



**World Bank Administrative Tribunal**

**2024**

**Decision No. 710**

**HT,  
Applicant**

**v.**

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

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

**HT,  
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 4 June 2024. The Applicant was represented by Nat N. Polito of the Law Offices of Nat N. Polito, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 11 October 2024.
3. The Applicant challenges the Bank's decision to terminate her employment.

#### FACTUAL BACKGROUND

4. The Applicant joined the Bank in 2008 in the Burundi Country Office (Burundi CO) as a Grade B Team Assistant and, in 2010, was promoted to a Grade C Program Assistant. From 2013, she served as a Grade C Executive Assistant, and the Applicant states that, from 2016, she served under an open-ended contract.
5. According to the Bank, "one of the core duties of the Executive Assistant is to support the Country Manager's work in running the country office," and this support "involves scheduling meetings and events with government contacts, coordinating office visits by visiting missions and World Bank senior management, tracking mail in and out of the office, and typically keeping the calendar for the Country Manager to ensure that she can be efficient and effective." Further, the

Bank states that “Burundi is a Fragility, Conflict, and Violence [...] country, with safety concerns for international staff, as well as difficult living conditions.”

6. With respect to her performance, the Applicant states in her Application:

My performance has consistently garnered positive feedback. I have been honored with substantive awards such as Vice-President Unit (VPU) awards, Team Awards, and Individual Awards on an annual basis. For the past 15 years at the Bank, my Managers and Country Directors never raised any concerns regarding my performance, until the story took another turn in FY2021 [Fiscal Year 2021].

7. In 2019, the then Country Manager, (hereinafter referred to as the Former Country Manager) arrived to head the Burundi CO. The record indicates that the Former Country Manager was initially pleased with the Applicant’s performance. Specifically, the Former Country Manager stated in the Supervisor’s Comments section of the Applicant’s FY20 Annual Review:

[The Applicant] has been a key element of Burundi’s good results. She is diligent, accurate and has really helped me as a CM [Country Manager] to have a very successful year.

[The Applicant] has gone beyond her responsibilities by helping me managing the CO but also relations with partners and GoB [Government of Burundi] officials. She has been my “protocol” officer - able to direct me towards the good information and keeping ears on the ground.

We had an incredibly tensed year, in addition to covid19, a very difficult electoral process.

I am looking forward to continue working with [the Applicant] and expand her operational experience to support a growing portfolio in Burundi.

8. The record indicates that thereafter the Applicant and the Former Country Manager had a difficult working relationship.

9. According to the Bank, beginning with the remote working arrangements implemented in Burundi due to the COVID-19 pandemic, the “Applicant’s work performance began to suffer.” The Bank states:

At first, the Former Country Manager assumed it was because of the disruptions from the new work arrangements, that [the] Applicant was finding the transition to remote work difficult.

The Former Country Manager soon began to realize, however, that rather than being a valuable contact to the Bank's external stakeholders, including the Burundi government, [the] Applicant saw her Executive Assistant position as a valuable intermediary position that increased her own influence with the government. She was selective in the information she would pass on to and from the government, and the Former Country Manager began to mistrust [the] Applicant's judgment in controlling the information and access to the Former Country Manager.

10. Further, the Former Country Manager states that the Applicant "sought to isolate me from colleagues by misrepresenting my availability," and the Former Country Manager states that she countered this behavior "by implementing transparent scheduling policies and making myself more accessible to staff." Additionally, according to the Bank:

The Former Country Manager also received a complaint from an IT [Information Technology] contractor working in the office that [the] Applicant was acting inappropriate towards her and bullying her. [The] Applicant had slapped the backside of the IT contractor, upsetting the contractor severely. When the Former Country Manager asked [the] Applicant about the incident, [the] Applicant claimed she was just serving a "friendly manner to treat a younger sister." The Former Country Manager told [the] Applicant that this was not how the slap was received by the contractor.

11. The Applicant states that, beginning in February 2021, she "was abused" by the Former Country Manager. According to the Applicant:

The relationship was unprofessional, as [the Former Country Manager] assigned [the Applicant] a series of personal tasks outside of her job description, including making sure [the Former Country Manager's] personal wine closet at her home was fully stocked, ordering furniture for her home, arranging her bi-weekly hairdresser appointments, and having [the Applicant] write to the [Former Country Manager's] husband regarding personal matters. [...] [The Former Country Manager] also made derogatory remarks towards [the Applicant], calling her the "girlfriend" of the Country Director, making fun of her nationality, and using disparaging language towards her in front of others. [...] [The Applicant] feared she would face retaliation if she brought her concerns forward.

12. The Former Country Manager refutes the allegations by the Applicant as “factually inaccurate” and “offensive.”

13. On 4 October 2021, the Former Country Manager sent the Applicant an email with her formal Overall Performance Evaluation (OPE) feedback. The email stated:

It has been a disappointing year for [the Applicant]. She has had difficulties adapting to a new work environment driven by a combination of both Home Work Based [HWB] conditions (affecting all staff) and expansion of the team’s operational duties due to significant increase in portfolio and engagement. While HWB has revealed important gaps in delivery of basic tasks, evolution of the CO based staff roles and responsibilities has appeared to be a challenge in the way [the Applicant] has handled relations with her colleagues, external parties as well as with her direct supervisor. These have significantly impacted her performances during this fiscal year, but also the overall work atmosphere in the CO.

Four areas of concerns have been regularly shared with [the Applicant] (i) take full ownership of the tasks that are being given to her. [The Applicant] tends [to] select tasks she is interested into and delegate others to more junior staff while taking credit for results without taking responsibility for when mistakes are done. This provides a very uneven delivery of tasks and confusion with colleagues; (ii) Adapt communication style. [The Applicant] tends to target the way she interacts with people and the information she shares based on her preferences and interests. This can result in misunderstanding, create confusion amongst the team and eventually frustrations and distrust. In some occasions, she has been perceived as bullying her way through resulting in the CM having to apologize on behalf on [sic] the Bank to external parties; (iii) Lack of collaboration and sharing of knowledge. While new technologies and HWB has given the teams many tools to better collaborate – especially at distance, [the Applicant] had enormous difficulties to understand how her role as a EA [Executive Assistant] had to evolve, including by working more collaboratively and less hierarchically with her colleagues. It is symptomatic for instance that she has difficulties accepting that key meetings with clients, high level officials and Bank Management, have to be organized closely with the Operations officer and IT colleagues. Similarly, [the Applicant] had difficulties differentiating her tasks i.e. schedule meeting with Ministers and counterparts v/s tasks devoted to the External Affairs Officer i.e. manage external relations. Similarly, while ACS [Administrative Client Support] colleagues’ role has been strengthened to support operations, and therefore, as agreed with her, will report into the OO [Operations Officer], [the Applicant] seems to have challenges in sharing her knowledge in a sustainable manner. (iv) Lack of trust from the CM. Given the role that [the Applicant] is playing, gaining and maintaining the trust of the CM is critical. Unfortunately, due to too many incidents, misunderstanding and miscommunication, this relation is now beyond repair. Despite several attempts to conduct constructive conversations with the support of HR [Human Resources],

there has been no visible/tangible progress towards a normalization of the situation. To some extent, the situation has worsened and, this OPE cycle is an illustration. [The Applicant] has, without consultation with her supervisor, selected feedback providers [which for some do not work on Burundi or only have very limited interactions with her]. While her supervisor selects a list of feedback providers, [the Applicant], without any level of consultation with her supervisor, excluded key roles with whom she is supposed to interact on a daily basis.

[The Applicant] has been performing in this role for many years and, understandably, as she expressed several times, seems to not be able to evolve further in her career which creates frustrations on her side. It seems obvious that [the Applicant] is no longer motivated by her tasks and it shows in the very uneven level of delivery. The business needs does not justify any evolution in grade in this position and [the Applicant] needs to accept this. She has been given several opportunities to develop new skills but, after many back and forth, has declined to do so. This however is not sustainable, neither for herself, her colleagues and her supervisor. There is a need for a radical change in work environment for [the Applicant] in order to (a) reduce her level of stress by having less personal interactions with a wide range of stakeholders; (b) potentially restore the level of trust and (c) give her the opportunity to learn new skills.

14. On 12 October 2021, the Former Country Manager emailed the Applicant asking the Applicant to schedule a meeting with the Former Country Manager and the Human Resources Business Partner (HRBP) “to close on the OPE process and, more importantly, move to the next steps.”

15. On 14 October 2021, the Applicant emailed the Former Country Manager and stated:

I acknowledge receipt of your email and thank you.

Please be informed that I am very concerned on how you are dramatically evaluating my performance.

However I am still hoping that this challenging situation is one that can be resolved, so we can move forward and be back on business.

That’s the reason I have opted, to continue this conversation with the help of mediating parties.

16. On 18 October 2021, the Former Country Manager responded to the Applicant’s email and stated:

Please proceed with the mediation process swiftly so that we can indeed get back to business in a way that will minimized [*sic*] disruption in the work program. As you know, this situation is impacting not only you and me but also the rest of the CO team.

17. According to the Bank, the mediation was not successful.

18. On 23 December 2021, the Bank's Anti-Harassment Coordinator emailed the then Country Director with the Former Country Manager in copy, stating:

I just wanted to bring to your attention that I have been contacted by several staff in the Burundi Country Office who raised concerns about unwelcome and inappropriate behaviors that they allegedly experienced from [the Applicant]. I have discussed the situation with [the Former Country Manager] but haven't talked to [the Applicant] yet. I understand that this is a delicate situation, as the alleged inappropriate behaviors trigger performance issues.

19. On 24 January 2022, the Former Country Manager placed the Applicant on an Opportunity to Improve Performance (OTI) plan. In the OTI memorandum of 24 January 2022, the Former Country Manager referenced a 13 September 2021 discussion with the Applicant regarding unsatisfactory aspects of the Applicant's performance and noted that "[t]he purpose of this memo is to record the discussion we had on September 13, 2021." The OTI memorandum specified the following aspects of the Applicant's performance as unsatisfactory:

- Challenges related to HBW [Home-Based Work]
- Selective interest in tasks and [n]eed for sustainable performance
- Conflict [m]anagement
- Flexibility and adaptation to change

which generated in

- (i) lack of full ownership of the tasks that are being given to you
- (ii) Adapt communication style with colleagues and myself
- (iii) Lack of collaboration and sharing of knowledge
- (iv) Lack of trust from the CM.

20. Further, as stated in the OTI memorandum, the Applicant was given an opportunity to address the above deficiencies specifically by

- (i) Focusing on timely, accurate completion of the following tasks:
  - various requests from the CM, Operations officer and ECR [External and Corporate Relations] officer in a non-selective manner;
  - follow up on meeting actions
  - improving communication during meetings
- (ii) Working more closely with, ACS colleagues, Operations Officer, ECR Officer and IT Sr. Assistant to help you with better support to the CM in scheduling important meetings and events, ensure prioritization of tasks,
- (iii) Improving your workplace behavior by working better in one-on-one and collaborate with teams, by exchanging criticism in a non-confrontational CONFIDENTIAL manner and by not allowing personal issues to impede delivery of work; [and]
- (iv) Improving your client orientation by demonstrating greater collaboration with ECR and Operations officer and ACS team in scheduling meetings and events, ensure greater quality and timeliness of processing of official letters to the government. (Emphasis in original.)

21. Additionally, in the OTI memorandum the Former Country Manager stated:

I expect to see improvement Your [*sic*] capacity to adapt to HWB challenges so as to improve teamwork and collaboration with colleagues.

Your capacity to adapt to new organization (including presence of new functions as ECR and new reporting lines from ACS to Operations officer) and needs from the client and teams given the increased scope of activities due to portfolio size. I and/or [the HRBP] will discuss your progress with you every two weeks.

22. Further, the OTI memorandum informed the Applicant:

[F]ailure 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 under the provisions of Staff Rule 7.01: Ending Employment. (For Term staff only) Further, successful completion of the OTI does not guarantee renewal of a term appointment.



23. According to the Applicant, she “did not deserve to be placed on OTI, however, she feared she would face retaliation and termination if she challenged the OTI.”

24. On 7 June 2022, the Former Country Manager sent an email to all staff, stating:

You will have noticed that our cleaning company changed their staff working in the office.

As a reminder, these are contractors staff and you are kindly requested not to ask them to perform ‘domestic’ tasks and respect their TORs [Terms of Reference]. We have noticed that some of them are being asked to carry bags, photocopies, do chores [*sic*], etc. [f]or staff and this is not appropriate.

Also, please make sure that documents and other WB [World Bank] material are not being shared, used, etc. with those staff as this is part of security of WB information.

The Bank states that the Burundi CO had a contract with a janitorial company which provided staff to the Burundi CO to perform janitorial tasks as referenced in the Former Country Manager’s email.

25. In late fall 2022, the Former Country Manager ended her term in the Burundi CO.

26. In late 2022, the New Country Manager arrived in the Burundi CO to replace the Former Country Manager.

27. On 14 November 2022, the Applicant and the New Country Manager had a discussion regarding the Applicant’s FY22 performance, and the New Country Manager created an update to the 24 January 2022 OTI memorandum. The 14 November 2022 OTI update memorandum stated:

This is an update of the Jan 24, 2022 OTI Memo. The purpose of the memo is to record our discussions (held on November 14, 2022) about your performance during FY22 and update the recommendations for the [OTI]. With an SRI [Salary Review Increase rating] of 2, you are given a new opportunity to improve on issues highlighted in Jan 24, 2022, Memo. The OTI will cover 3 months.

**1. Main issues:**

- Challenge related to WFH [Work from Home] (now it will be hybrid work)
- Selective interest in tasks
- Conflict management
- No [f]lexibility and difficult adaptation to the changing organization (Change in ACS reporting line, and addition of OO, ECR colleagues and several new TTLs [Task Team Leaders] and increasing portfolio volume)

2. **Opportunity to Improve:** This is an opportunity to improve on the followings which will be regularly monitored:

- Adapt behaviors that are aligned with WBG [World Bank Group] values
  - Work in a collaborative way that reduces conflict, use effective conflict management approach, adopt appropriate languages in all communication channels, and avoid personal issues to impede delivery of work
- Ensure timely completion of all tasks given directly by the CM and other colleagues and improve collaboration with all colleagues within the CMU [Country Management Unit] and other units
- Take training that will reinforce your knowledge
- Schedule meetings and events in a professional manner:
  - Work closely with all ACS, OO, ECR and all colleagues to schedule meetings and events in the CM calendar using ‘Scheduling assistant’.
  - Coordinate and request meetings with Authorities for missions in a timely manner
  - Contribute to major events’ organization
- Manage correspondences:
  - Review incoming letters and their distribution to the relevant teams
  - In coordination with all ACS, monitor incoming letters to make sure that all follow up actions are taken
  - Ensure quality control and process in a timely manner of all outgoing letters for signature and distribution
  - Lead the archiving of all incoming and outgoing correspondences

### 3. Expectations:

I expect to see improvement in:

- Your capacity to adapt to changes, greater adaptation capacity to the hybrid work environment and adjustment to the changing organization for better collaboration and teamwork and
- Handling of all requests in a timely manner
- Managing all correspondences (incoming and outgoing)

4. As stated in the previous Memo (Jan 2022), 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 WBG [...].

28. On 8 May 2023, the New Country Manager sent the Applicant a “Successful Completion of Opportunity to Improve Performance” memorandum. The memorandum referenced a 5 May 2023 discussion with the Applicant and formally informed the Applicant that she had successfully completed the OTI, noting that “you have addressed and corrected the deficiencies in your performance.” The memorandum further stated:

Thank you for your response to the feedback you received, and congratulations on making the required efforts to address this serious issue. The level of performance you have now achieved must be consistently maintained. Recurrence of unsatisfactory performance may be the basis for me to recommend further action, including termination of your employment.

29. On 23 May 2023, the New Country Manager emailed the Bank’s Anti-Harassment Coordinator regarding a “Potential Harassment case in Burundi country office toward a contractor staff,” and copied the Country Director. The New Country Manager stated that she had been informed by an Operations Officer “about a potential harassment/abuse case in the office.” Specifically, the New Country Manager stated:

The Staff [the Applicant] [...] is identified as the abuser toward [Ms. S] (one of the six staff of Burundi Cleaning Company). This cleaning company has a contract with the World Bank to provide cleaning services in the office.

The facts about the case as reported by [the Operations Officer] (and later confirmed by [a colleague] over the phone) are the following:

- [Ms. S] was crying on May 22 around 9:30am-10:00am and was talking to [a colleague] and [another colleague] in Kirundi. [The Operations Officer] said that when she saw the gathering and noticed that [Ms. S] was sobbing she asked what was happening.
- Through translation from Kirundi to French, [Ms. S] said that she is being abused and harassed by [the Applicant] for a long time and that she cannot take it anymore
- [Ms. S] explained that [the Applicant] has been treating her as a personal maid asking her to do tasks and services that include: (i) flushing the toilet after she used it, (ii) going [to] do errands to buy personal things, (iii) going to the Bank....
- [Ms. S] also said that [the Applicant] has verbally abused her and threatened her that she will loose [*sic*] her job if she does not do what is being asked.

FYI, [the Applicant] was under OTI that she successfully completed on May 5, 2023. In the past, the [Former Country Manager] raised this same issue by sending a generic email to all staff to avoid asking the cleaning crew to do personal things.

As you recommended, I will have a meeting with [Ms. S] tomorrow to have a better understanding of the case, seek her view on a potential investigation, and reassure her that she should not do anything that isn't included in her normal tasks as mentioned in her contract. I will report back to you.

30. The Anti-Harassment Coordinator responded to the New Country Manager's email the same day, stating:

Thank you very much for reaching out and for your proactive handling of this situation. I will remain standby to assist on next steps, including a possible referral for investigation.

31. On 24 May 2023, the New Country Manager again emailed the Anti-Harassment Coordinator and stated:

This morning, I had a conversation with [Ms. S] who confirmed all the below facts (including flushing the toilet for [the Applicant] at her request). She stated that [the Applicant] has been abusing her for a long time. She also said she informed her supervisor [...] who raised the issue with [...] ([Administrative] Assistant [...]). I discussed with [Administrative Assistant] who confirmed the same facts.

The victim, [Ms. S], is willing to speak up and cooperate with the investigation. As discussed with you yesterday, please let's look for the possibility of putting [the Applicant] on Administrative leave right now and trigger the investigation as soon as possible.

Please let me know what you think.

32. The New Country Manager sent a follow-up email to the Anti-Harassment Coordinator on 24 May 2023 with "the French translation of the case as [Ms. S] told me this morning." The New Country Manager's email further stated that she had a phone conversation with the Country Director about the situation and that he "is supportive of taking actions as soon as possible."

33. Also on 24 May 2023, the New Country Manager sent an email to all staff referencing and attaching the 7 June 2022 email from the Former Country Manager and further stating:

Please read the below email dated June [7], 2022. I would like to stress the importance of showing respect to the Cleaning company crew who work in our office. The cleaning staff are here to do their job as described in their TORs. PLEASE DON'T ASK THEM TO PERFORM ANY PERSONAL/DOMESTIC TASK. (Emphasis in original.)

I count on you as World Bank Group Staff (including consultants) to show behaviors that are aligned with our institutions' values.

34. On 1 June 2023, the Applicant and the New Country Manager had a meeting, with HR present. According to the Bank, the New Country Manager provided the Applicant with an opportunity to explain herself but ultimately informed the Applicant that the New Country Manager felt the Applicant's behavior "was shocking and unacceptable," and that it would be in the best interests of the Bank to place her on administrative leave. On the same day, the New Country Manager stated via email to the Applicant:

This is the summary of the meeting we [...] had today June 1, 2023. I reminded you that during our discussions on May 5 (see attached email), I informed you of the successful completion of your OTI based on your improved performance. I also told you during our May 5<sup>th</sup> meeting that the same performance has to be maintained. Specifically I stated the importance for you to continue showing behaviors that are aligned with the WBG values.

I was lately informed that some of your behaviors are perceived as 'harassment'. For instance, it was reported to me that you repeatedly asked a vendor's employee to flush/clean the toilet after you used it. These kind of behaviors are against our institution values of Respect. I reported the allegations to EBC [Ethics and Business Conduct Department]. Furthermore, I informed you today that I am reversing my decision on the successful completion of the OTI based on these allegations that impact negatively your performance related to WBG values. In consultation with the CD [Country Director], I recommended that you are put on administrative leave from today until further notice. I gave you a copy of the memo from PaC [People and Culture, or HR] that provides details on the administrative leave. The memo is also attached for your attention.

I reminded you to keep this matter confidential. I kindly asked you to share your personal email address that will be used to communicate with you from now on.

35. The Applicant states that she “did not harass the cleaning contractor,” and, according to the Applicant, she stated to the cleaning contractor, “Dear [Ms. S], please ensure the bathrooms are well refreshed as we have a heavy mission team around.”

36. The Applicant received a memorandum, dated 31 May 2023, from the Manager, PACCO (PAC Corporate Case Management), regarding Notice of Administrative Leave and registering the decision to place the Applicant on administrative leave pursuant to Staff Rule 6.06, paragraph 10.10. The Bank states that this memorandum was given to the Applicant at the 1 June 2023 meeting with the New Country Manager. The effective date of the administrative leave was stated as “June 1, 2023 until further notice, unless shortened or extended with [Manager, PACCO] authorization,” and the memorandum informed the Applicant that her “placement on Administrative Leave is in the best interests of you and the World Bank Group.”

37. On 31 July 2023, the New Country Manager emailed the Applicant with HR representatives in copy and stated:

Thank you for reaching out and apologies for not getting back sooner.

You have been placed on Administrative Leave in the best interests of you and the WBG, and at my request to limit any disruption(s) to the CO workplace.

As discussed with you on June 1, the recent incident concerning your behavior towards our office custodian is something with which I have been grappling, quite honestly. I have decided to bring this episode to the attention of the WBG’s Office of Business Ethics for their information.

At the same time, I have decided - consistent with my June 1, 2023 email - to change my recommendation with respect to your successful completion of your OTI in light of the completely unacceptable behavior displayed by you towards our custodian. You will be copied on my recommendation and shall have 14 calendar days to submit your comments to my changed recommendation.

38. On 15 August 2023, the New Country Manager sent the Country Director an email recommending the termination of the Applicant’s employment. The email stated:

As you know, [the Applicant], Executive Assistant [...] has been placed on administrative [*sic*] on June 1, 2023, following allegations that she showed non respectful workplace behaviors that are disruptive to the work environment.

[The Applicant] has had performance issues for a while and was on OTI back in 2021 (OTI Memo attached). Following a close monitoring, I informed her on May 5[,] 2023 that she has successfully completed her OTI (see attached email for reference). After the successful completion of the OTI, her workplace behaviors changed during the rest of May. I was informed on May 23 that [the Applicant] is allegedly harassing a vendor's employee in the office. I reported the case to EBC and I discussed with our Anti-Harassment Coordinator [...] about the best way to handle the situation. [The Applicant] has been put on Administrative leave on June 1 and she was also informed of the reversal of the successful completion of her OTI (see email trail below).

I discussed with PaC [HR] colleagues different options to handle the case. The option of recommending an assignment to a lower level position (under Staff Rule 5.06) was not considered given that this is a legacy case and the underperformance is related to behavioral issues that are not aligned with the WBG core values.

Based on the above, I recommend a termination of her contract, pursuant to Staff Rule 7.01, Section 12, Unsatisfactory Performance.

39. Attached to the 15 August 2023 email to the Country Director was an Office Memorandum dated 14 August 2023 regarding "Recommended Action following Opportunity to Improve Performance," which recommended that the Applicant's employment be terminated. Specifically, the memorandum stated:

[The Applicant's] performance deficiency remains, in particular, related to her unacceptable behaviors toward our custodians within the institution. These behaviors are against World Bank values of respect and integrity. During the OTI process and at completion, [the Applicant] was reminded several times of the importance to show and maintain behaviors that are always aligned with the WBG's values. The last incident that was reported to my attention regarding her behaviors toward vendor's employees are unacceptable and disruptive to the work environment.

In my judgement, continued efforts to improve are not in the Bank's interest.

40. The 15 August 2023 email and 14 August 2023 memorandum from the New Country Manager stated that the New Country Manager was sharing a copy of the recommendation with the Applicant to provide her an opportunity to comment to the Country Director prior to his

decision in the matter. That email and memorandum indicated that the Applicant had 14 calendar days to provide such input pursuant to Staff Rule 5.03.

41. On 21 August 2023, EBC emailed the New Country Manager to schedule an intake meeting regarding the allegations she reported to EBC.

42. On 28 August 2023, the Applicant emailed the New Country Manager and the Country Director, and stated:

Thank you for your message. Thanks for giving me the first opportunity to comment on the allegations received. I regret the drastic measures taken and would like to explain as follows:

1. The deficiencies shared in the memo of January 24th, 2023 [*sic*] were successfully addressed, and in a memo dated May 03<sup>rd</sup>, 2023 OTI was closed and [the New Country Manager] congratulated me for that.

2. Since then I have not been made aware of any further deficiencies in my performance or behavior. Feedback received during the year did not notify any deficiencies as such. On June 01<sup>st</sup>, 2023, I was arbitrarily put on administrative leave without knowing what I had done or given the opportunity to respond to any allegations. I later learned that there was an incident report about me and would like to explain below what happened.

3. During the last weeks of May 2023, the Country Office received heavy missions, and I also had the opportunity to support two of them (Urban mission and Health Missions); my colleague ACS, [...], came to me saying that the missions sitting on the 1<sup>st</sup> floor wanted to use the ladies restrooms at our floor, because the ones on the 1<sup>st</sup> floor were not properly cleaned. They were then taken to the 2<sup>nd</sup> floor ladies' restrooms. We then called the cleaner and asked her to help refresh the restrooms on the missions' floor, 1<sup>st</sup> floor. I am very results' oriented and wanted our teams, the visiting teams to experience good service so I asked to take extra care. The cleaner agreed to help ensure all goes well, she accepted, never complained and promised to do and help to pay attention to detail. She never told me that I was rude or that she felt bad. We never spoke about that again that day. During the time of the missions, she helped follow up by ensuring the space remained well cleaned. We never argued, and I never raised my tone of voice, and she also never complained to me.

4. The cleaner that I have been working with since we returned to the office is [Ms. S], and she is the person that I spoke with. She supports me in maintaining the Front Office very cozy, clean and welcoming for the visitors, the staff, and also for the



Manager who requested the space to be maintained clean and disinfected at all times. We also ensure that CM's office is repellent free, as per her request. I have to remind her many times to spray it every morning and evening when she departs. She also prepares tea/coffee for the visitors or high level visitors on mission, transmits all kinds of courier, pouch, from reception to the FO desk. Sometimes, she confidentially shared the challenges she faced as a single parent, I was able to help by the support and encourage her in any way I could. I regret if my asking her to clean thoroughly was perceived badly and sincerely apologize for any embarrassment caused, but I have never asked her to flush the toilet after I have used it. I know that is wrong and will never do that. I have had a very good professional relationship with her since we returned to the office and will never disrespect her.

[...] In light of the above, I humbly request you to reconsider the decision to terminate my employment with the Bank.

5. Finally, I will take this time to thank my Manager [New Country Manager] who since she joined the Office, had a positive conversation with me and reassigned back some EA tasks. I took seriously the OTI, worked closely with my colleagues [...] in retreat preparations, meeting organization, portfolio reviews, CPPR [Country Portfolio Performance Review] preparations, PLR [Performance and Learning Review] workshops, PLR internal meetings, CO staff recruitments, CO event organizations, Donors' meetings, presentation of operational reports, correspondences' reviews, etc. were fulfilled and completed at the successful completion of my OTI. Many tasks were given back to me: organizing meetings, providing operational support by assisting missions whenever needed, etc. I have had a very successful career at the Bank for the past 15 years, and wish to continue contributing to the success of the WBG mission in Burundi.

43. On 29 August 2023, EBC interviewed the New Country Manager.

44. On 12 September 2023, the Business Integrity Review (BIR) unit in the Ethics and Internal Justice (EIJ) Vice Presidency contacted the Applicant via email and informed her of its "responsibility for reviewing allegations of misconduct by WBG staff." The email further informed the Applicant:

We have received allegations that concern you and are currently in the preliminary inquiry phase. If at the conclusion of the preliminary inquiry, we determine that there is sufficient basis to move the review to a formal investigation, we will notify you and provide an opportunity to respond. However, if we determine that there is no basis for a formal investigation, we will notify you of the outcome of our review.

45. On 19 September 2023, the New Country Manager emailed the Country Director attaching a draft termination memorandum regarding the Applicant for the Country Director's consideration.

46. On 15 November 2023, the Chair, World Bank Staff Association emailed the PaC Vice President (HRVP) with the subject line "Request for a Fair Investigation in the Case Concerning [the Applicant]." The Staff Association email stated, "We have serious concerns about the lack of due process in the case, and would like your intervention for a proper investigation." The email further stated that "the grounds on which [the Applicant] has been put on administrative leave for 2 years (June 1, 2023 to February 28, 2025) are not clear," and that "the reasons for which her manager, [New Country Manager], recommended her termination without warning are also unclear." The email stated that "it is not clear if/when EBC plans to investigate in light of the recommendation for termination."

47. On 8 December 2023, an HR Manager emailed the Applicant in response to the Staff Association email and copied the Chair, World Bank Staff Association. The email stated:

The Staff Association's email letter on your behalf to [...] PaC Vice President, was forwarded to me for review and response.

As you well know, your manager [...] graduated you from your OTI in May of this year. And your OTI in part concerned your unprofessional behaviors towards workplace colleagues. That is why the importance of 'Keep showing behaviors that are aligned with WBG values and that contribute to a positive work environment' was always mentioned in all emails [the New Country Manager] wrote to you about the monitoring and completion of your OTI. See the attached email [the New Country Manager] sent you after the discussion on the completion of your OTI in May 2023.

Soon after, indeed, in the very same month of May 2023, [the New Country Manager] received feedback you had mistreated the custodian cleaning the ladies' restroom in the Burundi country office, asking her to flush your feces. This was corroborated by another in the office. Whereas and in contrast to your version of events, you merely asked the toilets to be cleaned as the office was hosting outside visitors.

Working for an institution dedicated to helping the poorest of the poor, hearing such a corroborated incident was not only shocking, but a huge disappointment after just having graduated you from the OTI. You were placed on Administrative Leave and [the New Country Manager] explained she intended to report the incident to EBC

and to explore whether she could change her previous recent recommendation graduating you from your OTI. Having you come to the office after such an incident risked disruption and really was not an option. Instead, placing you on Administrative Leave served the best interests of both you and the WBG. It immediately lowered the temperature while allowing sufficient time to explore options.

In fact, the incident was reported to EBC. What they will do with the matter from their misconduct perspective remains within its discretion, and no doubt EBC will follow all necessary due process required in any such EBC review and investigation.

Concurrently, as a dutiful manager, [the New Country Manager] cannot simply ignore what transpired from a poor performance perspective and need not await the outcome of an EBC review and/or investigation. Instead, she decided to implement her option stated in your OTI graduation memo that provides if you fail to maintain this newly attained and fully satisfactory performance level, [the New Country Manager] reserves the right to change her recommendation from graduation to termination of appointment, which she did. The change of recommendation for graduation to termination was reviewed and considered thoroughly as required per [S]taff Rules 5.03 and 7.01 *thereby assuring all due process was followed with respect to termination for poor performance.* (Emphasis in original.) This change in recommendation was reviewed and accepted by [...] PaC Director, Client Services and [the New Country Manager's] Director, [...] (Country Director for Burundi) and thereafter approved by [...] VP Africa East.

I trust the above answers any due process queries and concerns you and our SA colleagues may harbor.

48. Also on 8 December 2023, the Applicant emailed the Anti-Harassment Coordinator and stated that “I am not quite sure I understand what is happening” and “the Management is hereby conducting a termination of my contract, only 10 months after they took over the CMU.” The Applicant further stated, “Since all is linked to EBC, why doesn’t the Management want to get an official report of this scandalous event that I did not take part in. Too many questions without an answer.” The Applicant further stated, “What did I do that embarrasses the new CMU? We had a very productive year and never received a negative feedback, spoken or written.” The Applicant also asked the Anti-Harassment Coordinator to “advise if I can at this stage conduct my own investigation of the facts and engage a personal lawyer.”

49. On 20 December 2023, EBC emailed the New Country Manager regarding her report of allegations against the Applicant and stated:

In line with our practice and procedure, we commenced a preliminary inquiry into the allegations. In the course of our preliminary inquiry, we were informed of your decision to rescind [the Applicant's] previous successful completion of her OTI, and recommendation to management to terminate her World Bank Group contract. Our understanding is that your decision and recommendation are directly connected to the allegations you reported to our office. We have also been informed that your recommendation was accepted, and [the Applicant's] contract has since been terminated. Please confirm our understanding and [the Applicant's] termination, as these will be taken into consideration in the progress of our review.

50. On 8 January 2024, the Country Director emailed the Regional Vice President for Eastern and Southern Africa (Regional Vice President), seeking "advice and clearance" on the memorandum the Country Director intended to send to the Applicant. The email further stated:

To be sensitive, [the New Country Manager] and I agreed to send it after the holiday season.

[The Applicant] has lodged complaints with EBC, and reached out to the ED [Executive Director] for Burundi among others.

Looking forward to hearing from you.

51. On 8 February 2024, the New Country Manager emailed the Regional Vice President and stated:

This is a gentil [*sic*] reminder about the request of clearance below from [the Country Director]. [HR] informed me that EBC advised HR to finalize this case as soon as possible. Could you please clear the attached memo.

52. The Regional Vice President responded to the New Country Manager the same day apologizing for the delay, noting that the request "slipped through the cracks" and informing the New Country Manager to "proceed."

53. On 14 February 2024, the HR Manager sent an email to the Director, People and Culture (HR Director), seeking the HR Director's "concurrence to proceed with the termination of [the

Applicant] [...] for a lapse in behaviors and values following an OTI (and previous counselling by her management on performance and behaviors)” and providing the HR Director with the draft termination memorandum. The HR Director responded the same day stating “We spoke, and I’m fine with the memo.”

54. On 15 February 2024, the Applicant received a memorandum regarding Notice of Termination from the Country Director, which stated:

Your supervisor, [the New Country Manager] (and previously [the Former Country Manager]), discussed with you and notified you in writing, issues concerning your performance, specifically the need to show behaviors that are aligned with the World Bank values. [The New Country Manager] (and previously [the Former Country Manager]) also advised you that if your performance did not improve, your employment might be terminated.

In coming to my decision, I have carefully considered your comments on the proposal to terminate your employment. I have also consulted with [...] (Director, PAC Client Services) and [...] (Regional Vice President for East and South Africa). Because your performance has not been consistent and aligned with the World Bank Values, please be informed that your employment with the World Bank will be terminated effective on April 30, 2024, in accordance with Staff Rule 7.01, Section 11 (Unsatisfactory performance).

In the Notice of Termination memorandum, the Applicant was further informed that her administrative leave would continue for two additional months.

55. Also on 15 February 2024, the Applicant emailed the Counsel to the Anti-Harassment Coordinator and an EBC investigator stating, “It is very surprising for me to realize that after nearly 7 months, I have not been contacted for this matter.” The Applicant further stated, “I would repeat again that I have not done such a shameful act, and would like to know the reason for not being contacted for a proper investigation through EBC.”

56. On 21 February 2024, the EBC investigator responded to the Applicant’s email and copied the Manager of the BIR unit (BIR Manager). The email stated that the BIR Manager would advise on the status of BIR’s review. The Applicant responded the same day stating that she was “looking forward to the guidance.”

57. On 24 May 2024, the BIR Manager informed the Applicant via email that, “[g]iven management’s decision to terminate your employment contract, EIJ Investigations has closed our review of the matter about which you inquired.” Also on 24 May 2024, the BIR Manager informed the New Country Manager that the case was closed in light of the termination of the Applicant’s employment.

58. On 4 June 2024, the Applicant filed this Application with the Tribunal.

59. The Applicant contests the decision to terminate her employment.

60. The Applicant seeks

immediate reinstatement to the position she held upon termination, and damages for loss of career opportunity. She also seeks compensation for the reputational damage because of defamatory accusations, inconvenience, emotional distress, and physical/mental stress, assessed at five years’ net salary, and such other and further relief as this Tribunal deems just and appropriate under the circumstances.

61. Further, the Applicant “requests that her personnel file reflect that there is no finding of harassment, misconduct or poor performance.”

62. The Applicant requests legal fees and costs in the amount of \$28,862.00.

63. In her Application, the Applicant sought provisional relief as follows: “[The Applicant] seeks immediate reinstatement of her employment and work program as of the date of her termination or to be placed on administrative leave pending a final ruling by the Tribunal.”

64. On 26 June 2024, the Bank provided comments on the Applicant’s request for provisional relief.

65. On 1 July 2024, the Tribunal denied the Applicant’s request for provisional relief.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

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

*The Applicant's employment was wrongfully terminated as there was no misconduct and no performance-based reason for termination*

66. The Applicant asserts that, pursuant to Tribunal precedent, should the Bank contend that her behavior was misconduct, the Bank must prove "through substantial evidence and beyond a mere balance of probabilities" that the alleged harassment occurred. The Applicant avers that the Bank cannot meet this standard as it failed to investigate the harassment claim, and she submits that "[t]he reason for the termination remains a mystery and an utter failure of transparency."

67. The Applicant claims that, in addition to failing to investigate, the Bank failed to notify her of the allegations against her; she purports that her "rights and obligations under the circumstances were never explained to her"; and she submits that no written description was provided to her. The Applicant denies making the comment at issue and states that, "while she did speak with the cleaning contractor, it was in a respectful manner and well within the bounds of [the Applicant's] professional responsibilities."

68. Moreover, the Applicant asserts that, even if she had made the alleged comment, it is not clear why it would constitute "misconduct" or "harassment," and she contends that "[t]he fact that someone may have taken offense to the comment does not mean that it is harassment or misconduct." In the Applicant's view, the alleged comment does not fall under the definition of misconduct in Staff Rule 3.00, paragraph 6.01; and she highlights that "[t]here is nothing reckless or pervasive about a single alleged comment requesting a vendor to flush or clean a toilet, nor is there any convincing reason to believe it is fundamentally imprudent."

69. The Applicant states that the New Country Manager "briefly mentioned, in a single sentence of her email placing [the Applicant] on administrative leave, that a vendor was allegedly asked to flush the toilet after [the Applicant] used the bathroom"; however, the Applicant avers that "this is neither a sufficient description of the allegations, nor does this description explain how

the alleged conduct constitutes harassment.” In the Applicant’s view, if the Bank considered her action to be harassment, it would have conducted an investigation and informed her accordingly, and she asserts that the failure to investigate implies “there was simply no misconduct.”

70. The Applicant contends that the Bank is attempting to avoid having to prove misconduct by labeling the alleged behavior as performance-based even though “it clearly is not.” The Applicant reiterates that the Bank’s failure to investigate means it cannot meet the Tribunal’s standard for misconduct and cannot justify the termination decision. The Applicant also references requirements under the Staff Rules for investigations into staff member conduct. The Applicant avers that, “[b]ecause [the Applicant’s] comment was completely unrelated to her performance,” and notwithstanding the Bank’s assertions to the contrary, “it must fall into the category of improper behavior.” Accordingly, in her view, the Bank was required to properly investigate before the termination decision but failed to do so.

71. Further, the Applicant asserts that there was no performance-based reason for the termination decision, and she highlights her performance evaluations as evidence of “her strong performance in her role.” With reference to the OTI, the Applicant notes that it “did not address instances of harassment,” and she asserts that, as such, “any such behavior would not constitute a ‘recurrence of unsatisfactory performance,’” as referenced in the New Country Manager’s OTI email as possible grounds for termination. In the Applicant’s view, given that she “did not repeat any previously detailed ‘unsatisfactory performance,’ there is no reason that her completion of the OTI should be reversed.”

72. While the Applicant avers that the alleged incident of harassment should not be considered part of performance, in her view, should it be so considered then, pursuant to Staff Rule 5.03, paragraph 5.01, the New Country Manager would have been required to issue the Applicant a new OTI informing her of the newly unsatisfactory performance. The Applicant underscores that she successfully completed the OTI prior to the termination and asserts that “[a]n OTI cannot create a permanent probationary period.” The Applicant submits that she was not on probation at the time of the incident in question and that her employment “could not be properly terminated based on this single incident.” She contends that “the OTI program would be essentially pointless” if her



employment could be terminated for insufficient performance at any point after completing the OTI.

73. The Applicant also submits that there is no relation between the alleged comment and her performance in her position, and she stresses that “[i]n no way could this behavior have impacted her ability to do her work, including collaborating with her team.” The Applicant avers that the communication issue outlined in the OTI “is completely independent from harassment.” She notes that the OTI refers to communication “during meetings” and with respect to “exchanging criticism in a non-confrontational CONFIDENTIAL manner,” and she asserts that neither “could be interpreted as bringing a single comment under the umbrella of performance.” (Emphasis in original.) In the Applicant’s view, the Bank fired her “due to a single comment she allegedly made to a cleaning contractor, which had no relation to her OTI.” She stresses that the OTI which she completed “had no relation to allegedly abusive conduct or harassment toward Staff,” and she takes issue with the Bank’s contention that, due to the reference to communication in the OTI, the alleged comment to Ms. S constitutes a relapse to behavior covered under the OTI.

74. The Applicant purports that “[i]t is unclear if [she] was ever formally terminated,” and she states, “The termination memorandum that she received was unsigned, and she received unclear messages regarding her status at the Bank.” She also asserts, with reference to the Bank’s claim that she “physically slapped [a contractor] on her behind,” that the Bank provides no documentation that this alleged occurrence played a role in its termination decision. The Applicant contends that “[i]t was clearly only referenced as an after-the-fact attempt [...] to establish some sort of pattern,” and she claims that “this was not the reason for termination and does not establish a pattern of poor performance.” Further, the Applicant avers that the alleged comment to Ms. S was the only one mentioned in email communication between the New Country Manager and the Applicant, and she submits that “[a]t no point did the Bank raise other, similar instances, or establish a pattern of behavior.”

75. The Applicant further takes issue with the Bank’s contentions regarding an all-staff meeting and all-staff email concerning the use of contractors for personal purposes and contends the email “cannot possibly be used to justify the termination decision.” To the Applicant, “[t]he

fact that it is addressed to all staff suggests that it was not considered a serious abuse and does not support the contention that it was sent in response to the actions of a single person.” Finally, the Applicant stresses that her successful completion of the OTI cannot be ignored, and she challenges the Bank’s attempts to link its reason for the termination decision with her performance four years prior to the termination. To the Applicant, any performance issues from that period are irrelevant as they were addressed when she was placed on an OTI in January 2022 and when she completed said OTI.

76. The Applicant stresses that Staff Rule 5.03, paragraph 5.02, does not permit the reversal of the successful completion of an OTI and termination for the alleged behavior in question. She submits that she “simply did not commit the type of wrong that would warrant immediate termination.”

#### ***The Bank’s Response***

*The termination decision was appropriate, was taken in accordance with the Staff Rules, and had a reasonable and observable basis*

77. The Bank contends that the Applicant was “repeatedly counseled about her behavior in the office, towards staff members and contractors,” and submits that, while some of the Applicant’s performance improved during the OTI period, after the period concluded the Applicant’s “problematic behaviors” continued as before. The Bank avers that “management considered all available options, but decided it was best for the World Bank to terminate [the] Applicant’s employment.”

78. The Bank submits that the Applicant received “[r]eal-[t]ime [f]eedback” about her performance issues from the Former Country Manager and avers that she “received constant input” about her performance. The Bank asserts that “[t]he entire performance management process was conducted in a transparent manner for [the] Applicant” and that “[s]he was accorded substantial due process throughout.” The Bank also states that the record demonstrates that the Applicant was able to give “pushback” on any comments from the Former Country Manager regarding performance feedback.

79. The Bank purports that the Former Country Manager aimed “to be diplomatic with her feedback” and, as an example, submits that,

after hearing that [the] Applicant was asking the janitorial contractors to perform personal errands, the Former Country Manager, rather than publicly upbraiding [the] Applicant, merely sent an email to all staff, not singling out [the] Applicant, to remind them all not to do so.

Further, the Bank submits that “the Former Country Manager tried to be as clear and constructive as possible,” and it notes a 3 June 2022 email to the Applicant in which the Former Country Manager stated, “This is an example of the need to improve communication.”

80. The Bank contends that the Applicant felt threatened by various decisions of the Former Country Manager regarding the Burundi CO as those decisions related to the Applicant’s “capability to control information in and out of the office, and to benefit from her position as the Country Manager’s Executive Assistant.” The Bank further claims that the Applicant “began to act in ways that made the work of her colleagues, and of the Country Manager, more difficult” after she realized she would not likely be promoted.

81. Further, the Bank contends that the “Applicant cannot credibly claim that she did not have ample notice of instances in which her Former Country Manager felt her performance was not meeting expectations.” The Bank points out that the Former Country Manager adjusted the Applicant’s ability to access her calendar due to “several instances of invitations not appearing on her calendar, or incorrect information,” and the Bank avers that a “staff member is generally not entitled to choose her own work program and decide on the manner in which she will complete the tasks she feels are valuable.” The Bank also avers that the Applicant was resistant to change and that this resistance “included her refusal to stop using vendor staff for her personal benefit, even though she was well aware that this was not permissible.”

82. The Bank submits that the Former Country Manager consulted with HR and decided to place the Applicant on an OTI program, and the Bank contends that the New Country Manager “refreshed the OTI after a meeting with [the] Applicant, to ensure that she and [the] Applicant

were on the same page with respect to the improvements expected of [the] Applicant.” The Bank submits that, due to “the residual disruptions caused by the COVID-19 pandemic and home-based work in Burundi and the end of her term, the Former Country Manager did not set a specific deadline for [the] Applicant” with respect to the OTI. The Bank asserts that, during the formal OTI, the Country Managers “continuously established specific and measurable performance objectives for [the] Applicant, promptly identified an[y] problems in performance to her, used regular bi-weekly meetings to provide timely and specific feedback, and gave her feedback against tangible performance metrics.” Further, the Bank submits that all Staff Rules and procedures were followed through the OTI process.

83. The Bank contends that the New Country Manager “had inherited the OTI” and that she decided to give the Applicant “every chance to start the relationship afresh.” The Bank submits that, “[g]iven [the] Applicant’s disciplined performance during the start of her tenure, there was no reason for the [New] Country Manager to believe that [the] Applicant would resume her previous behavior.” The Bank avers that the New Country Manager ended the OTI on 5 May 2023 because she was satisfied the Applicant was completing her duties and because she had not received any reports about the Applicant’s performance. The Bank further notes that the memorandum specifies that “[r]ecurrence of unsatisfactory performance may be the basis for me to recommend further action, including termination of your employment.” In the Bank’s view, a new OTI in the context of the Applicant’s present claims “would mean a potentially endless cycle of problem performance leading to an OTI, then conclusion of the OTI, and problem behavior, then another OTI, etc.” To the Bank, “[t]he standard of acceptable behavior is not magically erased when the OTI period ends,” and “[t]he staff member continues to be held to the same standards as were supervised during the OTI.”

84. The Bank contends that the New Country Manager learned of the incident with Ms. S “during an emotional conversation” in which Ms. S described the “long-term abuse she had faced” and “detailed the threat that [the] Applicant was holding over her – were [Ms. S] to tell someone about [the] Applicant’s abuse, [the] Applicant would have fired her.” The Bank submits that following this conversation the New Country Manager realized she was wrong to close the OTI.

85. Additionally, the Bank states that, while it accepts that a new OTI would be required if the performance issues concerning the Applicant “were ‘new’ or ‘different’ or not subject to a prior OTI,” it submits that “this is not the case here.” The Bank asserts that the “Applicant was placed on an OTI based on her bullying and harassing behaviors,” and claims that “[t]he abuse of [Ms. S] was neither new nor isolated, and it is reasonable to take a holistic approach to [the] Applicant’s behavior.” The Bank asserts that the Staff Rules expressly provide that, if after the conclusion of an OTI a staff member’s performance problems reoccur, the manager may respond with termination, and the Bank further submits that this warning was included in the memorandum the Applicant received regarding the end of the OTI. The Bank stresses that the memorandum ending the OTI period states:

The level of performance you have now achieved must be consistently maintained. Recurrence of unsatisfactory performance may be the basis for me to recommend further action, including termination of your employment.

The Bank submits that, once the OTI was formally over, the Applicant “engaged in precisely the behavior she was told to avoid,” and the New Country Manager decided that the “Applicant was simply unwilling to act in the way required of World Bank staff members.”

86. The Bank submits that the workplace norms explained to the Applicant in the OTI did not disappear when the OTI ended, and the Bank contends that the Applicant received “specific notice, even under the Former Country Manager, that abusing the cleaning company staff was specifically a performance issue.” The Bank submits that the Applicant’s behavior in terms of “ask[ing] the office contractors to perform tasks that fell far outside of the assigned responsibilities, including picking up her personal dry cleaning, picking up her personal groceries and asking the gardeners to tend to her garden at home,” led management to “re-instruct all office staff to cease such behaviors” in June 2022. The Bank further contends that in 2022 the Applicant was specifically told “to stop mistreating the employees of the janitorial company.” The Bank submits that the 7 June 2022 email from the Former Country Manager, while sent to all staff, “was directly in response to [the] Applicant’s observed behavior.”

87. The Bank posits that the “Applicant’s abuse of authority towards [Ms. S] shocked the [New] Country Manager [...] deeply” and that the Applicant inflicted a “litany of abuses” on

various office vendors, most often Ms. S, with the abuse going on for years and beginning in February 2021. The Bank purports that in May 2023 the New Country Manager “researched [the] Applicant’s behavior in the office” and “found out that [the] Applicant consistently was asking the janitorial staff to perform personal services for her.” The Bank asserts that the New Country Manager acted once she became aware of the full extent of the “Applicant’s unprofessional and disobedient behavior” as she could not allow it to continue. The Bank submits that,

[u]pon receiving these reports, and bearing in mind [the] Applicant’s previous performance, it was clear to the [New] Country Manager that [the] Applicant had most certainly not maintained the improvements in her performance intended to be addressed by the OTI.

88. The Bank submits that, pursuant to Staff Rule 7.01, paragraph 12.02, it was the prerogative of the New Country Manager and the Country Director to terminate the Applicant’s employment without going to another OTI. Further, the Bank submits that, “in order to prevent further abuse or retaliation by [the] Applicant,” it was decided that administrative leave was the best immediate response. The Bank maintains that it “did not need to start another OTI,” and insists that this was only one of available options along with reassignment or assignment to a lower-level position pursuant to Staff Rules 5.01 and 5.06. The Bank avers that “it is the manager’s duty to decide the best course of action based on the staff member’s behavior,” and contends that had the manager reissued an OTI it “would only result in a temporary respite from [the] Applicant’s behaviors.” The Bank avers that “the seriousness of [the] Applicant’s behavior negated the potential benefits to reassignment,” and the Bank submits that “the Manager’s decision to take alternative action to a second OTI was an appropriate one.” The Bank avers that “reassignment is not a cure for disrespectful behavior that violates the staff rules – it just shifts that behavior from one place to another.”

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

*The Bank violated the Applicant’s due process rights*

89. The Applicant submits that, even if her alleged harassment were considered a performance issue, due process was not followed. The Applicant cites the Tribunal’s jurisprudence and asserts

that “termination decisions should be held to an even higher standard than non-confirmation decisions, because open-ended Staff reasonably expect their employment to be ongoing.”

90. The Applicant states that she was not advised of issues with her performance and was not given any opportunity to correct the alleged behavior and to avoid a termination decision. The Applicant submits that, within a few weeks of completing the OTI, she was placed on administrative leave and then her employment was terminated. The Applicant states that “[s]he remains in the dark as to why she was terminated,” a decision for which she submits the Bank had no rational basis.

91. The Applicant avers that she was not given notice of the alleged harassment and contends that the OTI “dealt exclusively with performance-based issues,” and she submits that she “was never made aware of any harassing behavior that needed correcting.” She avers that she was not given “adequate warning” as required by the Tribunal’s jurisprudence and stresses that she was not given the opportunity to correct her behavior or defend herself. Rather, the Applicant claims her employment was “terminated based on a single allegation,” and she contends that the termination decision “is a fundamental failure of due process.”

92. The Applicant submits that the record shows that she received positive feedback and successfully completed the OTI. She claims that, “[f]ollowing this feedback, she had no reason to believe that her performance was being questioned, or that she had to make further improvements.” Further, the Applicant posits that there is no evidence that the New Country Manager believed the incident in question was an instance of poor performance, and the Applicant submits that the New Country Manager “may have been disturbed by the comment, but this behavior had nothing to do with [the Applicant’s] OTI or TOR.”

93. The Applicant contends that, in response to the allegation, “she was immediately placed on administrative leave,” and she avers that “[t]here is no evidence of a pattern of harassment that posed an ongoing risk to staff or vendors justifying administrative leave.” The Applicant avers that she was “summarily terminated,” without an opportunity to correct her alleged behavior. She asserts that the Bank failed to give her the benefit of the doubt and a presumption of innocence;

failed to adjudicate, reasonably investigate, or prove that she committed conduct justifying termination of employment; failed to provide her with reasonable notice of the policy or that behaviors such as the matter at hand would result in a termination decision; failed to provide her with advance notice that her employment would be terminated and that she would face sanctions “due to a single, unsubstantiated comment”; and failed to utilize the office of the Anti-Harassment Coordinator and the Bank’s processes for addressing the alleged comment and any interpersonal issues with Ms. S.

94. In the Applicant’s view, the documentation in the record establishes that “the Bank rushed to judgment,” and she contends that the Bank “accept[ed] the word of the accuser without conducting an unbiased investigation that would have included interviewing [the Applicant] and other witnesses.” The Applicant further submits that, “[i]f there were other grounds for termination, such as treating [Ms. S] as a personal assistant, the Bank provides no evidence that would justify a finding of harassment, other than the word of [Ms. S], as reported by others.” To the Applicant, her “due process rights were simply disregarded, as these allegations should have been investigated before the decision to terminate her”; and she submits that “[a]ny conflicts or accusations could and should have been dealt with through the proper channels, stopping short of termination.”

95. The Applicant also states that she was denied due process in that she received no response to the 28 August 2023 email she sent to management detailing her account of the alleged comment and explaining the lack of communication about the termination decision. She submits that she “was understandably confused about her status with the Bank and the reasons for termination.” The Applicant avers that the Bank has not provided any documents to show that it “considered her side of the story.” Further, the Applicant submits that the New Country Manager’s references to “reversing the OTI” could not be interpreted to be a notice of termination, and the Applicant states that she “reasonably believed that ‘reversing the OTI’ meant that she would have another opportunity.”



***The Bank's Response***

*The termination process followed all procedural requirements and provided due process to the Applicant*

96. The Bank contends that behavior is an aspect of performance and that the Applicant's employment was terminated "because her behavior towards others was so unprofessional, for such a long time, that it seriously affected the work environment in the Burundi office." The Bank submits that the New Country Manager met with the Applicant before the termination decision and explained what she had learned from Ms. S. To the Bank, the Applicant "had a full opportunity to explain herself" at the 1 June 2023 meeting but did not manage to persuade the New Country Manager.

97. Further, the Bank references an "all staff" session with the Former Country Manager as well as an "all staff" email in which she explained that custodial contractors were not to be used for personal errands. The Bank submits that the New Country Manager met with the Applicant and "explained that asking custodial staff to flush the toilet after [the] Applicant had soiled it, repeatedly, was shockingly inappropriate conduct for a World Bank staff member." The Bank avers that the Applicant was on notice because the Applicant had been warned in the OTI process that she could not revert to her prior misbehavior after completing the OTI. To the Bank, the fact that the Applicant had been warned not to be abusive to staff but continued to do so after the OTI only justifies the termination decision.

98. The Bank submits that the New Country Manager discussed the incident with the Applicant before the decision to place her on administrative leave, and it submits that the New Country Manager had discussions with her Country Director, the Anti-Harassment Coordinator, and various HR representatives, and weighed her options carefully. The Bank notes that the New Country Manager decided on termination because of "the seriousness of [the] Applicant's behavior, and the possibility of reoccurrence." The Bank avers that, pursuant to Staff Rule 5.03, paragraph 5.02, on 15 August 2023, the New Country Manager emailed a recommendation of termination to the Country Director with the Applicant in copy and asking her to submit comments.

99. The Bank submits that the New Country Manager verified the “toilet-flushing incident” in that she spoke to Ms. S and, upon learning that the Applicant had been directing Ms. S “to act as her personal assistant,” the New Country Manager “verified this by asking the Operations Officer who confirmed this pattern.” Further, the Bank submits that the Applicant was given “ample notice that the [New] Country Manager was concerned about her behavior towards the janitorial staff and was considering termination of her employment.” In the Bank’s view, the New Country Manager “did not rush to judgment” in determining how to address the Applicant’s behavior. The Bank notes that the recommendation on termination was not until 14 August 2023 and, further, that the 15 February 2024 Notice of Termination “was issued almost a year after the discovery of [the] Applicant’s behaviors.”

100. The Bank further notes the Applicant’s response on 28 August 2023 and deems it “unconvincing.” Further, the Bank contends that reassignment of the Applicant or assignment to a lower grade level would not have been reasonable options as they “had the potential to subject other staff members and/or vendors to the same abusive behavior.” The Bank submits that consequently, management proceeded to finalize the termination, with the Country Director waiting until after the holidays before giving the Applicant formal notice, which was also approved by the Regional Vice President and the HR Director.

101. The Bank avers that the Applicant was given all the procedural protections required under the Staff Rules before the termination of employment for performance, and the Bank submits that this decision was approved “in the interests of the World Bank.” The Bank submits that the New Country Manager “took a significant amount of time to seriously consider the decision, including evaluating all relevant circumstances, gave [the] Applicant an opportunity to explain herself, and consulted with HR, her senior management, and the Anti-Harassment Coordinator [...], before moving forward with the termination process.” The Bank claims that the Applicant was given “every opportunity to defend herself.” To the Bank, its decision was not unfounded, nor was it arbitrary or hasty, but, rather, “was reluctantly made, after a reasonable amount of time, and only after considering all other options as inadequate to protect its staff and mission.”

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

*The termination decision was disproportionate to the alleged misconduct or performance issue*

102. The Applicant asserts that, pursuant to Tribunal precedent, punishment for misconduct must comport with the principle of proportionality and that, pursuant to the applicable Staff Rule, disciplinary measures are to be made on a case-by-case basis. The Applicant submits that termination of employment is the most severe possible sanction at the Bank's disposal, and she submits that it "is clearly disproportionate to a single, unsubstantiated allegation of harassment." She further submits that the reasons for the termination decision were unsatisfactory performance including harassment allegations, and she contends that this does not require mandatory termination under Staff Rule 3.00, paragraph 10.09.

103. The Applicant asserts that the Bank has not supported its position that the severe sanction against the Applicant is proportionate to the claims, and the Applicant submits that "[t]his is a minor offense unrelated to performance, easily addressed and likely based on a misunderstanding." The Applicant highlights that, after the Applicant was informed via email from the New Country Manager of the complaint, she was not given the opportunity to resolve the issue, such as through a probationary period. In the Applicant's view, she "is entitled to be reinstated with no change in grade or any punishment." Further, the Applicant "requests that, should she be [r]einstated, that the Tribunal specify what sanction, if any, she should receive." The Applicant submits that, "[a]t most, she should be counseled to refrain from such behavior with a note in her personnel file."

***The Bank's Response***

*This is not a misconduct case and should not be decided as one*

104. The Bank contends that the Applicant's employment was not terminated for misconduct and that the standards articulated by the Applicant apply only in evaluating EBC cases or HRVP decisions pursuant to misconduct investigations. The Bank underscores that "[n]o misconduct decision was ever made that could be challenged by [the] Applicant," and the Bank contends that the Applicant's positions should be disregarded.

105. The Bank avers that, pursuant to the Staff Rules, the New Country Manager had an obligation to report suspected staff misconduct to EBC, and the Bank states that the New Country Manager reported the behaviors to the Anti-Harassment Coordinator. To the Bank, “[t]here is no requirement that a staff member’s behaviors that impact performance be handled only by EBC.” (Emphasis in original.) The Bank submits that many workplace behaviors impacting performance may not constitute harassment and, accordingly, would not be appropriate for EBC and the HRVP to address through the process of a misconduct investigation.

106. The Bank submits that the New Country Manager “did the right thing,” and the Bank avers:

She alerted EBC to a *potential case of harassment* and at the same [sic] in consultation with the HR Business [P]artner and the Country Director decided, as was within their discretion to do so, to not await an EBC investigative outcome, but to handle [the] Applicant’s behaviors through the performance management mechanism. (Emphasis in original.)

107. The Bank avers that the New Country Manager was entitled to treat the Applicant’s mistreatment of Ms. S as a related issue to the issues she had been counseled on throughout the OTI process. The Bank notes that the New Country Manager “acted quickly within her authority to protect staff from [the] Applicant’s continuing abuse” and to protect the Bank’s reputation.

108. The Bank submits that EBC opened a preliminary inquiry pursuant to the New Country Manager’s report, and that EBC interviewed witnesses and gathered facts to evaluate if the Applicant’s behavior violated the Bank’s rules. Additionally, the Bank states that the HRVP explained, via email response to the Applicant, that her performance-related issues were separate from the EBC investigation. The Bank asserts that the Applicant was notified that EBC was closing its review of the matter due to management’s decision to terminate the Applicant’s employment and that EBC did not make any findings or decisions.

109. The Bank submits that no information was shared between EBC and the New Country Manager about the substance of the preliminary inquiry and that the EBC inquiry was confidential. To the Bank, the New Country Manager made the decision about the Applicant’s performance without regard for whether the Applicant’s conduct may constitute misconduct. The Bank offers

EBC's records for the Tribunal's *in camera* review "because they relate to [the] Applicant's credibility" and because, according to the Bank, the information "corroborates the facts determined by the [New] Country Manager that [the] Applicant asked [Ms. S] to flush her feces, not merely clean the toilets." The Bank states that the records have not been shared outside EBC and played no role in the performance-related decisions.

110. The Bank stresses that "[t]here was no EBC decision, or even input, into this performance management process," and it submits that the New Country Manager evaluated the possible managerial responses to the behavior issues the Applicant continued to display after closure of the OTI. The Bank highlights that EBC notified the New Country Manager of the conclusion of the preliminary inquiry on 24 May 2024, over seven months after the termination decision, and the Bank asserts that "the performance decision was wholly independent."

111. To the Bank, the termination decision was "based on continued poor and outrageous performance," and it was not a misconduct case involving sanction from the HRVP. The Bank underscores that, when evaluated pursuant to performance management, the Bank "acted reasonably in light of the history and the facts."

112. Finally, the Bank avers that reinstatement would be an inappropriate remedy in the instant case and would likely "cause significant harm to the World Bank and its staff and contractor staff," and the Bank claims that staff members would fear retaliation from the Applicant. In the Bank's view, "there is no assurance that [the] Applicant would feel constrained in any way from acting on her worst impulses and threats."

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

### WHETHER THE TERMINATION DECISION WAS AN ABUSE OF DISCRETION

113. The decision to terminate a staff member's employment for poor performance is a discretionary decision of the Bank. *BI (Nos. 6 and 7) (Merits)*, Decision No. 587 [2018], para. 35.

With respect to review of such a decision, the Tribunal stated in *Lopez*, Decision No. 147 [1996], para. 36:

The question for decision by the Tribunal is whether the [a]pplicant's service was properly terminated by the Respondent for unsatisfactory performance in accordance with both the substantive requirements and the procedural guarantees required by the internal law of the Bank. The Tribunal has repeatedly stated that it will not substitute its judgment for the discretionary decisions of the Bank's management, particularly in terms of the evaluation of staff performance, and that the "Administration's appraisal in this respect is final, unless the decision constitutes an abuse of discretion [...]."

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

[d]ecisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a staff member's contract of employment or terms of appointment. *See also ET*, Decision No. 592 [2018], para. 91; *DO*, Decision No. 546 [2016], para. 33.

115. The Tribunal also recalls that, in *GI*, Decision No. 660 [2021], para. 78, it stated:

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

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

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

116. The Tribunal recalls that, on 15 February 2024, the Applicant received a memorandum regarding Notice of Termination from the Country Director, which stated:

Your supervisor, [the New Country Manager] (and previously [the Former Country Manager]), discussed with you and notified you in writing, issues concerning your performance, specifically the need to show behaviors that are aligned with the World Bank values. [The New Country Manager] (and previously [the Former Country Manager]) also advised you that if your performance did not improve, your employment might be terminated.

In coming to my decision, I have carefully considered your comments on the proposal to terminate your employment. I have also consulted with [...] (Director, PAC Client Services) and [...] (Regional Vice President for East and South Africa). Because your performance has not been consistent and aligned with the World Bank Values, please be informed that your employment with the World Bank will be terminated effective on April 30, 2024, in accordance with Staff Rule 7.01, Section 11 (Unsatisfactory performance).

117. The Tribunal will now examine whether the Bank's decision to terminate the Applicant's employment was an abuse of discretion.

118. The Tribunal observes that the Staff Rules provide the mechanisms for addressing performance issues with a staff member. Pursuant to Staff Rule 5.03, paragraph 5.01:

If a Manager or Designated Supervisor determines that a Staff Member's performance (which includes professional and work-place behavior) is not satisfactory, the Manager or Designated Supervisor may do the following:

- a. Consider reassignment to another position under Rule 5.01 or assignment to a lower level position under Rule 5.06.
- b. Discuss and Document Opportunity to Improve Unsatisfactory Performance. Discuss and share with the Staff Member in writing:
  - i. the aspects of performance that are not satisfactory,
  - ii. guidance on what improvement is expected and by when, and
  - iii. the possible consequences of failure to improve.
- c. Health Assessment: Request a health assessment under Rule 6.07, paragraph 3.03 if performance problems are believed to be health-related.

119. Further, pursuant to Staff Rule 5.03, paragraph 5.02:

In the case of failure to achieve or sustain satisfactory performance following a documented opportunity to improve under sub-paragraph 5.01(b), a Manager or Designated Supervisor may recommend, with the concurrence of the HR Manager,

further actions consistent with that documented discussion. The recommendation is in writing, to the next in line manager at Level GI or above and may include; (i) reassignment to another position under Rule 5.01; (ii) assignment to a lower level position under Rule 5.06, or (iii) termination in accordance with Rule 7.01, Section 12, Unsatisfactory Performance. The Staff Member is given a copy of the recommendation and at least 14 calendar days to comment prior to a decision on the recommendation.

120. And Staff Rule 7.01, paragraph 12.02, states:

A decision to separate a Staff Member for unsatisfactory performance may be made by the Manager of the Staff Member's Manager or Designated Supervisor, at grade GI, or above, on the basis of a recommendation from the Staff Member's Manager or Designated Supervisor, taking into account the comments of the Staff Member, if any, as specified in Staff Rule 5.03, "Performance Management Process," paragraph 3.03, with the concurrence of the Director, Human Resources, for Bank or MIGA Staff, or IFC Director, Human Resources, for IFC Staff and, where the decision maker is not a Vice President, the concurrence of the Vice President of the Manager making the decision.

121. The Tribunal thus considers that the substantive requirements for terminating a staff member's employment due to unsatisfactory performance are as laid out in Staff Rule 5.03 and Staff Rule 7.01 above.

122. The Tribunal observes that the Bank submits that its actions were in accordance with the Staff Rules. Specifically, the Bank avers that, "based on her bullying and harassing behaviors," it placed the Applicant on an OTI and subsequently proceeded to terminate the Applicant's employment when the Applicant failed to adhere to the terms of the OTI after it closed. The Bank submits that, pursuant to Staff Rule 7.01, paragraph 12.02, it was the New Country Manager's and the Country Director's "prerogative to terminate employment without recourse to another OTI."

123. It is apparent from the Bank's position that it construes the language of Staff Rule 5.03, paragraph 5.02, to mean that it is permissible to proceed to terminate a staff member's employment pursuant to Staff Rule 7.01, paragraph 12, if that staff member has failed to sustain satisfactory performance following a successfully completed OTI. The Tribunal notes that the Bank states that it accepts that a new OTI would be required if the performance issues concerning the Applicant



“were ‘new’ or ‘different’ or not subject to a prior OTI,” and the Bank submits that “this is not the case here.”

124. In the instant case, it is undisputed that on 8 May 2023 the Applicant successfully completed the OTI. The Tribunal recalls the subsequent Office Memorandum dated 14 August 2023 regarding “Recommended Action following Opportunity to Improve Performance,” which the New Country Manager sent to the Country Director and which recommended that the Applicant’s employment be terminated. The memorandum stated:

[The Applicant’s] performance deficiency remains, in particular, related to her unacceptable behaviors toward our custodians within the institution. These behaviors are against World Bank values of respect and integrity. During the OTI process and at completion, [the Applicant] was reminded several times of the importance to show and maintain behaviors that are always aligned with the WBG’s values. The last incident that was reported to my attention regarding her behaviors toward vendor’s employees are unacceptable and disruptive to the work environment.

In my judgement, continued efforts to improve are not in the Bank’s interest.

125. The Tribunal recalls that the 24 January 2022 OTI from the Former Country Manager specified as unsatisfactory performance that the Applicant “Adapt communication style with colleagues and myself,” and that the Applicant was being given an opportunity to address deficiencies by “improving communication during meetings” and by “[i]mproving your workplace behavior by working better in one-on-one and collaborate with teams, by exchanging criticism in a non-confrontational CONFIDENTIAL manner and by not allowing personal issues to impede delivery of work.” (Emphasis in original.)

126. Additionally, the Tribunal recalls the 14 November 2022 update by the New Country Manager to the Applicant’s OTI, which included the following:

**2. Opportunity to Improve:** This is an opportunity to improve on the followings which will be regularly monitored:

- Adapt behaviors that are aligned with WBG values
  - Work in a collaborative way that reduces conflict, use effective conflict management approach, adopt appropriate languages in all

communication channels, and avoid personal issues to impede delivery of work.

127. In the instant case, the Bank appears to characterize the Applicant's alleged behavior toward Ms. S as "against World Bank values of respect and integrity" and to subsume it under the rubric of the Applicant's OTI and its reference to "[a]dapt behaviors that are aligned with WBG values." But the Tribunal observes that, pursuant to the Bank's HR guidelines, an OTI must be specific.

128. The Tribunal notes the Bank's HR Toolkit with respect to "Managing Poor Performance." As explained in the HR Toolkit, an OTI "provides the staff member with a written explanation of areas of their performance that need improvement (including technical and professional/workplace behaviors)," and further "provides the staff member with guidance on: (i) how these deficiencies should be addressed; (ii) by when improvement is expected; (iii) how often the manager will discuss progress toward performance expectations with the staff member; and (iv) what the consequences are of repeated or ongoing unsatisfactory performance." Further, as stated in the Bank's "OTI Managerial Self-Service User Guide," managers are to provide specific "guidance on how the staff member should address the deficiency, who he/she should consult with, [and] what additional training they should undertake."

129. In the Tribunal's view, an OTI must set out clearly a staff member's deficient behaviors to be improved and the expected outcomes for the staff member to achieve and sustain. It is insufficient to include a generic reference to "Adapt behaviors that are aligned with WBG values" in the anticipation that this will encompass all future behavioral deficiencies, including ones that are in a different category of deficiency.

130. The Tribunal notes the Bank's contention that a new OTI in the context of the circumstances of the instant case "would mean a potentially endless cycle of problem performance leading to an OTI, then conclusion of the OTI, and problem behavior, then another OTI, etc." In the Tribunal's view, the Bank's perspective and reasoning in this case appear to be influenced by the relatively short duration of time between the Applicant's successful completion of the OTI on 8 May 2023 and the alleged performance issue as identified on 23 May 2023. Indeed, the Tribunal

observes that the New Country Manager and HR proceeded to undo or “reverse” the 8 May 2023 graduation of the Applicant from the OTI.

131. The Tribunal notes that the Bank cites no rule or policy which delineates the scope of what is in effect a post-OTI probationary period. Pursuant to the Bank’s reasoning, a staff member could successfully complete an OTI today and be subject to termination for unsatisfactory performance ten years later should management determine that the staff member has reverted to the performance issues that were stipulated in the decade-old, successfully completed, and closed OTI. Clearly such a position is unsupportable, particularly in an institution such as the Bank in which staff may spend their entire careers and in which performance may fluctuate over time. The Tribunal considers that, once successfully completed, an OTI cannot create an indefinite probationary period during which time a staff member’s employment may be terminated for unsatisfactory performance in the same manner as if the staff member had failed to graduate from the OTI.

132. On the facts of the instant case, the Tribunal does not accept that the behavior in question was the subject of the Applicant’s OTI as the Bank contends. Therefore, the Tribunal finds that the Bank could not terminate the Applicant’s employment for unsatisfactory performance without adhering to the substantive requirements under the Staff Rules for performance management, which the Tribunal finds the Bank failed to do. Accordingly, the Tribunal finds that the Bank’s decision to terminate the Applicant’s employment was not reasonable, was not in compliance with Bank rules, and constituted an abuse of discretion.

133. The Tribunal has addressed only the disputed decision before it – whether termination of the Applicant’s employment for unsatisfactory performance was an abuse of discretion due to non-compliance with Staff Rule 5.03. With respect to the serious allegations against the Applicant regarding Ms. S, the Tribunal notes that, due to the Bank’s termination decision, EBC closed its review of the allegations without making any findings of fact. Consequently, this judgment makes no pronouncement on the appropriateness or otherwise of the serious matters alleged.

## WHETHER THE REQUIREMENTS OF DUE PROCESS WERE OBSERVED

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

135. The Tribunal has stated that due process “guarantees refer precisely to adequate warning about criticism of performance or any deficiencies that ‘might result in an adverse decision being ultimately reached,’ and the corresponding opportunity for the staff member to defend himself.” *B*, Decision No. 247 [2001], para. 21. *See also GW*, Decision No. 686 [2023], para. 168; *Tange*, Decision No. 607 [2019], para. 136.

136. The Applicant contends that she was not advised of issues with her performance or given any opportunity to correct her alleged behavior so as to avoid termination. The Bank contends that the Applicant was on notice of her behavioral issues affecting performance by way of the “all staff” email from the Former Country Manager on 7 June 2022 regarding not asking the janitorial staff to perform personal errands, as well as through her placement on an OTI in which the Bank submits she “had been warned [...] that she could not simply revert to her prior misbehavior after the conclusion of the OTI.”

137. The Tribunal is not persuaded by the Bank’s position. First, the Tribunal has already found that the Applicant’s OTI did not specify the kind of behavior which the Bank purports resulted in the termination of the Applicant’s employment. Accordingly, the Applicant cannot be deemed to have had notice and an opportunity to correct by virtue of the OTI. Second, the Tribunal considers that the Former Country Manager’s “all staff” email of 7 June 2022 was not specifically directed at the Applicant and as such does not constitute adequate warning of a performance deficiency on the Applicant’s part. In these respects, the Tribunal finds that the Bank failed to observe the requirements of due process.

138. The Tribunal recalls the 15 February 2024 memorandum regarding Notice of Termination from the Country Director in which he stated to the Applicant, “In coming to my decision, I have carefully considered your comments on the proposal to terminate your employment.” In this

respect, the Tribunal observes that, in his 21 December 2023 testimony to EBC, the Country Director detailed having previous awareness of concerns with the Applicant from the Former Country Manager, as communicated to him when he served as Chief Economist for the Africa region. The Country Director stated in his EBC interview:

Well, OTI, the opportunity to improve, right, is what happens when you give 2 to a staff, right, 2 in your – in the SRI. And this is generally given to staff who are really, you know, not performing at the level expected. And is the step towards either improvement or exit, right?

So, she's been put by [the Former Country Manager] in OTI. And after a year, she couldn't actually raise it. She could not, you know – so, technically, [the Former Country Manager] should have exited her. Because after a year in OTI as a Manager either you, you know, end successfully the OTI, meaning the staff has improved, or you exit the staff. So, I'm not sure what happened. But she should have exit – she should have exited her.

139. In the Tribunal's view, the Country Director's comment that "she should have exited her" indicates a level of bias or predetermination on his part and suggests that he may not have given due consideration to the recommendation to terminate the Applicant's employment and to the Applicant's rebuttal. It appears to the Tribunal that, in the Country Director's view, the Applicant should have been fired irrespective of the allegations relating to Ms. S and the Applicant's defenses against those allegations. The Tribunal recalls *AI (No. 2)*, Decision No. 437 [2010], concerning termination of employment in the context of a Performance Improvement Plan. In *AI (No. 2)*, [2010], the Tribunal found that the record did not support that the Senior Vice President had given due consideration to the applicant's rebuttal to the Performance Improvement Plan Evaluation Memorandum before making his decision, and the Tribunal was persuaded that consideration could not have been given to the applicant's rebuttal "with the seriousness and thoroughness it required." *Id.*, para. 65. In the instant case, the Tribunal is not convinced that the Country Director gave serious and fair consideration to the Applicant's rebuttal to the termination recommendation and, accordingly, the Tribunal is not persuaded that the Applicant was afforded a fair opportunity to defend herself with respect to the allegations for which her employment was terminated. In this regard, the Tribunal finds a violation of due process.

140. In view of the above due process violations, the Tribunal determines that the Applicant must be compensated.

#### REMEDIES

141. Having found that (i) the termination decision was an abuse of discretion and (ii) the Bank failed in its due process obligations to the Applicant, the Tribunal will assess the appropriate remedies to be awarded to the Applicant.

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

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

143. The Tribunal notes that the Applicant seeks

immediate reinstatement to the position she held upon termination, and damages for loss of career opportunity. She also seeks compensation for the reputational damage because of defamatory accusations, inconvenience, emotional distress, and physical/mental stress, assessed at five years' net salary, and such other and further relief as this Tribunal deems just and appropriate under the circumstances.

144. Further, the Applicant

requests that her personnel file reflect that there is no finding of harassment, misconduct or poor performance.

145. The Tribunal has the discretion to determine the appropriate remedy in a given case. Considering the circumstances of the instant case, the Bank shall reinstate the Applicant to her position prior to the termination decision or to a similar position. In the alternative, the Bank shall pay the Applicant the sum of two years' salary net of taxes based on the last salary drawn by the Applicant in lieu of reinstatement.

## DECISION

- (1) The decision terminating the Applicant's employment is rescinded;
- (2) The Bank shall reinstate the Applicant to her position prior to the termination decision or to a similar position, within sixty days of receipt of this judgment, or, in the alternative, the Bank shall pay the Applicant compensation in the amount of two years' net salary based on the last regular salary drawn by the Applicant for the improper termination decision;
- (3) The Bank shall remove from the Applicant's personnel file all records relating to the termination decision and shall substitute them with a copy of this judgment;
- (4) The Bank shall pay the Applicant one year's net salary based on the last regular salary drawn by the Applicant for violations of due process;
- (5) The Bank shall pay the Applicant's legal fees and costs in the amount of \$28,862.00; and
- (6) 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