank notes the Applicant's reliance on the lack of documentary evidence but asserts that “[w]ritten proof is [...] not required, especially in sexual harassment cases.” The Bank contends that EBC “relied on the overwhelming, consistent, testimony of survivors and witnesses” and that these “accounts all corroborate each other.” The Bank further contends that travel and leave data corroborate the claims of Ms. F, an administrative support staff, that she tried to be absent from the Singapore Office when the Applicant visited, submitting that, from 2011 to 2020, the record shows that Ms. F “took some form of leave **twenty-five times** when [the] Applicant was in Singapore.” (Emphasis in the original.)

81. With respect to the credibility of the witnesses, the Bank rejects the Applicant's contentions that the behaviors of Ms. F, an administrative support staff, and Ms. R, the intern, were not consistent with a victim of sexual harassment, asserting that there is no “right way” for a survivor of harassment to behave, especially in a workplace where they may be afraid of retaliation for speaking out. The Bank notes that the “staff members who are on the record in the [Final Report]

complaining about [the] Applicant's behaviors are uniformly of lower grades than [the] Applicant." The Bank further submits that the Applicant's "accusations about what motivations the complaining staff members might have had to lie about him lacked factual support."

82. The Bank also contends that, contrary to the Applicant's assertions regarding the timing of the complaints, "there is no such formal time limit on EBC's work." The Bank submits that the EBC record "shows that the complaints by the staff members were contemporaneous and consistently repeated over the years, even before the World Bank's recent strong emphasis on preventing sexual harassment." The Bank avers, "The fact that their Country Directors over the years chose not to take further action after hearing their complaints should not penalize the survivors or allow [the] Applicant a free pass now."

83. To the Bank, on one side are the "numerous consistent witness statements which all corroborated each other in sketching a long-standing pattern of behavior by [the] Applicant" and on the other "stands [the Applicant], denying the totality of this evidence." The Bank submits that it "must be allowed to make credibility determinations in its work, especially since staff who are under investigation have a significant self-interest in the outcome of the investigation, which can affect their testimony." The Bank contends that the Applicant's denials "seemed formulaic and exaggerated, and [that] EBC reasonably decided not to take them at face value."

84. In this respect, the Bank submits, for example, that the Applicant's denial with respect to being warned about hugging was "directly contradicted by two of the Country Directors [the Applicant] himself suggested that EBC interview." The Bank submits further, with respect to the Applicant's credibility, that he "misstated facts in declarations and communications during [the] investigation," for example the Applicant's "mischaracterization of what happened when he was previously sanctioned" in 2018.

85. The Bank also cites the Applicant's declaration to the Tribunal, "under penalty of perjury," submitted with his initial request for provisional relief, in which the Applicant declared, "Since receiving the Notice of Alleged Misconduct in April of 2022, I have been very cautious in terms of shaking hands with staff, avoiding one-on-one meetings, avoiding closed door meetings, and

speaking about any non-work-related topics, such as the health and well-being of fellow workers or their families.” The Bank contends that this declaration is contradicted by the Applicant’s behavior with respect to Ms. R, the intern, in late 2022 and early 2023.

86. The Bank next submits that the Tribunal should “be skeptical of the veracity of the Anonymous Note.” The Bank questions why the Note was submitted only to the Staff Association and not to EBC, by whom the author purports to have been interviewed, and why the Note was discovered only now “right after” the Bank filed its Answer. Further, the Bank avers that there is no explanation how the author knew of the Staff Association’s involvement in a confidential Tribunal case. In the Bank’s view, the Note’s “mysterious origin, authorship, and its timing, should rob it of any evidentiary value here.” Further, the Bank contends that the Note does not add anything new, as it does not claim that the author, or anyone else, provided false information to EBC.

87. Finally, the Bank contends that EBC and the HRVP correctly determined that the Applicant’s behavior amounted to sexual harassment. The Bank submits that, consistent with the Bank’s definition of sexual harassment, the Applicant “repeatedly engaged in unsolicited physical contact with Singapore staff members,” “made inappropriate comments about staff members’ appearance,” and “made suggestive comments and innuendo.” The Bank avers that the Applicant’s conduct was unwelcome as evidenced by the two warnings he received from different Country Directors. To the Bank, the Applicant’s behaviors “clearly created a hostile work environment for his colleagues.”

The Applicant’s Contention No. 2

The Applicant may challenge the termination of his employment

88. The Applicant contends that he “in no way” waived his right to challenge the termination of his employment by resigning before the termination sanction took effect. The Applicant submits that, although he resigned, “he expressly reserved his right to challenge the ‘sanctions associated with his termination,’ and the Bank agreed that he may do so.” The Applicant contends that, if he “shows that he did not commit misconduct worthy of the sanctions he received, including the

choice to resign or be terminated, he should be allowed to return to the same position at the Bank and his name must be taken off the UN Clear Check list.” To the Applicant,

[a] termination decision is not required to challenge the [HRVP’s] decision to sanction the Applicant. If the Tribunal finds that [the Applicant] did not commit sexual harassment, or misconduct which is serious enough to merit termination, there is no reason why [he] may not return to the Bank and have all other sanctions imposed on him reversed.

The Bank’s Response

The Applicant has waived his challenge to the sanction of termination of employment

89. The Bank contends that, by resigning before the termination sanction took effect, the Applicant waived his challenge to the termination sanction. The Bank submits that the present case should be limited to challenging the non-termination sanctions imposed by the HRVP. The Bank notes that the Applicant’s resignation was “voluntary and effective,” and that the Applicant was not “forced to resign.” Thus, to the Bank, the Applicant has “no basis to seek to reverse his own freely-made decision.” The Bank submits that the Applicant “wanted to, and did, decide to resign” and that “reversing his own resignation decision would not be a ‘[rescission] of the [World Bank’s] decision contested,’ according to the Tribunal’s Statute, Article XII.” As such, the Bank submits that the Applicant “does not have the right to claim reinstatement as a remedy in this case.”

The Applicant’s Contention No. 3

The sanctions are highly disproportionate to the misconduct found

90. The Applicant contends that, even if the allegations of misconduct are true, termination is a highly disproportionate sanction to the alleged misconduct. The Applicant submits that he was accused of “elongated handshakes, asking personal and family questions, and hugs”; that most of the alleged conduct “occurred years ago”; that he was not placed on notice of the allegations or given an opportunity to correct his behavior; and that he has never had a disciplinary action for sexual harassment in his 26-year career at the Bank. To the Applicant, then, termination, “or here a forced resignation and all the punishments associated with termination” as an “initial punishment,” is highly disproportionate.

91. The Applicant notes that he was not found to have committed any of the offenses which warrant mandatory termination under Staff Rule 3.00, paragraph 10.09. The Applicant contends that, applying the proportionality factors listed in Staff Rule 3.00, his alleged conduct “cannot be defined as severe.” In this respect, the Applicant submits that his alleged conduct “cannot compare to other cases of alleged sexual harassment,” stating that his “alleged behavior is not even sexual in nature and cannot be considered serious misconduct.” To the Applicant, “[n]o number of strange greetings coupled with isolated comments could rise to the level of seriousness required for termination. The Bank’s termination sanctions are simply arbitrary and capricious and cannot be supported.”

92. With respect to the frequency of the conduct, the Applicant submits that he is accused of making “two (2) isolated comments which may contain a sexual connotation” and that therefore the frequency of the conduct is “not sufficient to justify termination.” The Applicant also submits that, because he “only visited the Singapore office once every few months,” training, rather than termination, would have been an appropriate sanction in his circumstances.

93. In this respect, the Applicant submits that “the Bank’s own policies distinguish between sexual harassment constituting actionable misconduct versus less serious offenses requiring corrective action short of termination.” The Applicant notes that the Bank’s “Sexual Harassment Action Plan states that the formation of the Office of the Anti-Harassment Coordinator serves to address claims of sexual harassment which do not rise to the level of misconduct,” contending that “the [Office of the Anti-Harassment Coordinator] should have been utilized in this case.”

The Bank’s Response

The sanctions imposed are proportionate to the misconduct found

94. The Bank contends that the sanctions imposed are both provided for in the Staff Rules and proportionate to the misconduct found. The Bank notes that disciplinary measures are imposed on a case-by-case basis, taking into account the seriousness of the matter, any extenuating circumstances, the situation of the staff member, the interests of the Bank Group, and the frequency

of conduct for which disciplinary measures may be imposed. The Bank submits that the sanctions imposed were

based on the facts determined by EBC, but also based on [the] Applicant's prior disciplinary matter, and on the lack of remorse by [the] Applicant. In addition, [the] HRVP is always mindful of the Bank's duty of care to offer all staff an environment free from abuse and harassment, especially when future misconduct is possible.

95. The Bank contends that, as recognized by the Tribunal, "sexual harassment is one of the most serious forms of misconduct" and notes that it has "spent a lot of time and effort over the past few years to improve its response to harassment in the workplace." The Bank submits that the staff members supporting the complaint have "suffered real harm as a result of [the] Applicant's actions." Noting the junior grades of the testifying staff members, the Bank asserts, "[The] Applicant was clearly aware of his relatively higher status within the Bank, and he threatened the witnesses with EBC investigations for cooperating with EBC. Indeed, he filed a cross-complaint for retaliation against [Ms. F, an administrative support staff,] because of her testimony." The Bank submits that

[the] Applicant's comments to EBC, on the Interim Report and the Final Report, show that rather than accept and understand why his behavior was inappropriate and caused harm to other staff members, he frequently threatened the victims of his behavior with investigations and Tribunal actions, claiming that by cooperating honestly with EBC, they were "harassing" him.

96. The Bank also submits that the only extenuating circumstance in the Applicant's case was his cooperation with the EBC investigation, which is required by the Staff Rules. Moreover, this was not a case in which a lack of prior misconduct findings could serve as an extenuating circumstance, as the Applicant was found to have violated the Bank's rules and regulations regarding the employment of a G5 domestic employee in 2018. The Bank avers:

[The] Applicant has had prior misconduct proceedings and a sanction, and as noted below, [the] Applicant did not show remorse or any understanding of how his behaviors harmed staff. Indeed, [the] Applicant's behavior during the EBC investigation with respect to the intern, illustrated that he would not change his behaviors.

97. The Bank further contends that “combatting sexual harassment has been very important” to the Bank for the past several years and that the Bank “is fully committed to providing a safe environment for all Bank staff so that they may do their work free from fear of harassment.” The Bank cites the efforts of its Workplace Culture Taskforce to demonstrate its interest in addressing sexual harassment.

98. The Bank next contends that the frequency of the conduct underlying the sanctions supports their proportionality. The Bank submits that the Applicant engaged in inappropriate behavior “during most of his 43 visits to the Singapore Office.” To the Bank, the “inappropriate conduct was a consistent pattern, undeterred by warnings, and staff’s efforts to be absent from the office during his visits.” Noting that the Applicant’s behavior “continued for years, even into and during the EBC investigation,” the Bank contends that “there is no reason to believe that [the] Applicant would ever change his behaviors.”

99. In response to the Applicant’s assertion that training, rather than termination, would have been an appropriate sanction, the Bank submits that “[the] Applicant should not need more counseling about inappropriate workplace behavior,” as, “[l]ike all staff members, he has participated in the Bank’s Ethics and Anti-Sexual Harassment training”; “[h]e is presumed to be aware of the Staff Rules and the Code of Ethics”; and “two of [his] Country Managers testified to EBC that they expressly and specifically warned him against being inappropriately physical with staff members in Singapore, as early as 2013.” Further, the Bank submits that, contrary to the Applicant’s claim that the Bank should have utilized the Office of the Anti-Harassment Coordinator in this case, the complaints regarding the Applicant’s conduct in the Singapore Office and with respect to Ms. R, the intern, were first directed to the Office of the Anti-Harassment Coordinator which then determined it was appropriate to refer the matters to EBC.

The Applicant’s Contention No. 4

The Applicant’s due process rights were violated

100. The Applicant contends that management, EBC, and HR violated his due process rights. First, the Applicant asserts that he was denied an opportunity to defend against the allegations. The

Applicant submits that staff members have the right to prompt and adequate notice from management regarding concerns with the staff member's employment. The Applicant contends that he "was not made aware of allegations of sexual misconduct until years after the alleged occurrences," which has "resulted in incurable prejudice" to him. While the Applicant recognizes that "there is arguably no statute of limitations applicable to an EBC investigation of misconduct," he submits that here, "if there was sexual harassment that could result in termination, [the Applicant] was denied a reasonable opportunity to defend his conduct, have timely interviews of the accusers, or interviews of other witnesses with fresh memories, pull email documentation or engage in other measures."

101. Next, the Applicant submits that "due process rights afforded to Bank employees also include the right to progressive discipline." The Applicant maintains that he "was not given an adequate warning, which would have reflected the severity of the situation and provided him with an opportunity to change his behavior," noting that "[y]ears passed between the warnings, which [the Applicant] allegedly received, and his termination." The Applicant avers that, "[a]s an open-ended employee, [he] should have been entitled to a meaningful opportunity to correct his behavior, and progressive discipline, if such a change was not enacted." To the Applicant, because he "was not given any coaching, or any other tool to address his behavior before facing termination," his due process rights were violated.

102. Finally, the Applicant contends that he was not afforded a fair, balanced, and impartial investigation. The Applicant submits, "Despite the fact that [he] was an experienced and respected Staff member with no history of sexual misconduct, EBC and HR did not give him and witnesses corroborating his behavior the benefit of the doubt, instead finding [him] and his witnesses to lack credibility." In the Applicant's view, "EBC did not afford the witnesses who did not witness any inappropriate behavior equal weight as compared to those who stated that they experienced the inappropriate conduct." The Applicant submits that there is "no contemporaneous documentation of the sexual harassment" and that "the EBC Report does not justify the credibility awarded to these witnesses [who stated they experienced the inappropriate conduct] and there is no justification based on the totality of the recorded evidence."

103. The Applicant avers that he “reasonably believes that the EBC investigation resulted from a group of coworkers who simply exaggerated claims about a Staff member with whom they did not want to work, due to personality and cultural differences, which resulted in the serious and career-ending accusations of sexual harassment.” To the Applicant, “[t]hese claims were not seriously questioned as they should have been.” The Applicant submits that “EBC should have investigated the cultural norms in Singapore to understand the level of offense felt by Staff members in reaction to [his] alleged conduct,” which, according to the Applicant, could have resulted in appropriate sanctions such as “cultural sensitivity training.” The Applicant further submits that “EBC failed to investigate potential ulterior motives for the timing of the formal complaint of sexual harassment,” which he asserts were related to his potential permanent relocation to the Singapore Office.

The Bank’s Response

The Applicant was accorded full due process rights during the EBC investigation and the HRVP’s decision-making process

104. The Bank contends that, during the EBC investigation and decision-making process, “[the] Applicant was accorded every due process right, consistent with the Staff Rules and the Tribunal’s precedent.” The Bank notes that the Applicant was “given the appropriate notices,” “participated actively” in the process, and was granted extensions of time to file materials when requested. The Bank submits that the Applicant “does not identify any instances where he was denied notice or an opportunity to comment” and asserts that the Applicant “misuses the term ‘due process violations’ to generally refer to actions with which he disagrees.”

105. The Bank notes the due process requirements for EBC investigations and submits that the record “shows that EBC carried out its investigation fully within the parameters set out in Staff Rule 3.00.” The Bank submits that, after EBC found enough evidence to proceed with an investigation, EBC provided the Applicant with a Notice of Alleged Misconduct and interviewed him. Following the interview, the Applicant was provided a transcript on which he could comment and provide a written response, as well as propose additional witnesses. The Bank avers that EBC interviewed three additional witnesses following proposals by the Applicant and determined that

the other proposed witnesses were not relevant to the allegations under review, instead relying on the feedback provided in the numerous character references submitted on the Applicant's behalf.

106. The Bank further contends that the HRVP provided the Applicant with "ample notice and opportunity" to provide his comments on the misconduct findings. The Bank submits that the HRVP met personally with the Applicant before making a final decision, delayed making the final decision to accommodate the Applicant, and agreed to accept the Applicant's resignation before the effective date of the termination.

The Staff Association's Amicus Curiae Brief

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

108. The Staff Association submits that the "punishment of termination, a permanent bar on hiring by the Bank and inclusion on the Clear Check roster are wholly unfounded based on the record in this case." The Staff Association notes its efforts at the Bank to address sexual harassment but avers that it has never been its position that the appropriate way to address sexual harassment is to "summarily terminate any staff member who is alleged to have engaged in sexual harassment irrespective of the factual support for those allegations and the severity of the behavior."

109. The Staff Association submits "that this is a clear case of overreach." To the Staff Association, the allegations "do not meet the most basic definition of sexual harassment inasmuch as they are not sexual in nature." The Staff Association contends that behaviors that may have made the "accuser uncomfortable" do not constitute harassment and that, when the Applicant was told the behaviors made other staff uncomfortable, the behaviors stopped. The Staff Association notes that it supports "strong punishments for sexual harassers in cases where the harassment is severe and/or where it is repeated," but submits that, in this case, where "the alleged behavior was not even sexual in nature, was far from severe, and ceased when the Applicant was made aware of the concerns, such a draconian punishment is entirely disproportionate." The Staff Association further submits that the Note received by the Staff Association "calls into question the already

flimsy evidence that the Applicant’s behavior was sufficiently pervasive and severe as to warrant punishment.”

110. The Staff Association also contends that the Applicant should be able to challenge the sanction of termination, regardless of the fact that he submitted his resignation. To the Staff Association, given that the associated sanctions of permanent exclusion from the Bank and placement on the Clear Check roster remain in place, the Applicant should be able to challenge those sanctions as well as the termination decision upon which they were based.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

SCOPE OF THE TRIBUNAL’S REVIEW

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

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

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

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

does not mean that the Tribunal is an investigative agency. The Tribunal simply takes the record as it finds it and evaluates the fact-finding methodology, the probative weight of legitimately obtained evidence, and the inherent rationale of the findings in the light of that evidence. *Id.*

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

114. Effective 17 May 2023, the Principles of Staff Employment were amended such that Principle 8.3 provides:

The Organizations shall determine whether the evidence supports the conclusion that it is more likely than not that the staff member engaged in misconduct. “More likely than not” means that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the staff member engaged in misconduct.

115. The Tribunal notes the Bank’s contention that, as the HRVP decision was made after the effective date of the amended Principle 8.3, the preponderance of the evidence standard should be applied, while the Applicant contends that “this is a misconduct case resulting in termination of employment” and that the Bank “should have to do more than meet a preponderance of the evidence standard to prove misconduct.”

116. The Tribunal notes that the preponderance of the evidence standard provided for in Principle 8.3 is different than the Tribunal’s long-held jurisprudence that the burden of proof in misconduct cases is that there must be “substantial evidence” “higher than a mere balance of probabilities” to support the finding of misconduct. The Tribunal will thus consider the implications of this new standard codified by the Bank.

117. As recognized by the Tribunal in its first judgment, *de Merode*, Decision No. 1 [1981], para. 27, the Tribunal, in deciding on the internal disputes between the Bank and its staff, “must apply the internal law of the Bank as the law governing the conditions of employment.” Further, in *N*, Decision No. 356 [2006], para. 19, the Tribunal explained, “The cardinal rules governing

staff rights and duties are those contained in the Principles of Staff Employment, which establish the constitutional foundations on which the Staff Rules and other regulatory elements are based.”

118. From its first judgment, the Tribunal has recognized the power of the Bank to unilaterally amend the conditions of employment of its staff, subject to limitations against retroactivity or abuses of discretion. *De Merode* [1981], paras. 35, 48.

119. The Tribunal wishes to note the practices of the tribunals of other international organizations. The United Nations Appeals Tribunal (UNAT), for instance, stated in *Molari v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-164, para. 30:

Disciplinary cases are not criminal. Liberty is not at stake. But when termination might be the result, we should require sufficient proof. We hold that, when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable.

Likewise, the Inter-American Development Bank Administrative Tribunal, in *José Jesus Lovo Parrales v. IDB*, Judgment Case No. 102 (2021), para. 127, stated that it would “apply the standard of proof adopted by the United Nations Appeals Tribunal and by the [World Bank Administrative Tribunal].”

120. The International Labour Organization Administrative Tribunal (ILOAT), uniquely, has held that “the burden of proof rests on an organisation to prove allegations of misconduct beyond a reasonable doubt before a disciplinary sanction can be imposed.” *A (No. 2) v. FAO*, ILOAT Judgment No. 4227 (2020), para. 6.

121. By contrast, the tribunals of the International Monetary Fund (IMFAT), the African Development Bank (AfDBAT), and the Asian Development Bank (ADBAT) all apply a preponderance of the evidence standard. In *Ms. “EE” v. International Monetary Fund*, Judgment No. 2010-4, paras. 54, 65, the IMFAT recognized the organization’s application of the preponderance of the evidence standard of proof. The AfDBAT, in *J.O. v. African Development Bank*, Judgment No. 150 (2021), para. 86, held that, in disciplinary proceedings, “[t]he standard

of proof is not proof beyond reasonable doubt as in criminal cases but is on a balance of probabilities.” In *Mr. K v. Asian Development Bank*, Decision No. 117 (2018), para. 89, the ADBAT stated:

Before imposing disciplinary measures, the [respondent] had a duty to show by a “preponderance of the evidence” that the [a]pplicant had engaged in misconduct. This term means “evidence which is more credible and convincing than that presented by the other party. In cases of misconduct, it is a standard of proof requiring that the Evidence as a whole shows that it is more probable than not that the staff member committed misconduct.”

122. The Tribunal thus observes that the application of a preponderance of the evidence standard, though not universally applied, is consistent with the practices of the tribunals of some other international organizations.

123. The Tribunal considers that it was within the Bank’s power to amend the conditions of employment through a provision in the Principles of Staff Employment stating that the applicable standard of evidence in disciplinary proceedings is a preponderance of the evidence standard. The Tribunal finds no legal basis to disregard this new standard of evidence.

124. The revised Principle 8.3 of the Principles of Staff Employment is silent as to the date of application of the new evidence standard, creating ambiguity as to whether it applies at the date of the acts alleged to constitute misconduct by the staff member, the date the determination is made by the Bank that such acts constitute misconduct, or some interceding date such as the date of a Notice of Alleged Misconduct which crystallizes a complaint. The Tribunal considers that generally retroactive application of law to the detriment of a staff member is not allowed. *See de Merode* [1981], para. 46. The Tribunal considers that procedural fairness dictates that such ambiguity be resolved for the benefit of the staff member who is alleged to have committed misconduct.

125. To avoid concerns of procedural fairness, the Tribunal considers that it will review misconduct determinations in respect of acts occurring before 17 May 2023 applying a standard of “substantial evidence.” It will review misconduct determinations in respect of acts occurring on or after 17 May 2023 applying a preponderance of the evidence standard. The acts forming the

basis of the complaints in the Singapore Office having occurred prior to 17 May 2023, the Tribunal will review the present case in light of the substantial evidence standard.

THE EXISTENCE OF THE FACTS

126. The Tribunal will first consider whether the record supports EBC’s findings of facts regarding the Applicant’s behaviors underlying the misconduct found.

127. The Tribunal recalls that the Final Report concluded that EBC had determined that there was “sufficient evidence” to substantiate the allegations of Ms. F, an administrative support staff, that the Applicant “engaged in sexual harassment towards her.” The HRVP noted in her decision letter, “The EBC record shows that for several years [the Applicant] engaged in a pattern of unwelcome inappropriate behavior of a sexual nature, and [his] conduct had a negative impact on the staff members in the Singapore Country Office.”

Sexual harassment toward Ms. F

128. The Tribunal considers that the following behaviors were found by EBC to have supported its findings that the Applicant engaged in sexual harassment toward Ms. F: (i) physical contact causing discomfort, and (ii) comments about appearance or physical characteristics.

129. With respect to the first behavior, during her interviews with EBC, Ms. F stated, “The thing – my problem with [the Applicant] because maybe this is, you know, the – I’m sorry – maybe the western culture that he’s very – he likes to hug, you know, hug people.” Ms. F also demonstrated to the EBC investigators how the Applicant would shake her hand, captured in the following exchange:

[Ms. F]: [...] [W]ith me what he likes, you know, he likes to touch and like your hand, you know, he likes to oh, you know, touching you like this –

[EBC]: So good. Thank you, [Ms. F]. For the record I’m going to describe the type of touching that you’re showing because we are also video here. So, the touching

you're describing is like he basically touches like your – from your middle arm from above your elbow –

[Ms. F]: Yeah.

[EBC]: – all the way down to your hand like rubbing it, like –

[Ms. F]: Yes.

[EBC]: – softly, sliding his hand over your arm. And he has done that to you?

[Ms. F]: Yeah. He did that to me, he likes to hug, you know.

130. Ms. F further described the Applicant's hugs as follows:

I told – I told [Director D] also that, you know, – because I know if you know staff sometimes, you know, we just hug because, you know, we feel friends, right. Like with [Country Director C] my boss, you know, [Country Director C], we hug, you know, each other when we have celebration, but I don't feel, you know, this is the pure hug as friends like as, you know, brother, sister, you know, but different with [the Applicant] when you, you know, when he hugs you, I have a different feeling, you know. Because I know his attitude. I just – I know – I just know that because also what he did, you know, I know I that. I sense it, you know. That's why I don't like to – if he hugs me or if he comes, you know, only shake hands like this is okay. But if his hand he always, you know, touching, touching giving this one, so I really – I did not like it.

131. Ms. F also described her reaction to the Applicant's physical behaviors and why she believed the Applicant had a feeling she did not want to be close to him: "Because when he came – when he wants to shake my hand I don't want to, you know, shake his hand and I don't want to even close to – physically close to him. So, I always pretend that I'm busy, I don't have time. That's what I – that's what I did." Ms. F stated in her interviews that her experience with the Applicant began in 2012 and that she gradually began avoiding him around 2015 or 2016.

132. The record demonstrates that four other witnesses stated to EBC that they had similar experiences with the Applicant with respect to physical contact causing discomfort. Ms. G, a Program Assistant, stated to EBC that the Applicant was "too friendly" and "touchy-touchy," demonstrating to EBC how the Applicant would touch and pat her shoulder. Ms. G explained that

when the Applicant would be “touchy-touchy,” she would distance herself to avoid “uncomfortable moments.”

133. Mr. H, the IT Officer, stated to EBC that, beginning in 2011, the Applicant would greet him every time he was in Singapore by holding Mr. H’s hand with both hands while massaging and squeezing it for ten to fifteen seconds, would sometimes also touch the lower part of Mr. H’s arm while greeting him, and, on one occasion, hugged Mr. H “cheek to cheek.”

134. In her interview with EBC, Ms. J, the Receptionist/Team Assistant, stated that she was uncomfortable the first time the Applicant shook her hand because it was “strangely long,” “about two minutes,” and the Applicant held her hand with both of his hands, but that she realized he greeted “whoever he meets” the same.

135. Ms. L, a Financial Officer, stated in her EBC interview that, during her first year with the Bank, the Applicant would pat her hand and lower arm which initially made her uncomfortable. Ms. L also stated that the Applicant would greet her with a hug, but that for her it “was no issue” because she saw “the Applicant did it to everyone.”

136. In addition, in his interview with EBC, Country Director B stated that, while this behavior did not make him uncomfortable, the Applicant would hug him and that “it was more a Latin American hug rather than an East Asian.”

137. The record also demonstrates that seven witnesses told EBC that they either saw or were told by Ms. F at the time about the Applicant’s physical behaviors toward her. Mr. H and Ms. J both stated in their interviews with EBC that they saw the Applicant shake Ms. F’s hand similarly to how they described he would shake their hands.

138. Ms. G; Mr. I, the Senior Resource Management Officer; and Ms. P, the Operations Assistant, each told EBC that Ms. F would complain to them about how the Applicant would hold, rub, or pat her hand while shaking it. Country Director B told EBC that, sometime in 2012 or 2013, Ms. F told him that she was uncomfortable with the Applicant’s hugs. Finally, Director D stated

in her EBC interview that, around 2018, Ms. F told her that the Applicant “acts very familiar with the support staff” and that his handshake “lingers a little bit longer.”

139. With respect to the second behavior, comments about appearance or physical characteristics, Ms. F stated in her interviews with EBC that, each time the Applicant visited Singapore, he would make comments such as the following:

[O]h [Ms. F] you gained weight, you look fat and then when he comes out and he came back again after like several months, oh, you lost weight, you look great, you look sexy, you look hot and things like that, you know. This is how, you know, the wordings that he said to me. But I never, you know, respond to that, you know, but it just – I don’t feel comfortable with that.

Ms. F elaborated that, when the Applicant would make such comments, he would look at her “[f]rom top to bottom.” Ms. F also stated that the Applicant called her “sexy” on one occasion, describing the incident as follows:

[Ms. F]: [...] But I remember the dress that I wore, why he said that. It was a black dress. Yeah, he said that, I don’t think –

[EBC]: What did he say when you were wearing a black dress?

[Ms. F]: Oh, you look so sexy. Your body is really perfect. Something like that, you know, he just appraised my body.

[EBC]: I see.

[Ms. F]: Yeah.

[EBC]: Is that what he said, along the lines, your body looks so perfect?

[Ms. F]: Yeah. You look so sexy, you look like, just, you know, a little grade, you know. I forgot exactly what word, but he elaborate more on how I look that day.

[EBC]: I see. So it was a phrase along the lines of, your body looks so perfect?

[Ms. F]: Something like that, you know. After he said you look sexy, and then he say more other, you know, sentences that I forgot exactly, but I only remember that he said it looks sexy. But it was short sleeve, it’s not sexy open, no, it’s like – oh, I tuck in up to here – it was short sleeves up to here but it has with a belt. And up to – below my knees. It’s just, not a sexy dress, really.

Ms. F stated that she did not tell any of her colleagues about these comments.

140. The record demonstrates that two other witnesses recalled to EBC similar experiences with the Applicant with respect to comments about physical appearance or characteristics. Ms. L, a Financial Officer, stated in her EBC interview that on one occasion the Applicant told her to style her hair differently, and that she did what he told her because she thought, ““Oh my God. Is this – maybe managers, they don’t like it?” So [she] immediately changed.” Ms. L also stated that she thought later maybe the Applicant was joking with her. Ms. L further stated that the Applicant often told her that she looked “beautiful” but that she was not uncomfortable because it was a “good word.”

141. In her interview with EBC, Ms. O, a Program Assistant, stated that, on one occasion when the Applicant called her to his office to introduce himself, he told her, “You look good” while rubbing his hands together.

Unwelcome inappropriate behavior of a sexual nature

142. The Tribunal will next review the following behaviors which were found by EBC to have supported its findings that the Applicant engaged in a pattern of unwelcome inappropriate behavior of a sexual nature: (i) inappropriate physical contact; (ii) comments about appearance or physical characteristics; (iii) questions and comments on private matters that some found intrusive; and (iv) other inappropriate questions or comments that made staff members uncomfortable. With respect to the first two behaviors, the Tribunal recalls the witness statements described in paragraphs 129 through 141 above.

143. With respect to the third behavior, questions and comments on private matters that some found intrusive, the record demonstrates that four witnesses described to EBC instances of the Applicant asking intrusive questions or commenting on private matters. Ms. J, the Receptionist/Team Assistant, recalled to EBC an incident sometime in 2014 when she told the Applicant she was busy over the weekend and he questioned “[w]hat family commitments” she had and where she was going. Ms. J further stated to EBC that, on around three occasions after

this, the Applicant would make comments to her such as “I know you are busy over the weekend. Otherwise, I would have invited you over for dinner.”

144. Ms. N, a Financial Officer, described to EBC that the Applicant would ask questions because “he wants to get close,” but that she would “draw the line”: “So, yeah, so I’ll draw the line, whatever question about my husband, about my children, about whatever, my work, I will draw the line. Yes, I consciously do that. So, we are not there at all.”

145. Ms. O, a Program Assistant, described to EBC an instance when the Applicant called her into his office to introduce himself to her and asked “whether or not [she was] married and – or [was she] still single,” explaining that he gave her an uneasy feeling with his body language and look during this conversation. This was the same encounter as when the Applicant told her she “look[ed] good,” described in paragraph 141 above.

146. With respect to the fourth behavior, other inappropriate questions or comments that made staff members uncomfortable, the record demonstrates that four witnesses told EBC of instances when the Applicant asked or made inappropriate questions or comments that made them uncomfortable. Mr. H, the IT Officer, told EBC that, around 2012, the Applicant asked him how he could find a place in Singapore that “provide massage with the extra service for the sexual services,” which made him surprised and uncomfortable.

147. Ms. J, the Receptionist/Team Assistant, told EBC that, in 2014 when she first met the Applicant, he asked her to come to his office and invited her to his hotel for dinner or drinks over the weekend, which made her uncomfortable as she did not have “any work-related matters to discuss with him.”

148. Ms. L, a Financial Officer, explained to EBC that, during her first year working at the Bank, the Applicant would make her uncomfortable by telling colleagues that he and she were “very close.” Ms. L told EBC further that, despite “feeling scared,” she eventually spoke out when the Applicant said they were close and the behavior stopped.

149. The Tribunal will next consider the record with respect to whether there was a negative impact on the staff in the Singapore Office as a result of the Applicant's behaviors. As noted in the preceding paragraphs, many of the witnesses testified before EBC that the Applicant's physical and verbal behaviors toward them made them uncomfortable. Several witnesses also told EBC that Ms. F, an administrative support staff; Ms. G, a Program Assistant; Ms. J, the Receptionist/Team Assistant; and Ms. P, the Operations Assistant, would make facial expressions, sounds, or otherwise express discomfort when discussing that the Applicant would be visiting the Singapore Office.

150. Further, Ms. F stated in her EBC interview that she told Director D that she would take leave if the Applicant came to Singapore because she was not comfortable with him in the office. Country Director C also recalled to EBC that Ms. F would ask not to be in the office when the Applicant came to Singapore but did not explain why. Ms. P told EBC that she believed both Ms. F and Ms. J told her they did not want to be in the office when the Applicant was there. While the Bank has submitted leave records of Ms. F before the Tribunal to support witness testimony that she took leave when the Applicant visited Singapore, the Tribunal notes that such records were not part of the evidence upon which the misconduct decision was based, and thus the Tribunal will not consider whether such evidence justifies the misconduct decision now. *See Cissé*, Decision No. 242 [2001], para. 30.

151. Having reviewed the record with respect to witness testimony, the Tribunal will next consider the Applicant's statements with respect to the allegations. In his interview with EBC, written response to the allegations, and responses to the draft investigation report, the Applicant vehemently denied all the allegations made by Ms. F, an administrative support staff, and the other witnesses interviewed by EBC. The Applicant stated that his interactions with Ms. F were limited to "Meet and Greet," he only sporadically shook her hand and the handshake was typical of a professional or business handshake, and he never made any comments to her or anyone else about their physical appearance.

152. In his responses to the draft investigation report, the Applicant alleged that Ms. F's "motive" for filing the complaint against him was retaliation for his "not fulfilling personal favors

(and career advancement help)” for her. The Applicant alleged that, starting in 2012, Ms. F requested that he bring luggage to or from Washington, D.C., for her when he traveled to Singapore, but that, around late 2015 or early 2016, he “had to politely decline” her requests due to inconvenience. The Applicant alleged that, after he stopped bringing her luggage, Ms. F’s attitude and behavior changed and she created a hostile environment for him. The Applicant further suggests that Ms. F’s “100% enmity” toward him began “day one” and that Ms. F was “visibly insecure and jealous” of the Applicant’s connections. The Applicant alleges that Ms. F was using the “Sexual Harassment Vehicle” to “reputationally challenge and tarnish [his] name [...] to accomplish her long pending wish.”

153. The Tribunal is not convinced by the Applicant’s allegations. First, the Tribunal observes, as noted by EBC and the Bank, that Country Director B stated to EBC that Ms. F first raised her concerns regarding the Applicant’s hugging to him sometime in 2012 or 2013, long before the Applicant allegedly stopped bringing Ms. F’s luggage to and from Washington, D.C. Moreover, as noted by the Bank, ceasing to do personal favors for a colleague does not constitute a protected activity under the Bank’s definition of retaliation.

154. The Tribunal further observes that the Applicant’s claims regarding Ms. F’s ulterior motives emerged in his successive responses to EBC, with the Applicant claiming in his final responses to EBC that Ms. F began threatening him during his first two visits to the Singapore Office in 2011, telling him, “You will know my power and strength in Singapore office and HQ [Headquarters]. I will make you touch my feet for help,” and that “she was planning for a big attack” in 2014. The Tribunal does not find that there is anything in the record to support the Applicant’s eventual version of events.

155. The Applicant questions the credibility of Ms. F because, in his view, her conduct was inconsistent with that of a person who was being harassed by the Applicant. The Tribunal agrees with the Bank and considers that there is no “right way” for a person subjected to harassment to behave, especially in a workplace. The Tribunal notes that Ms. F was in a position where she was required to continue a work relationship with the Applicant. Further, of two email exchanges submitted by the Applicant relating to luggage requests made by Ms. F, the Tribunal observes that

one was made in reply to an email from the Applicant stating, inter alia, “How is your family?. Take good care. Please inform your sister that she can call anytime my number or [my wife’s] number. We are here to help. Please feel free.” The Tribunal finds that Ms. F’s continued work relationship with the Applicant has little bearing on whether the alleged behaviors occurred.

156. The Tribunal notes the Bank’s submission that EBC was reasonable in its adverse credibility determination against the Applicant as the Applicant’s denials “seemed formulaic and exaggerated” and he mischaracterized his 2018 misconduct sanctions to EBC.

157. The Tribunal now turns to the testimony of Ms. R, the intern at Bank Headquarters, whom the Applicant met in September 2022 while, the Tribunal notes, the EBC investigation was ongoing. The Tribunal notes the Applicant’s declaration to the Tribunal that, after receiving the Notice of Alleged Misconduct in April 2022, he was “very cautious in terms of shaking hands with staff, avoiding one-on-one meetings, avoiding closed door meetings, and speaking about any non-work-related topics, such as the health and well-being of fellow workers or their families.” This is contradicted by Ms. R’s statements to EBC regarding her experiences with the Applicant beginning in September 2022.

158. Ms. R told EBC in her interview that the Applicant would discuss personal matters with her. Ms. R stated:

I don’t remember what meeting it was, but since I always felt a bit uncomfortable, I felt the need to mention that I have a boyfriend, that I’m in a relationship. And I just mentioned something that my boyfriend had visited. I don’t know if – I think he visited in November, but I mentioned it in December sometime. And then he asked questions like, yeah, what does your boyfriend do? And where is he now? And a lot of like detailed question on what, like, my – like [my supervisor and his manager] would have never asked. Like there would – my other professional contacts here would have never asked those questions to me, like what does my boyfriend do and these kind of things. So, these were personal things that we exchanged.

159. Ms. R described to EBC an instance when the Applicant stopped by her office and his comments made her uncomfortable to the point that she decided to withdraw her character reference for the Applicant:

[Ms. R]: Yeah, yeah, yeah. So, he said that I wasn't in the office and then he asked me were you on holiday? And then I said, yes, I was in California doing a road trip. And then he asked me, oh, you can drive? And I was – I said yes. And then he said, oh, yeah, you are really the full package. And then I was very confused and I just laughed and I was just like, oh, god, like why is he saying “full package”? I think that's just like a very unprofessional and inappropriate thing. I mean, it's just –

[EBC]: Take your time. Take your time.

[EBC]: Would you like some water, [Ms. R]?

[EBC]: Do you want us to pause to give you some minutes to compose yourself?

[Ms. R]: No, it's fine. It's fine. It's fine.

[EBC]: It's fine?

[EBC]: But just for the record, I mean, you're becoming a little bit emotional and you're crying. We know it's difficult to go through this incidents or episodes, so take your time. We can bring you some water, give you some tissues here.

[Ms. R]: Thank you.

[EBC]: Would you like to take a short break? It will be fine.

[Ms. R]: No, it's fine. I mean, yeah, so it was just two words, but I've – and – but I've – just like in that moment I just realized, okay, like, that uncomfortable feeling kind of that he was – that was kind of correct and I shouldn't have – like, just like in the 10 minutes afterwards and also like the whole evening when I went home, I just realized I shouldn't have written that character reference because I just didn't know what had actually happened. It was actually – what is actually like a previous sexual harassment case. Like I didn't question it in the whole time of November until, like, Christmas when I went home and I just felt like I didn't want to go back to the internship. And I just didn't know why, but then – I asked myself, okay, what are the reasons why I don't want to go back to D.C.? And then I just also realized maybe that's because of that person, but maybe not. I was just, yeah, like very confused. But in the time after sort of my master's thesis deadline and I had, like, still some personal, like, university things, I just – yeah, until that time with the “full package”. And then that just really hit. I realized that I should never had written that character reference because I didn't believe what I really wrote. And in that moment I just wanted to write, like, a professional email to kind of take it off. And yes, and at that point, because I went home and I felt just very bad – because even though it's just two words, it's just like I've never had in a professional environment that someone said anything that was going into a direction of something more I don't know if you can say flirty, but just for me, yeah.

Ms. R also told EBC that, during this instance, the Applicant stated something like she “should stay in contact with him until the day he dies” or “until the end of his days.”

160. Separately, in her interview with EBC, Ms. R also discussed the negative impact of the Applicant’s behaviors toward her. Specifically, Ms. R described the shock and stress related to the Applicant requesting that she write a character reference for him and that, while she was home for the holidays following the Applicant’s request, she “felt like [she] didn’t want to go back to the internship,” partly because of the Applicant. In addition, Ms. R told EBC that, after the Applicant made the comment that she was the “full package,” she “didn’t feel safe in [her] office because [she] knew [the Applicant] was walking past and forth,” so she would keep her office door closed when her supervisor was working from home. Ms. R further stated that she canceled subsequently scheduled meetings with the Applicant and a meeting set up with a program manager with whom he had connected her because she “didn’t want to owe him anything.”

161. The Tribunal notes that Ms. R is not a complainant in this matter and that her testimony is not probative of the events that occurred in the Singapore Office. However, the Tribunal finds that Ms. R’s testimony is relevant as to the credibility of the Applicant.

162. Having reviewed the record, the Tribunal finds not unreasonable EBC’s conclusion that the Applicant’s denials were “formulaic and exaggerated.”

163. Regarding the Applicant’s statements with respect to his 2018 misconduct sanctions relating to his employment of a G5 domestic employee, having reviewed the contemporaneous emails between the Applicant and HR, the Tribunal considers that it would not be unreasonable for the Applicant to have been confused as to whether the written censure remained in his personnel file. Nonetheless, based on the totality of the record, the Tribunal finds that it was reasonable for EBC to find the Applicant not credible.

164. The Tribunal observes that included in the Final Report are 57 character reference letters from current and former Bank staff and others submitted on behalf of the Applicant (not including

the letter Ms. R requested to withdraw). The Tribunal recalls that Ms. R stated before EBC that the Applicant dictated to her what to include in her now withdrawn letter but notes that there are no allegations in the record undermining the remaining letters. The Tribunal observes that the character reference letters largely provide a positive image of the Applicant based on the experiences of their authors. As the letters do not speak to any of the behaviors or events that form the basis of the misconduct findings, the Tribunal finds that the letters have little evidentiary value in determining the existence of the facts.

165. The Applicant also asks the Tribunal to consider the anonymous Note submitted to the Staff Association, purportedly from a female staff member in the Singapore Office. The Tribunal finds that this Note has no evidentiary value based on its unclear origins and further observes that the Note does not claim that any false information was provided to EBC in the course of its investigation.

Conclusion as to the existence of facts

166. After its review of the record, the Tribunal observes that, on the one hand, there are the consistent testimonies of Ms. F, an administrative support staff, and five other witnesses alleging similar physical and verbal behaviors by the Applicant toward them, as well as the testimonies of five witnesses alleging other verbal behaviors by the Applicant toward them. On the other hand, there are the Applicant's denials of all of the alleged conduct. Further, the Tribunal was not persuaded by the Applicant's claims that Ms. F was orchestrating the misconduct investigation out of jealousy or in retaliation and has already determined that EBC was reasonable in doubting the Applicant's credibility.

167. Based on the totality of the evidence, the Tribunal finds, using the standard of substantial evidence higher than a balance of probabilities, that EBC was reasonable to conclude that the Applicant engaged in the following behaviors: (i) physical contact causing discomfort toward Ms. F and others; (ii) comments about appearance or physical characteristics toward Ms. F and others; (iii) questions and comments on private matters that some found intrusive; and (iv) other inappropriate questions or comments that made some staff members uncomfortable. The Tribunal

further finds, based on substantial evidence higher than a balance of probabilities, that these established behaviors had a negative impact on staff in the Singapore Office.

WHETHER THE ESTABLISHED FACTS LEGALLY AMOUNT TO MISCONDUCT

168. The Tribunal will next consider whether the above established facts legally amount to misconduct. The Tribunal recalls that the HRVP determined that the Applicant engaged in misconduct as defined under Staff Rule 3.00:

(i) Paragraph 6.01 (e): Harassment; contributing to a hostile work environment.

(ii) Paragraph 6.01 (b) – Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct.

(iii) Paragraph 6.01 (c) – Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3.1 (c) of the Principles of Staff Employment, including the requirements that staff avoid situations and activities that might reflect adversely on the Bank Group (Principle 3.1) and conduct themselves at all times in a [manner] befitting their status as employees of an international organization (Principle 3.1 (c)).

(iv) Code of Conduct: Living Our Values: Sexual Harassment – “Sexual harassment is any unwelcome sexual advance, request for sexual favor, or other verbal, nonverbal or physical conduct of a sexual nature that interferes with work, is made a condition of employment, or creates an intimidating, hostile, or offensive work environment.”

Misconduct under Staff Rule 3.00, paragraph 6.01 (e) and the Code of Conduct: Living Our Values: Sexual Harassment

169. The Tribunal will begin its analysis by considering whether the established facts amount to harassment under Staff Rule 3.00, paragraph 6.01 (e) and, more specifically, sexual harassment as defined in the Code of Conduct, in effect during the relevant times.

170. In *CK*, Decision No. 498 [2014], the Tribunal examined the finding of sexual harassment by looking at whether “the conduct in question was of a sexual nature” and “whether the [subject] knew, or should have known that it was unwelcome.” *Id.*, para. 83. *See also FC*, Decision No. 615

[2019], para. 138. The Tribunal will do the same here. Noting the definition of sexual harassment in the Code of Conduct, the Tribunal will also consider whether the Applicant's conduct created an "intimidating, hostile, or offensive work environment."

Whether the established behaviors were sexual in nature

171. In *CK* [2014], para. 81, the Tribunal determined that the conduct at issue in that case was sexual in nature in part because the record made clear that it "stemmed from the [a]pplicant's admitted physical attraction to the [c]omplainant." While physical attraction was a component of the applicant's conduct in *CK* [2014], the Tribunal wishes to clarify that physical attraction or sexual desire or appetite on the part of the harasser is not necessary for finding that conduct is sexual in nature. The Tribunal further stated in *CK* [2014], para. 78:

Invariably, an assessment of whether conduct amounts to sexual harassment involves a review of both subjective and objective factors; whether the complainant perceived sexual harassment, and equally importantly, whether the applicant's conduct, physical or otherwise, would be perceived as sexual harassment by a reasonable person. The complainant's personal characteristics such as age and employment status are also relevant. The central question is whether a reasonable person would consider the [a]pplicant's conduct amounted to sexual harassment of the [c]omplainant. The [a]pplicant's conduct must be assessed in context.

172. The Tribunal notes that, in determining whether conduct is sexual in nature, it will consider both the subjective perception of the person subjected to the conduct and the objective perception of a reasonable person considering the conduct under the circumstances. Neither the intent of the perpetrator of the conduct nor the absence of sexual interest or desire on his or her part is determinative of whether conduct is sexual in nature. In addition to including conduct commonly understood to be sexual harassment such as groping, making advances, or soliciting sexual favors, sexual harassment can also, depending on the context, encompass more subtle conduct.

173. As established above, the Applicant was found to have engaged in both physical and verbal conduct which made Ms. F, an administrative support staff, and other staff in the Singapore Office uncomfortable. Specifically, the behaviors established included the following:

- Elongated handshakes while rubbing the arm and massaging, squeezing, or patting the hand;
- Hugs;
- Comments toward female staff members about appearance or physical characteristics, such as commenting on weight or hair, or saying they looked “good” and “sexy”;
- Asking female staff members questions about their family commitments, marital status, and relationships that some found intrusive; and
- Asking or making otherwise inappropriate questions or comments, such as asking a junior, female staff member to come to his hotel for drinks or dinner over the weekend and telling colleagues that he and a junior, female staff member were close.

174. In determining whether the above behaviors were sexual in nature, the Tribunal will have regard to both the perception of the staff members who were subjected to the behaviors and the perception of a reasonable person in consideration of the circumstances. In this respect, the Tribunal notes that each of the witnesses who testified to have experienced the above conduct described to EBC their discomfort caused by the Applicant’s behavior.

175. Certain of the Applicant’s behaviors, on their own, may reasonably be considered to be sexual in nature. The Tribunal finds that commenting on a female staff member’s body and telling her she looks “good” or “sexy” may reasonably be considered suggestive and sexual in nature. The Tribunal also finds that the Applicant, a senior, male staff member while on mission travel, asking a junior, female receptionist to come to his hotel during the weekend for drinks or dinner, without any business reason for doing so, may reasonably be considered to cross the bounds of appropriate workplace behavior into behavior that is potentially sexual in nature.

176. With respect to the remaining behaviors, the Tribunal considers that the Applicant’s conduct must not be viewed in a vacuum; rather, the Tribunal will assess whether a reasonable person would consider his conduct to be sexual in nature under the circumstances. Behavior that is not explicitly or overtly sexual may still amount to sexual harassment because of the context in which it occurred, having regard to factors such as the position of the perpetrator or the identity of the person subjected to the behavior.

177. As an example of how such factors may be considered, the Tribunal looks to the IMFAT judgment in *Ms. "GG" (No. 2) v. International Monetary Fund*, Judgment No. 2015-3. In that case, the applicant alleged that her department director sexually harassed her by advising her to be more "charming" as a form of career feedback. Though the IMFAT found that the remarks did not constitute sexual harassment as they were not necessarily sexual in content, it determined that the applicant was reasonable in perceiving that the remarks had gendered implications and formed part of a pattern of unfair treatment constituting a hostile work environment. *Id.*, paras. 256–62. In making this determination, the IMFAT noted that the remarks, whatever their intent, "were related to the fact of [the applicant's] gender." *Id.*, para. 258. The IMFAT also considered the reactions of staff members similarly situated to the applicant in determining the reasonableness of the applicant's perception. *Id.*, para. 259.

178. It is with these considerations in mind that the Tribunal will review the remaining behaviors. Turning first to the physical conduct, the Tribunal recognizes that handshakes and hugs between colleagues are not inherently problematic. The question is, then, whether, under the circumstances, Ms. F, an administrative support staff, and the other witnesses were reasonable in perceiving the Applicant's physical conduct as inappropriate and sexually harassing.

179. The Tribunal first notes that the Applicant's style of handshake, as described by Ms. F and others, is unnecessarily physical and imposing and as such goes beyond the norm for a professional greeting. Witnesses described their hands being held by both the Applicant's hands while he either massaged, squeezed, or rubbed their hand or forearm. With this behavior, the Applicant transformed an act that is commonplace in a professional setting into a gesture that could reasonably have been perceived in the circumstances by Ms. F and others as inappropriately intimate.

180. Further, the Tribunal considers the testimony of Mr. H, the IT Officer, who stated to EBC that, despite feeling uncomfortable about the Applicant's handshake, "I don't know what to do probably because of this Bank staff from high level coming from D.C. So, we are just like, oh,

okay. For me, I let it happen for me.” Mr. H also explained to EBC that he did not know what to do in response to the Applicant’s handshake because he was “new in the Bank.”

181. The Tribunal considers that Mr. H’s testimony supports a finding that the Applicant’s real and perceived seniority contributed to the discomfort of those subjected to the Applicant’s physical behaviors. In this respect, the Tribunal notes that one of the witnesses who testified to not being uncomfortable with the Applicant’s behavior, Country Director B, was a male staff member in a position of seniority to the Applicant. By contrast, witnesses such as Ms. F who testified to their discomfort were support staff in a position junior to the Applicant.

182. The Tribunal next considers whether the remaining verbal behaviors, including questions regarding family and relationships and comments implying closeness, can reasonably be perceived as sexual in nature. The Tribunal notes that the witnesses testifying to these behaviors – Ms. J, the Receptionist/Team Assistant; Ms. L, a Financial Officer; and Ms. O, a Program Assistant – were all female and in positions junior to the Applicant, and it will consider the Applicant’s behaviors with these factors in mind.

183. The Tribunal considers that the Applicant’s telling colleagues that he and Ms. L were “close” implies familiarity and intimacy, considering Ms. L’s sex and junior position. Similarly, the Applicant’s questions and comments about the social lives of Ms. J, Ms. N, and Ms. O could reasonably have been taken as inappropriately intrusive in the circumstances. While personal conversations about relationships may be an acceptable part of workplace collegiality between peers, the Tribunal notes that the present case involves a senior male staff member on mission travel interacting with junior or young female staff members.

184. In sum, based on the totality of the evidence, the Tribunal concludes, based on the foregoing, that the Applicant’s established behaviors are reasonably considered sexual in nature.

Whether the Applicant knew or should have known that his behavior was unwelcome

185. In considering whether the Applicant knew or should have known that his behavior was unwelcome, the Tribunal observes the testimonies of Country Director B and Director D, who each stated to EBC that they had a conversation with the Applicant regarding his behavior toward the front office staff in Singapore. Specifically, the record demonstrates that, some time in 2012 or 2013, Country Director B told the Applicant that his hugging behavior was making staff in the Singapore Office uncomfortable. Further, Director D testified that, around 2018, she had a conversation with the Applicant in which she warned him to be “careful” in his behavior with the Singapore front office staff. In view of these warnings, the Tribunal finds that the Applicant knew, as early as 2012 or 2013, that at least some of his behaviors were unwelcome. Further, the Tribunal also considers that, even if other physical or verbal behaviors were not specifically mentioned in the conversation with Country Director B, the Applicant should have been on notice at that time that his behaviors may not be welcomed as he intended them.

186. The Tribunal also observes that the Applicant was explicitly put on notice that his behaviors were perceived as unwelcome sexual harassment when he received the Notice of Alleged Misconduct. The Tribunal considers it reasonable to conclude that, after this time, the Applicant should have been aware that some of his behaviors were unwelcome, yet he continued to engage in similar behaviors with Ms. R, the intern. This is consistent with some obliviousness on the part of the Applicant as to the effect on young or junior female staff members of certain of his behaviors.

187. In *CK* [2014], para. 85, the Tribunal recognized that a

junior staff member may find it difficult to express her discomfort to her supervisor for fear that it might disadvantage her in connection with her employment. The Tribunal finds the [c]omplainant’s statement that she did not want to appear unfriendly by expressing her discomfort compelling. Rather than seeking express signals of discomfort, the [a]pplicant should have been aware that a young and junior staff member holding a precarious employment contract is limited in her ability to clearly inform her supervisor that his physical contact with her is unwelcome. The Tribunal also observes that silence on the part of a complainant of sexual harassment that a particular conduct, physical or otherwise, of a sexual

nature is unwelcome does not change the legal character of the conduct as sexual harassment.

188. The Tribunal considers that the reasoning in *CK* [2014] may apply even absent a supervisory relationship, where the existence or reasonable perception of seniority causes a junior or young staff member to likewise find it difficult to express discomfort to a senior staff member.

189. In the present case, the Tribunal notes that the Applicant presented himself as a senior and influential staff member. The Tribunal notes a 17 June 2014 email conversation with Ms. F, an administrative support staff, discussing the future of the Singapore Office, in which the Applicant included the subject line, “Do not worry.. I am your best friend. Will always take good care of you....” The Tribunal further notes the testimony of Country Director C, who, despite being senior to the Applicant in position, expressed significant discomfort during his interview with EBC, stating that it was a “tremendous risk” to him and that “on almost all levels of the Institution people were kind of scared of [the Applicant].” In his own submissions to EBC, the Applicant noted, “I had meritorious access to President’s office, MDs, and VPs across the WBG” and stated that such access continued with successive senior officials.

190. In these circumstances, the Tribunal finds it unrealistic to expect an individual to articulate verbally their discomfort with the Applicant’s behaviors. The Tribunal observes the testimony of Ms. L, a Financial Officer, who told EBC that, when she finally spoke out regarding the Applicant telling colleagues they were “close,” she felt “very scared” and that “other colleagues were quite shocked. And there’s also colleagues that joined the Bank at the same time as me. And he said, ‘Wow, [...], how can you say that?’”

191. In *CK* [2014], para. 85, the Tribunal elaborated on the consequences of a junior staff member’s reasonable unwillingness to speak against a supervisor, stating:

[A] manager owes a greater duty of care to ensure a safe working environment for his or her staff. This situation is compounded by the fact that the [c]omplainant was in a vulnerable position as a short-term consultant embarking on her first employment. As a senior professional with extensive experience working in a multi-cultural environment the [a]pplicant knew, or certainly should have known, that such physical contact with the [c]omplainant could have raised ambiguity about

his motives. As a manager, he should also have known that a junior staff member may find it difficult to express her discomfort to her supervisor for fear that it might disadvantage her in connection with her employment.

192. The Tribunal finds it reasonable that a senior staff member in the Applicant's position likewise should have been aware of how his physical and verbal behaviors could be perceived by and could impact junior or young female staff. In the circumstances of this case, the Tribunal observes that failure on the part of a complainant of sexual harassment to articulate in words that a particular conduct, physical or otherwise, of a sexual nature is unwelcome does not change the legal character of the conduct as sexual harassment. In light of the above, the Tribunal finds that the Applicant knew, or should have known, that his behaviors were unwelcome.

Whether the conduct created an intimidating, hostile, or offensive work environment

193. The Tribunal recalls the established facts with respect to the negative impact the Applicant's behavior had on staff in the Singapore Office, discussed in paragraphs 149 and 150 above. In particular, the Tribunal notes that the record demonstrates that Ms. F, an administrative support staff, was made so uncomfortable by the Applicant's behavior that she expressed to her colleagues and directors that she would prefer to take leave when the Applicant was in the office to avoid him. The Tribunal considers that, for Ms. F, the Applicant's conduct created a work environment that became offensive when he visited the Singapore Office.

194. Having determined that the Applicant's established behaviors were sexual in nature, were unwelcome, and created a hostile, intimidating, or offensive work environment, the Tribunal concludes that the established facts legally amount to misconduct under Staff Rule 3.00, paragraph 6.01(e) and the Code of Conduct: Living Our Values: Sexual Harassment.

Misconduct under Staff Rule 3.00, paragraphs 6.01 (b) and (c)

195. Having found that the established facts amount to sexual harassment, the Tribunal also considers that the Applicant's behavior constituted both a reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct as well as acts or omissions

in conflict with the general obligations of staff members set forth in Principle 3.1 (c) of the Principles of Staff Employment. As such, the Tribunal concludes that the established facts legally constitute misconduct under Staff Rule 3.00, paragraphs 6.01 (b) and (c).

WHETHER THE SANCTIONS IMPOSED WERE SIGNIFICANTLY DISPROPORTIONATE TO THE
MISCONDUCT FOUND

196. The Tribunal will next consider whether the sanctions imposed were significantly disproportionate to the misconduct found. The Tribunal recalls that, in her decision letter, the HRVP imposed the following sanctions:

- 1) termination of [the Applicant's] Bank Group employment;
- 2) loss of future employment and contractual opportunities with the Bank Group;
- 3) restrictions on access to the Bank Group's premises; and
- 4) written censure to remain in [the Applicant's] personnel file.

The HRVP also determined that,

[i]n addition, [the Applicant] will be placed on the United Nations' Screening Database System, Clear Check, which will flag [his] misconduct to organizations within the United Nations system.

The Applicant resigned before the sanction of termination took effect.

Whether the Applicant may challenge the sanction of termination

197. The Applicant maintains that he may challenge the sanction of termination and requests, as a remedy, reinstatement to the position he held at the Bank. The Bank disagrees and contends that the Applicant waived his challenge to the termination sanction by resigning before the sanction was effected. The Bank maintains that the Tribunal's consideration should be limited to the remaining sanctions and that the Applicant may not claim reinstatement as a remedy.

198. The Tribunal recalls that the Applicant resigned from his position and considers that, as the sanction of termination did not apply to the Applicant, he lacks standing to now challenge that sanction. In other words, the Applicant cannot challenge an adverse employment decision that never occurred; by resigning before the termination sanction took effect, the Applicant precluded any challenge to the end of his employment. The Tribunal observes that the record demonstrates the Applicant was made aware of the consequences of his choice to resign prior to his decision. As a consequence, the Tribunal finds that reinstatement is not a remedy available to the Applicant in this case, as there is no termination for the Tribunal to rescind. Having resigned from his position of his own free will, the Applicant cannot now ask the Tribunal to reverse his own decision. (*See Aspergis*, Decision No. 83 [1989], paras. 60–62, where the Tribunal found that the applicant could not get the Tribunal to order the Bank to accept a separation agreement when he had already rejected the Bank’s offered separation agreement and resigned.)

199. In light of these circumstances, the Tribunal finds that it is precluded from considering the proportionality of the sanction of termination.

Whether the remaining sanctions were significantly disproportionate to the misconduct found

200. While the Tribunal has determined that the Applicant has no standing to challenge the sanction of termination, the Tribunal notes that he does have standing to challenge the remaining sanctions which were applied to him, namely the bar to rehire, the access restriction to the Bank, and written censure to remain in his personnel file. As such, the Tribunal will now consider whether these sanctions are significantly disproportionate to the misconduct found.

201. In *Gregorio*, Decision No. 14 [1983], para. 47, the Tribunal held that, in order for a sanction to be proportionate,

there must be some reasonable relationship between the staff member’s delinquency and the severity of the discipline imposed by the Bank. The Tribunal has the authority to determine whether a sanction imposed by the Bank upon a staff member is significantly disproportionate to the staff member’s offense, for if the Bank were so to act, its action would properly be deemed arbitrary or discriminatory.

202. In *Houdart*, Decision No. 543 [2016], para. 95, the Tribunal reiterated the principle of proportionality and observed that,

in addressing the issue of proportionality, its job is not to decide what sanction the Tribunal would impose or whether the HRVP chose the best penalty, but, rather, whether the HRVP reasonably exercised his discretion in this matter. [...] [T]here is no mechanical formula on how to weigh these considerations. The selection of the sanction in a given case requires a judgment of balancing the relevant factors by the HRVP. That discretionary judgment is for the HRVP to make, and as long as [the] HRVP's decision was not unreasonable, the Tribunal will not interfere.

203. Staff Rule 3.00, paragraph 10.09, in effect at the relevant time, requires that,

[u]pon a finding of misconduct, disciplinary measures, if any, imposed by the Bank Group on a Staff Member are determined on a case-by-case basis. Any decision on disciplinary measures takes into account such factors as the seriousness of the matter, any extenuating circumstances, the situation of the Staff Member, the interests of the Bank Group, and the frequency of conduct for which disciplinary measures, as provided in paragraph 10.06 of this Rule may be imposed.

204. In considering whether the HRVP properly exercised her discretion in determining the sanctions imposed, the Tribunal will examine the five factors enumerated in Staff Rule 3.00, paragraph 10.09. *See S*, Decision No. 373 [2007], para. 52.

205. With respect to the seriousness of the matter, the Tribunal acknowledges and agrees with the Bank's submission that "sexual harassment is one of the most serious forms of misconduct" and its note that it has "spent a lot of time and effort over the past few years to improve its response to harassment in the workplace." The Tribunal recognizes the impact of the Applicant's behavior on the staff in the Singapore Office, especially Ms. F, an administrative support staff, who for years expressed her discomfort with the Applicant's behaviors and her desire to not be in the office when he was present. The Tribunal notes that the HRVP considered that the Applicant's seniority contributed to the gravity of his conduct, stating in her decision, "Considering your senior role to the staff members in the Singapore Country Office, it was incumbent upon you to ensure that your conduct was professional and met the expectations of your position." The Tribunal acknowledges

that sexual harassment may encompass more severe behaviors such as those at issue in *FW and FX*, Decision No. 649 [2021].

206. Next, the Tribunal observes that the HRVP noted the Applicant's previous misconduct finding relating to his employment of a G5 domestic employee.

207. As to the situation of the Applicant, as recognized by the Tribunal in *FW and FX* [2021], para. 191,

[i]n circumstances of misconduct "against the institution," performance may be a legitimate mitigating factor because the subject's performance for the Bank might mitigate the harm done to the Bank. However, this is not a relevant mitigating factor to consider in instances of misconduct "against the individual." In instances of misconduct "against the individual," the harm is to the person. Therefore, the subject's performance record at the Bank has no impact on the person. It is hardly conducive to the Bank's Action Plan for Preventing and Addressing Sexual Harassment for high-performing individuals who sexually harass others to be sanctioned less harshly.

As such, the Tribunal does not consider the Applicant's performance record as an appropriate mitigating factor in its determination of proportionality.

208. Turning to the interests of the Bank, the Tribunal observes that the Bank has the right to set standards in its workplace. Particularly, in the face of the staff concerns about sexism and racism which have spanned years, the Bank is entitled to expect and enforce a proper standard of professional behavior. In this respect, the Tribunal notes the Bank's statement that it "is fully committed to providing a safe environment for all Bank staff so that they may do their work free from fear of harassment." As recognized by the Tribunal in *FW and FX* [2021], para. 191, sexual harassment causes "institutional harm by way of diminished workplace productivity and morale, loss of talent through reduced career longevity on the part of affected staff, and damage to an institution's reputation as an employer of choice."

209. With respect to the frequency of the conduct, the Tribunal observes that the Applicant's behaviors spanned several years and that witnesses such as Ms. F and Mr. H, the IT Officer, testified that some of the Applicant's behavior occurred each time he visited the Singapore Office.

The Applicant notes, though, that he has not visited the Singapore Office since 2019; and Director D stated to EBC that, after she told the Applicant in early 2018 to be “careful” in his behavior with female staff, she did not receive any further complaints from Ms. F and Ms. F told her that the Applicant was “behaving himself” following his initial visit. The Tribunal considers that there is nothing in the record to establish that the identified sexually harassing behaviors continued in Singapore in 2018 or 2019.

210. Finally, the Tribunal notes that the record does not contain evidence that the Applicant either acknowledged the negative impact of his conduct or apologized other than to the institution of the World Bank and to the Manager, HRDCO. The record does show that the Applicant harbored antagonism and retaliatory animus against Ms. F. The HRVP noted in her decision letter that she found the Applicant’s behavior to create an unsafe working environment. The Tribunal concurs with the Bank that it was appropriate to consider the safety of other staff members in the working environment in determining the sanctions.

211. The Tribunal had earlier ordered the Bank to produce a comparative chart containing all instances in the last five years that the Bank has disciplined a staff member for a finding of sexual harassment. The chart produced by the Bank in response contained eight cases in which the staff member was found to have committed sexual harassment (not including the Applicant). In four of those cases, the sanctions imposed consisted of “[t]ermination; ineligibility for future employment with the WBG; access restriction; and written censure.”

212. The Tribunal recalls its jurisprudence in *Houdart* [2016], para. 95, in which the Tribunal noted that, in considering proportionality, the Tribunal will not “decide what sanction the Tribunal would impose or whether the HRVP chose the best penalty” and that, “as long as [the] HRVP’s decision was not unreasonable, the Tribunal will not interfere.” Having considered the seriousness of the matter, any extenuating circumstances, the situation of the Applicant, the interests of the Bank, and the frequency of conduct, as well as the comparative information provided by the Bank, the Tribunal concludes that the HRVP was not unreasonable in imposing the sanctions of a bar to rehire, an access restriction, and written censure to remain in the Applicant’s personnel file and finds that these sanctions are not significantly disproportionate to the misconduct found.

213. The Tribunal notes that the HRVP also decided that “the Applicant will be placed on the United Nations’s Screening Database System, Clear Check, which will flag [the Applicant’s] misconduct to organizations within the United Nations System.” The Tribunal observes that this decision has adverse consequences for the Applicant. When the HRVP made this decision against the Applicant on 23 October 2023, the Bank had not yet issued a policy decision that it would participate in the UN Clear Check program nor had any specific policy or Staff Rule been enacted granting the HRVP the power to take such action in sexual harassment cases. Some six months after the HRVP’s decision and nearly three months after the Applicant filed his Application challenging the disciplinary decision, the Bank on 10 April 2024 announced its policy that it would participate in the UN Clear Check program effective immediately. The Tribunal notes the Bank’s submission that disclosure of staff misconduct to public international organizations is permissible under the Staff Rules but considers that an ad hoc disclosure in response to a specific request as envisioned in the Staff Rules is distinct from permanent placement in a database like UN Clear Check. In these circumstances, the Tribunal cannot uphold the HRVP’s decision to place the Applicant on the UN Clear Check database.

WHETHER THE REQUIREMENTS OF DUE PROCESS WERE OBSERVED

214. The Applicant makes three contentions with respect to due process. First, the Applicant contends the Bank violated his due process rights by not giving him prompt and adequate notice of the concerns with his conduct. Second, the Applicant contends that due process required that he be entitled to progressive discipline. Third, and finally, the Applicant contends that he was not afforded a fair, balanced, and impartial investigation. The Tribunal will examine each of these contentions in turn.

215. With respect to the first contention, the Applicant cites the Tribunal’s judgment in *GW*, Decision No. 686 [2023], para. 168, in which the Tribunal stated that a “staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached. Second, the staff member must be given adequate opportunities to defend himself.” In *GW* [2023], para. 173, the Tribunal found that

the applicant's supervisor "failed to warn the [a]pplicant of the seriousness of his situation with respect to his suitability for continued employment" or that "failure to improve may result in termination."

216. The Tribunal observes that the principles relied upon in *GW* [2023] are inapplicable to the Applicant's case, as the former was concerned with the applicant's performance, deficiencies in his work, and suitability for employment, while the present case concerns misconduct. The Tribunal considers it evident from the Staff Rules that committing misconduct may result in termination of employment. The Tribunal considers that the requirements of due process in a matter of alleged misconduct do not oblige the Bank to warn staff or give them an opportunity to defend or change their behavior before the Bank issues a notice of alleged misconduct and conducts an EBC investigation.

217. With respect to the Applicant's second contention, the Tribunal observes that there is nothing in the Staff Rules entitling a staff member to progressive discipline as a matter of due process. Rather, the Tribunal considers, so long as a sanction is not significantly disproportionate to the misconduct found in accordance with Staff Rule 3.00, paragraph 10.09 and relevant Tribunal precedent, how the Bank chooses to address staff misconduct is a management decision.

218. The Tribunal will next turn to the Applicant's third contention and consider whether the EBC investigation and the Bank's decision-making process respected the Applicant's right to due process.

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

220. In *Rendall-Speranza*, Decision No. 197 [1998], para. 57, the Tribunal explained the nature of disciplinary proceedings in the Bank as follows:

In order to assess whether the investigation was carried out fairly, it is necessary to appreciate the nature of the investigation and its role within the context of disciplinary proceedings. After a complaint of misconduct is filed, an investigation is to be undertaken in order to develop a factual record on which the Bank might choose to implement disciplinary measures. The investigation is of an administrative, and not an adjudicatory, nature. It is part of the grievance system internal to the Bank. The purpose is to gather information, and to establish and find facts, so that the Bank can decide whether to impose disciplinary measures or to take any other action pursuant to the Staff Rules. The concerns for due process in such a context relate to the development of a fair and full record of facts, and to the conduct of the investigation in a fair and impartial manner. They do not necessarily require conformity to all the technicalities of judicial proceedings.

221. The Tribunal notes and agrees with the Bank's assertion that the record "shows that EBC carried out its investigation fully within the parameters set out in Staff Rule 3.00." The Tribunal observes that the Notice of Alleged Misconduct provided the Applicant with the specific charges being investigated. The Tribunal also notes that the Applicant was provided the opportunity to explain his conduct through the production of evidence as well as written and oral testimony. The record further demonstrates that EBC gave the Applicant its draft reports and provided him the opportunity to submit comments, which were incorporated in two revisions to the draft report. The Tribunal further observes that the Applicant's comments on the draft reports were considered and included in the Final Report.

222. The Tribunal further observes that, in response to the Applicant's proposal of additional witnesses, EBC interviewed three additional witnesses. The Tribunal considers that EBC considered the significant overlap between the remaining proposed witnesses and those individuals who submitted positive character reference letters to EBC. EBC reasonably concluded that the character reference letters did not negate the evidence provided by those who experienced the behavior in the Singapore Office.

223. The Tribunal's jurisprudence on due process in misconduct investigations emphasizes the requirement that subject staff members receive an adequate opportunity to respond to allegations

made against them and to put forward their own evidence. The Tribunal is satisfied the Applicant had such an opportunity in the present case.

224. Next the Tribunal turns to the Applicant's allegations that EBC and the HRVP did not give the benefit of the doubt to him and to the witnesses corroborating his behavior. The Tribunal considers that neither the requirements of due process nor the presumption of innocence requires that EBC investigators or the HRVP take at face value the denials of the subject of an investigation. The Tribunal is not convinced, as discussed in paragraphs 156 through 163 above, that EBC acted unreasonably in finding that the Applicant was not credible. Regarding the assertion that certain witnesses were afforded the benefit of the doubt rather than others, the Tribunal finds no evidence in the record that the EBC investigators unfairly awarded credibility to certain witnesses and thereby displayed bias. Rather, EBC determined that Ms. F's testimony was corroborated by five independent and impartial witnesses in the Singapore Office and, in addition, considered whether and found no evidence that Ms. F had a motive to file a false allegation. The Tribunal considers that there is no evidence in the record that the investigation or the HRVP's decision-making process lacked fairness, balance, or impartiality.

225. In view of the above, the Tribunal concludes that the requirements of due process were observed.

CONCLUDING REMARKS

226. The Tribunal stresses the importance of maintaining a workplace free from sexual harassment, and the Tribunal welcomes the Bank's continued efforts to demonstrate its commitment in this regard. The Tribunal also recognizes the nuances of human interaction and acknowledges the importance of appropriate, interpersonal relationships in the workplace. The Tribunal encourages the Bank to continue in its efforts to train and educate staff on how to navigate this delicate balance especially in a modern, multicultural workplace.

227. The Applicant has prevailed in his claim in respect of the decision to place him on the UN Clear Check database. The Tribunal notes the Bank's statement that, as the Applicant had not yet

exhausted all challenges to the misconduct finding and sanctions, his name has not yet been placed into the UN Clear Check database. As such, the Tribunal does not find that any remedy is warranted in this case other than to direct the Bank to not proceed with the placement. In view of the success of this claim, as well as the complex and novel issues presented by the Applicant's case, the Tribunal finds that some contribution to the Applicant's legal fees and costs is warranted.

DECISION

- (1) The Bank shall not place the Applicant's name into the UN Clear Check database;
- (2) The Bank shall contribute to the Applicant's legal fees and costs in the amount of \$25,000.00; and
- (3) All other claims are dismissed.

/S/ Janice Bellace _____
Janice Bellace
President

/S/ Zakir Hafez _____
Zakir Hafez
Executive Secretary

At Washington, D.C., 18 October 2024