



World Bank Administrative Tribunal

2024

Decision No. 708

**HR,
Applicant**

v.

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

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

**HR,
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 12 March 2024. The Applicant was represented by Ryan E. Griffin of James & Hoffman, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 11 October 2024.
3. The Applicant challenges the Bank's disciplinary decision issued on 23 October 2023.

FACTUAL BACKGROUND

The Applicant's employment history and the Kuwait Country Office

4. The Applicant, a Kuwaiti national, joined the Bank in 2012 as an Operations Analyst, Grade Level GE, in the Kuwait Country Office (Kuwait CO). In December 2020, the Applicant was promoted to Operations Officer, Grade Level GF, in the Kuwait CO. The Applicant holds degrees from universities in Spain and the United States. She worked in the Kuwait CO throughout her Bank career.
5. The record indicates that the Bank's operating model in Kuwait is a non-lending one due to Kuwait's status as a high-income economy. The World Bank Group (WBG) program in Kuwait consists of a large Reimbursable Advisory Services (RAS) program wherein the WBG provides

advisory or consulting services for the client in return for a fee. The WBG's operations in Kuwait are funded by the Kuwaiti government, including paying for the office space as well as for the salaries of all Country Management Unit staff, the Kuwait CO Resident Representative, and a number of Internationally Recruited Staff working on specific projects in Kuwait.

6. Further, the Kuwait CO is relatively small, with approximately twenty staff members at the relevant time, and the nationalities of these staff included a U.S. national born in Iraq; Jordanian nationals, including some Jordanian nationals of Palestinian origin; Yemeni nationals; Egyptian nationals; and Kuwaiti nationals.

7. From 2015, the Applicant worked exclusively on the Kuwait Education Project (Education Project) in the Kuwait CO. The Education Project was an RAS program with a \$35 million commitment and over thirty staff. According to the Bank, in 2017, the Applicant was removed from work on the Education Project by the then Country Manager, Mr. R, a Jordanian national, in part due to the Applicant's "difficult relationship with colleagues both within and outside the Education [P]roject." As stated by Mr. R in the "Supervisor's Comments" section of the Applicant's Fiscal Year 2016 (FY16) Annual Review:

Overall FY16 was a year of transition and new work opportunities for [the Applicant]. As an Operations Analyst with extensive prior involvement in the Bank's educational reform efforts in Kuwait, [the Applicant] provided substantial assistance to the Education Team during the change in TTLship [Task Team Leadership] in FY16. She supported and helped orient the new TTL, she managed and navigated all operational activities for the team and she coordinated closely with key counterparts [...]. The transition came later in the year as [the Applicant] and the new TTL attempted to align their respective expectations around roles and responsibilities within the growing Education team. After internal consultations, [the Applicant] opted to move onto supporting other RAS operations within the Kuwait Country Program – namely in Human Development – and supporting education engagements within the Bank. In parallel to her involvement with the Kuwait education team in FY16, [the Applicant] supported Bank activities in [...] in the area of education and social protection. Specifically, she provided strong technical support to the work on conditional cash transfers with the Kurdistan Regional Government in Iraq. Feedback from colleagues praised her for maintaining constructive relationships with official counterparts in the Kuwaiti education sector during the transition and for her strong commitment to supporting [...] education work in Iraq.

8. In the Applicant's FY17 Annual Review, the Supervisor's Comments by Mr. R in the "Areas of Development" section stated:

One of the primary areas for improvement is on the workplace behavior side. [The Applicant] and I had numerous discussions in FY17 about her detachment from CO life and not engaging more fully and positively with all members of the CO team.

[...]

Lastly, her general level of collegiality – an important workplace behavior – can be enhanced through greater positivity in her daily interactions with all CO team members. I hope [the Applicant] will work on improving these workplace behaviors over the next few months and leading up to the mid-year conversation. A continuation of the same workplace behaviors will prompt consideration of putting in place an 'opportunity to improve' (OTI) action plan to help her address these behaviors and to align her work program as appropriate.

9. In the Staff Acknowledgement Comments of her FY17 Annual Review, the Applicant stated, "Most of what was mentioned about my behavior is an accusation. Most if not all of the staff do not engage with each other in the office due to the work load!" She further stated, "I engage with the staff professionally not personally, and this should be seen as professional work behavior instead of negative behavior."

10. In the Applicant's FY18 Mid-Year Conversation, the Supervisor Comments by Mr. R stated:

As to her workplace behaviors, I have observed improvements in her levels of pro-activity and teamwork since the FY17 end of year evaluation – and I urge her to continue along the same path. I would still like to see greater improvements, though, in her overall collegiality with all Kuwait CO team members in the coming months – and will re-examine the option of giving her 'an opportunity to improve' (OTI) in coordination with HR [Human Resources] at the end of the FY.

11. In the Applicant's FY18 Annual Review, the Supervisor's Comments by Mr. R in the "Areas of Development" section stated:

There is one important area of improvement that deserves attention going forward – namely [the Applicant's] workplace behaviors – particularly those related to respect, collegiality and teamwork. [...] In a follow-up discussion to our end-of-

year conversation, and based on additional feedback from Kuwait CO team members, I explained to her my decision to formally give her an ‘Opportunity to Improve’ (OTI) over the remaining part of the calendar year. [...] In our discussion, I explained to [the Applicant] that failure to make improvements with respect to these workplace behaviors – respect, collegiality and teamwork – may result in the termination of her contract in the future.

12. In the Staff Acknowledgement Comments of the Applicant’s FY18 Annual Review, the Applicant stated:

The FY18 OPE [Overall Performance Evaluation] indicated that I had failed to improvements [*sic*] in my workplace behaviors especially with respect, collegiality and teamwork. This was another accusation as I had always treated my colleagues with respect even when they’re under pressure and act disrespectfully towards me.

13. Further, the peer feedback of the Applicant’s FY18 Annual Review regarding the Applicant’s “Strengths” included:

[The Applicant] is an active light-bulb in the Kuwait office, her knowledge, experience and professional manner makes her a great asset.

[...]

I’m currently working with [the Applicant] on coordinating with the telecom regulator and the competition authority. It’s been a pleasure and great experience to be working with her. She is a great team player and has contributed to the office environment a lot to ensure it stays in a position environment.

[...]

[The Applicant] is a true team player. She is very good in following up with the team and the client. She is also very good at sending reminders to keep track of actions. It is a real delight to work with her. She has excellent interpersonal skills and is always willing to facilitate the team and help in any way.

[...]

I have known [the Applicant] for the last two years during which time we not only worked together but interacted on several intellectual and other levels. As a colleague, [the Applicant] does a superb job at delivering her tasks promptly, within budget and best possible technical quality. She is very honest with great sense of integrity. She is highly interested in her job and very capable of delivering the best results; hence she makes a great mentor for her colleagues. She can manage the

client in a very effective way and develop the capacity of her counterparts when needed. She has great decision-making capabilities and deals with issues promptly. She holds herself accountable, encourages constructive advice when it comes to her style and uses such advice to improve as a professional. [The Applicant] is committed and passionate about working in the World Bank. She is an awesome individual and great colleague. Throughout our work together she exceeded all my expectations. She is hardworking and willing to learn. She inspires those around her. I value and enjoy working with her.

14. On 4 September 2018, management placed the Applicant on an Opportunity to Improve Performance (OTI) plan. As stated in the OTI memorandum, the following aspects of the Applicant's performance relating to WBG "core values" were deemed unsatisfactory:

- Exhibiting respectful workplace behaviors to all Country Office staff members
- Maintaining collegiality with colleagues working the same workplace environment
- Working within a team to collectively own team tasks and accountabilities.

15. Additionally, the OTI memorandum informed the Applicant that she was being given an opportunity to address these deficiencies specifically by:

- (i)
 - Improving your workplace behavior by displaying respectful workplace behavior towards all Bank staff members at all times; and
 - Enhancing your general level of collegiality by engaging all Bank colleagues with greater positivity
 - Working more effectively as a team player to own and deliver on team tasks and deliverables
- (ii) Enrolling in the following online training sessions [...]
 1. Your Role in Workplace Diversity
 2. Bridging the Diversity Gap
 3. Navigating the Workplace with Emotional Intelligence
 4. Emotional Intelligence: Applying EI at Work
 5. Creating and Maintaining a Positive Work Environment
 6. Positive Atmosphere: Establishing a Positive Workplace Environment
 7. Being an Effective Team Member
 8. Using Business Etiquette to Build Professional Relationships.

16. The OTI memorandum informed the Applicant that improvement was expected by 31 December 2018, and it further stated that, "during the OTI period, Kuwait CO management will

expect to receive no negative feedback on your workplace behaviors from other team members.”

The OTI memorandum also stated:

Please note that failure to improve at a reasonable pace or to sustain satisfactory performance is a serious matter and could result in the termination of your employment from the World Bank Group in accordance with Staff Rule 7.01: Ending Employment, Section 11.

17. In October 2018, the Applicant completed the training sessions stipulated in the OTI memorandum.

18. On 29 October 2018, the new Kuwait CO Resident Representative (Resident Representative), a U.S. national born in Iraq, assumed his role in the Kuwait CO.

19. On 2 December 2018, the Applicant was notified of her successful completion of the OTI by the Resident Representative.

20. In the Applicant’s FY19 Annual Review, the Resident Representative stated in the Supervisor’s Comments:

I have found [the Applicant] to be an excellent professional with significant experience in the World Bank overall, and in Kuwait in particular. During the review period, I assigned [the Applicant] several high-level tasks that she took on with gusto and accomplished to a high level of quality.

[...]

She is highly respected by the clients and has excellent access to government officials. She has clearly exhibited the skills, experience, and aptitude to take on tasks that are above her current grade. I want to also emphasize that [the Applicant] has exhibited behaviors that are fully consistent with Bank values, including strong team skills, respect, impact, integrity, and innovation.

21. According to the Applicant,

[s]tarting sometime around the time [the Applicant] was hired, the Kuwaiti government began exerting pressure on the Bank to hire more Kuwaiti staff. In response, senior Bank management in both the Country Office and the region

adopted a policy of seeking to fill open positions in the Kuwait office with Kuwaiti nationals before considering non-national hires. Both the government's wishes and management's accommodations were well known to country office staff.

The Applicant further states:

This Kuwaiti-first hiring policy caused significant discord within the country office. Non-national staff (mainly Yemeni, Egyptian, and Jordanian, including of Palestinian descent) holding local positions such as Drivers, Executive Assistants, and Program Assistants, began to fear for their employment, believing their contracts would be allowed to expire so that the Bank could replace them with Kuwaiti nationals. These fears were further exacerbated by resentment toward [the Applicant] and certain other Kuwaiti staff, whom non-national staff perceived as unfairly benefiting from the Kuwaiti-first hiring policy and from favoritism by country office management.

22. According to the Bank, “[i]n the Spring of 2019, the WBG received a request from the government of Kuwait to increase the number of Kuwaiti nationals in the Kuwait office and generally in the WBG.” The record includes minutes related to 2019 meetings between the Kuwait Minister of Finance and the WBG concerning this request, which stated:

Increasing Kuwaiti Nationals in the CO and in the Bank: Kuwait continues to express a strong desire to increase the number of Kuwaiti nationals represented in the CO as well as the Bank overall. The World Bank has put together a plan to do so and has added three new Kuwaiti Nationals to the CO, including the appointment of a National Operations Officer. The MENA [Middle East and North Africa] Fellowship Program, financed by the Kuwait Investment Authority will contribute to increasing nationals at the Bank level. The Admin Agreement is now being finalized internally for subsequent signing with GoK [Government of Kuwait].

23. Further, according to the Bank,

[i]n the Kuwait CO, if you were a Kuwaiti national, you benefitted from certain privileges that non-Kuwaitis were denied. For example, Kuwaiti nationals drank bottled water purchased for the office, whereas non-Kuwaiti nationals were remanded to drinking tap water. If you were a Kuwaiti national, you were allowed to occupy the lunchroom at the exclusion of non-Kuwaitis.

Referral of allegations to EBC and EBC's preliminary inquiry

24. On 8 February 2021, Mr. G, a Yemeni national who joined the Bank in 2015 and served as a Driver in the Kuwait CO working with the Education Project, submitted a complaint to the Ethics and Business Conduct Department (EBC) through the Ethics Helpline regarding the termination of his employment. He alleged that the termination decision as taken by the Resident Representative was unfair and stated:

There is a lot of discrimination, bias, and misbehaviors, and acts of racism that are being practiced by some specific Kuwaiti colleagues against me (as a Yemeni and a [non]-Kuwaiti national) and against other colleagues many of them either resigned or left Kuwait office to another countries. Unfortunately, these course of actions and behaviors are being promoted by the current country representative since he joined the Kuwait office. You may can [*sic*] investigate on those facts by contacting our ex-colleagues whom left the office due to the foresaid actions.

25. On 16 February 2021, EBC interviewed Mr. G and, on 29 April 2021, conducted a follow-up interview with Mr. G. During his 16 February 2021 interview with EBC, Mr. G stated that he was alleging misconduct against the Resident Representative and the Applicant.

26. Specifically, he informed EBC that, in July 2019, he was assigned to drive the Applicant to a meeting at the Kuwait Ministry of Planning. Mr. G stated that the standard procedure was for drivers to wait outside with the vehicle, thirty minutes prior to the meeting, and that he typically went to the relevant staff's office to remind them of the meeting. According to Mr. G, the Applicant was not in her office when he went and later, while waiting in the vehicle for her, he contacted another driver, Mr. O, in order for him to inform the Applicant that she was late and that Mr. G had been "waiting for more than an hour outside." Mr. G told EBC that the Applicant's "name was deleted from my phone" and he was unable to contact her himself.

27. Mr. G told EBC that the Applicant was upset with him for not calling her directly and was "shouting" at him and saying, "[W]hy you don't call me directly in my phone." Mr. G told EBC that he explained that he lost her number and "told her to keep your voice down please and don't shout me. I am not your own driver and respect me." Mr. G told EBC that the Applicant continued "shouting on."

28. Mr. G also told EBC that he reported this interaction with the Applicant to the Resident Representative upon returning to the office and that the Resident Representative told him that he would speak to the Applicant and follow up with Mr. G. Mr. G told EBC that he followed up with the Resident Representative “for two, three months, but nothing happened.”

29. Mr. G also told EBC of an interaction with the Applicant in the Kuwait CO kitchen, which he stated occurred “a few weeks” after the July 2019 interaction with the Applicant in the vehicle. Mr. G stated to EBC:

I was preparing a cup of tea in the kitchen and I was cleaning my glass and my cup, sorry. And then she come back from behind and push me – she can’t reach the cabinet to bring her own cup.

Mr. G told EBC that it was “a push, but not strong,” and that the Applicant used her hand for the “push” on his left shoulder while he was standing at the kitchen sink so that she could access a kitchen cabinet.

30. Mr. G told EBC that he told various colleagues about this interaction in the kitchen but that he did not report it to the Resident Representative because he had not received any follow-up from the Resident Representative on the vehicle interaction with the Applicant.

31. On 1 May 2021, Ms. M, a Kuwaiti national and a former Extended Term Consultant with the Bank, filed a complaint with EBC through the Ethics Helpline “to raise awareness about an unethical favoritism and hostile [i]nterview” for an Operations Analyst position in the Kuwait CO for which she had applied and for which the Applicant was Chairperson of the Selection Advisory Committee. In her complaint to EBC, Ms. M stated:

I want to raise the attention that there are several discrimination and racism cases have been practiced against some colleagues in the country office by the current operations officer with a green light from the Country Resident Representative (CRR), who is to the Chair’s close friend before becoming the CRR in Kuwait even though she has been put in probation by the ex-country manager due to her attitude and performance but the new CRR has promoted her from E to F and fully supporting her on practicing acts for favouritism, discrimination and racism against

many colleagues whom either left the World Bank office in Kuwait, left Kuwait office or got their contract terminated.

32. On 12 and 17 May 2021, EBC interviewed Ms. M.

33. In her interview with EBC of 12 May 2021, Ms. M stated that she had “an issue of favoritism” but that there was no discrimination “towards me directly.” She told EBC that “the discrimination was against [...] certain staff because of their nationality.” She further stated, “[W]hen I said favoritism, discrimination, and racism it is – it is – it’s because of the whole situation in the office.” Ms. M told EBC that “discrimination and racism is towards specific staff of other nationalities.”

34. Ms. M further stated:

So Kuwait office in the last few years there was some sort of discrimination towards non-Kuwaiti staff. I am – I am a Kuwaiti myself. And I am absolutely against this environment. They – some staff members who are part of [the Resident Representative’s] clan are very hostile towards, let’s say, someone who is from Jordan or Palestine. They would – they would say something that is very demeaning. They don’t call him, like with it – if I talked to that person, like the person who is – a person who is very hostile towards other nationalities, if I sit and talk to them they would – don’t – they wouldn’t call them by – properly by their name. No. They would undermine them and call them by their nationality. Like this Palestinian, or this – and this is a Jordanian. And this is Kuwait’s money and they are taking Kuwait – like in this type of attitudes that are really, really bad.

Ms. M stated that the Resident Representative’s “clan” included the Applicant and Ms. Y, a Kuwaiti national and an External Affairs Officer in the Kuwait CO.

35. In her 17 May 2021 interview with EBC, Ms. M discussed the Operations Analyst position for which she had applied and told EBC that the Applicant was a family relation to the individual selected for the position.

36. Further, during EBC’s preliminary inquiry into the allegations against the Applicant based on the complaints, it was also alleged that the Applicant made belittling remarks toward and

questioned the professional competence of Mr. A, a Yemeni national who served as a Program Assistant in the Kuwait CO from 2014 to 2019.

37. In a 17 May 2021 interview with EBC, Mr. A stated that he “was feeling humiliated” by the Applicant, and that the Resident Representative was the Applicant’s “close friend.” Mr. A recounted work interactions with the Applicant and stated to EBC that he “was feeling discriminated against” as a non-Kuwaiti national. He also stated to EBC:

So, by that time, when [the Resident Representative] joined, she started practicing all types, what I can’t say for me. You know, I can’t say she was practicing racism. Not against me, against many other – many other colleagues I remember many cases. And then what happened is like, you know, whenever someone was going to complain about her to the Country Rep, he was turning against the person who was coming to complain and putting it as a negative. I remember, like, two cases, I think, as a negative feedback against the person who want to complain.

38. Mr. A also told EBC that, in March 2019, he served as coordinator for a United Nations (UN) evacuation drill at the UN compound in Kuwait at the behest of a colleague who was unavailable to attend the training due to an emergency. Mr. A told EBC that he was responsible for counting the WBG staff members who attended the training and that he called staff while driving to the UN compound as part of the simulated drill. He further told EBC that he called Ms. Y to confirm her attendance and she advised him that she was with the Applicant and that they were on the way. Mr. A told EBC that given this information, in his view, the Applicant was counted and he did not need to call the Applicant separately.

39. Mr. A told EBC of his experience once the Applicant arrived at the UN compound as follows:

And I was sitting on my desk. She was shouting on me in a very bad way. And she was telling me you are not doing your work very well and you are not good, you are – I told her why? She said why you did not call me? And I knew by that time she was shouting me. [Ms. Y] was sitting behind of me. And she was sitting in front of me. And [Ms. Y] was just smiling at her while she was shouting on me because they were enjoying like teasing others and humiliating others. And she was saying for me why you did not call me? I told her I called [Ms. Y]. [Ms. Y] told me you are – you were with her. And she confirmed that. And I said it is – you are with her, so why I do need – why I need to call you again? It is a drill. It is an evacuation

drill. And she said, no, no, no, you are not doing your job. You are a bad guy and she started like talking bad about me.

40. Mr. A also described to EBC feeling humiliated when interacting with the Applicant in her office, claiming that she spoke to him “in a very unpolite way.” He told EBC that he recalled an occasion where the Applicant said to him: “You cannot do the work and it should be only me because you cannot do your work appropriately. And you are not doing a good job at all.”

41. Mr. A further stated to EBC that “there were some, like, hot exchange of emails” with the Applicant and stated that the Applicant “always was saying you are not doing a good work and you are not like professional and you should not do this.” Mr. A did not provide said emails to EBC despite EBC’s requests.

42. From May to November 2021, EBC conducted interviews with several witnesses and reviewed documentation provided by the witnesses as well as documentation related to the Applicant’s performance history.

43. In a 26 May 2021 interview with Ms. Z, a Jordanian national of Palestinian origin and an Executive Assistant in the Kuwait CO, Ms. Z told EBC:

There is another thing, you know, I noticed that if you have enough time, you know, this is why I’m telling you that, you know, the manager is, I don’t know how much fair he is, but, you know, during the previous manager, we had an investigation in the office because [the Applicant] was an OT, Opportunity To Improve. I know she’s a hard person to work with. And after, you know, we had, you know, calls from HR and they make their report. And then after they did their report, you know, all of a sudden, you know, when [the Resident Representative] comes, she was hired as an Operations Officer. She was an OT and in an Opportunity To Improve, but all of a sudden she become an Operations Officer.

That’s why sometimes, you know, and, you know, don’t feel offensive, but sometimes I feel I don’t trust the Bank system. How much the Bank system is transparent, I don’t know. You know, when you see people who act like, you know, not fair to other staff and they view us like, you know, as if we are inferiors, and they call us names, you know, she call us names. Like, you know, if you are a Palestinian you are Falastan. I don’t know how can I explain this to you, but they call names people based on their nationality. And then all of a sudden they become like operations officers and they are promoted. This makes you don’t trust the

system in the Bank. I mean, sometimes I feel what is the HR? I mean if we have a person with issues and he becomes, like, and he is promoted, that means, you know, sometimes I feel all the investigations of, you know, I really respect you, but I think it doesn't worth the time that we spend. You know, we spend hours and hours in investigation in [the Applicant's] case and we saw that [the Applicant] become like she becomes an F after she was an E. And as an OT, we expected that she will not stay in the Bank, but in the country she becomes like an officer.

And imagine that all staff in the office will work for this officer who discriminate based on your nationality or based on whether you are in her group or not. So, and this is again, you know, this makes me not comfortable with the system, the World Bank system as a whole.

44. In her interview, Ms. Z also told EBC that the Applicant referred to Yemeni staff as "Abuyemen," which Ms. Z described to EBC as meaning "a Yemeni, but in a cynical way," and that "it's kind of, you know, you make like fun of someone because of his origins."

45. In a 10 August 2021 interview with Ms. M, Ms. M stated to EBC:

[E]ven when I used to sit with [the Applicant] and [Ms. Y] in either [the Applicant's] office or [Ms. Y's] office, they used to kind of bash [Mr. A] and say, oh, the Yemenis are controlling the office and blah, blah, blah, like really horrible stuff. They did.

EBC investigation

46. On 8 November 2021, EBC provided the Applicant with a preliminary notice of the allegations made against her.

47. On 10 November 2021, EBC provided the Applicant with a Notice of Alleged Misconduct. Per the Notice of Alleged Misconduct, the Applicant was notified that it was alleged that she failed to disclose a familial relationship while acting as Chairperson of the Selection Advisory Committee for the Operations Analyst position. Further, the Applicant was notified that it was alleged that she "may have engaged in harassing and/or discriminatory behavior against WBG staff by directing unwelcome, offensive and hostile language towards them, using derogatory words and consequently creating a hostile work environment." Specifically, the Notice of Alleged Misconduct stated the allegations as follows:

- i. you repeatedly raised your voice at [Mr. G], made demeaning and belittling remarks, and publicly questioned his professional competence;
- ii. sometime in July 2019, while in the office kitchen, you intentionally pushed [Mr. G] by making physical contact with your hand, by pushing his shoulder in order to get by him to reach the cabinet;
- iii. sometime in 2019, during a United Nations organized security training in Kuwait, you yelled at [Mr. A], made belittling remarks and questioned his professional competence, saying “you are not doing a good job, who brought you here, etc.”;
- iv. you repeatedly used belittling and demeaning language to describe staff members and referred to them by their country of origin e.g., referring to staff members as “that Jordanian” or “that Yemeni”; and
- v. you treated non-national staff (i.e., non-Kuwaiti nationals) unfavorably because of their country of origin and/or ethnicity, including repeatedly making derogatory comments concerning staff members’ race or country of origin and used offensive slurs such as “Abuyemen” to describe people from Yemen, and “Falastan” to describe people from Palestine.

48. Also on 10 November 2021, EBC conducted a subject interview with the Applicant, and the Applicant signed a “Confidentiality and Non-Disclosure Agreement,” dated 10 November 2021, agreeing “to maintain the confidentiality of the Ethics and Business Conduct (EBC) investigative report(s) and documents” pertaining to her case.

49. On 30 November 2021, EBC continued and concluded the subject interview with the Applicant.

50. In the Applicant’s November 2021 interviews with EBC, the Applicant denied the allegations against her.

51. With respect to Mr. G, the Applicant stated to EBC that she avoided being in the same place as Mr. G because she had “a couple of incidents.” The Applicant stated, “The reason I avoid being with him in the same place is because he looks at us in a very dirty way.” The Applicant

stated that Mr. G had an “inappropriate way of looking at me, looking at my legs, looking at other parts” and that she did not feel comfortable.

52. The Applicant also told EBC of a May 2016 auto accident in which Mr. G was driving and she was a passenger. The Applicant told EBC that Mr. G reported the accident “in a fake way,” and the Applicant stated that she was injured in the accident and has a “spasm” as a result.

53. On 6 December 2021, the Applicant provided EBC with a written response to the Notice of Alleged Misconduct.

54. On 18 and 19 January 2022, the Applicant contacted EBC regarding WhatsApp voice notes she received from Ms. M during the Operations Analyst recruitment process. In the voice notes, Ms. M made reference to her interview for the Operations Analyst position and stated that she was “very disappointed at so many different levels,” that “certain questions were really unfair,” and that she was “sure” the Applicant did not ask other candidates a question she asked Ms. M. Ms. M further stated on the voice notes that the Applicant was “cutting me off few times and I really didn’t appreciate that,” and “the ego was really bad, was really bad from you and I really didn’t appreciate it.” Ms. M also stated, “I am totally disappointed and distressed because you deprived me of a right I deserve[.] [S]even years part time, seven years and I don’t even get a support from you or even [the Resident Representative.] Why, why are you taking away an opportunity that should be mine.”

55. On 22 February 2022, EBC provided the Applicant with copies of her interview transcripts and advised her that she had ten days to review and comment on the transcripts.

56. On 23 February 2022, the Applicant requested and EBC granted additional time to comment on her interview transcripts.

57. On 13 March 2022, the Applicant provided her comments on the interview transcripts.

58. In the following months, EBC conducted various witness interviews, including with the Resident Representative on 26 May and 9 June 2022, and with Ms. M on 29 August 2022 and Mr. G on 2 September 2022.

59. On 13 December 2022, EBC sent the Applicant a draft copy of its investigation report for her review and comments, to be submitted within ten business days. The Bank states that the Applicant requested additional time to provide comments and was granted such time.

60. On 9 January 2023, the Applicant provided EBC with her comments on its draft report. The Applicant included a “statement of defense” and claimed bias in EBC’s witness selection. The Applicant proposed twenty-five witnesses for EBC’s consideration.

61. In February 2023, EBC conducted six interviews with six witnesses whom the Applicant had suggested in her comments to the draft report. EBC also visited the Kuwait CO in February 2023.

62. On 2 March 2023, the Applicant provided additional responses to the EBC draft report.

63. On 6 April 2023, EBC provided the Applicant with a copy of its revised draft report and asked her to respond with any comments within ten business days, by 20 April 2023.

64. On 30 April 2023, the Applicant responded to EBC and stated that she would share her reply “shortly.”

65. On 10 May 2023, the Applicant provided her response to the revised draft report.

EBC Final Investigation Report findings

66. On 20 June 2023, EBC issued its Final Investigation Report which it submitted to the WBG Vice President, People and Culture (HRVP) for determination. The EBC Final Investigation Report concluded:

Based on a careful review of the evidence, EBC found sufficient evidence to substantiate the allegations that [the Applicant]:

- i. repeatedly made disparaging and demeaning remarks about [Mr. G] by publicly questioning his professional competence;
- ii. repeatedly raised her voice and made belittling and demeaning comments towards [Mr. G]. For example, on July 16, 2019, while being driven to an official function by [Mr. G], she raised her voice and berated [Mr. G] for not following office protocol;
- iii. Sometime in 2019[,] while in the office kitchen, pushed [Mr. G] by the shoulder, in order to get past him;
- iv. repeatedly raised her voice and berated [Mr. A]. For example, during a United Nations organized security drill in March 2019, she raised her voice at [Mr. A] and berated him. On other occasions, [the Applicant] also berated [Mr. A] and questioned his professional competence;
- v. repeatedly made disparaging and derogatory remarks concerning staff members' ethnicities and used ethnic slurs to refer to staff members, such as *Falastan*, to describe people of Palestinian descent, *Abuyemen* or *Al-Yemeni* to describe people from Yemen; [and]
- vi. following the Kuwait government's requests to the WBG to recruit more Kuwaiti nationals to the WBG, inappropriately and repeatedly stated publicly that the WBG was spending Kuwait's money and advocated for the recruitment of more Kuwaitis to the Kuwait office.

67. In the Final Investigation Report, EBC further concluded:

Based on a careful review of the evidence, EBC found sufficient evident [*sic*] that [the Applicant's] conduct towards [Mr. G] and [Mr. A] was unwelcome. Given her manner of interaction and pervasiveness of her conduct, [the Applicant] should have known that her conduct was unwelcome. EBC also found that [Mr. G] and [Mr. A] were reasonably offended by [the Applicant's] behavior. Accordingly, EBC found that [the Applicant's] conduct amounted to harassment and created a hostile and offensive work environment for [Mr. G] and [Mr. A].

EBC also found sufficient evident [*sic*] that [the Applicant] repeatedly made belittling remarks and used demeaning language to describe staff members; and made disparaging comments about staff members and used ethnic slurs to describe staff members. Several witnesses told EBC that they were offended by [the Applicant's] comments. Given the nature of the comments, the pattern of behavior

and the regularity of it, EBC concluded that it was reasonable for staff to find [the Applicant's] comments offensive, and she should have known that her comments were unwelcome and offensive. Accordingly, EBC reasonably determined that her comments contributed to a hostile work environment for staff.

With regard to her knowledge of her familial relationship [...] and subsequent disclosure of this relationship, EBC did not identify sufficient evidence to determine that [the Applicant] knew of her familial relationship [...], prior to the recruitment exercise or that she failed to promptly disclose to the SAC [Selection Advisory Committee] or the Resident Representative [...] her familial relationship [...]. Moreover, EBC determined that her relationship [...] does not fall within the familial relationships enumerated in either Category I or Category II in Staff Rule 4.01, paragraph 5.03.

EBC did not find [the Applicant's] allegations against [Mr. G] credible. EBC noted that [the Applicant] raised the allegation in response to the notice of EBC's investigation, there were inconsistencies in witness testimony and [a colleague] denied that she experienced any sexually inappropriate interactions from [Mr. G].

Based on the foregoing, EBC further determined that [the Applicant's] overall conduct amounted to a failure to observe applicable norms of prudent professional conduct and conflicted 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.

68. In the "Mitigating and Other (Aggravating) Factors" section of the Final Investigation Report, EBC noted the following:

[The Applicant] was cooperative with EBC during its review.

EBC noted that the Kuwaiti government's request to the WBG to recruit more Kuwaiti nationals and the WBG's policy to increase Kuwaiti representation in the Kuwait office may have created an enabling environment for some of [the Applicant's] behaviour, especially her comments about recruiting more Kuwaitis to the office. EBC also noted that the Kuwaiti government's advocacy for and, WBG's policy of increased representation of Kuwaitis generally created an atmosphere of insecurity amongst local non-Kuwaiti staff. The insecurity however was exacerbated by [the Applicant's] behaviour and comments.

EBC is not aware of any prior disciplinary proceedings against [the Applicant] during her tenure at the WBG. However, it is worthy of note that in 2018, she was placed on an OTI to address her "disrespectful behaviour" and manner of interactions with all cadre of staff. [The Applicant] successfully completed the OTI

and subsequently challenged the OTI through both the Administrative Review and Performance Management Review processes. Her challenges were unsuccessful.

EBC noted that due to the Covid-19 pandemic and the resulting impact, the Kuwait office was closed for an extended [*sic*] between 2020 and 2022. However, most of the interactions predate the pandemic and staff are now back in the office.

69. Additionally, in the Final Investigation Report, EBC noted:

EBC also considered [Ms. M's] credibility. EBC noted that [Ms. M] was disappointed with the outcome of the recruitment process and left a voice mail, expressing her personal disappointment in [the Applicant's] lack of support for her in the recruitment process, and EBC concluded that she was motivated by her non-selection for the Operations Analyst position.

The HRVP decision

70. On 23 October 2023, the HRVP sent the Applicant a decision letter regarding the allegations of misconduct against her. As stated in the HRVP decision letter:

In the Notice of Alleged Misconduct addressed to you on November 10, 2021, you were informed of a review under Staff Rule 3.00 into allegations that you may have engaged in harassing and/or discriminatory behavior against World Bank Group (WBG) staff by directing unwelcome, offensive, and hostile language towards them, using derogatory words and consequently creating a hostile work environment.

[...]

It was also alleged that while you acted as the Chairperson of the Selection Advisory Committee (SAC) for the recruitment of the Operations Analyst, WBG Country Office, Kuwait, you failed to disclose your familial relationship with one of the applicants who is your cousin.

[...]

After a careful and thorough review of the Final Report, I have determined that there is sufficient evidence to support a finding that you have engaged in misconduct, as defined under following provisions of Staff Rules:

Staff Rule 3.00, paragraph 6.01

(b): Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct or willful misrepresentation of facts intended to be relied upon;

(c): Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment including the requirements that staff avoid situations and activities that might reflect adversely on the Organizations (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)); and

(e): Harassment; contributing to a hostile work environment or wrongful discrimination including on the basis of race, or national origin.

In its Final Report, EBC found sufficient evidence to substantiate the allegations that your conduct towards these colleagues was unwelcome. EBC considered the nature of your interactions described above and the fact that you were previously put on notice about your manner of interaction and the impact of your behavior (i.e., through an Opportunity to Improve plan (OTI)), you should have known that your conduct was unwelcome. EBC also found that the colleagues were reasonably offended and intimidated by your behavior. Accordingly, EBC found that your conduct amounted to harassment and created a hostile, offensive and intimidating work environment for the colleagues. EBC also found sufficient evidence that you repeatedly made belittling remarks and used demeaning language to describe staff members; and made disparaging comments about staff members and used ethnic slurs to describe staff members based on their countries of origin. Witnesses told EBC that they were offended and intimidated by your comments. Given the nature of your comments, the pattern of behavior and the regularity of it, EBC concluded that it was reasonable for staff to find your comments offensive, and you should have known that your comments were unwelcome, offensive, and intimidating. Accordingly, EBC reasonably determined that your comments contributed to an intimidating and hostile work environment for staff.

EBC further determined that your overall conduct amounted to a failure to observe applicable norms of prudent professional conduct and conflicted 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.

EBC did not identify sufficient evidence to determine that you knew of your familial relationship with the applicant, prior to the recruitment exercise or that you failed to promptly disclose to the SAC or the Resident Representative your familial relationship with the applicant. Moreover, EBC determined that your relationship with this individual does not fall within the familial relationships enumerated in either Category I or Category II in Staff Rule 4.01, paragraph 5.03.

By way of mitigating factors, EBC noted that you do not have any prior adverse disciplinary findings against you during your service with the WBG.

To decide on the proportionality of the disciplinary measures to be imposed, and in accordance with Staff Rule 3.00, paragraph 10.09, I considered such factors as the seriousness of the matter, the interests of the WBG, any extenuating circumstances, the situation of the staff member, and the frequency of the conduct for which disciplinary measures may be imposed.

In view of the foregoing and that there is zero tolerance for such discriminatory behaviors in the WBG, I have decided that effective November 1, 2023, the appropriate disciplinary measures are: (a) termination of employment; (b) loss of future employment and contractual opportunities with the WBG; (c) access restriction to the WBG's premises; and (d) written censure to remain on your personnel file.

71. On 1 November 2023, the Applicant was separated from the World Bank Group.

The present Application and relief sought

72. On 12 March 2024, the Applicant filed this Application challenging “[t]he disciplinary decision issued by [the HRVP] on October 23, 2023.”

73. With respect to relief, the Applicant states that she requests the following:

- i. [Rescission] of the October 23, 2023, disciplinary decision.
- ii. Reinstatement to an equivalent and mutually agreeable position, along with backpay and benefits from the date of termination. [...]
- iii. In the alternative, compensation in lieu of reinstatement pursuant to Article XII.1 of the Tribunal's Statute in an amount no less than three years' salary. [...]
- iv. Removal of disciplinary records from [the Applicant's] personnel file.

74. Further, the Applicant states that she

requests compensation in an amount deemed just and reasonable by the Tribunal to remedy the damage to her career and professional reputation and the emotional distress resulting from being subjected to a sprawling, multiyear ethics

investigation in which every other staff member in the Kuwait Country Office and even individuals outside of the Bank became aware that [the Applicant] was being investigated.

75. The Applicant requests legal fees and costs in the amount of \$38,665.00.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The EBC record fails to establish misconduct, the Bank is unable to show misconduct by a preponderance of the evidence, and the HRVP erred in deeming the Applicant's actions misconduct under the circumstances of this case

The EBC record fails to establish misconduct, and the Bank is unable to show misconduct

76. The Applicant asserts that "EBC's misconduct findings are at best speculative because they are largely based on vague, uncorroborated, inconsistent, biased, or contradicted testimony." In particular, the Applicant contends that the findings regarding her interactions with Mr. G cannot be sustained.

77. With respect to the kitchen incident, the Applicant underscores that the EBC report fails to mention that there were no eyewitnesses to this alleged event and that, in the Applicant's view, it is Mr. G's word against hers. She states that "she consistently and emphatically denied that such an incident occurred." Further, the Applicant challenges as inconsistent the "secondhand accounts" of witnesses, which she claims EBC relies on as corroborative evidence, and she contends that "the quantum of evidence needed to prove the allegation simply does not exist." The Applicant asserts that the "preponderance of the evidence" standard and the obligation to afford her the benefit of the doubt with respect to conflicting evidence prevent the Bank from reconciling the conflicting accounts regarding this incident in a way adverse to the Applicant.

78. With respect to the 16 July 2019 incident, the Applicant submits that Mr. G was assigned to drive her to a meeting and did not call or stop by her office ahead of the trip per usual practice.

She states that once she was in the car “she inquired about why he did not do so and discussed how he could have handled the situation differently.” To the Applicant, this is another “he said, she said” situation where the Bank cannot meet its burden of proof because, while Mr. G claims she was “shouting,” the Applicant denies raising her voice and notes that there were no firsthand witnesses. Further, the Applicant stresses that character evidence, or EBC’s belief about what the Applicant would likely do in a particular situation, is not a substitute for an evidentiary determination regarding what she actually did. She posits that,

even if [the Applicant] had raised her voice at [Mr. G] in the car—which she denies, and as to which there is no testimony other than [Mr. G’s] (recycled many times as hearsay) to the contrary—it is impossible to imagine that the Bank would have deemed this a terminable offense if a higher-level, internationally recruited male staff member engaged in the same conduct.

79. The Applicant further purports that there is “no plausible misconduct” with respect to the allegation that she publicly questioned Mr. G’s competence. Referencing the May 2016 car accident, the Applicant submits that her concerns about riding with Mr. G and her efforts to avoid doing so were not unreasonable. She characterizes the allegations in this respect as regarding the “tone” of her voice and submits that the testimony regarding this is “largely secondhand hearsay, which is hardly sufficient to establish substantial evidence of something as subjective and context-dependent as the tone of someone’s voice.” The Applicant contends that EBC’s findings with respect to these incidents with Mr. G are insufficient in the disciplinary context where due process requires a higher quantum of proof. She further submits that witnesses testified to EBC that it was the 2016 accident rather than Mr. G’s nationality that led the Applicant to avoid riding with him.

80. The Applicant also asserts that EBC’s findings regarding her interactions with Mr. A cannot be sustained because they are based on testimony which is “a web of hearsay, inconsistencies, and the vaguest of allegations.” She claims that Mr. A “consistently failed to identify any specific corroborating details for his allegations,” and points out that he failed to produce written evidence to EBC in the form of emails which he claimed to have. To the Applicant, the EBC findings in respect of Mr. A “amount to little more than the subjective and contradictory impressions of staff members who, for the most part, did not actually witness the interactions to which they testified.” In the Applicant’s view, “substantial evidence is lacking.”

81. The Applicant next challenges the EBC finding that she “inappropriately and repeatedly stated publicly that the WBG was spending Kuwait’s money and advocated for the recruitment of more Kuwaitis.” The Applicant avers that such actions cannot constitute misconduct because the Kuwaiti government and senior Bank management spoke publicly about the use of Kuwaiti money and thus these statements are true and well-known in the Kuwait CO. Further, she contends that it “was indisputably the high-level policy of the Bank” to recruit more Kuwaitis at the time in question and that staff were aware of this.

82. With respect to the EBC findings regarding the use of derogatory ethnic terms, the Applicant again avers that the EBC findings cannot be sustained. She contends that EBC relies “almost entirely” on Ms. M’s testimony, and she contends that EBC in fact deemed Ms. M to lack credibility due to her bias against the Applicant for allegedly blocking Ms. M from being hired. The Applicant stresses that “EBC did not identify a single concrete instance of such behavior with any specificity as to date, time, or other corroborating detail, but instead simply accepted at face value [Ms. M’s] vague assertions that such conduct ‘[u]sually’ happened.” She asserts that the testimony which EBC relies upon does not meet the Bank’s burden of proof with respect to claims that the Applicant referred to other staff members by their nationalities.

83. On the finding that the Applicant referred to staff of Yemeni descent as “Abuyemen,” the Applicant asserts that this term is ambiguous and context-dependent and that EBC must show both that she used the term and that she did so in an offensive context. The Applicant asserts that, per the Final Investigation Report, only one witness testified as to having heard the Applicant use this term, and that Mr. A specifically denied that the Applicant ever called him “Abuyemen.” With respect to the finding that the Applicant regularly referred to staff of Palestinian origin as “Falastan,” the Applicant questions the testimony on which EBC relies as vague and unspecific.

84. The Applicant contends that there is an absence of any concrete evidence with respect to the EBC findings and that the EBC conclusions cannot be sustained. In the Applicant’s view, the “preponderance of the evidence” standard adopted by the Bank in July 2023 with respect to misconduct “does not materially alter the analysis.” She asserts that the Bank still may not rely on

“impressionistic” evidence, must afford her “the benefit of the doubt” in terms of inconclusive evidence, and may not substitute its own evaluation of the facts for those of the designated investigative body. The Applicant maintains that the EBC findings are insufficient to sustain the findings of misconduct against her.

The HRVP erred under the circumstances of the Applicant’s case

85. The Applicant asserts that it was unreasonable for the HRVP to deem the Applicant’s actions misconduct under the specific circumstances of this case because she “is being scapegoated for institutional problems well above her pay grade.” The Applicant submits that, at all relevant times with respect to the allegations, she was a Grade Level GE Operations Analyst without actual or apparent supervisory authority over anyone.

86. Further, the Applicant avers that she cannot be blamed for the perceived hostility toward non-Kuwaiti staff as

these internal dynamics within the Kuwait office were indisputably the result of external pressure from the Kuwaiti government; internal acquiescence to that pressure by senior regional Bank management in the form of a Kuwaiti-first hiring policy; the effectuation and open publicization of that policy by those with actual authority, including [...] [the] Resident Representative; and the apparent absence of any serious effort by [the Resident Representative] and others to address the concerns of non-Kuwaiti staff regarding their continued status in the organization.

87. She submits that “no one with actual authority to meaningfully address the complex political dynamics in the Kuwait office is being held to account for the allegedly hostile environment that non-Kuwait staff claimed they faced,” and the Applicant highlights that the Resident Representative continues in his tenure. The Applicant claims that “numerous witnesses” identified him “as being primarily responsible for perpetuating or exacerbating cultural tensions in the Kuwait office.” To the Applicant, “EBC engaged in a massive effort to find a suitable scapegoat, a Level GE local staff member whom [the HRVP] could treat as expendable and then declare the problem solved.”

88. The Applicant also contends that she is being unfairly sanctioned a second time for personality and/or behavioral issues which should be addressed through performance management not disciplinary action. She submits that the “core subject matter” of the EBC findings involves “personality and/or behavioral issues that implicate matters of professionalism and collegiality.” The Applicant references her September 2018 OTI wherein management determined that she needed to improve the “workplace behavior side,” and her successful completion of the OTI three months later, as illustrative of the fact that these are performance rather than disciplinary issues. To the Applicant, should these issues have needed to be addressed again it should have been through performance management.

89. Further, the Applicant contends that she “is being disciplined for almost entirely the exact same issues for which she already faced an adverse employment action in 2018,” and she submits that almost all the facts in the Final Investigation Report predate the OTI “and, as such, presumably constituted the alleged ‘respectful workplace behavior’ and ‘collegiality’ issues that triggered the OTI.” She asserts that, “[a]s a fundamental principle of fair treatment, [she] should not be subjected to multiple adverse employment actions for the same underlying conduct,” and that the disciplinary decision should therefore be overturned.

The Bank’s Response

The facts clearly establish misconduct, and the disciplinary measures imposed are provided for in the Staff Rules

90. The Bank contends that the present case is governed by the Principles of Staff Employment, the Staff Rules, and the Code of Conduct, as well as the Applicant’s Letter of Appointment and the Tribunal’s jurisprudence. The Bank highlights that, in April 2023, its Board of Executive Directors approved an amendment to the Principles of Staff Employment to modify the applicable standard of evidence in misconduct cases. The Bank states that, “[u]nder the prior Principles of Staff Employment, the standard of evidence was not clear for all misconduct cases, which posed a particular challenge in cases of racism and sexual harassment.” The Bank submits that the relevant changes to Principle 8.3 of the Principles of Staff Employment state:

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.

The Bank submits that the Applicant accepts the “preponderance of the evidence” standard as applicable to the instant case, and the Bank contends that it has met this standard of evidence for proving misconduct.

91. The Bank avers that “[h]arassment in the workplace is a very serious matter” and that its reform of the Principles of Staff Employment to remove uncertainty over the standard of evidence required in misconduct cases was precisely so that victims of harassment – like Mr. G, Ms. M, and Mr. A – “could raise complaints that, after a substantiation as serious as those undertaken by EBC in the performance of their duties, could result in a resolution that would do justice upon the complainants, as it happened in this case.” The Bank stresses that “harassment, by any gender, is a serious matter and will be investigated in the same manner.”

92. The Bank asserts that, pursuant to Tribunal precedent, allegations of misconduct 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 submits that EBC conducted forty-one interviews of thirty-two witnesses, six of whom were proposed by the Applicant, and that EBC analyzed substantial documentation. Moreover, the Bank notes that EBC officials visited the Kuwait CO and conducted in-person interviews and an in situ visit of the physical space of the interaction between the Applicant and Mr. G.

93. To the Bank, the facts establish that the Applicant’s behavior amounted to misconduct, and the Bank asserts that the EBC findings are substantiated by evidence. In the Bank’s view, the evidence “is neither speculative, impressionistic, nor inconclusive”; and the Bank assert that, “[i]n some instances, the evidence was corroborated by more than five witnesses and clearly meets the more likely than not standard.” Further, the Bank asserts that each of the allegations against the Applicant was corroborated by more than one witness, and the Bank contends that “EBC carefully and thoroughly evaluated the credibility of the witnesses as well as [the] Applicant’s credibility.”

The Bank avers that “EBC’s factual conclusions were based on a totality of the evidence presented.”

94. The Bank contends that the Applicant unsuccessfully attempts to discredit the testimony and credibility of Mr. G and Ms. M “by providing half-truths or selectively citing excerpts of their testimonies.” The Bank contends that the Applicant’s claims in this respect are overcome by the fact that “the excerpts are part of interviews that are significantly longer” with “consistently damaging portrayals of [the] Applicant’s unprofessional behavior over several years.” Further, the Bank claims that factors such as language barriers, other types of supporting evidence, and the Applicant’s own admission dispel the Applicant’s attempts to discredit the testimony of Mr. G and Ms. M.

95. The Bank also asserts that the Applicant’s misconduct was directed at individual staff members, and the Bank submits that, pursuant to Tribunal precedent, performance evaluations cannot be used as mitigating factors when the harm is suffered by individual staff members. To the Bank, the Tribunal has established “a clear and significant distinction between misconduct perpetrated against an individual and misconduct perpetrated against the institution,” and the Bank contends that the Applicant’s technical performance is irrelevant and should not be considered.

96. The Bank submits that the HRVP took “the record as a whole” and made “a thorough review” of the Final Investigation Report in imposing sanctions which are provided for under Staff Rule 3.00.

The Applicant’s Contention No. 2

The EBC investigation and Final Investigation Report fail to fully comport with the requirements of due process

97. The Applicant contends that EBC’s investigative process and Final Investigation Report were unfair, unbalanced, and prejudicial to the Applicant. With respect to EBC’s investigative process, the Applicant asserts that it was a “fishing expedition,” and submits that “[i]t is impossible to understand EBC’s sprawling, ten-month preliminary investigation, encompassing nineteen

interviews with sixteen different witnesses, as anything other than an all-out effort to ensure that a full investigation could be opened.”

98. The Applicant contends that EBC’s selection of witnesses appears to reflect a desire to arrive at a misconduct finding. She submits that EBC chose to rely almost entirely on testimony of staff members whom the complainants suggested would likely say negative things about the Applicant even when they “had at most limited day-to-day interaction with [the Applicant]” and, accordingly, whose testimony was thus largely hearsay testimony about what they had heard secondhand or thirdhand.

99. The Applicant avers that EBC’s reliance on hearsay for character evidence occurred despite the “substantial direct evidence” in the form of her years of peer feedback in Annual Reviews, which the Applicant submits shows that she was held in the highest regard. Moreover, the Applicant asserts that EBC rejected the credibility of hearsay evidence in the Applicant’s favor and, by way of example, points to her testimony that she avoided riding with Mr. G because he “interacted with her in a sexually inappropriate manner,” which she asserts was corroborated by Ms. Y’s testimony. Further, the Applicant submits that EBC declined to contact the majority of the witnesses she identified as having firsthand knowledge of her personality and professional interactions.

100. With respect to the Final Investigation Report, the Applicant posits that “it is overwhelmingly negative throughout, minimizing the positive and foregrounding the negative at every turn.” The Applicant contends that the positive and exculpatory testimony in the EBC findings does not appear to carry any weight in the EBC summaries and conclusions. She points to the allegation of nepotism in violation of Staff Rule 4.01, paragraph 5.03, and avers that EBC “wished to clothe even an exculpatory finding in the worst light possible” and that it “dedicated paragraphs to attacking [the Applicant’s] allegedly inconsistent statements regarding disclosure before finally conceding that she did not have any disclosure obligation in the first place.”

101. The Applicant also submits that the Final Investigation Report “omits almost entirely any acknowledgement that the two complainants had readily apparent ulterior motives in advancing

allegations of hostility and discrimination against [the Applicant], namely that they both blamed her—unfairly, as it turns out—for their disputed employment matters.” The Applicant asserts that EBC fails to acknowledge this and that it fails to question whether to weigh said testimony accordingly as that of interested parties rather than neutral witnesses. In particular, the Applicant notes that EBC found that Ms. M’s testimony regarding the Applicant’s allegedly close family relationship was wrong and motivated by personal bias, and the Applicant questions how EBC could treat Ms. M’s testimony as credible as to other issues in the investigation.

102. The Applicant stresses that the testimony of both Mr. G and Ms. M is colored by bias as they held grudges against her based on their unfounded beliefs that the Applicant was responsible for ending their careers with the Bank. The Applicant submits that “EBC’s case lives or dies” with their testimony and asserts that, in addition to their direct testimony, the corroborating evidence EBC relies upon is also tainted by bias as the witnesses relay hearsay testimony about what Mr. G and Ms. M allegedly told them.

The Bank’s Response

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

103. The Bank asserts that the Applicant’s claims of violations of due process are not supported by the facts and that the record demonstrates that the Applicant was afforded all due process rights in line with the Staff Rules and Tribunal precedent. The Bank submits that the EBC investigation was fully within the parameters set out in Staff Rule 3.00.

104. Specifically, the Bank notes that after the preliminary inquiry EBC found sufficient basis to proceed to an investigation and provided the Applicant with a preliminary notice of the allegations. Further, the Bank submits that the Applicant was provided with a Notice of Alleged Misconduct, was interviewed, and was provided with a copy of the interview transcript to which she responded with notes. The Bank also highlights that the Applicant contacted EBC to provide additional information and provided comments on her transcript.

105. With respect to the Applicant's claims of unfairness due to allegedly being punished twice in light of her OTI, the Bank submits that "many of the incidents subject of this investigation occurred after [the] Applicant graduated from the OTI." The Bank avers that "the record shows that the [Applicant's] bad behavior continued long after [the] Applicant graduated from the OTI and in fact, escalated," and the Bank contends that "the driving incident and the pushing incident in the kitchen determinatively occurred in 2019." Moreover, the Bank underscores that "the language of the OTI clearly states that [the] Applicant had an obligation to maintain good behavior, even after graduating from the OTI." The Bank submits that, should the Tribunal "disregard the plain language of the OTI and find that EBC and the HRVP should not have been allowed to consider [the] Applicant's behavior as a whole, there is sufficient post OTI behaviors that would warrant the sanctions imposed."

106. The Bank submits that "it not only dutifully abided by [the] Applicant's due process rights, but also evaluated [the] Applicant's conduct appropriately under the applicable rules." Specifically, the Bank references the WBG Guidance "Anti-Harassment," which it submits provides a definition of harassment and examples of what constitutes harassment, and the Bank contends that the Applicant engaged in harassment and was appropriately sanctioned for misconduct.

107. In the Bank's view, "EBC got it right" in this case, and the Bank submits that EBC produced a well-balanced Final Investigation Report and that the HRVP reviewed all of the material presented to her.

The Applicant's Contention No. 3

The sanctions imposed are grossly disproportionate under the totality of the circumstances

108. The Applicant asserts that the disciplinary sanctions should be rescinded in their entirety because the misconduct findings are not supported by substantial evidence. To the Applicant, should the Tribunal uphold EBC's findings, the harsh sanctions of termination and a ban on future employment would still be grossly disproportionate and arbitrary based on the totality of the record and a comparative assessment of the treatment of staff members in similar situations.

109. The Applicant avers that the totality of the circumstances, the significant mitigating factors, and the absence of identified aggravating factors weigh heavily against termination as a sanction. She asserts that she “had a stellar Bank career” for almost a decade prior to the EBC investigation, consistently received high praise in her performance reviews, and successfully completed the OTI and went on to have, according to her supervisor, an “outstanding year.” She asserts that the Bank is contending that the OTI should be treated as a significant aggravating factor and is trying to discipline her “for essentially the same conduct that she successfully addressed through the OTI.” The Applicant avers that the Bank “should not be permitted to effectively triple-count [the Applicant’s] 2018-and-earlier conduct against her by treating it as the basis for the OTI, the basis for the misconduct finding, and the basis for elevating the sanctions imposed thereafter.”

110. She notes that the present matter was the only instance of misconduct in her Bank career and that neither EBC nor the HRVP identified any aggravating factors to support the use of the most severe sanction. The Applicant contends that, while the Bank has invented post hoc aggravating factors, the question before the Tribunal is whether the HRVP abused her discretion in terminating the Applicant’s employment and banning her from future employment based on the EBC record. The Applicant reiterates that EBC did not identify aggravating factors and that the HRVP did not terminate the Applicant’s employment based on aggravating factors. To the Applicant, the sanctions imposed did not constitute a reasonable exercise of discretion in the absence of aggravating factors.

111. The Applicant cites Tribunal precedent to compare her case with others in which termination has not been a sanction, and to assert that the sanctions are disproportionate and constitute unfair treatment. She notes that, as a Grade Level GE staff member at the time of the allegations in issue, she did not possess supervisory authority and could not reasonably be perceived as possessing such authority. Further, she contends that there is no “significant power differential” in her case to amplify the alleged misconduct and that there is no “abuse of authority” finding to compound any violations. The Applicant submits that, while she had no authority over anyone, the HRVP “chose to treat her much more harshly than high-level staff who inarguably had such authority to abuse.”

112. The Applicant reiterates that, “to the extent non-Kuwaiti staff members did legitimately fear the loss of their employment to Kuwaitis or otherwise experience a hostile environment, these problems were caused by the high-level political dynamics created by the Kuwaiti government’s demands and acquiescence thereto at the highest levels of the Bank.” She submits that the Bank ignores these material circumstances and pins “an allegedly office-wide culture of fear on a single GE-level Analyst while absolving the GH-level Resident Representative of any responsibility.”

113. Further, the Applicant takes issue with the Bank’s claim that she “endangered the safety of WBG staff in the Kuwait CO,” and she asserts that these allegations from the Bank are prejudicial. With respect to the Bank’s claim that she breached EBC confidentiality and provided documents to the Kuwaiti law enforcement authorities, the Applicant submits that the Bank offers no evidence that she did so but instead insinuates that she did so. Finally, she contends that the Bank’s reference to an ongoing criminal investigation in Kuwait is irrelevant to the questions of whether the EBC findings can be substantiated and whether the sanctions imposed are disproportionate. She contends that the materials provided by the Bank in this respect are “extremely prejudicial.”

The Bank’s Response

The disciplinary measures imposed are proportionate and should stand

114. The Bank asserts:

Decisions imposing disciplinary measures will take into account such factors as the seriousness of the matter, extenuating circumstances (mitigating and aggravating factors), the situation of the staff member, the interests of the WBG, and the frequency of conduct for which disciplinary measures may be imposed.

115. The Bank contends that “[t]he record shows that [the] Applicant’s behavior was serious and widespread.” The Bank submits that the Applicant’s behavior was evident since FY17 and that eight out of the ten staff mapped to the Kuwait CO Country Management Unit either complained of or witnessed the Applicant’s poor professional conduct. To the Bank, the Applicant’s “behaviors are hers and hers alone,” and “[n]o one else can be responsible for them and none of [the] Applicant’s excuses can justify them.” Further, the Bank stresses that the

Applicant has not recognized her misdeeds or apologized to anyone and that she continues to deny any wrongdoing.

116. The Bank also contends that the EBC investigation demonstrated that the “incidents” were not isolated events but rather a clear pattern of inappropriate and unprofessional behavior. The Bank submits that, after the completion of the OTI, the Applicant engaged in misconduct against Mr. G and Mr. A. The Bank disputes the Applicant’s contention that she is being punished twice for the same behavior. The Bank stresses that the “Applicant’s poor conduct continued after she graduated from the OTI” and that it “escalated from verbal to physical when she pushed [Mr. G] in the kitchen.”

117. The Bank submits that one of its principal obligations pursuant to its duty of care to staff is its “responsibility to thoroughly investigate allegations of harassing behavior and hostile work environment to ensure a proper and safe work environment for all staff.” The Bank notes that misconduct is to be addressed through the internal justice system not through performance management reviews and contends that placement on an OTI is “not a sanction but rather a program to help staff meet their obligations to the institution.”

118. The Bank claims that further aggravating factors considered by the HRVP were the Applicant’s duty to comply with the Principles of Staff Employment and Code of Conduct and “to lead by example.” The Bank avers that as an Operations Officer the Applicant had “additional responsibility to conduct herself with professionalism and in a manner that fostered an inclusive and respectful workplace environment,” and that she did the opposite. The Bank also deems it an aggravating factor that the “Applicant directed her behavior towards staff of other nationalities, and staff at lower grade levels.”

119. Further, the Bank asserts that the Tribunal precedent relied upon by the Applicant to challenge the disciplinary sanctions is distinguishable from the present case, and the Bank stresses that “in this case there is harassment, creating a hostile work environment, and wrongful discrimination on the basis of race and national origin, plus not observing the standards of professional conduct.” Further, the Bank reiterates that the “Applicant’s misconduct was not

victimless (or against the institution) but rather misconduct directed at several staff members personally that had a severe impact and created a hostile work environment.”

120. The Bank also contends that, in evaluating the proportionality of a disciplinary measure, the Applicant’s personal situation is to be considered. To the Bank, the Applicant’s pattern of behavior prior to the EBC investigation is well-documented, and the Bank claims that the Applicant continued to harass, demean, and threaten staff after graduating from the OTI. The Bank also submits that the interest of the Bank in battling the alleged misconduct is a factor in determining proportionality and stresses that combatting harassment has been of central importance to the Bank for the past several years. To the Bank, its commitment to ending harassment in the workplace includes the reform of the Principles of Staff Employment, which makes it clear that “substantial evidence” is no longer required. The Bank underscores that a misconduct finding may stand if it is “more likely than not” that the offending behavior occurred. To the Bank, in the instant case, the evidence supports either standard of proof and the disciplinary measures put upon the Applicant must stand.

121. Additionally, the Bank submits that staff in the Kuwait CO were afraid to report incidents of misconduct because of their awareness that perpetrators such as the Applicant would go unpunished due to closeness with the Resident Representative. The Bank also asserts that there was “a substantial power differential with the perpetrators” with respect to staff with lower grades.

122. The Bank also submits that it “was informed that a criminal complaint was filed before the Kuwaiti law enforcement for libel/defamation, based on and using the transcripts of the EBC investigation.” The Bank states that the Kuwaiti authorities have called in former and current staff members for questioning, and the Bank states that the relevant former and current staff members have informed the Bank that the Applicant initiated the complaint. To the Bank, the Applicant was placed on an OTI for the same type of conduct due to mistreatment of other Kuwait CO staff and the Bank avers that, although the Applicant graduated from that OTI, “her pattern of harassing behavior continued until her termination.” The Bank contends “that same pattern of harassment and retaliation continues until today,” and the Bank refers to its position that the Applicant initiated a criminal complaint against Kuwait CO staff due to their participation in the EBC investigation.

The Bank asks that, in the context of the Applicant's request for reinstatement as a form of relief, the Tribunal "consider [the] Applicant's rule-breaking, retaliatory, and purposefully endangering conduct post-termination towards other Kuwait CO staff members."

123. Finally, the Bank submits:

Over the past five years, there have been four cases, including [the] Applicant's case, with similar types of misconduct. In three of these cases, the sanctions imposed were identical and included: i) either termination of employment or ineligibility for future employment at [the] WBG, ii) access restriction to WBG premises, and iii) written censure to remain in file indefinitely.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

THE SCOPE OF THE TRIBUNAL'S REVIEW IN DISCIPLINARY CASES

124. 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.

125. 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.*

126. 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.

127. 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.

128. 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.

129. 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.”

130. 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.

131. 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].”

132. 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.

133. 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.”

134. 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.

135. 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.

136. 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.

137. 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 Kuwait CO 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 AND WHETHER THEY AMOUNT TO MISCONDUCT

138. The Tribunal will examine the record to determine whether it supports the Bank's conclusion that the Applicant committed misconduct.

139. The Tribunal notes that the EBC Final Investigation Report concluded:

Based on a careful review of the evidence, EBC found sufficient evidence to substantiate the allegations that [the Applicant]:

- i. repeatedly made disparaging and demeaning remarks about [Mr. G] by publicly questioning his professional competence;
- ii. repeatedly raised her voice and made belittling and demeaning comments towards [Mr. G]. For example, on July 16, 2019, while being driven to an official function by [Mr. G], she raised her voice and berated [Mr. G] for not following office protocol;
- iii. Sometime in 2019[,] while in the office kitchen, pushed [Mr. G] by the shoulder, in order to get past him;
- iv. repeatedly raised her voice and berated [Mr. A]. For example, during a United Nations organized security drill in March 2019, she raised her voice at [Mr. A] and berated him. On other occasions, [the Applicant] also berated [Mr. A] and questioned his professional competence;
- v. repeatedly made disparaging and derogatory remarks concerning staff members' ethnicities and used ethnic slurs to refer to staff members, such as *Falastan*, to describe people of Palestinian descent, *Abuyemen* or *Al-Yemeni* to describe people from Yemen; [and]
- vi. following the Kuwait government's requests to the WBG to recruit more Kuwaiti nationals to the WBG, inappropriately and repeatedly stated publicly that the WBG was spending Kuwait's money and advocated for the recruitment of more Kuwaitis to the Kuwait office.

140. Further, the HRVP's decision letter informed the Applicant:

After a careful and thorough review of the Final Report, I have determined that there is sufficient evidence to support a finding that you have engaged in misconduct, as defined under following provisions of Staff Rules:

Staff Rule 3.00, paragraph 6.01

(b): Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct or willful misrepresentation of facts intended to be relied upon;

(c): Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment including the requirements that staff avoid situations and activities that might reflect adversely on the Organizations (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)); and

(e): Harassment; contributing to a hostile work environment or wrongful discrimination including on the basis of race, or national origin.

141. The Tribunal recalls that, in its Final Investigation Report and with respect to Mr. G, the Driver, EBC found sufficient evidence to substantiate the allegations that the Applicant “repeatedly made disparaging and demeaning remarks about [Mr. G] by publicly questioning his professional competence” and “repeatedly raised her voice and made belittling and demeaning comments towards [Mr. G].” EBC noted the 16 July 2019 interaction in the vehicle with Mr. G as an example where it found the Applicant “raised her voice and berated [Mr. G] for not following office protocol.” Further, EBC found sufficient evidence to substantiate that “[s]ometime in 2019[,] while in the office kitchen, [the Applicant] pushed [Mr. G] by the shoulder, in order to get past him.”

142. With respect to Mr. A, the Program Assistant, the Tribunal recalls that EBC found that the Applicant “repeatedly raised her voice and berated” him, and EBC cited the March 2019 UN-organized security drill as an example where the Applicant “raised her voice at [Mr. A] and berated him.” Additionally, EBC found sufficient evidence to substantiate the allegation that, “[o]n other occasions, [the Applicant] also berated [Mr. A] and questioned his professional competence.”

143. Finally, the Tribunal recalls that EBC found that the Applicant “repeatedly made disparaging and derogatory remarks concerning staff members’ ethnicities and used ethnic slurs to refer to staff members,” and that she “inappropriately and repeatedly stated publicly that the

WBG was spending Kuwait's money and advocated for the recruitment of more Kuwaitis to the Kuwait office.”

144. The Tribunal observes that the HRVP noted in her decision letter that EBC found sufficient evidence to substantiate the allegations that the Applicant's conduct toward her colleagues was unwelcome and that the Applicant should have known her conduct was unwelcome. Further, the HRVP decision letter noted that EBC found sufficient evidence that the Applicant “repeatedly made belittling remarks and used demeaning language to describe staff members; and made disparaging comments about staff members and used ethnic slurs to describe staff members based on their countries of origin.” The decision letter also noted that witnesses told EBC that they were offended and intimidated by the Applicant's comments.

145. In view of the above, the Tribunal considers that the findings of fact at issue in this case concern the following:

- EBC's findings regarding the Applicant's interactions with Mr. G;
- EBC's findings regarding the Applicant's interactions with Mr. A; and
- EBC's findings regarding the Applicant's comments about and interactions with staff concerning nationality.

The Tribunal will examine the above EBC findings which informed the HRVP's misconduct determination and will determine whether the evidence supports the conclusion that the Applicant engaged in misconduct.

146. Before turning to its review of the specific allegations and findings of misconduct in the instant case, the Tribunal will provide its observations regarding the general workplace environment in the Kuwait CO, as borne out in the record, for the purposes of relevant context.

General workplace environment in the Kuwait CO

147. The Tribunal first recalls that the Bank operates a non-lending model in Kuwait and that its program there consists of a large Reimbursable Advisory Services program wherein the Bank provides advisory and consulting services for the client in return for a fee. The Tribunal further

recalls that the Bank's Kuwait operations are funded by the Kuwaiti government, including the salaries of all Country Management Unit staff, the Resident Representative, and other Internationally Recruited Staff working on projects in Kuwait.

148. The Tribunal next observes that the record indicates that there were clear and increasing tensions in the Kuwait CO between Kuwaiti and non-Kuwaiti staff. The record suggests that these tensions increased greatly in 2019 in the context of the official request from the Kuwaiti government for the Bank to hire more Kuwaiti nationals, the Bank's acceptance of this request, and its communication of the "Kuwaiti First" initiative and related action plan to Kuwait CO staff.

149. In these respects and for further context, the Tribunal notes the testimony of Ms. D, a Jordanian national and a Team Assistant in the Kuwait CO who served with the Bank from around 2013 to 2018, wherein she stated to EBC:

[EBC]: Okay. And when you worked in the World Bank office in Kuwait, how would you describe the general office environment?

[Ms. D]: When I first walked in you mean?

[EBC]: No. Just generally, how would you describe the general office environment?

[Ms. D]: Okay. So, when I started, it was like – it was perfection. It was a lot of fun. It was – I was – you can say that I was in love with the environment and the work. But it slowly kind of went down, if you know what I mean. How do I say this? It became kind of a sensitive environment. And things that I would have liked to see – I mean, I was surprised to see that some of these things happen in the bank. Especially as an international organization, you would think that everyone who joins would have like a bit of an open mind and – yeah, they will have an open mind to other cultures and other people. But it kind of went like a bit of – I'm going to say it bluntly, we would face some racism issues in the bank lately, before – I mean, before I leave. I don't know now, but before I leave.

[EBC]: Okay. Can you elaborate?

[Ms. D]: Okay. So, before – like before I leave, we heard a lot of comments from the Government saying that they mostly want to hire – that they then want the bank to hire Kuwaitis, and they kept saying this. And when like other Kuwaiti staff would hear this, they keep saying this also in meetings. And you'd hear these comments around the office like, oh, we should have more Kuwaitis in the office. And that's totally fine. I mean, at the end, it's a Kuwait office. But if, like, if you want to hire

someone, just make sure they have the right qualifications. You can't choose someone just based on their nationality when there are other more qualified people that can actually add input, a good input to the office and to the work. So, that created some sort of discrimination in the office, like you would say. Whenever there's an interview for a non-Kuwaiti, they would say, oh, no, why are you interviewing this person? You should not be interviewing. We should not have these non-Kuwaitis in the office. So, that created some sort of a fear for non-Kuwaitis that, okay, I might lose my job any minute because of – they want to hire Kuwaitis in the office and not me. So, that created some sort of fear. And when you have people working under fear and constant worrying that they might lose their jobs, of course it's going to affect their work and their energy at work. So, yeah, I'm – yeah, that's what I mean.

[EBC]: Okay. So, if we understand you correctly, essentially, it was – it had more to do with the fact that you – the Government wanted more Kuwaitis to be hired. And this sort of played out in the office. And when – people, when they were positioned – when positions opened up in the office, there was an emphasis on hiring Kuwaitis; is my understanding correct?

[Ms. D]: Correct.

150. The Tribunal further notes the testimony of Ms. T, a Senior Procurement Specialist and Palestinian who worked in and out of the Kuwait CO from July 2019 to March 2020:

[EBC]: Okay. In your time in the office, did you observe any tension between certain nationalities in the office?

[Ms. T]: Certain nationalities? Again, that's the issue of Kuwaiti versus non-Kuwaiti. I mean, like, for example, you would hear other colleagues talking about – especially [a colleague] those who were in the office for some time. Like the – and also, there's a tendency now that every new hiring, especially of ACS [Administrative Client Support], has to be Kuwaiti, I don't know. They say – they used to say that there is some instruction or agreement with the Ministry of Finance of Kuwait that they want to see more Kuwaitis in the office. So, you feel this tension between Kuwaiti and non-Kuwaiti and in speaking with other colleagues, especially the lower grades.

Ms. T further stated to EBC:

Also, on the, like, the hiring of new ACS, it's like, people were talking in the office, why do they have to give preference to Kuwaitis? These are not things that I can substantiate, you know? And I don't know. I was not part of the selection committee who selected these people.

151. Further, and with respect to the Kuwaiti–non-Kuwaiti divide, the Tribunal observes that a “them” versus “us” mentality permeated the Kuwait CO workplace. The Tribunal observes, for instance, EBC’s interview with Mr. G on 16 February 2021, which included the following:

[EBC]: [...] So, the floor is yours. Tell us in your own words what is going on. And you tell us also who is the subject, who is – who are you alleging is discriminating against you? So, we might be asking you back and forth maybe for examples and other things, but the floor is yours, you can tell us what is going on.

[Mr. G]: So, we are in the office for drivers, and – excuse my language, if there is any mistake you can correct me – and we always – they always treat us like a different, not like the same, other – our colleagues. Always if we have a complaint or if we have an issue, we cannot find anyone or any person in the office or in the HR to solve it. So, like they said, we don’t have anyone.

[EBC]: Okay. Go ahead, we are listening.

[Mr. G]: Yeah. And one time – there is one colleague, her name is [the Applicant], when I start my job, it was in August 2015 in the education project. She was one from the team and always she was shouting on me and treat me like I am a driver for her, not for the office, you know?

Additionally, Mr. G stated to EBC:

[EBC]: I know that you also maybe point that non-Kuwaiti people were treated bad. What do you mean by that? If you can explain?

[Mr. G]: I told you, we are as the drivers, they are not listening to us. This is the main problem. When there is something happen to us or anything like harassment, like anything else, they they are not listening. That’s the main problem.

152. The Tribunal notes that the Bank acknowledges that “[t]here was something amiss in the Kuwait Country Office” but that the Bank disputes that it was related to the Kuwaiti First initiative. The Tribunal recalls that the Bank states that Kuwaiti nationals “benefitted from certain privileges that non-Kuwaitis were denied.” The Bank explains that “Kuwaiti nationals drank bottled water purchased for the office, whereas non-Kuwaiti nationals were remanded to drinking tap water” and further that, “[i]f you were a Kuwaiti national, you were allowed to occupy the lunchroom at the exclusion of non-Kuwaitis.”

153. The Bank explains, and the record supports, that the situation in the Kuwait CO resulted in “an extensive investigation that spanned two years” and which involved EBC conducting forty-one interviews of thirty-two witnesses, reviewing thousands of pages of documents, and investigating the conduct of three staff members. The Tribunal notes that EBC investigated the conduct of the Applicant; Ms. Y, a Kuwaiti national; and the Resident Representative, a U.S. national born in Iraq.

154. The Tribunal notes that Ms. Y resigned her employment with the WBG in February 2023, prior to the conclusion of the EBC investigation. Still, the Tribunal takes note of the HRVP decision letter of 23 October 2023, which informed Ms. Y that she was found to have engaged in misconduct as defined under Staff Rule 3.00, paragraph 6.01 (b), (c), and (e), and which imposed disciplinary sanctions of “(a) loss of future employment and contractual opportunities with the WBG; (b) access restriction to the WBG’s premises; and (c) written censure to remain on your personnel file.”

155. With respect to the Resident Representative, the Tribunal does not have the full EBC investigative record before it, but the Tribunal notes that EBC did not identify sufficient evidence to warrant submitting a report to the HRVP for discipline and instead issued a caution to the Resident Representative. As stated in EBC’s 24 January 2024 communication to the Resident Representative:

We note that while our investigation did not identify sufficient evidence to warrant submitting a report to the PaC [People and Culture, or HR] for discipline, the evidence on record indicated that you did not effectively address workplace concerns reported to you and your perceived favoritism towards certain staff led to an atmosphere of distrust in the office. EBC also found evidence that your perceived inaction in effectively addressing these workplace concerns led staff members to feel uncomfortable reporting other concerns to you because they were afraid of retaliation. It is however noteworthy that we did not find [*sic*] to substantiate the allegations that the nonrenewal of [Mr. G’s] contract was retaliatory.

156. In the context of the above-described Kuwait CO workplace environment and the related EBC investigation into this environment, the Tribunal notes the Applicant’s contention that, at the relevant time of the incidents in question, she was a Grade Level GE Operations Analyst without

supervisory authority, and the Tribunal further notes her position that she “is being scapegoated for institutional problems [...] while those with actual authority to address the issues in the Kuwait office avoid all accountability.”

157. Finally, before beginning its analysis of the specific allegations and findings against the Applicant in the instant case, the Tribunal observes that this case concerns allegations that occurred some years ago, and the Tribunal further observes that, despite the considerable testimonial evidence in the record, there is limited contemporaneous documentation and, for some incidents, no eyewitness accounts.

Specific allegations against the Applicant

Interactions with Mr. G (Driver and Yemeni national)

158. The Tribunal notes that EBC found that the Applicant “repeatedly spoke to [Mr. G] in a rude manner, raised her voice at him and questioned his competence.” EBC further found that the Applicant “openly and repeatedly questioned [Mr. G’s] competence to others in the office,” and it found that the manner in which the Applicant communicated what may have been performance feedback “was disparaging, demeaning and not constructive.”

159. The Tribunal first observes that the Applicant admitted to EBC that she “reserved the right to call [Mr. G] out” when he made errors in his driving and exposed her to danger, but denied denigrating or belittling him, directly or to other staff members. Specifically, in her response to the EBC revised draft report the Applicant stated:

Indeed, there are instances where [Mr. G] made obvious errors while driving me on official duties, and I reserved the right to call him out when he made such mistakes. It is important to acknowledge that by assigning me [Mr. G] to be my driver, the World Bank Group entrusted him with my life. However, this did not limit me to being passive even when [Mr. G] exposed me to danger. Per the witness statements, however, I belittled [Mr. G] through the manner in which I addressed him. Whereas some incidents resulting in me changing the tone my voice on him were due to frustrations by how he executed his duties, I, at no point, questioned his

competence, neither did I belittle him. I was only concerned with instances when he drove recklessly and, at that point, I had no option but to call him out.

160. The Tribunal observes that EBC relied on the testimony of multiple witnesses in its investigation of and findings regarding the Applicant's interactions with Mr. G. The Tribunal notes that witnesses testified that the Applicant avoided or requested not to be driven by Mr. G because she viewed his driving as "reckless," and witnesses recalled the May 2016 car accident in which Mr. G was driving and the Applicant claimed to be injured as a passenger. In these respects, the Tribunal notes that, in its Final Investigation Report, EBC acknowledged that the Applicant's "comments about [Mr. G's] competence were likely influenced by his involvement in a car accident in which she claimed to have suffered injuries," and further noted that Ms. Z, Mr. O, and Ms. I testified to this point. Specifically, the Tribunal notes that Ms. Z stated that the Applicant did not like the way Mr. G drove, and Ms. Z explained to EBC that she attributed this sentiment to the accident. Ms. I also noted the accident with Mr. G in which the Applicant claimed to be injured and stated that the Applicant did not want to drive with him thereafter. Further, Mr. O testified that, after the accident with Mr. G, the Applicant did not want to ride with him. He stated, "But what I remember, and what I want to add is that, after she came back, she stopped wanting to ride in the car with [Mr. G]. So, she started to take a taxi, or a different car. She just refused to be in the car with him."

161. Another witness whom EBC relied upon in investigating the Applicant's interactions with Mr. G, Ms. S, testified to EBC that she personally witnessed the Applicant speaking inappropriately to Mr. G and recalled an incident from "six or seven years ago," and she stated:

So, something happened on the road, basically, he I think sped – I'm not remembering the particular details of the – of the issue. But we were – you know, we had just gotten away, something was going to happen, and it didn't. I think because he sped, so take it with a – you know, this is – I'm giving you rough details. I don't remember exactly what happened but she wasn't happy because he was speeding, I think, that was what she was – she was angry about. And she's – and she started to raise her voice and say something to the effect – I'm paraphrasing here. So, I don't remember the – exactly what she said. But why did you – you know, sort of like rebuking him like a mother would rebuke her child, I told you, you know, why did you speed, you should, you know. It was just very – I felt secondhand embarrassment, if I can, you know – I want to – I'm trying to paint it for you like you were there, I'm trying to let you know how I felt.

162. Additionally, in its Final Investigation Report, EBC cited the testimony of Mr. A who stated with respect to the Applicant and Mr. G that he “was hearing stories that she was humiliating him every day.” He further recalled one occasion when he was in the car with the Applicant and Mr. G was driving. According to Mr. A, the Applicant “started trying to irritate [Mr. G] while he was even driving,” and “[s]he started telling him you cannot drive. Your drive is bad. By the way, you don’t know the roads. You don’t know what to do and these kind of things.”

163. Having considered the evidence, the Tribunal is of the view that the testimony describes isolated and sporadic occurrences and reflects the subjective impressions and recollections of staff members, years after the event, with respect to the Applicant’s conduct. The Tribunal finds that the witness testimony does not sufficiently support a finding of fact for disciplinary purposes that the Applicant spoke to Mr. G in the manner found by EBC.

164. It is to be noted that Mr. G served as a driver and fellow staff member of the Bank in the Kuwait CO. The Applicant’s preferences with respect to which driver drove her on official Bank business, however understandable her motivations behind such preferences may be, cannot create an entitlement that the Applicant could avoid interacting with Mr. G in a professional capacity, nor can it permit the Applicant to speak to Mr. G in a rude or disrespectful manner or publicly question his professional competence without consequence. However, in the Tribunal’s view, the measure of evidence in the record does not support a finding of misconduct under the applicable evidentiary standard.

165. The Tribunal next turns to the EBC findings regarding the vehicle incident of 16 July 2019. The Tribunal observes that EBC concluded, on the basis of “witness testimony,” as well as “[the Applicant’s] past behavior and her manner of interactions with [Mr. G],” that, while en route to an official meeting, the Applicant “raised her voice at [Mr. G], spoke to him in a disrespectful manner and berated him for failing to stop by her office to notify her of the meeting before going to the vehicle and subsequently for not calling her directly to notify her that he was waiting in the vehicle, instead of calling [Mr. O] to notify her.” The Tribunal will examine the evidence presented in the

record to determine whether the Bank has proven the Applicant's alleged conduct by substantial evidence.

166. The record indicates, based on the testimony of both the Applicant and Mr. G, that there was an incident which occurred while Mr. G was driving the Applicant to an official meeting on 16 July 2019. It is the nature of this interaction and the Applicant's specific behavior toward Mr. G that is in issue. Mr. G testified that the Applicant was "shouting" and persistently berated and questioned him on the way to the meeting regarding his decision to wait in the car for her rather than contact her directly; the Applicant stated that she questioned Mr. G on what, in her view, was a disrespectful deviation from protocol but did not raise her voice at him.

167. The Tribunal notes that EBC interviewed other staff members with whom Mr. G stated he had shared his experience. In particular, Mr. O testified that Mr. G told him the same day or the next day that the Applicant "scolded" him in the car. Mr. O further stated to EBC that "my use of the word scolded was not properly communicated," and "maybe I used the wrong word here. But he only came to us and said that [Mr. G] – that [the Applicant] talked to him, and asked him, why he didn't have her phone number." Mr. O further testified that Mr. G "didn't really like the way [the Applicant] talked to him, you know, and asked him why you didn't have my number." Ms. Z testified that Mr. G told her of the incident and told her that the Applicant was upset and shouted at him saying, "You don't know how to do your job, why you are not calling me, why are you calling other people to call me, don't know my number." Mr. H testified that Mr. G told him the Applicant was "yelling" at him about not contacting her directly.

168. Mr. G also told EBC that he reported this incident to the Resident Representative, and, per the Final Investigation Report, the Resident Representative ultimately testified that Mr. G informed him about the incident with the Applicant. Mr. G further testified to EBC that, despite following up, the Resident Representative took no action on this incident; and Mr. G testified that he believed no action was taken by the Resident Representative because he is friends with the Applicant.

169. The Tribunal notes that EBC stated in its Final Investigation Report:

EBC did not find [the Applicant's] testimony credible as several witnesses [...] confirmed that [Mr. G] told them about [the Applicant's] behavior when he returned to the office, was upset about the manner of her interaction with him in the vehicle. [Mr. G] subsequently reported [the Applicant] to [the Resident Representative] on the same day. EBC noted that witnesses' testimonies were consistent with [Mr. G's] narration of the incident and also consistent with each other's account of the events.

EBC also considered [the Applicant's] past behavior and general manner of interactions with [Mr. G] noted above. EBC noted that several staff across different grades told EBC that [the Applicant] spoke to staff, including [Mr. G] in a rude and disrespectful manner. Additionally, EBC noted that [the Applicant] was previously placed on an OTI in 2018, for her workplace behaviors related the manner of her interactions with staff. Based on the foregoing, EBC did not find [the Applicant's] denial credible.

Accordingly, based on witness testimony, [the Applicant's] past behavior and her manner of interactions with [Mr. G], EBC concluded that on July 16, 2019, while driving to an official meeting, [the Applicant] raised her voice at [Mr. G], spoke to him in a disrespectful manner and berated him for failing to stop by her office to notify her of the meeting before going to the vehicle and subsequently for not calling her directly to notify her that he was waiting in the vehicle, instead of calling [Mr. O] to notify her.

170. In the Tribunal's view, the record demonstrates by the requisite evidentiary standard that there was an occasion on 16 July 2019 in which the Applicant took issue with Mr. G's approach and in which Mr. G took issue with the Applicant's response to his approach. Beyond that, the Tribunal cannot conclude in line with the EBC findings. Rather, the Tribunal notes that the disputed interaction took place while Mr. G was driving and the Applicant was in the back seat. The Tribunal notes that the relevant parties have different recollections with respect to the Applicant's tone and volume in the car on 16 July 2019, and on this the Tribunal is not nearly as willing as EBC to dismiss the Applicant's credibility or to give more weight to Mr. G's testimony.

171. In the Tribunal's view, interpretations and perceptions of tone and respect can be influenced by factors such as social and cultural context. The Tribunal considers that these contexts are in turn often imbued with and/or may lead to individual impressions and expectations concerning gender, age, and class, among other characteristics. The Tribunal considers that, in its fact-finding, EBC failed to have sufficient regard to the fact that Mr. G's testimony was influenced by his own perception and perspective of what occurred on that day.

172. The Tribunal finds it important to recall at this juncture that many staff members testified that the Kuwaiti First hiring initiative created an environment of deep uncertainty within the Kuwait CO for non-Kuwaiti staff, such as Mr. G. The Tribunal notes that the perceptions of Mr. G regarding the way the Applicant spoke to him, and his subsequent relaying of that perception to his colleagues, may have been influenced by his concerns around his own job security in view of the Kuwaiti First initiative. Further, to the extent Mr. G indeed harbored concerns regarding his continued employment, these concerns may have been heightened in the context of his interacting with the Applicant, given the history of the car accident in which she stated she was injured as well as her willingness to point out what she considered to be errors on his part as a professional driver.

173. The Tribunal considers it reasonable for the Applicant, as a Bank professional on official business, to have expressed to Mr. G her concerns regarding his alleged departure from protocol at the time in question. Indeed, the Applicant admits that she did so but denies raising her voice or otherwise speaking to him disrespectfully. Considering the circumstances, the Tribunal does not find it to be an established fact that the Applicant raised her voice at Mr. G, spoke to him in a disrespectful manner, or berated him on 16 July 2019.

174. The Tribunal next turns to the EBC findings of fact regarding the kitchen incident. Mr. G alleged that “a few weeks” after the 16 July 2019 incident in the vehicle, the Applicant “pushed” him out of her way while in the Kuwait CO kitchen. Based on its investigation, EBC concluded that the Applicant “pushed [Mr. G] in the office kitchen.”

175. The Tribunal recalls that Mr. G testified to EBC that the Applicant pushed him in the kitchen while he was cleaning his cup at the kitchen sink in order to retrieve her own cup from the cabinet. He told EBC that he informed four colleagues of this incident – Mr. A, Ms. Z, Mr. N, and Mr. H. In its Final Investigation Report, EBC notes that Mr. N did not recall Mr. G informing him of the alleged incident, but the record indicates that Mr. A, Ms. Z, and Mr. H all had recollections of Mr. G speaking to them about the alleged incident. In the case of Mr. A and Mr. H, these conversations were the same day or within a day or two of the incident; with respect to Ms. Z, she

could not recall when Mr. G told her of the incident, but she told EBC that she believed it was in 2019.

176. Mr. G further told EBC that he did not report this incident to the Resident Representative because he had not received follow-up on his reporting of the July 2019 vehicle incident with the Applicant and, as such, he felt reporting the kitchen incident would be futile. EBC found this explanation from Mr. G plausible, and EBC stated that it also noted the testimony of various staff members who also observed a close relationship between the Applicant and the Resident Representative.

177. The record shows that the Applicant denied the allegation that she “pushed” Mr. G.

178. The Applicant claimed that, “[a]s a Kuwaiti female coming from a conservative culture and society, it is unacceptable for women to be close to men or touch them.” The Tribunal recalls that the Applicant also provided EBC with a photograph of the kitchen in question, which she contended undermined Mr. G’s claim in that a “staff member reaching for their cup would be far away from the person preparing the drink.” Further, the Tribunal notes the Applicant questioned Mr. G’s failure to report this alleged incident to the Resident Representative and/or to raise it with the Bank’s internal dispute resolution mechanisms.

179. The Tribunal notes that it is undisputed that there were no eyewitnesses to the alleged kitchen incident. Accordingly, the veracity of the accusation will necessarily be based on the testimony of Mr. G and the Applicant, which is in turn weighed on the basis of each’s credibility. For EBC, the testimony of Mr. G “was generally more credible” than that of the Applicant, and EBC explains that it “considered the layout of the kitchen,” as well as “the consistency in the account of the testimonies of most of the witnesses who [Mr. G] told of the incident,” and EBC states that it “found that their testimonies also corroborated [Mr. G’s] account of the event.” As such, EBC concluded as a matter of fact that the Applicant pushed Mr. G in the office kitchen.

180. The Tribunal is not so persuaded. The Tribunal considers that it is called upon to examine the truth of the testimony provided during the EBC proceedings. As such, the Tribunal must be

mindful of the possibility of animus at the time of interview. In this respect, the Tribunal recalls that, at the time of the interview, Mr. G was of the view that the Applicant was in some way responsible for the termination of his employment. Specifically, in his complaint to EBC of 8 February 2021, Mr. G alleged that the decision not to extend his contract was unfair and partly based on discriminatory practices in the Kuwait CO and, in his interview on 16 February 2021, he alleged misconduct against the Applicant. The Tribunal takes note that EBC conducted a separate review of Mr. G's allegations regarding the non-extension of his contract and that the EBC investigation "did not conclude that [the Applicant] made the decision or recommended the non-extension of [Mr. G's] contract."

181. Additionally, with respect to possible animus on the part of Mr. G, the Tribunal observes that Mr. G's testimony evinces palpable resentment toward the Applicant for her promotion to a Grade Level GF position at the same time that he was let go from the Bank. For instance, the Tribunal observes that, in his 16 February 2021 interview with EBC, Mr. G stated:

Why they end my contract, only me? There is no one leaving the Bank at this time. Because you know this pandemic, I heard from my colleague in Washington, [Mr. A], they cannot terminate your contract at this time because of COVID-19. And also, she, I mean [the Applicant], they he promote her to another job or another position.

Mr. G further testified:

[EBC]: [Mr. G], do you have any questions for us, or do you have anything to add, or that you haven't told us?

[Mr. G]: Yeah, I want to ask if there is an HR system in the World Bank, how could [the Resident Representative], he promote [the Applicant] to take the new position and there is other staff who deserve this position, you know?

[EBC]: So, that's a different –

[Mr. G]: Especially she had many complaints from many staff, and she is the one who take this new position.

[EBC]: So, that's a different issue, if –

[Mr. G]: Yeah.

[EBC]: If you have an issue that you want to bring forward about the promotion of [the Applicant], then you know you can do that.

182. In the Tribunal’s view, it is clear from the record that there was tension between Mr. G and the Applicant and that he held personal resentment toward the Applicant. The Tribunal considers this relevant to assessing Mr. G’s account, given in February 2021, of the incident that took place in 2019.

183. The Tribunal also considers that the specific nature of the physical contact in question is relevant to the inquiry. Of note, Mr. G testified to EBC that it was “a push, but not strong.” At the same time, the Tribunal observes that Ms. Z testified to EBC that Mr. G told her that the Applicant “pushed him hard to move him from her way,” thus creating inconsistency in the testimonial evidence. Indeed, the record supports that Mr. G told other staff members of an incident of contact with the Applicant in the kitchen and that these staff members purportedly recounted what Mr. G had told them to EBC. But the record also shows that the Applicant issued a strong and consistent denial of this allegation from Mr. G.

184. The Tribunal recalls that, in *HD*, Decision No. 697 [2023], the Tribunal explained that the Bank’s disciplinary proceedings are subject to certain principles including that a staff member has a right to a presumption of innocence, that the Bank bears the burden of proof, and that, if the evidence is inconclusive, then the benefit of the doubt goes to the staff member accused of misconduct. *Id.*, paras. 120–122. In view of the conflicting testimony and the requirement that the Applicant be given the benefit of the doubt, the Tribunal does not find it to be an established fact that the Applicant “pushed” Mr. G in the kitchen.

Interactions with Mr. A (Program Assistant and Yemeni national)

185. The Tribunal recalls that, in its Final Investigation Report, EBC noted the testimony of various witnesses regarding interactions between the Applicant and Mr. A, and EBC examined the Applicant’s interactions with Mr. A at the UN-organized evacuation drill. EBC found, based on witness corroboration, that the Applicant “spoke in a disrespectful manner and in a raised voice to [Mr. A] at the UN compound.” EBC found, “based on witness corroboration of the tone and tenor

of [the Applicant's] interactions with [Mr. A] (at the UN compound and generally in the office),” that the Applicant “repeatedly belittled [Mr. A] by questioning his judgement and professional competence.” The Tribunal will now assess this EBC finding of fact.

186. The Tribunal observes that the Applicant denied being rude or disrespectful to Mr. A and further denied questioning his professional judgment or stating to him that he was not doing his job, that he did not know what he was doing, or that he was not doing a good job. Further, the Tribunal observes that, in her testimony, the Applicant disputed the date of the UN evacuation drill in question and Mr. A's involvement, and denied having any inappropriate interactions with him during any such trainings. She stated:

There isn't anything from his side to be done. There was mainly the UN staff. They are the ones, who were you know preparing the lists and everything – like they they were confirming about delays, confirming the buses and everything, the number. So, the Bank did not have any hand in the training. Like, I don't – we didn't have any of our staff, you know, calling, you know, the people in the yards, you know, like to go into the buses or everything, it was mainly the UN staff.

187. However, in her response to the EBC revised draft report, the Applicant stated:

Initially, I was not fully familiar with his security tasks to judge him other than his role in the security call tree, when he did not call me, I had to question this action so I can report any feedback to the security team/focal point on this training, and to have all the precautions in the future. When I approached him at the WBG table, he was sitting alone as most of staff were scattered in the field with the UN security to know their assigned buses. [Mr. A] confirmed in his interview dated May 17, 2021 [...] that the place was empty, and no staff were around other than [*sic*] [Ms. Y] and me. [...] I finished my check in with [Mr. A], asked him about the call tree and immediately moved to the UN table to finalize the registration and learn about the next steps. At the end, this is an evacuation training not a marathon, we must take it seriously and provide feedback. If he was offended of my action for being precautionous on the process and accusing me of shouting (when I didn't), he should've reported that to the management or used other HR tools. However, he didn't report it until the investigation he mentioned [...]. [Mr. A] acknowledged very well and for the longest time that if my voice was loud, out of respect I would inform staff if my voice volume was high and not to misunderstand me, he commented on how I dealt with my voice volume in his feedback for my performance for FY15 [...]. Though it's worth noting that I suffer from some sort of inner tube ear problem that causes my ear to be blocked from flying pressure

resulting in some hearing loss temporarily for days, when such happens, I find my voice gets louder because of such temporarily hearing loss.

188. The Applicant further stated that she denied the allegation that she shouted, that Mr. A's allegation was "baseless," and that "if only if for the purpose argument I would say that probably I was suffering from hearing loss at that time which resulted in having my voice louder than usual. That's my only explanation for it though I refuse and object to such unfounded claims of [Mr. A]."

189. The Tribunal observes from the above excerpts that the Applicant changed course and acknowledged the training in question and Mr. A's role, and stated that she questioned him regarding not calling her. Further, the Applicant stated that if she had raised her voice it would be attributed to a hearing loss condition.

190. The Tribunal notes that EBC stated in the Final Investigation Report that "witnesses recalled that they observed [the Applicant] raise her voice at [Mr. A]," and that she "treated him disrespectfully," but that "witnesses did not recall the nature of [the Applicant's] comments." The Final Investigation Report notes that Ms. Y, however, testified that she did not observe any inappropriate interactions during the evacuation drill. The Tribunal also notes the testimony of Mr. W who stated with respect to his recollection of the evacuation drill, "I remember that I think [the Applicant] was very upset." He further stated to EBC, "I mean, you know, I won't say she was shouting, but she was frustrated and she was angry and she was expressing herself."

191. In view of the testimony in the record, the Applicant's own wavering in her recollection of the event, and the Applicant's tacit acknowledgment that she may have spoken loudly due to a hearing condition, the Tribunal is satisfied it is established as a matter of fact that the Applicant spoke to Mr. A in a raised voice at the UN evacuation drill.

192. In the Tribunal's view, whether such interaction was also "disrespectful" as EBC found is more difficult to ascertain from the record. In this regard, the Tribunal notes that three witnesses who were present – Mr. Q, Mr. G, and Mr. N – testified that they observed Mr. A being upset. However, Mr. A himself testified that no one other than Ms. Y was present at the time of the interaction, and, as previously noted, Ms. Y in turn testified that she did not observe anything

inappropriate. The Tribunal observes that EBC stated that it weighed the conflicting testimonies of the witnesses and that EBC noted with respect to Ms. Y's testimony that "multiple witnesses observed that she was close friends with [the Applicant], which would motivate her to be untruthful to EBC." Be that as it may, on review of the record, the Tribunal is not convinced that the evidence supports a finding that the Applicant spoke to Mr. A in a disrespectful manner rising to the level of misconduct at the UN-organized evacuation drill.

193. The Tribunal next recalls that EBC found that, in her interactions with Mr. A, the Applicant "repeatedly belittled" him "by questioning his judgement and professional competence." The Tribunal notes that, in his interview with EBC, Mr. A expressed that the Applicant spoke to him in a disrespectful manner, regularly questioned his professional competence, and made him feel humiliated. He further testified that the Applicant's alleged treatment of him was the main reason he sought to relocate from the Kuwait CO, ultimately moving to the Bank's Washington, D.C., offices. The Applicant denied the allegations against her, but EBC did not find her testimony credible.

194. The Tribunal observes that EBC highlighted the testimony of Ms. M, Mr. W, and Ms. I in support of Mr. A's claims. Ms. M testified to EBC regarding her recollection of a telephone conversation in which the Applicant spoke to Mr. A in "a very rude way" and was "screaming on the phone;" Mr. W testified that Mr. A expressed upset to him at the way he was treated by the Applicant; and Ms. I testified that Mr. A called her multiple times to discuss the Applicant's "extremely rude, extremely mean" interactions with him.

195. In the context of a misconduct finding, the Tribunal is not persuaded that the above is sufficient to substantiate by the standard of substantial evidence the allegations against the Applicant, which she denies. Additionally, the Tribunal considers that Mr. A's credibility, and the strength of his allegations against the Applicant, is undermined by his failure – despite repeated requests from EBC – to produce the "hot exchange of emails" he claimed to have with respect to the Applicant. While the Tribunal sees no specific reason beyond that fact to doubt Mr. A's testimony, the Tribunal considers that it is simply not enough, even when combined with the

testimony of other witnesses, to support a finding of fact that the Applicant “repeatedly belittled [Mr. A] by questioning his judgement and professional competence.”

Interactions and comments concerning nationality

196. The Tribunal will now turn to the EBC findings of fact regarding the Applicant’s interactions with and comments about staff concerning nationality. It is established in the record that the Kuwaiti government made requests to the WBG to increase the number of Kuwaiti nationals in the Kuwait CO and in the Bank more broadly. It is also evident in the record, and the EBC Final Investigation Report specifically notes, that the Resident Representative was transparent in communicating this Kuwaiti government request to staff.

197. As stated in the Final Investigation Report, EBC found sufficient evidence to substantiate the allegation that, “following the Kuwait government’s requests to the WBG to recruit more Kuwaiti nationals to the WBG, [the Applicant] inappropriately and repeatedly stated publicly that the WBG was spending Kuwait’s money and advocated for the recruitment of more Kuwaitis to the Kuwait office.” EBC found that the Applicant “openly questioned the recruitment of non-Kuwaitis to the Kuwait office and openly advocated for the Kuwait office to recruit Kuwait nationals.” The Final Investigation Report further stated, “Based on the context and substance of [the Applicant’s] comments, EBC concluded that [the Applicant’s] comments were not made in an effort to remind staff in a specific recruitment process of the goal of recruiting more qualified Kuwaiti nationals in the country office or to positively highlight the goals of increased representation of qualified Kuwaitis in the Kuwaiti office.”

198. In her responses to the EBC draft report and in her testimony, the Applicant denied advocating for the recruitment of more Kuwaitis to the Kuwait CO, denied questioning the recruitment of non-Kuwaitis, and denied making statements to the effect of “it’s Kuwait’s money.” In her response to the EBC revised draft report, she stated:

I would deny advocating for hiring Kuwaitis for Kuwait’s money, because I am a big believer of skills and experiences before the nationalities. I was involved in many hiring committees where I voted for hiring non-Kuwaitis for their skills such

as hiring [a colleague] for her skills at a young age, [Mr. G] who the committee didn't like but I fought for him because he was polite during his interview and knew Kuwait entities. In addition to his country's political situation, I pushed even more to support him.

I may highlight the need for Kuwaiti involvement in some projects with difficult entities to help the teams understand the culture and the political economy and not repeat the failure of the education project that didn't have a Kuwaiti member and caused a reputational damage for the bank. My statements about benefiting from Kuwaitis were strangely translated to negative statement and about Kuwait's money.

199. The Tribunal observes that the HRVP decision letter does not make specific reference to this allegation that the Applicant advocated for the recruitment of more Kuwaitis. The HRVP decision letter does state, however, that EBC found sufficient evidence that the Applicant “repeatedly made belittling remarks and used demeaning language to describe staff members; and made disparaging comments about staff members and used ethnic slurs to describe staff members based on their countries of origin.” The Tribunal will examine whether these findings of fact by EBC are sufficiently supported by the record.

200. The Tribunal notes at the outset that it considers these latter findings to concern allegations of the most serious nature, and the Tribunal takes note that the Bank submits that the Principles of Staff Employment were amended “as a response to the recommendations of the WBG Task Forces on Racism and Workplace Culture” and to address challenges in cases of racism and harassment.

201. On review of the record, the Tribunal observes that EBC primarily relies on the testimony of Ms. M, a Kuwaiti national, to support its findings that the Applicant “repeatedly made disparaging and derogatory remarks concerning staff members’ ethnicities and used ethnic slurs to refer to staff members, such as *Falastan*, to describe people of Palestinian descent, *Abuyemen* or Al-Yemeni to describe people from Yemen.” Additionally, EBC states in the Final Investigation Report:

With regard to the comments about [Mr. R], EBC noted that [Ms. M] was the only one who told EBC that [the Applicant] referred to [Mr. R] as that “Jordanian.” However, notwithstanding the lack of witness corroboration, based on the tone and

tenor of [the Applicant's] communication and pattern of behavior, EBC concluded that it was likely that she made the comments referring to [Mr. R] as that Jordanian.

202. The Tribunal does not accept EBC's findings. Crucially, the Tribunal considers the credibility of Ms. M to be questionable. The Tribunal recalls that Ms. M complained to EBC about the outcome of the selection process for an Operations Analyst position for which she applied, and the record indicates that she blamed the Applicant, as Chair of the Selection Advisory Committee, for the outcome. The Tribunal recalls that, in her interview with EBC, Ms. M purported that the Applicant was a family relation to the candidate ultimately selected for the Operations Analyst position, in violation of Bank rules, which EBC in turn investigated and determined was not the case. The Tribunal also recalls Ms. M's voice notes sent to the Applicant at the time of the recruitment which, in the Tribunal's view, show clear animosity toward the Applicant, with Ms. M stating to the Applicant, "Why, why are you taking away an opportunity that should be mine."

203. In these respects, the Tribunal observes that EBC itself found, in its assessment of the recruitment exercise for the Operations Analyst position and the Applicant's alleged failure to disclose a family relationship, that Ms. M was biased. Specifically, EBC stated in the Final Investigation Report:

EBC also considered [Ms. M's] credibility. EBC noted that [Ms. M] was disappointed with the outcome of the recruitment process and left a voice mail, expressing her personal disappointment in [the Applicant's] lack of support for her in the recruitment process, and EBC concluded that she was motivated by her non-selection for the Operations Analyst position.

204. In view of the above, the Tribunal considers that Ms. M's testimony against the Applicant is seriously undermined and that it cannot, alone, outweigh the Applicant's denials of the serious allegations in question and the Applicant's entitlement to the presumption of innocence. What is more, the Tribunal observes that EBC specifically noted that Ms. M's testimony that the Applicant referred to Mr. R as "that 'Jordanian'" was uncorroborated, but EBC still concluded that the Applicant likely made this comment based on the "tone and tenor" of the Applicant's communication and her "pattern of behavior." The Tribunal does not accept this reasoning.

205. Having removed Ms. M's testimony from the analysis, the record indicates that the Tribunal is left with the testimony of Ms. Z, Mr. K, and Ms. I. In her interview with EBC, Ms. Z, a Jordanian of Palestinian origin, stated that she heard the Applicant refer to staff of Yemeni descent as *Abuyemen* and that this term carries a "cynical" connotation. She further stated that she overheard the Applicant use the term *Falastan* to describe Palestinians, and Ms. Z stated, "You know, when you call someone falastan in Kuwait, that means you are making fun of them. This is like cynical, you under grade him, you know, the way that, you know, he's inferior for you."

206. Mr. K, a Yemeni national, told EBC that the word "Falastan in Kuwait, if it's used by Kuwaiti, it's negative. It's not positive." EBC noted in its Final Investigation Report that he further stated that he heard the word *Falastan* used in discussions between the Applicant and Ms. Y to refer to Palestinians. Specifically, the Tribunal notes that in his testimony he stated:

[EBC]: Okay. So, I may just ask you the same question again. I want you to talk specifically about when you heard [the Applicant] use the word Falastan.

[Mr. K]: So, either I – just to be specific, not specifically from [the Applicant], but more specifically from [Ms. Y], as I already mentioned. But [the Applicant], she was present, and she didn't say otherwise, or she didn't correct [Ms. Y] or she – that's basically what's happened, you know, so.

207. Ms. I, a Kuwaiti national, testified to EBC that she did not hear the Applicant using the term *Falastan*, but that the Applicant "would be laughing along" when Ms. Y used the term in reference to Ms. Z.

208. The Tribunal notes the Applicant's position that EBC fails to attach any specificity as to "date, time, or other corroborating detail" with respect to these particular allegations, and the Tribunal further notes that the record indicates that several staff members in the Kuwait CO testified to never hearing staff referred to as *Abuyemen* or *Falastan* or to hearing anyone use those terms.

209. Further, the Tribunal observes that the Applicant denied these allegations. In her 10 November 2021 interview with EBC she stated, "I do not accept this – I don't know if I should

call it allegation or accusation because I don't call people by their nationalities, you know? I call them by their names or their last names. That's it."

210. On review of the evidence in the record, the Tribunal finds that the Bank has not established that the Applicant "repeatedly made disparaging and derogatory remarks concerning staff members' ethnicities and used ethnic slurs to refer to staff members, such as *Falastan*, to describe people of Palestinian descent, *Abuyemen* or Al-Yemeni to describe people from Yemen." In the Tribunal's view, the testimony in the record is too limited in scope and too vague as to particular occurrences and details to support such a finding against the Applicant.

211. In the Tribunal's reading, the testimony in the record overwhelmingly documents a prevailing sentiment in the Kuwait CO whereby non-Kuwaiti staff in the office perceived a "them against us" divide which created a difficult work environment. Under the Bank's rules, however, misconduct is specific to the individual, and the Tribunal reviews the particular allegations and the available evidence to determine whether the Bank has met its burden of proof. The Tribunal reiterates that in the context of disciplinary proceedings, if the evidence is inconclusive, the benefit of the doubt must go to the accused. *HD* [2023], para. 122. Moreover, given that the Tribunal does not find sufficient evidence to support that the Applicant in fact used the terms *Falastan*, *Al-Yemeni*, or *Abuyemen*, the Tribunal need not explore the definitions and connotations of these terms.

212. Having considered the evidentiary record in this case, it is clear to the Tribunal that the Kuwait CO was a deeply complex and problematic office environment in which national, ethnic, racial, cultural, and political tensions appear to have been exacerbated, if not outright fueled, by a Kuwaiti First hiring initiative that was well-known to staff. While it is not within the Tribunal's purview to question this initiative in the abstract, the Tribunal observes that the implementation of this initiative appears to have occurred in a manner at odds with the Bank's international character and core values, and the Tribunal considers that the record strongly suggests that the initiative's implementation negatively impacted the workplace experiences of individuals at issue in the instant case. Indeed, EBC's Final Investigation Report cites testimony that the open discussion about recruiting more Kuwaitis created apprehension and uncertainty for non-Kuwaiti staff who

believed their term contracts would not be renewed. In the circumstances of the instant case, the Tribunal considers that there was a failure to create a professional work environment in the Kuwait CO but cannot conclude that the Applicant committed misconduct as found by the HRVP.

213. The Tribunal recalls that the HRVP made the disciplinary decision based on the findings of fact by EBC. As the Tribunal does not accept the EBC findings, the HRVP's disciplinary findings and sanctions are also hereby set aside. Moreover, the Tribunal wishes to note that, while it has made its determinations in the instant case pursuant to the substantial evidence standard, the Tribunal's determinations would have been the same pursuant to a preponderance of the evidence standard.

WHETHER THE REQUIREMENTS OF DUE PROCESS WERE OBSERVED

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

215. 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." As stated in *Kwakwa* [2003], para. 29:

[T]he due process requirements for framing investigations of misconduct in the context of the World Bank Group's relations with its staff members are specific and may be summarized as follows: affected staff members must be [apprised] of the charges being investigated with reasonable clarity; they must be given a reasonably full account of the allegations and evidence brought against them; and they must be given a reasonable opportunity to respond and explain.

216. The Applicant contends that the EBC investigative process and its Final Investigation Report were unfair, unbalanced, and prejudicial to her. She takes issue with EBC's preliminary inquiry, deeming it a "sprawling, ten-month preliminary investigation," and she further questions

EBC's selection of witnesses and the hearsay nature of their testimony. She contends that the Final Investigation Report "is overwhelmingly negative throughout" and that it fails to acknowledge that the testimony of the main complainants, Mr. G and Ms. M, is tainted with bias.

217. The Bank contends that the Applicant was afforded all due process rights and that EBC produced a well-balanced Final Investigation Report.

218. The Tribunal notes the Applicant's concerns with the selection of witnesses and the reliance on hearsay testimony. The Tribunal recalls that, in response to the Applicant's request, EBC interviewed six witnesses as proposed by the Applicant. Further, the Tribunal observes that throughout the Final Investigation Report, the Applicant's views and responses to the allegations are included and incorporated.

219. On review of the record, the Tribunal is satisfied that the Applicant's due process rights were not violated.

REMEDIES

220. Having set aside the misconduct findings and related sanctions by the HRVP, the Tribunal will now assess the appropriate remedies in this case.

221. The Tribunal notes that the Applicant seeks "[r]einstatement to an equivalent and mutually agreeable position, along with backpay and benefits from the date of termination," or "compensation in lieu of reinstatement [...] in an amount no less than three years' salary."

222. In the circumstances of the instant case where the Applicant held a term contract, where the Tribunal observes the difficult workplace environment of the Kuwait CO, and where the record indicates some behavioral issues on the part of the Applicant, the Tribunal considers that compensation is the appropriate remedy.

223. The Tribunal decides that the Bank shall pay the Applicant compensation in the amount of two years' net salary and legal fees and costs in the amount of \$38,665.00.

DECISION

- (1) The disciplinary sanctions of termination of employment, loss of future employment and contractual opportunities with the WBG, access restriction to the WBG's premises, and written censure to remain on the Applicant's personnel file are hereby rescinded;
- (2) The Bank shall remove from the Applicant's personnel file all records relating to the allegations of misconduct, including the Final Investigation Report and the decision of the HRVP, and shall substitute them with a copy of this judgment;
- (3) The Bank shall pay the Applicant compensation in the amount of two years' net salary based on the last regular salary drawn by the Applicant;
- (4) The Bank shall pay the Applicant's legal fees and costs in the amount of \$38,665.00; and
- (5) 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