



**World Bank Administrative Tribunal**

**2025**

**Decision No. 723**

**IE,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

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

**IE,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

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

2. The Application was received on 2 May 2025. The Applicant was represented by Ryan E. Griffin of James & Hoffman, P.C. The International Finance Corporation (IFC) was represented by David Sullivan, Deputy General Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 7 November 2025.

3. The Applicant contends that (i) the misconduct finding against him cannot be sustained; (ii) the misconduct investigation and the impugned disciplinary decision were marred by multiple serious violations of due process; and (iii) the sanctions imposed are significantly disproportionate to the findings of misconduct.

**FACTUAL BACKGROUND**

4. The Applicant joined the IFC in 2005 as a consultant. In 2009, the Applicant became a full-time staff member. Since 2012, he has worked in the Office of the Compliance Advisor Ombudsman (CAO).

5. CAO is the independent accountability mechanism for projects supported by the IFC and the Multilateral Investment Guarantee Agency (MIGA). It works to resolve complaints, enhance environmental and social outcomes, and foster accountability and learning through three complementary functions: (i) dispute resolution, (ii) compliance, and (iii) advisory. The senior

leadership of CAO includes the Director General, the Senior Advisor to the Director General (added in 2021), the team leads of the three functions, and the Senior Communications and Outreach Specialist.

6. Starting in 2015, the Applicant served as the team lead, Grade Level GG, for CAO's Compliance team. In that role, the Applicant was tasked with managerial functions such as assignment of work, objective setting, performance reviews, and approval of leave and travel for Compliance staff. He also advised the CAO Director General in relation to hirings and contract extensions. He excelled as team lead, receiving performance ratings of 4 or 5 on a five-point scale in every fiscal year (FY) from FY2018 to FY2021, reflecting that he had exceeded or significantly exceeded expectations. Behavioral areas to develop in feedback comments and performance evaluations during this period referred to the Applicant's need to improve listening skills, awareness of his impact on others, and his day-to-day management of people within his team.

7. In 2017, the Applicant became the full-time supervisor of Ms. A, who was one of two GE-level analysts on the Compliance team.

8. Ms. A joined the IFC in 2011 as an analyst on CAO's Dispute Resolution team. She remained an analyst there for six years, at which point she went on parental leave. Ms. A sought promotion to the next grade level while on the Dispute Resolution team but was not promoted and felt sidelined. According to her then manager, Ms. A's promotion was precluded by a lack of mediation expertise. When Ms. A returned from parental leave, she was placed as an analyst on the Compliance team under the Applicant's supervision. According to Ms. A, she was not consulted on this new placement, which she perceived as a lack of respect. When she moved to the Compliance team, she expressed to the Applicant her concerns about how this placement might restart the process for consideration for promotion.

9. Ms. A and the Applicant had different assessments of her readiness to be promoted, which resulted in disagreements and, according to Ms. A, hostility toward her on the part of the Applicant.

10. In the Applicant's FY20 performance evaluation, the Applicant and his manager acknowledged that the Applicant had "management challenges," including that "some staff have raised concerns regarding salary, promotions and access to opportunity for young/female/African staff." The record indicates that Ms. A was "the only young, female, African staff on the Compliance team at the time."

11. Between October 2020 and February 2021, the Applicant and Ms. A engaged in mediation, initiated by the latter, through Mediation Services. CAO's Human Resources Business Partner (HRBP) participated in the mediation process.

12. On 1 February 2021, the mediation resulted in a confidential agreement pertaining to Ms. A's career progression.

13. On 3 March 2021, the Applicant emailed Ms. A to inquire about her interest in a certain development assignment with another team. In response, Ms. A asked for clarification on whether taking a development assignment would restart the calculation of "years spent in current role" and further delay the possibility of promotion within the Compliance team. The Applicant responded with the IFC's criteria for promotion, stating further, "It's up to you to decide whether [the] development assignment fits into your career goals."

14. In March 2021, CAO hired an external contractor, IMPACTO, to implement a multi-phase review of CAO's resource needs and then develop a resource management plan.

15. On 19 March 2021, the Applicant held an informal talent review meeting with the Director General. On 22 March 2021, the Applicant followed up in writing to the Director General outlining the action items which resulted from the meeting. The action items pertained to exploring various budget and staffing options for the Compliance team. Some of the action items included that the Applicant would (i) "[c]ontinue to pursue [the] option of development assignment swap for FY22 for [Ms. A]/[another staff member]"; (ii) "[f]ollow up with [another team member] on the status of [the other GE-level analyst's] contract (extension)"; (iii) "discuss with [the HRBP the] process for nonrenewal of staff on term appointment," noting that Ms. A's contract "will be up for renewal

in Nov. 2022”; and (iv) discuss with the HRBP the possibility of adopting an “up or out” policy for CAO analysts.

16. On 19 March 2021, the Applicant contacted the HRBP requesting guidance on several personnel matters, including guidance on the non-renewal process.

17. On 6 May 2021, the Applicant recommended a two-year contract extension for the other GE-level analyst in Compliance whose contract would expire on 22 July 2021. The Director General approved the two-year extension and, on 9 May 2021, it was processed accordingly.

18. In the spring of 2021, Ms. A applied to a GF-level specialist position on the Compliance team. Ms. A was shortlisted along with ten other candidates. The shortlisted candidates were asked to submit a writing sample and participate in a written exercise by drafting a memorandum. A three-member recruitment committee, formed to advise the Applicant and the Director General on the hiring, blindly graded the written submissions, meaning that the reviewers did not know which candidate wrote the submissions. The recruitment committee ranked Ms. A’s writing sample as tied for last and her memorandum seventh out of eleven candidates. The Applicant participated in grading the writing samples but not the memoranda.

19. On 6 May 2021, the Applicant initiated a meeting with Ms. A to inform her, in person, that she would not be moving forward in the recruitment process for the GF-level specialist position, and to provide feedback on her written submissions.

20. On 7 May 2021, Ms. A followed up via email, stating:

Thank you once again for the feedback. This is a bit disappointing as I have tried over the years to establish myself within Compliance. I have tirelessly sought opportunities to take on substantive work and get support in improving these skills you note I lack but I was always overlooked (at least not until very recently). I am still processing the conversation and hoping to figure out exactly the things that will be acceptable to you that I need to help me progress in the team.

21. On 7 May 2021, the Applicant responded, providing “marked up” versions of her written submissions and summarizing the aspects of the submissions that were effective and the aspects that were lacking. In closing the Applicant stated:

I appreciate your disappointment at not moving forward in this selection process but do not agree that you have been overlooked in terms of opportunities to take on challenging work and improve your skills while working with the CAO compliance team. Happy to discuss career development issues with you further. Suggest we pick this up at our next scheduled check in. Have a look at your calendar and see if you can find a good time in the coming days. Finally I would like to acknowledge the contribution of your work to that of the CAO compliance team. I am committed to helping you progress in your career.

22. On 1 June 2021, in an email from the recruitment committee to the Applicant and the Director General, the recruitment committee recommended two candidates for a second round of interviews for the GF-level specialist position, one of whom was the other GE-level analyst on the Compliance team.

23. In June 2021, the Board of Directors of the IFC and the MIGA (the Board) approved a new CAO policy which outlined CAO’s purpose, mandate and functions, core principles, governance, and operating procedures. The new operating procedures stipulated, among other things, that CAO cases would need to be completed in shorter time frames.

24. On 1 July 2021, Ms. A began short-term disability leave.

25. Also on 1 July 2021, the Senior Advisor to the Director General (Senior Advisor) joined CAO. In that role, she was tasked with leading the CAO workforce planning exercise which would be informed by IMPACTO’s assessments and input from CAO team leads.

26. The record contains an undated IMPACTO presentation outlining the results of its multi-phase review of CAO’s resource needs. According to the presentation, the Compliance team would need to maintain its existing positions, including two GE-level analyst positions to implement the “CAO Strategy 2022-2024.” IMPACTO further identified “Human Capital Gaps” within each of CAO’s teams. In other words, IMPACTO identified the types of positions each team would need

to add to implement CAO's strategic plan and achieve its key performance indicators. IMPACTO identified three new positions needed on the Compliance team: a GH-level position to head the function, a GG-level senior specialist, and a GD-level program assistant.

27. On 22 July 2021, the Applicant emailed the Senior Advisor, copying the Director General, to share the HR guidance he received regarding non-renewal decisions and how to conduct Ms. A's performance evaluation while she was on disability leave. Summarizing the non-renewal guidance he received, the Applicant stated:

[The HR representative and I] discussed the longer term future of [Ms. A's] position. Her term contract comes up for renewal in a bit over a year [...]. My suggestion would be not to renew. Under WBG [World Bank Group] staff rules there is no obligation to renew a term position and we can do this based on business needs. A minimum of six months' notice is needed for this but more can be given. [The HR representative] suggests preparing for this in the fall and giving notice.

28. On 14 September 2021, the Applicant emailed the Senior Advisor asking her to follow up with the HRBP regarding the duration of Ms. A's "disability claim," explaining that he had "previously discussed with [the HRBP] and [the Director General], the potential for non renewal of [Ms. A's] contract," and was still "inclined to go down this path for reasons unrelated to the current disability claim." He further asked the Senior Advisor "if [she] could check in with [the HRBP] on this and help [the Director General] and [the Applicant] to consider [their] options on this front."

29. On 15 September 2021, the Senior Advisor responded, stating that she conferred with the HRBP who confirmed that a non-renewal decision can be made even if the staff member is on disability leave. She further stated, "What we would need to consider is what we use as criteria for non-renewal as there is a risk of conflict."

30. On the same day, the Applicant responded, stating:

I have four staff coming up with extension decisions around the same time:

1/ [An Extended-Term Contract (ETC) staff member] and [an ETC staff member] (their ETCs will expire – do we let them go or create new analyst positions);

2/ [An ETC staff member] (will be at the end of her 1<sup>st</sup> year of ETC);

3/ [A staff member] (will move off the donor funded program, we will need to pay for her position if she stays on).

Between these I think there is a good staffing needs case for not extending [Ms. A's] position. [Let's] have a discussion on this with [the HRBP] and then present a proposal/options to [the Director General].

31. In response, the Senior Advisor stated, "Ok! I will schedule it. I agree the best way forward [is] to anchor the decision on workforce planning. I am scheduled to start this process/conversation with [the HRBP] next week so it is great timing."

32. On 6 October 2021, the Applicant, the Senior Advisor, and the HRBP met with an HR Corporate Case Management (HRDCO) Manager and a Senior HR Specialist to seek their guidance on the proposed non-renewal. The HRDCO Manager and the Senior HR Specialist suggested that CAO prepare a business case memorandum documenting the reasons for the non-renewal decision.

33. On or around 16 November 2021, the CAO leadership team, which included the Applicant, met to discuss the workforce planning exercise and define action plans to address gaps in CAO's workforce, as identified by IMPACTO. According to the Senior Advisor, one such action plan was to prioritize hiring a GG-level senior specialist position on the Compliance team before waiting for the Board's approval of new positions, which was not guaranteed. According to the Senior Advisor, this plan was proposed by the Applicant to address a backlog of cases and to meet the shortened case closure time frames stipulated in the CAO policy approved by the Board in June 2021. Creating a GG-level senior specialist position, however, would exceed the then-approved "headcount limitation" for the Compliance team. To resolve the headcount issue, the Applicant proposed the non-renewal of Ms. A's appointment, with the option to re-advertise a GE-level analyst position if the new headcount was approved by the Board.

34. On 16 November 2021, the Senior Advisor began drafting, with the Applicant's input, the business case memorandum to justify the non-renewal of Ms. A's appointment.

35. On 17 November 2021, the Senior Advisor sent the draft business case memorandum to the HRDCO Manager, the Senior HR Specialist, and the HRBP, with copy to the Applicant, seeking their feedback and suggestions for improvement.

36. On 19 November 2021, the HRBP provided comments on the memorandum, noting that “the rationale looks fine” and suggesting that the memorandum include the fact that there are “currently 2 analysts for compliance,” adding that it “[w]ould be good to mention this so as to be clear that after [Ms. A] leaves there will be one analyst and then after you get the budget/headcount for a second one you will be advertising for it.”

37. On 29 November 2021, the Director General provided her edits to the memorandum, deleting a comment which stated that Ms. A was not a “top performer.”

38. On 3 December 2021, the finalized business case memorandum provided the “[r]ationale for non-renewal” as follows:

[A] key priority for the CAO compliance team is to increase the seniority of the compliance team. This reflects the need for staff who have high level technical and analytical skills, can execute complex tasks with minimal supervision, take on leadership functions; and represent the CAO in high-level discussions with internal and external stakeholders. The need for increased numbers of senior staff is in response to the new CAO Policy approved by the Board in June of this year. [...] To support this plan, it is proposed that CAO will not renew the appointment of Ms. [A]. This will free up a head count and give CAO budget flexibility to fund a Sr Staff position.

39. The memorandum provided no explanation as to why Ms. A’s GE-level analyst position was selected to be reallocated to a senior position as opposed to the other GE-level analyst position in Compliance.

40. On 15 December 2021, the Applicant notified Ms. A of the non-renewal of her contract, stating:

You may be aware CAO has gone through a workforce planning process over the past six months with implications for the staffing of the compliance function [...].

As part of this process, we have decided to prioritize adding a senior staff position for the compliance team in the coming months. In this context, and considering our current head count limitations, we have decided not to renew your contract with CAO, which is due to expire on 26/11/2022.

41. On 17 January 2022, a GG-level vacancy on the Compliance team was advertised on the WBG's job portal.

### *Ethics and Business Conduct investigation*

#### Preliminary inquiry

42. As the above workforce alignment and associated decision-making were taking place, another process began to unfold in parallel. On 20 July 2021, approximately three weeks after Ms. A went onto disability leave, she filed a complaint with the Ethics and Business Conduct Department (EBC), the department that investigates misconduct allegations, alleging harassment and discrimination by the Applicant (First Complaint). She alleged that the Applicant bullied her, shut her down in conversations, and yelled at her. She further alleged that he discredited her work and did not provide her opportunities for career advancement in CAO and that his behavior negatively impacted her, resulting in her being diagnosed with anxiety and depression, which required her to take disability leave.

43. On 17 August 2021, EBC interviewed Ms. A regarding her First Complaint. When asked by EBC to chronologically explain the events that led her to file a formal complaint against the Applicant of discrimination, Ms. A stated:

[M]y career at CAO has been mismanaged, and I've been shortchanged. I've been sidelined and discriminated against. [...] I joined CAO [...] and I was working with the dispute resolution team. [My supervisor on the Dispute Resolution team] never gave me any opportunities, even when I asked for it. [...] [T]here was always one excuse or the other not to allow me to progress within the team. [...] Anyway, so, in December 2016, I went on maternity leave [...]. And then, I got back to the office in October 2017. And on my first day back, [I was informed that CAO] decided I was going to be working fully with the compliance team. And this was without [...] any conversation with me at all. [...] I do understand that management has the right to restructure [...]. However, you know, there's usually a consultation with

whoever is going to be affected. And none of this happened, which it was also a reflection of how they perceived me or how they've always treated me because of their lack of acknowledgment or lack of respect for my person. [...So] I had the conversation with [the Applicant] also, so, okay. At that time, I'd been with CAO for six years. And someone else had been hired after me, had been promoted over me. [...] And so, I spoke to him about it, [...]. And then, he stopped me in my chair and was like, "Well, you joining the compliance team at that time, I was basically starting from scratch." [...] [I]t was that constant uphill battle with him. And he was always very hostile. And even like yelling at me. Even when I work on his team, and I try to talk to him about it, he shoved me down, even publicly in the office before the lockdown, I'm trying to engage with him. He yelled violently at me [...]. [T]wo other people that were hired after me got promoted over me again. So, and I go, "So, what exactly is it that I am meant to be doing that I am not doing?" [...] And, you know, then, there was the engagement survey [conducted around] June 2019. And by the time the survey results came out, you know, it was clear that there were issues in the unit, [...] concerns about transparency and how people are promoted, [...] discrimination and intimidation against [...] females of African descent, and females who are mothers.

44. Ms. A further stated that "the last thing that pushed [her] over the edge" was being shortlisted but not selected for the GF-level position in Compliance. Ms. A acknowledged that her written submissions were blindly assessed but believed that the Applicant "knew it was [her] paper."

45. Near the end of 2021, the workforce alignment and decision-making process and the EBC investigation converged, when Ms. A learned of the non-renewal of her appointment on 15 December 2021. Ms. A informed EBC of the non-renewal. In the course of a follow-up interview during the preliminary inquiry phase, Ms. A made additional complaints against the Applicant, alleging that the non-renewal recommendation was an abuse of authority, retaliatory, and discriminatory based on disability (Second Complaint).

46. During the preliminary inquiry phase, EBC conducted seventeen interviews with twelve individuals, primarily from CAO and HR. Based upon its review of the record, including witness testimonies and documentary evidence, EBC found insufficient basis to proceed to an investigation of the First Complaint and thereafter closed its preliminary inquiry into allegations of racial and gender discrimination. However, EBC found sufficient basis to proceed to an investigation

regarding the Second Complaint alleging abuse of authority, retaliation, and discrimination based on disability related to the non-renewal of Ms. A's appointment.

Notice of investigation

47. On 21 September 2022, EBC provided the Applicant with the Notice of Alleged Misconduct, which stated:

I am writing to inform you that the Ethics and Business Conduct Department (EBC) is conducting an investigation into allegations that you may have committed misconduct under the World Bank Group (WBG) rules and policies by abusing your authority, retaliating, and discriminating against Ms. [A].

It is specifically alleged that you recommended the non-renewal of [Ms. A's] employment contract, which currently ends in November 2022, in part because Ms. [A] requested to mediate a work-related matter with you through the WBG's Mediation Services, a unit of the WBG's Internal Justice Services.

It is also alleged that you recommended the non-renewal of Ms. [A]'s contract in part, because she was on disability leave. [...]

If the allegations made against you are substantiated, your actions may constitute misconduct under applicable WBG rules and policies, including, but not limited to the following provisions of Staff [Directive] 3.00:

- i) Paragraph 6.01(a) – Abuse of authority;
- ii) Paragraph 6.01(b) – Reckless failure to identify, or failure to observe generally applicable norms of prudent professional conduct;
- iii) Paragraph 6.01(c) – Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment including the requirements that staff avoid situations and activities that might reflect adversely on the Organizations (Principle 3.1) and conduct themselves at all times in a manner befitting their status as employees of an international organization;
- iv) Paragraph 6.01(e) – Wrongful discrimination;
- v) Paragraph 6.01(g) – Retaliation by a Staff Member against any person who uses the Internal Justice Services.

Testimony

48. On 21 September 2022, EBC conducted a subject interview of the Applicant. During the interview, when EBC inquired about the Applicant's managerial role, the Applicant stated:

I have all the management authority of a tagged manager. I don't have the managerial title in my role, but I am [...] the team lead with [...] a range of managerial responsibilities. [...]

But I was not, at [...] the time of the issues that are raised by this complaint, a manager with authority, for example, to hire or to decide not to extend a contract.

49. EBC also asked the Applicant whether Ms. A was the only staff member in Compliance whose contract was considered for non-renewal. The exchange was as follows:

[EBC]: Okay. And so, between January 2021 and December, when [Ms. A's] contract was not renewed, had you conceived or discussed the non-renewal of any other staff member's contract within your team?

[The Applicant]: I don't recall any discussions. I would say no, I don't think we did.

50. During an interview with the Senior Advisor, EBC asked whether the non-renewal decision was reached as a group. The Senior Advisor explained, "This was [the Applicant's] decision and [the Applicant's] recommendation [...] but it needed to be implemented by [the Director General], who's the only [tagged] manager that we have."

51. When EBC asked the Director General about the Senior Advisor's role in CAO, the Director General explained that, when the Senior Advisor joined CAO on 1 July 2021, her role was to "help bring to a close the strategic planning process," noting that the Senior Advisor "arrived at the end of this process when some objectives were already set." The Senior Advisor explained to EBC that, following the strategic planning, she then coordinated CAO's workforce planning exercise, and that "each one of the functions did their own analysis on how the projected workforce would look."

52. EBC asked the Senior Advisor about the urgency behind reallocating a GE-level analyst position on the Compliance team to a more senior, GG-level position before the Board approved CAO's request for additional positions. The Senior Advisor explained:

[T]he results of our analysis [...] is that we needed seven additional positions [in CAO] at a seniority level higher than what we have, and this was specifically relevant to Compliance, who had a workforce of mostly Analysts and Junior Specialists. [...] And we are going to submit [the conclusions of the workforce plan] at the end of April [...] for Board approval [...]. We need to go through the process of requesting them. It might be that we get them, it might be that we don't get them, or we get three, four, it's still to be decided. [...] So – but we could not wait until, potentially we'll get an approval by June, resources by FY23, right, so July next year. What do we do with this humongous [case] backlog in the meantime? So, we made some short-term decisions also. And we also included those short-term decisions in that presentation that we made to the entire staff. And those short-term decisions were mainly some gap-filling, temporary gap-filling. [...] We [...] decided to prioritize the senior staff position for Compliance, so basically, in that way, so that we could manage the backlog until July FY23.

[EBC]: [W]as there any consideration in waiting until you sought approval for more positions, in terms of eliminating or not renewing [Ms. A's] contract?

[The Senior Advisor]: [...] [W]e couldn't wait until July because of the pressure.

53. During an interview with EBC, the Director General explained that, per the new CAO policy, approved by the Board in June 2021, case time frames were “tightened,” so case processing time frames that had previously taken “years, two or three years” would now need to be completed in “months.”

54. The Senior Advisor initially recalled to EBC that she was aware of the Applicant's mediation with Ms. A, and that the mediation was discussed during the 6 October 2021 meeting held between the Senior Advisor, the Applicant, the HRBP, the HRDCO Manager, and the Senior HR Specialist. In a subsequent interview with EBC, she stated that she had not been aware of the mediation and that the Applicant, the Director General, the HRDCO Manager, and the Senior HR Specialist did not inform her that a mediation had taken place.

55. The Director General stated to EBC that, sometime in January or February 2021, the Applicant was “straightforward” in notifying her about his mediation with Ms. A, providing her

with some context that the mediation pertained to a disagreement between him and Ms. A as to her readiness for a promotion.

56. Noting that there were two GE-level analyst positions on the Compliance team, EBC asked the Applicant, the Senior Advisor, the Director General, and the HRBP about the rationale for selecting Ms. A's position as the one to be reallocated to a more senior position.

57. The Applicant stated that the rationale for selecting Ms. A's position rather than the other GE-level analyst position was that, in comparison to the other analyst, (i) Ms. A's contract expired sooner; (ii) Ms. A had lower performance ratings; (iii) Ms. A had poorer talent ratings; and (iv) Ms. A had not done as well in a recruitment process for a GF-level position on the Compliance team.

58. The Senior Advisor and the Director General stated that the rationale for selecting Ms. A's position rather than the other GE-level analyst position was that Ms. A was out on disability leave, while the other analyst was actively working on cases; in their view, selecting Ms. A's position would therefore be less disruptive to CAO's case work. The Director General denied that Ms. A's performance was a factor in the decision.

59. The HRBP stated that the rationale for selecting Ms. A's position rather than the other GE-level analyst position was that Ms. A's appointment expired sooner and her talent ratings were not as high.

60. According to the HR records obtained by EBC, Ms. A received performance ratings of 3 twice and 3.5 once. The other GE-level analyst received ratings of 3.5 twice and 3 once. The difference in talent ratings was more significant. The other GE-level analyst was rated "solid talent" for FY2019, FY2020, and FY2021, while Ms. A was rated "needs attention" in each of those three years. The talent ratings for those years were assigned by the former Head of CAO, not by the Applicant.

61. EBC interviewed various CAO staff regarding their observations of the working interactions between the Applicant and Ms. A.

62. A compliance specialist stated to EBC, “[T]here were times when I [...] could see that [Ms. A] had done really good work or had kind of gone beyond the call of duty. And it wasn’t acknowledged by [the Applicant]. And I felt like that was quite unfair.”

63. The other GE-level analyst on the Compliance team described an instance in which Ms. A made a presentation during a team meeting, stating, “People thought it was okay. [...] But then, when she presented, [the Applicant] was, like, no. That’s not what I want. No, that’s not what I asked you to do. And we were, like, what does he want then? Because – and then, you know, it’s clear to everyone that [the Applicant] doesn’t like [Ms. A].” The GE-level analyst also recalled an instance in which Ms. A came to her crying following an interaction with the Applicant.

64. An associate operations officer on the CAO Advisory team observed that Ms. A would stand up for herself and disagree with the Applicant, and described the relationship as “fraught” but did not assign blame.

65. EBC asked witnesses about their accounts of the Applicant’s behavior toward colleagues other than Ms. A.

66. Ms. A stated to EBC that she witnessed the Applicant treat other colleagues and former colleagues inappropriately, stating, for example:

I know that [a colleague] experienced things, like she would write a report, and he would throw it at her like in front of people and yell at her, saying, what kind of rubbish is this? And like, the constant yelling and putting people down is like, it’s so common.

67. The associate operations officer on the CAO Advisory team stated, “I’ve never had any conflict with anyone like I’ve had with [the Applicant],” noting that the Applicant would yell in the workplace.

68. A senior specialist stated, “I’ve come away from meetings with [the Applicant] feeling like he was unnecessarily harsh”; she further cited a specific incident in which she could hear the Applicant shouting at a male colleague from “one or two doors down.”

69. The other GE-level analyst on the Compliance team described witnessing the Applicant be “very rude” to another woman on the team, describing his tone as “so harsh and so rude that it was very shocking.” She also recalled witnessing the Applicant speak “in a very harsh way” to another colleague. She further recounted an occasion in which the Applicant told her, “I’m not available for bullshit,” in response to her inquiry about the timeline of an urgent case. She also noted that the Applicant would talk over her.

#### The Applicant’s comments

70. On 3 May 2023, EBC provided the Applicant’s interview transcript to the Applicant for his review and comments with a deadline of 17 May 2023. The Applicant requested an extension of the deadline to 30 May 2023, and EBC granted this request. On 31 May 2023, the Applicant provided evidentiary documents together with his comments on the transcript.

71. On 6 June 2023, EBC emailed the Applicant a copy of the Draft Investigation Report for his review and comments.

72. Under Staff Directive 3.00, subject staff members are given ten business days to provide their comments on draft reports. EBC granted two extension requests submitted by the Applicant, changing the initial deadline from 21 June 2023 to 7 July 2023. When the Applicant requested a third extension, EBC denied the request. The Applicant followed up, noting that he was “currently managing health issues requiring [him] to take significant amounts of sick leave.” In response, EBC confirmed the deadline could be reconsidered if the Applicant would submit a medical certificate in support of his request. On 26 June 2023, EBC reached out again noting that the Applicant could provide a medical certificate, and the deadline could be reconsidered.

73. On 7 July 2023, the date of the deadline, the Applicant emailed EBC, stating, “I have documentation from my clinician regarding my medical condition, however, this contains confidential information which I am not willing to share with EBC. If required, however, I can provide this to HSD [the Health and Safety Directorate] on a confidential basis.”

74. Also on 7 July 2023, EBC requested the Applicant’s leave records from HR sufficient to show the category of any leave taken from 1 June 2023 to 7 July 2023.

75. On 9, 19, and 31 July 2023, the Applicant provided his comments on the Draft Investigation Report. In his comments, the Applicant reiterated that his recommendation not to renew Ms. A’s contract was based on the staffing needs of the Compliance team and was in no way linked to the “amicable mediation process.” He further noted that EBC, in several instances, conflated “discussions taking place as part of a deliberative process” with the making of “recommendations” and that EBC heavily relied on these confluations in reaching its conclusion.

76. In his comments, the Applicant also sought to correct EBC’s understanding that the non-renewal decision was based on the formal and time-banded “workforce planning exercise” as opposed to workforce management more generally. The Applicant stated that the basis for the non-renewal decision, “as explained consistently by myself, [the Director General], [the Senior Advisor,] and [the HRBP],” was the need for more senior Compliance staff, and that, while the need for more senior staff was affirmed through the workforce planning process, to say that Ms. A’s appointment was not renewed because of the workforce planning exercise was not correct and also not how the decision was communicated to Ms. A.

77. In his comments, the Applicant expressed his view that, when examining the timeline of events, EBC ignored intervening factors that arose following the conclusion of the mediation and that contextualize the timing of the non-renewal discussions. The Applicant pointed out, for example, that the Draft Investigation Report repeatedly misrepresented that the CAO workforce planning exercise started in October 2021, “even though there is documentary evidence that the workforce planning process started as early as March 2021 (with the engagement of the consultancy IMPACTO) and then intensified with the hiring of [the Senior Advisor] in July 2021.”

Together with his comments, the Applicant provided IMPACTO reports, workforce presentations dated March 2021, and the terms of reference for IMPACTO which specified that the scope of IMPACTO's work related to CAO's resource planning.

78. In his comments, the Applicant further stated that EBC's report should not refer to allegations, evidence, or conclusions on matters of "abuse of authority," "a reckless failure to observe applicable norms of prudent professional conduct," "acts or omissions in conflict with the general obligations of staff members," "harassment," or "discrimination" unless the matter "relates specifically to the allegation that I was properly informed of (namely, retaliatory [...] non-renewal of [Ms. A's] contract)."

79. On 7 August 2023, EBC provided the Applicant with a revised Draft Investigation Report incorporating the Applicant's comments and requested his comments by 21 August 2023. The revisions made to the report were highlighted for convenience.

80. On 11 August 2023, the Applicant emailed EBC requesting "15 working days to respond [...] following [his] return home from vacation on August 23." EBC thereafter extended the deadline to 7 September 2023, noting that the extension was final.

81. On 5 September 2023, the Applicant notified EBC that he was ill and requested an additional week to review the revised report. EBC denied this further request for extension, noting that twenty-two business days had already been afforded for his review and that the Applicant had already been informed that no further extensions would be provided.

82. On 8 and 11 September 2023, the Applicant submitted comments on the revised Draft Investigation Report and alleged issues with accessing some exhibits.

### Final Investigation Report

83. On 12 September 2023, EBC sent its Final Investigation Report to the Vice President, Human Resources (HRDVP). In its report, EBC found sufficient evidence to substantiate the

allegations that the Applicant retaliated against Ms. A by recommending the non-renewal of her term contract. EBC also concluded that the Applicant, “by his recommendation, abused his authority.” Further, EBC determined that the Applicant’s overall conduct amounted to

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

84. In its Final Investigation Report, EBC concluded that Ms. A’s participation in mediation with the Applicant was “a contributory factor in his decision to recommend the non-renewal of her term contract.” It further concluded that the Applicant and the Senior Advisor “used the CAO workforce plan to justify the non-renewal.” EBC based its conclusions on the following facts:

- a. [The Applicant] and Ms. [A] engaged in a Mediation (*i.e.*, a protected activity) between November 2020 and February 2021.
- b. The CAO workforce planning exercise took place in October 2021.
- c. Before the workforce planning exercise began, [the Applicant] started preparing the basis for non-renewal of Ms. [A’s] term contract in March 2021, approximately seven weeks after their Mediation engagement ended. [The Applicant] subsequently recommended the nonrenewal of Ms. [A’s] contract on multiple other occasions before the workforce planning exercise began.
- d. [The Applicant] initially denied that he made the recommendations before the workforce planning exercise began but subsequently acknowledged that he had initial deliberations on the non-renewal of Ms. [A’s] contract after being confronted with documentary evidence. EBC concluded that these “deliberations” were indeed recommendations to not renew Ms. [A’s] contract.
- e. The key individuals involved in the decision to non-renew Ms. [A’s] contract gave conflicting reasons for why she was selected for non-renewal instead of [the other GE-level analyst] who was similarly situated to Ms. [A].
- f. EBC determined that [the Applicant] and [the Senior Advisor] decided to use the workforce planning process to non-renew Ms. [A’s] contract before the process began.

85. In its Final Investigation Report, EBC found that the Applicant's testimony regarding the bases for selecting Ms. A's GE-level analyst position over the other GE-level analyst's position for reallocation to a senior position were not credible and not supported by the testimony of the Director General or the Senior Advisor.

86. In consideration of the Applicant's first asserted basis, namely, that Ms. A's contract expired before the other GE-level analyst's contract, EBC stated that, at the time of the Applicant's "first recommendation" to the Director General to not renew Ms. A's contract, the other GE-level analyst's contract term was set to expire in July 2021, while Ms. A's contract was set to expire in November 2022. EBC further noted that, in March 2021, documentary evidence demonstrated that the Applicant was "recommending" the non-renewal of Ms. A's contract while concurrently working on the renewal of the other GE-level analyst's contract.

87. In consideration of the Applicant's second and third asserted bases, namely, that Ms. A had lower performance ratings and poorer talent ratings, EBC recalled the Director General's testimony that the Applicant did not raise Ms. A's performance with her as the basis for his recommendation to not renew Ms. A's appointment and that the Director General had edited the business case memorandum to remove reference to Ms. A's performance. EBC also noted Ms. A's testimony that the Applicant did not raise her performance as a basis for his recommendation not to renew her appointment.

88. In consideration of the Applicant's fourth asserted basis, namely, that Ms. A had not done as well in the recruitment process for a GF-level position on the Compliance team, EBC reviewed the record and found that the Applicant's "first recommendation" to the Director General in March 2021 to not renew Ms. A's appointment preceded the conclusion of the recruitment exercise for the GF-level position.

89. EBC further considered the timing of what it found to be the Applicant's first non-renewal recommendation to the Director General on 19 March 2021, noting that this date was approximately seven weeks after the Applicant entered into the mediation agreement with Ms. A. EBC noted, in this respect, that, at the time of the Applicant's "first recommendation" of non-

renewal of Ms. A's appointment, Ms. A had approximately nineteen months left on her term contract. EBC found that the timing of the non-renewal recommendation was more likely related to the conclusion of mediation, rather than a pressing concern of a pending contract expiration, especially given that the Applicant did not recommend the renewal of the other GE-level analyst's position until four months before its expiration. EBC also noted that the Applicant's numerous recommendations for the non-renewal of Ms. A's appointment predated the commencement of the CAO workforce planning exercise, which, it found, began in October 2021.

90. In its Final Investigation Report, EBC identified the following mitigating factors for consideration:

[The Applicant] was cooperative throughout EBC's review. [The Applicant] relied on risk management advice from [HR], who advised that the prior Mediation was a separate process from the non-renewal. However, EBC concluded that [the Applicant] sought [HR's] advice with the full knowledge that the rationale provided for the non-renewal of Ms. [A's] contract was pretextual.

91. On 14 September 2023, EBC emailed a copy of the Final Investigation Report to the Applicant and confirmed its transmission to the HRDVP. This email again shared a link to the report's exhibits and further noted that the Applicant's comments, though belatedly submitted, would be forwarded for consideration.

*Misconduct Advisory Committee and decision letter*

92. On 31 December 2023, the HRDVP retired. Meanwhile, the IFC was in the process of implementing the Misconduct Advisory Committee, which had been announced in July 2023. In January 2024, the inaugural Misconduct Advisory Committee convened.

93. On 5 February 2024, an HR representative notified the Applicant, via email, that a Misconduct Advisory Committee had been convened to review the matter and that an Acting HRDVP would provide him with a decision on the matter "as quickly as possible." The Applicant responded, requesting to meet with the Misconduct Advisory Committee. In response, the HR representative informed the Applicant that, pursuant to the WBG's procedure, meetings with a

subject staff member are held at the discretion of the Misconduct Advisory Committee and that, despite being informed that the Applicant requested a meeting, the Misconduct Advisory Committee confirmed it did not have an interest in meeting with the Applicant.

94. On 8 February 2024, the Misconduct Advisory Committee met to review the matter.

95. Effective 1 August 2024, a new HRDVP was appointed. According to the IFC, “in the interest of efficient resolution of ongoing disciplinary matters,” and because the Acting HRDVP had been overseeing the process for many months, including having convened and received advice from the Misconduct Advisory Committee, the Acting HRDVP continued in his role as Acting HRDVP and decision-maker for this case.

96. On 11 November 2024, the Acting HRDVP provided the Applicant with his written decision.

97. The Acting HRDVP determined that the Applicant’s conduct did not amount to retaliation, stating:

I have determined that there is not sufficient evidence presented in the Final Report to support a finding that you engaged in retaliation as defined under WBG Staff Directives 3.00 and 8.02. EBC concluded in its Final Report that Ms. [A’s] protected activity was a contributory factor in the non-renewal of her Term contract and your recommendation for the non-renewal of her contract was in part motivated by retaliation for her use of Mediation Services. The timing of the non-extension recommendation was not sufficiently persuasive to support a determination that retaliation had occurred, given that there was no other evidence in the Final Report that the nonrenewal recommendation had a direct connection to the mediation.

98. While the Acting HRDVP did not find that the Applicant’s behavior rose “to the level of retaliation,” he did find that the Applicant’s behavior amounted to an abuse of authority as Ms. A’s supervisor. In the decision letter, he elaborated on this finding, stating:

EBC noted in its Final Report that in November 2015, you assumed the position of Team Leader for the CAO Compliance team. EBC noted further that when Ms. [A] moved to the CAO Compliance team full-time in October 2017, you became her supervisor.

EBC found that in consideration of the Mediation engagement with Ms. [A], you expressed willingness to work with Ms. [A] to develop her technical skills. However, despite the Mediation agreement (as articulated by you) stating that you would provide opportunities for her to develop her technical skills and demonstrate her readiness for progression, including through stretch assignments and a possible developmental assignment, you actively explored, and on multiple occasions, recommended the non-renewal of Ms. [A's] term contract. [...]

In its Final Report, EBC concluded that you, by your recommendation for non-renewal of Ms. [A's] term contract, abused your authority. Further, EBC determined that your overall conduct amounted to: (i) a reckless failure to observe applicable norms of prudent professional conduct; and (ii) a conflict with the general obligations of staff members set forth in Principle 3 of the WBG Policy "Principles of Staff Employment," including the requirement that staff conduct themselves at all times in a manner befitting their status as employees of an international organization. I agree with EBC's conclusions [...].

[...]

Considering the long-standing workplace challenges and difficulties in your work relationship with Ms. [A], as substantiated in the Final Report, I find it more likely than not that it inappropriately contributed to your non-extension recommendation to the CAO decision-makers who relied on it. I find that your behavior was unacceptable for a Level GG staff member with supervisory responsibilities. Workforce planning should not be used as a pretext for settling workplace differences.

99. The Acting HRDVP determined that the Applicant engaged in misconduct under the following provisions:

1. WBG Staff Directive 3.00, paragraph 6.01(a) – Abuse of authority;
2. WBG Staff Directive 3.00, paragraph 6.01(b) – Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; and
3. WBG Staff Directive 3.00, paragraph 6.01(c) – Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the WBG Policy "Principles of Staff Employment," including the requirements that staff avoid situations and activities that might reflect adversely on the Organizations (Principle 3.1) and conduct themselves at all times in a manner befitting their status as employees of an international organization (Principle 3.1(c)).

100. The Acting HRDVP imposed the following sanctions:

- 1) Ineligibility for any supervisory or managerial role for a period of two (2) years from the date of this letter; and
- 2) Written censure in the form of this letter to remain in your personnel record.

101. In the decision letter, the Acting HRDVP listed the factors he considered when deciding on the proportionality of the disciplinary measures to be imposed in this case, stating:

[T]o decide on the proportionality of the disciplinary measures to be imposed in this case, I considered the factors listed in WBG Staff Directive 3.07, paragraph 10.09. By way of mitigating factors, I note you cooperated fully with EBC's investigation. I further note that you relied on risk management advice from the Human Resources Corporate Case Management unit ("HRDCO"). However, I note that EBC concluded that you sought HRDCO's advice with the full knowledge that the rationale provided for the [non-]renewal of Ms. [A's] contract was pretextual. I also note that, as provided in WBG Staff Directive 3.00, paragraph 6.01, a finding of misconduct does not require malice or guilty purpose.

102. In his decision letter, the Acting HRDVP specified that the standard of evidence he used when making his determination was the standard of evidence established in Principle 8.3 of the Principles of Staff Employment, effective 17 May 2023, which states:

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

103. Approximately one month after the Acting HRDVP issued his decision letter, the Tribunal announced its publication of *HR*, Decision No. 708 [2024], and *HQ*, Decision No. 707 [2024], in which the Tribunal held that the "substantial evidence" standard, which requires proof of misconduct "higher than a mere balance of probabilities," would continue to govern its review of disciplinary cases "in respect of acts occurring before 17 May 2023." *HR* [2024], para. 137; *HQ* [2024], para. 125.

104. On 17 March 2025, the Applicant contacted the IFC's legal department inquiring whether management intended to reconsider the Applicant's disciplinary decision in order to apply the correct legal standard.

105. On 20 March 2025, an IFC counsel indicated, via phone call, that management did not intend to reconsider the disciplinary decision prior to the Applicant initiating a Tribunal case.

*The Applicant's employment since the commencement of the EBC investigation*

106. On 3 August 2023, the Applicant was placed on paid involuntary administrative leave.

107. In April 2025, the Applicant began a two-year external assignment at another international organization.

*The Application and remedies sought*

108. On 2 May 2025, the Applicant submitted this Application, requesting the following remedies:

- i) [Rescission] of the [...] misconduct findings and disciplinary sanctions.
- ii) Retraction of the [...] EBC Final Investigation Report [...].
- iii) Removal of disciplinary records from [the Applicant's] personnel file [...].
- iv) Notification to all staff (current and former) (a) interviewed by EBC during its investigation of [the Applicant], (b) involved in the [Misconduct Advisory Committee] proceedings, and (c) otherwise notified of the EBC investigation into [the Applicant's] conduct and/or the Acting HR[D]VP's disciplinary decision, that [the Applicant] was found not to have engaged in any misconduct. [...]
- v) Issuance of a written apology from the Ethics and Internal Justice Vice President [...].

109. The Applicant further claims compensation in an amount deemed just and reasonable by the Tribunal to remedy the damage to the Applicant's career and professional reputation and the ongoing emotional distress resulting from

- i) Being subjected to [a] disciplinary investigation and decision process that ran for over two years [...];
- ii) The EBC investigators' improper access to his sick leave records;
- iii) EBC's failure to manage [the Applicant's] complaint regarding the improper access to his sick leave records in accordance with established rules;
- iv) Numerous egregious violations of due process and fairness throughout the investigative process;
- v) Being improperly disciplined by the Acting HR[D]VP for alleged misconduct that was never presented to him in a Notice of Alleged Misconduct. [...]; and
- vi) The [IFC's] failure to reconsider its disciplinary action according to the proper standard as determined by this Tribunal [...].

110. The Applicant requests compensation for legal fees "incurred in defending himself throughout a flawed disciplinary process" in the amount of \$10,595.00.

111. The Applicant further requests legal fees and costs in the amount of \$68,262.50.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

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

*The non-renewal decision was based on valid business reasons, and the misconduct findings cannot be sustained using the applicable standard of evidence*

112. The Applicant contends that it is unfair to discipline him for recommending a discretionary managerial action that is supported by valid business reasons. The Applicant maintains that the non-renewal recommendation was based on business needs which were validated through the CAO workforce planning exercise and endorsed by HR experts and the CAO Director General. In the

Applicant's view, "if [the Director General] acted for valid business reasons, then [his] recommendation that she act for those same reasons cannot constitute misconduct."

113. The Applicant claims that, given the "unimpugned business case" for the Director General's non-renewal decision, "there can be no contention that [the Applicant] was required to recommend renewal in order to avoid a misconduct charge," nor could he have been expected to recuse himself from the CAO workforce planning exercise, or to exclude Ms. A's position from consideration in the planning exercise, "merely because he had discussed the option of not renewing her contract before the formal commencement of the exercise."

114. The Applicant contends that it sets a terrible policy precedent and is an infringement on managerial discretion to rule that a supervisor may be disciplined for making an otherwise permissible and soundly justified recommendation in the context of a unit-wide planning exercise, merely because a member of staff who is adversely affected by the outcome of the exercise has a history of dissatisfaction with her supervisor.

115. The Applicant claims, moreover, that the misconduct finding cannot be sustained because it is not supported by substantial evidence, which the Tribunal has determined is the relevant standard of evidence, given that the conduct at issue occurred before 17 May 2023, the date the WBG's new standard of evidence came into effect.

116. The Applicant maintains that the circumstantial evidence is not so clear as to generate conviction in the mind of a reasonable person. In this respect, the Applicant points to the fact that the Director General, the Senior Advisor, the HRBP, and other witnesses all testified consistently about the need for increased higher-level staffing on the Compliance team, and this need was even validly used later as a basis for Board-approved budget requests.

117. In the Applicant's view, he should be given the benefit of the doubt because "there is no direct evidence in the record that [he] had any ill feeling towards Ms. [A] at all." To the Applicant, the misconduct finding, thus, cannot be sustained.

***The IFC's Response***

*The facts support the finding that the Applicant abused his authority in relation to the non-renewal recommendation*

118. According to the IFC, the facts support the finding that the Applicant abused his authority in relation to the non-renewal recommendation.

119. In the IFC's view, the Applicant downplays his role in the decision-making process that led to the non-renewal decision. The IFC maintains that, although he was not a tagged manager, the Applicant was nonetheless exercising managerial authority and his managerial decision was pretextual.

120. The IFC points out that, while citing a business case justification that he himself developed, the Applicant attempts to rely on formalities to shift responsibility for decision-making onto others when the evidence shows that he initiated and shepherded a process that forced out a staff member he supervised, with whom he had longstanding challenges, and with whom he had recently entered into a mediation agreement. The IFC considers the Applicant's reliance on the Director General's formal managerial authority to be overly formalistic and contrary to explanations provided by both himself and senior management in CAO.

121. The IFC claims that, as early as March 2021, a few weeks after mediation concluded, the Applicant was driving discussions with the Director General and HR about the non-renewal of Ms. A's contract. According to the IFC, despite having two GE-level positions to consider for non-renewal, the Applicant confirmed that Ms. A was the only staff member in CAO whose contract was considered for non-renewal.

122. The IFC explains that the Applicant knowingly extended the unit's other GE-level analyst for a term that would exceed Ms. A's, only to then rely, in part, on that extension as the rationale for the non-renewal of Ms. A's contract. In the IFC's view, the Applicant created the very circumstances he relied upon, instead of extending the other GE-level analyst's contract to a date

where both GE-level analyst positions could be fairly compared and evaluated during the workforce planning exercise.

123. In the IFC's view, the Applicant attempts to obscure the connection between the detailed history of workplace difficulties between himself and Ms. A and his focused effort to include her non-renewal as part of the Compliance team's staffing plan. The IFC claims that there is significant testimonial evidence of the challenges between the Applicant and Ms. A provided not only by Ms. A but also by other colleagues in the unit. Namely, the IFC points to a colleague's observation of the Applicant being "aggressive" or "angry" toward Ms. A, and describing Ms. A as "nervous" and "crying" following a workplace interaction with the Applicant. The IFC further points to testimony wherein a colleague observed the Applicant's change in approach to work product when Ms. A became responsible for it.

124. In the IFC's view, while the Acting HRDVP did not consider there to be sufficient evidence of a "direct connection" between the mediation and the Applicant's non-renewal recommendation, there is sufficient evidence to demonstrate that the Applicant's "long-standing workplace challenges and difficulties" in the working relationship influenced the non-renewal decision. To support this contention, the IFC points out that the original draft of the business case memorandum cited Ms. A's performance as part of the rationale for not renewing Ms. A's contract. The IFC maintains that citing Ms. A's performance as a basis for the recommendation demonstrates that difficulties in the working relationship influenced the non-renewal recommendation, because the Applicant's and Ms. A's diverging views on her performance constituted much of their workplace difficulties, as demonstrated by the testimony of multiple colleagues, and the fact that Ms. A sought mediation to reach a resolution regarding her readiness for promotion.

125. To the IFC, the Applicant's behavior toward Ms. A, clearly established through documentary and testimonial evidence, constitutes misconduct as found by the Acting HRDVP.

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

*The misconduct investigation and impugned disciplinary decision were marred by multiple serious violations of due process*

126. The Applicant claims that the misconduct investigation and the impugned disciplinary decision were marred by multiple serious violations of due process.

127. The Applicant contends, for example, that he was denied the right to have his case reviewed or reconsidered under the correct legal standard when the IFC incorrectly applied the “preponderance” standard that is indisputably less favorable to the Applicant.

128. The Applicant also claims he was never fairly apprised, with reasonable clarity, of the allegation of “abuse of authority” on which the Acting HRDVP based his decision and thus never had a meaningful opportunity to defend himself against this charge. The Applicant’s position is that he was only on notice that EBC was investigating alleged abuses of authority relating to alleged actions of retaliation and disability discrimination, not “some general” allegations of abuse of authority. The Applicant states that EBC’s reports never made any freestanding “abuse of authority” findings that would allow him the fair chance to rebut the charge.

129. The Applicant also maintains that the duration of the disciplinary process was “simply unreasonable” and that, despite EBC’s own extended time frame, EBC repeatedly and unfairly denied the Applicant’s reasonable requests for extensions to review and respond at every stage of the process.

130. The Applicant further claims that EBC wrongfully continued its investigation even after determining that Ms. A’s initial allegations of harassment and discrimination lacked merit. To the Applicant, EBC took an “investigate until you find something” approach. And, even if the Tribunal were to accept that EBC had grounds to progress to a full investigation, EBC should have shut the investigation down after receiving the Applicant’s comments on the Draft Investigation Report, which put EBC on notice that the report lacked the required evidence to substantiate a misconduct finding.

131. The Applicant also maintains that EBC finalized its report without ever providing the Applicant with a full set of exhibits, depriving him of the most basic of due process rights, the right to comment on all evidence being used against him.

132. In the Applicant's view, EBC's requests for confidential medical information from the Applicant were improper and abusive. The Applicant contends, moreover, that EBC improperly obtained access to his leave records under the false pretense of representing to HR that these records were needed for its investigation.

133. The Applicant further contends that EBC did not interview two witnesses proposed by the Applicant. In the Applicant's view, EBC was therefore not diligent in seeking both inculpatory and exculpatory evidence.

134. The Applicant claims that the Final Investigation Report violated his due process rights by being unduly prejudicial. In this respect, the Applicant states that, because the harassment and discrimination allegations were closed at the preliminary stage for lack of evidence, it was prejudicial for EBC to include a section of the report regarding alleged workplace difficulties and any testimony related to these "long closed and squarely rejected allegations."

135. The Applicant further states that EBC improperly included findings in relation to the implementation of the February 2021 mediation agreement, despite the fact that the content of a mediation agreement is confidential and not to be used in any other proceedings.

136. The Applicant claims that EBC falsely states in its report that he "initially denied" recommending the non-renewal in March 2021 and only acknowledged the truth when "confronted with documentary evidence," when in fact he actually stated that he could "not recall" having any discussions prior to June 2021 pertaining to the non-renewal of Ms. A's contract. To the Applicant, EBC outrageously chose to misrepresent his totally understandable initial lack of recollection as a denial for the sole apparent purpose of undermining his credibility.

137. The Applicant contends that EBC failed to include in its analysis the issue of the Senior Advisor's credibility once it began to investigate the Senior Advisor regarding her role in the non-renewal decision, i.e., by the third interview of the Senior Advisor.

138. In sum, the Applicant maintains that he was subjected to a drawn out, unfair, abusive, unduly burdensome, and invasive investigation from beginning to end and that the mere rescission of the flawed disciplinary decision will not come close to fully remedying these violations of his rights; rather, additional remedies for this unfair treatment are warranted.

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

*The Applicant's due process rights were not violated during the EBC investigation and the HRDVP decision-making process*

139. The IFC maintains that the Applicant was accorded due process during the disciplinary decision-making process because (i) there was an allegation sufficiently credible to merit a formal investigation; (ii) the Applicant was given notice and an opportunity to defend himself; (iii) EBC exercised reasonable discretion in determining the witnesses to interview; (iv) EBC provided the Applicant with access to all exhibits after the Applicant alerted EBC to his access difficulties; (v) EBC reasonably granted extensions of deadlines to the Applicant; (vi) EBC never requested confidential medical information; (vii) the investigation was not unduly long; and (viii) the disciplinary decision met the required standard of evidence.

140. The IFC first claims that EBC properly exercised its discretion in deciding to proceed with a formal investigation of the allegations. The IFC recalls the Tribunal's jurisprudence in explaining that, during the preliminary inquiry phase, the threshold to cross to justify the initiation of a formal investigation is low; all EBC needs to find is that the allegation is sufficiently credible to merit a formal investigation. The IFC maintains that, here, EBC gathered evidence and proceeded to the investigation stage of allegations that were supported. The IFC explains that the decision-maker carefully considered the facts presented in the Final Investigation Report and found misconduct to have been substantiated, though on a different basis from EBC, which further confirms that the investigation was appropriate.

141. The IFC next contends that the Applicant was given notice of the allegations made against him and an opportunity to defend himself, as demonstrated by (i) the Notice of Alleged Misconduct sent to the Applicant on 21 September 2022; (ii) the Applicant's submission of evidence and witness names for EBC's consideration, which EBC followed up on and addressed in its report; (iii) EBC's provision of the Draft Investigation Report and the revised Draft Investigation Report to the Applicant for his review and comments; and (iv) the fact that EBC considered and incorporated the Applicant's several submissions of comments in the Final Investigation Report.

142. Third, the IFC contends that it is not a requirement of due process for EBC to interview all of the witnesses suggested by subject staff members. The IFC maintains, in any event, that EBC reasonably exercised its discretion by interviewing eight of the ten witnesses proposed by the Applicant in his response to the Notice of Alleged Misconduct. The IFC points to the Final Investigation Report wherein EBC explained why two witnesses proposed by the Applicant were not interviewed: one witness did not respond to EBC's several requests for an interview, and the other proposed witness, the HRDCO Manager, was not interviewed because EBC had already interviewed two witnesses from HR who provided evidence on the same issues for which the HRDCO Manager would have been interviewed.

143. Next, the IFC maintains that EBC provided the Applicant with access to all exhibits after the Applicant alerted EBC to his access difficulties, and, even if any of the alleged issues with accessing some exhibits to the Draft Investigation Reports were corroborated, there is no evidence that the Applicant was prejudiced.

144. According to the IFC, EBC reasonably granted the Applicant several extensions to submit comments on the Draft Investigation Reports, as demonstrated by the record.

145. The IFC maintains that it was appropriate for EBC to establish a basis for the Applicant's extension request. In the IFC's view, EBC was not requesting confidential medical information when it sought for the Applicant to provide a doctor's statement to support his request for an extension based on illness, nor were the Applicant's leave records secured under a "false pretense"; rather, the leave records were needed as part of the investigation's process.

146. The IFC rejects the Applicant's contention that the duration of the investigation and decision-making process resulted in due process violations. The IFC maintains that EBC's investigation was not unduly long given (i) the scope of the investigation, wherein EBC received multiple complaints by Ms. A relating to different allegations; (ii) the number of witnesses EBC interviewed; and (iii) the extensions afforded to the Applicant. The IFC maintains that the timeline for the HRDVP decision-making process was likewise reasonable under the circumstances. Namely, (i) the HRDVP who initially received the Final Investigation Report retired three months later, and (ii) the WBG was in the process of setting up the Misconduct Advisory Committee and was providing training to members of the committee. The IFC points out that, in any event, the investigation and misconduct determination concluded well within the three-year period set forth in the applicable Directive.

147. While the Applicant now claims that EBC improperly included information from a confidential mediation agreement, the IFC points out that, despite clear reminders from EBC regarding the confidentiality of mediation agreements, the Applicant made reference to the agreement and "contended [during the EBC investigation] that he could not effectively defend himself without summarizing the outcome of the Mediation process."

148. The IFC explains that EBC interviewed the Senior Advisor three times over the course of a year during its investigation and that her first-hand accounts are supported by documentation. In the IFC's view, any inconsistencies in the testimony provided by the Senior Advisor after she became aware that she was also the subject of an investigation were explicitly noted in the Final Investigation Report.

149. Finally, the IFC contends that the disciplinary decision-making process complied with the standard of evidence applicable at the time and can therefore not be a basis for an allegation of unfair treatment or violation of due process. Moreover, the IFC maintains that there is no basis in the administrative law of the WBG to prompt, much less require, *sua sponte* review or reconsideration of a disciplinary decision properly made under the applicable rules.

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

*The sanctions imposed are significantly disproportionate to the findings of misconduct*

150. In the Applicant's view, even if the Tribunal were to sustain the misconduct findings, the sanctions should be invalidated because they are significantly disproportionate under the totality of the circumstances.

151. The circumstances the Applicant identifies as favoring leniency are (i) that the Applicant did not have any managerial authority and did not make the non-renewal decision; (ii) that the Applicant's recommendation was permissible and within his discretion; (iii) that the Applicant sought, received, and relied on advice from his superiors and HR experts; (iv) that it is unclear what the Applicant could have done differently; and (v) the Applicant's long and outstanding record of service to the WBG.

152. The Applicant maintains that the two-year prohibition on being considered for a supervisory or managerial role is unduly harsh and presents a significant barrier for him to apply for positions in the WBG as does the permanent censure because this censure could be visible to hiring managers, significantly inhibiting his competitiveness for positions indefinitely.

***The IFC's Response***

*The disciplinary measures imposed are not significantly disproportionate to the misconduct*

153. The IFC contends that the disciplinary sanctions imposed are reasonable and proportionate to the misconduct because the decision-maker considered the mitigating factors, the extenuating circumstances, the situation of the Applicant, the interest of the WBG, and the frequency of the conduct, as specifically noted in the Acting HRDVP's decision letter.

154. The IFC maintains that the abuse of authority by a supervisor, especially when it results in the end of employment of another staff member, is a matter of serious concern. The IFC asserts that, in addition to his supervisory responsibilities, the Applicant also held a position of trust

working in CAO, handling high-profile, complicated investigations with significant financial and reputational implications for the IFC, a role which demanded a high level of ethics and integrity.

155. The IFC claims that the Acting HRDVP considered all relevant factors in determining the appropriate disciplinary measures and that the resulting sanctions were tailored to the specific misconduct substantiated. In the IFC's view, even if the "totality of the circumstances favors leniency" as the Applicant urges, the sanctions imposed are sufficiently restrained: the Applicant remains an IFC staff member, at the same grade and with the same benefits, and the ineligibility for any supervisor or managerial role is limited to two years, which will have lapsed before the end of the Applicant's current external service assignment. Moreover, the IFC states that a written censure in a staff member's record is not widely accessible and forms a part of "limited access" personnel documents.

156. The IFC maintains that, in light of the seriousness of the substantiated misconduct, the sanctions imposed are proportionate and appropriate.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

### THE SCOPE OF THE TRIBUNAL'S REVIEW IN DISCIPLINARY CASES

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

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

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

## BURDEN OF PROOF AND STANDARD OF EVIDENCE IN DISCIPLINARY CASES

158. As noted by the Tribunal in *HD*, Decision No. 697 [2023], para. 120, “[t]he Bank’s disciplinary proceedings [...] are subject to certain principles including the following. First, a staff member has a right to a presumption of innocence.” The WBG Directive/Procedure: Conduct of Disciplinary Proceedings for EBC Investigations guarantees presumption of innocence as a staff right. It states in Section III, Part A.I.1, “Throughout the course of disciplinary proceedings, subject staff members are presumed innocent until all facts and circumstances have been obtained and a decision on the evidence has been made by the World Bank Group Human Resources Vice President.”

159. Second, the burden of proof is on the IFC and “there must be substantial evidence to support the finding of facts which amount to misconduct.” *FQ*, Decision No. 638 [2020], para. 88. Moreover, such a standard of evidence leading to disciplinary sanctions “must be higher than a mere balance of probabilities.” *Dambita*, Decision No. 243 [2001], para. 21. *See also FG*, Decision No. 623 [2020], para. 67; *EZ*, Decision No. 601 [2019], para. 69.

160. Finally, as stated by the Tribunal in *HD* [2023], para. 122, “if evidence is inconclusive then the benefit of the doubt goes to the staff member accused of misconduct.” This principle is expressly endorsed by the Integrity Vice Presidency (INT), an independent unit within the WBG whose core function involves investigating fraud and corruption in WBG-financed projects. The current INT Guide to the Staff Rule 8.01 Investigative Process (Fourth Edition) (2016) states at page 5, “If the evidence is inconclusive or insufficient to meet the WBG’s standard of proof, the allegations are considered to be unsubstantiated, in which case the benefit of the doubt goes to the staff member accused of misconduct.” The International Labour Organization Administrative Tribunal (ILOAT) has applied this principle in misconduct cases. *See V*, ILOAT Judgment No. 3880 (2017).

161. Effective 17 May 2023, the Principles of Staff Employment were amended to revise the standard of substantial evidence stipulated by the Tribunal, referred to above, such that Principle 8.3 provides:

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

162. In *HQ* [2024], para. 125, the Tribunal held:

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

*See also HR* [2024], para. 137.

163. The acts forming the basis of the complaints in this case occurred prior to 17 May 2023; therefore, the Tribunal will review the present case under the substantial evidence standard.

#### THE EXISTENCE OF THE FACTS AND WHETHER THEY LEGALLY AMOUNT TO MISCONDUCT

164. The Tribunal explained in *HD* [2023], para. 123, that generally “misconduct allegations can be substantiated by admission, documentary or testimonial evidence, or circumstantial evidence, or can be based on the totality of evidence in the record.” The Tribunal will now examine the evidence presented in the record and review if it meets the substantial evidence standard to determine whether the Applicant engaged in misconduct under the provisions of the Staff Directives identified in the decision letter.

165. In the present case, Ms. A reported to EBC several allegations against the Applicant. The Tribunal observes that EBC closed its investigation at the preliminary inquiry phase with respect to allegations of racial discrimination and gender discrimination in the First Complaint, finding, based upon its preliminary review of the record, that there was an insufficient basis to proceed to an investigation of these allegations.

166. The Tribunal observes that EBC continued its investigation with respect to the remaining allegations of misconduct in the Second Complaint as identified in Staff Directive 3.00, paragraph 6.01(a), (b), (c), (e), and (g). EBC concluded in its Final Investigation Report that the Applicant's non-renewal recommendation was "in part motivated by retaliation for [Ms. A's] use of Mediation Services."

167. The Tribunal also observes that, after reviewing the Final Investigation Report, including its evidentiary exhibits, the Acting HRDVP determined that there was not sufficient evidence presented in the report to support a finding that the Applicant engaged in retaliation. Specifically, the Acting HRDVP explained that the "timing of the non-extension recommendation was not sufficiently persuasive to support a determination that retaliation had occurred, given that there was no other evidence in the Final Report that the nonrenewal recommendation had a direct connection to the mediation." The HRDVP stated that, while the Applicant's actions did not rise "to the level of retaliation," the Applicant's actions nevertheless amounted to misconduct under the following provisions of Staff Directive 3.00, paragraph 6.01:

- (a) Abuse of authority;
- (b) Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; and
- (c) Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the WBG Policy "Principles of Staff Employment," including the requirements that staff avoid situations and activities that might reflect adversely on the Organizations (Principle 3.1) and conduct themselves at all times in a manner befitting their status as employees of an international organization (Principle 3.1(c)).

168. The Acting HRDVP explained this determination, stating in his decision letter:

Considering the long-standing workplace challenges and difficulties in your work relationship with Ms. [A], as substantiated in the Final Report, I find it more likely than not that it inappropriately contributed to your non-extension recommendation to the CAO decision-makers who relied on it. I find that your behavior was unacceptable for a Level GG staff member with supervisory responsibilities. Workforce planning should not be used as a pretext for settling workplace differences.

169. The Tribunal observes that the Acting HRDVP based his finding of abuse of authority upon his determination that the Applicant's non-renewal recommendation was "a pretext for settling workplace differences." Neither the Staff Directives nor the WBG Staff Code of Ethics specifically defines pretext. Generally, in the context of employment disputes, pretext means an ostensible or false reason given by a supervisor or decision-maker that is used to conceal a discriminatory or other illegal reason. The Tribunal has previously reviewed the genuineness of the reasons provided for a given decision in determining whether the reason was "honest rather than pretextual." *See, e.g. HE*, Decision No. 698 [2023], paras. 88–89; *CC*, Decision No. 482 [2013], paras. 48–50.

170. In the present case, conversely, this review is done for the purpose of determining whether the Applicant's reasons were pretextual rather than honest.

171. This being a disciplinary matter, the Tribunal observes that there is no onus upon the Applicant to establish that his reasons were honest or even correct from a business standpoint. However, the assessment by the Tribunal of the IFC's establishment of facts showing the existence of a pretext requires consideration of the evidence in the record as to the reasons purportedly provided by the Applicant as a pretext. The Tribunal will thus turn to a review of (i) the rationales provided for the non-renewal recommendation and (ii) the overall actions of the Applicant, to determine whether the IFC has met its onus to establish that there is substantial evidence, higher than a mere balance of probabilities, that the Applicant's non-renewal recommendation was "used as a pretext for settling workplace differences" amounting to misconduct under Staff Directive 3.00, paragraph 6.01(a–c).

172. The Tribunal first recalls the finalized business case memorandum which outlined the rationale for the non-renewal recommendation. The memorandum stated:

[A] key priority for the CAO compliance team is to increase the seniority of the compliance team. [...] The need for increased numbers of senior staff is in response to the new CAO Policy approved by the Board in June of this year. [...] To support this plan, it is proposed that CAO will not renew the appointment of Ms. [A]. This will free up a head count and give CAO budget flexibility to fund a Sr Staff position.

173. In considering the genuineness of the rationale, the Tribunal observes at the outset that the stated rationale, namely, to increase senior staff on the Compliance team, was based on a policy approved by the Board in June 2021 aiming to increase the seniority of CAO staff and decrease case timelines.

174. The Tribunal next observes that the record includes numerous exchanges wherein the above-stated rationale, put forward by the Applicant, was endorsed or reviewed by individuals positioned to know CAO's business needs or the institution's best practices for managerial decisions, including (i) the Senior Advisor, whose role was to conduct a workforce planning exercise assessing the business needs of CAO; (ii) the Director General, who was involved in staffing discussions with the Applicant for months ahead of the non-renewal decision, exploring multiple avenues for meeting CAO's projected deliverables; (iii) the HRBP, whose role was to advise CAO on the proper processes and procedures regarding its staffing decisions; and (iv) two HRDCO representatives, specializing in providing risk management advice regarding managerial decisions.

175. The Tribunal also observes that, approximately one month after notifying Ms. A that CAO would not be renewing her GE-level analyst appointment, the Compliance team opened a GG-level vacancy. The Tribunal considers that this recruitment effort further supports the authenticity of CAO's priority to hire more senior staff on the Compliance team.

176. Based on the totality of the circumstances, the Tribunal accepts that CAO management considered that the Compliance team required more senior staff to meet its objectives and that, in view of headcount limitations, reallocating a GE-level position to a more senior, GG-level position supports the identified business requirement.

177. Although the Tribunal acknowledges the existence of legitimate business reasons for reallocating a GE-level position to a more senior, GG-level position, the analysis as to whether the non-renewal recommendation was pretextual does not end there. In a review of whether a staffing decision is pretextual, the Tribunal examines not only the legitimacy of the business reason for unit-wide staffing decisions but also the rationale for selecting one individual's position rather than

that of another to meet those business needs. *See, e.g., Andriamilamina (No. 4) (Merits)*, Decision No. 657 [2021], paras. 133, 162–164.

178. While the Compliance team was small, the Tribunal observes that there were two GE-level analyst positions available to reallocate to a senior position. The Tribunal will now review whether there is substantial evidence to demonstrate that the Applicant’s recommendation to select Ms. A’s GE-level analyst position for reallocation to a more senior position was pretextual.

179. The Tribunal recalls that, in March 2021, approximately one month after the Applicant and Ms. A concluded their mediation, CAO hired IMPACTO to implement a multi-phase review of the unit’s resource needs. The Tribunal considers that this process would necessitate managerial conversations regarding CAO’s staffing needs and the various options available to meet those needs and observes that the Director General and the Applicant held such a meeting on 19 March 2021.

180. The Tribunal notes that the Final Investigation Report characterizes the 19 March 2021 informal talent review meeting with the Director General as the Applicant’s “first recommendation” for the non-renewal of Ms. A’s appointment. This characterization is not supported by the record.

181. In this respect, the Tribunal notes the “action items” resulting from the informal talent review meeting, which were summarized in an email following the meeting. While the action items specify that the Applicant was to look into the non-renewal process, they further specify that the Applicant was to follow up on the budget for the planned development assignment for Ms. A. The email also notes that the Applicant researched the process for in situ promotions for GE-level staff.

182. The Tribunal considers, based on the contemporaneous documentation of the meeting, that several staffing options were discussed during the informal talent review meeting and that nothing was settled or “recommended” with respect to Ms. A’s appointment. Specifically, the Tribunal considers that, on 19 March 2021, the Applicant held a discussion with the Director General

regarding a holistic view of CAO's staffing options and that the timing of this discussion coincided with the start of IMPACTO's multi-phase review of CAO's resource needs.

183. The Tribunal observes that the email of 22 July 2021 from the Applicant to the Senior Advisor, with copy to the Director General, is the first instance in the record in which the Applicant recommended the non-renewal of Ms. A's appointment.

184. The Tribunal observes that the Applicant's first non-renewal recommendation pre-dated the October 2021 formal commencement of CAO's workforce planning exercise. However, the Tribunal considers that the timing of the recommendation in the context of this case is not indicative of pretext. The Tribunal is mindful that supervisors and managers continually assess their staffing needs. Moreover, here, the record clearly demonstrates that, prior to the October 2021 workforce planning exercise, CAO was undergoing a "staffing exercise" conducted by an external consultancy. This lends credence to the Applicant's assertion that there were intervening factors, such as IMPACTO's assessment of all CAO teams, prompting his staffing discussions rather than any alleged issues with Ms. A.

185. The Tribunal recalls that the Applicant's stated rationale for selecting Ms. A's position rather than the other GE-level analyst's position was that, in comparison to the other analyst, (i) Ms. A's contract expired sooner; (ii) Ms. A had lower performance ratings; (iii) Ms. A had poorer talent ratings; and (iv) Ms. A had not done as well in the recruitment process for a GF-level position on the Compliance team.

186. The Tribunal recalls the rationale provided by the HRBP, namely that, compared to the other GE-level analyst, Ms. A's contract expired sooner and her talent rankings were lower. The Tribunal notes that this testimony corroborates some of the rationales provided by the Applicant.

187. The Tribunal recalls the testimony of the Director General and the Senior Advisor, wherein they explained to EBC that Ms. A's position was selected because it would be less disruptive to the workflow considering that the other GE-level analyst was working on cases while Ms. A was on disability leave.

188. As the Tribunal has previously explained in *HE* [2023], para. 120,

Contemporaneous documents are generally more reliable records of the decision-making process and tend to be more valuable when a decision is challenged. Of course, the IFC can explain during the course of proceedings its reasoning for a decision. But by then the decision-makers may have left the institution or moved on to other departments. Even if they are still there, memories fade [...]. Therefore, later explanations cannot command the same weight as contemporaneous documentation.

189. Again, the Tribunal is mindful not to conflate its review of a disciplinary decision with that of a non-renewal decision. However, the Tribunal is compelled to similarly note, as it did in *HE* [2023], that memories fade, especially when, as in the case here, witnesses are asked to recall discussions which may have covered several potential rationales, and which took place several months before EBC's interview. Moreover, the Tribunal notes that, while investigating the Applicant's conduct, EBC also began investigating misconduct allegations against another CAO staff member, which the Tribunal considers may have altered the motivation behind certain witness accounts.

190. While the Tribunal notes that the rationales provided by the Applicant, the HRBP, the Senior Advisor, and the Director General do not perfectly align, the Tribunal considers that the more relevant factors for assessing whether the Applicant's rationale was pretextual are (i) whether the HRBP, the Senior Advisor, and the Director General confirmed that some consideration took place regarding which GE-level analyst position to select for reallocation to a GG-level position; (ii) whether the Applicant's stated rationale is supported by evidence; and (iii) whether the Applicant concealed, from the decision-maker, factors that may have been perceived to have affected the appropriateness of the non-renewal recommendation.

191. The Tribunal has already recounted the testimony of the HRBP, the Senior Advisor, and the Director General, providing confirmation that some consideration took place regarding which GE-level analyst position best suited CAO's business needs for reallocation to a GG-level position.

192. In reviewing whether the rationale is supported by evidence, the Tribunal notes EBC's finding that the Applicant's rationale for selecting Ms. A's position lacked credibility. The

Tribunal notes, however, that EBC's finding significantly relies on the erroneous characterization of the informal talent review meeting on 19 March 2021. Specifically, EBC found that several of the Applicant's reasons for selecting Ms. A's position could not have been known to the Applicant on 19 March 2021, the date EBC considered the Applicant had first recommended the non-renewal decision.

193. In the Tribunal's review of the record, however, it observes that as of 22 July 2021, the date on which the Applicant first recommended the non-renewal decision, the Applicant was in a position to know that (i) Ms. A's contract would expire sooner than the other GE-level analyst's; (ii) Ms. A's performance and talent ratings were lower than those of the other GE-level analyst; (iii) the other GE-level analyst was more competitively ranked than Ms. A in the GF-level recruitment process, by a significant margin; and (iv) Ms. A was on disability leave.

194. The Tribunal, thus, does not agree with EBC's findings that the timing of the Applicant's first recommendation undermines the credibility of his rationale for recommending the non-renewal of Ms. A's position.

195. The Tribunal observes that, during the recruitment process for the GF-level specialist position, Ms. A's written materials were blindly graded by a recruitment committee and that, through that objective process, her written memorandum was ranked seventh out of eleven submissions and her writing sample tied for last out of eleven submissions. The Tribunal further observes that, in that same recruitment process, the other GE-level analyst was one of two candidates the recruitment committee recommended to move forward for a final round of interviews.

196. The Tribunal also observes that the other GE-level analyst was rated "solid talent" for the FY2019, FY2020, and FY2021 talent ratings, while Ms. A was rated "needs attention" in each of those three years. The Tribunal notes that these talent ratings had been assigned by a previous Head of CAO and not by the Applicant.

197. The Tribunal considers that these third-party evaluations of Ms. A's performance support the credibility of the Applicant's rationale. In the present case, the Tribunal considers the evidence surrounding Ms. A's perceived stagnation at the GE level to be attributed to a genuine difference of professional judgment as to her readiness for promotion, and unrelated to any alleged workplace conflict between the Applicant and Ms. A.

198. The Tribunal next observes that the Applicant disclosed Ms. A's disability leave status, and his mediation with Ms. A, to both the Director General, as the ultimate decision-maker for the non-renewal, and the HRDCO representatives advising management on the non-renewal decision.

199. Moreover, the Tribunal notes that, during an interview with EBC, the HRBP explained that he not only was aware of the Applicant's mediation with Ms. A but also took part in the mediation process. During this same interview, EBC inquired about the appropriateness of the rationale for not renewing Ms. A's appointment, and the Applicant's interactions with Ms. A. The exchange was as follows:

[EBC]: In your interactions with [the Applicant] or [the Senior Advisor], was there anything, I guess, that stood out in the – in perhaps how they communicated, either the rationale or comments about [Ms. A] that stood out to you as unusual, inappropriate, in any way?

[The HRBP]: No. Honestly, no. It was mostly focused on business [...] in relation to the kind of level that they need in CAO and the kind of skills that they need and also the skills that [Ms. A] brings to the CAO at this stage. [...] I never heard or was part of a conversation where something inappropriate was mentioned about her. And it was all business-oriented. And honestly, I mean, they knew quite well that not renewing her contract is going to bring issues, okay, because of the – what she had been saying in terms of, you know, her career progression [...]. So, [...] it wasn't a decision that was, [...] just, you know, we're not going to renew her and that they know the implications. But they know, from their perspective, they feel that, from a business standpoint, they do have a strong rationale as to why [Ms. A] specifically did not have her contract renewed. [...] So, yeah, nothing inappropriate, honestly, that was mentioned. On the contrary, I mean, they knew that this is not going to be an easy case, yeah.

200. Based on its review of the record, the Tribunal considers that there is strong evidence to support the credibility of the Applicant's rationale for selecting Ms. A's position, as opposed to the position held by the other GE-level analyst on the Compliance team, for reallocation to a GG-level position.

201. Having determined that the rationale for reallocating the GE-level analyst position to a GG-level position was supported by business needs, and that the rationale for selecting Ms. A's position over the other GE-level analyst's position is supported by evidence, the Tribunal will now review whether there is substantial evidence, higher than a mere balance of probabilities, to demonstrate that alleged "workplace difficulties" inappropriately contributed to the Applicant's non-renewal recommendation.

202. The Tribunal recalls that the Applicant agreed to enter into mediation with Ms. A to settle differences of opinion regarding Ms. A's readiness for promotion to Grade Level GF. Through this process, on 1 February 2021, the Applicant and Ms. A reached a mediated agreement together.

203. The Tribunal observes that, in its Final Investigation Report, "EBC concluded that [the Applicant's] recommendations to non-renew Ms. [A's] contract term were in contrast with the spirit of the Mediation agreement (as outlined by [the Applicant] to EBC)" and "not made in good faith." The Tribunal considers that actions made in bad faith and taken against the affected staff member could be indicative of animus. Accordingly, it will review the evidence EBC relied upon to form its conclusion that the Applicant acted in bad faith.

204. According to the Final Investigation Report, the mediation agreement outlined concrete steps to support Ms. A's career development goals, namely, that the Applicant would "(i) clarify the requirements for Ms. [A] to obtain a promotion; (ii) provide opportunities for stretch assignments to improve her skills; (iii) give regular feedback according to a schedule; and (iv) explore opportunities for a [development assignment]."

205. In reviewing whether the Applicant's actions support EBC's conclusion that he acted in bad faith, the Tribunal first observes that, by 3 March 2021, the Applicant secured Ms. A an

opportunity for a development assignment. On 10 March 2021, in response to Ms. A's inquiry regarding how the development assignment might affect her career progression, the Applicant provided Ms. A, in writing, the criteria for her to obtain a promotion.

206. The Tribunal further observes that, in May 2021, the Applicant provided Ms. A with in-person feedback regarding her candidacy for the GF-level position, including specific feedback, both positive and negative, on her written submissions and a sample of a successful submission. The Tribunal also observes that, in an email exchange between the Applicant and Ms. A regarding his feedback on her candidacy for the GF-level position, the Applicant referenced their scheduled check-ins.

207. The Tribunal considers the established actions taken by the Applicant, namely his participation in the mediation and his implementation of its resulting agreement, to be indicative of a willingness to collaboratively work with Ms. A on her career progression, to the extent appropriate.

208. In view of the record, the Tribunal considers EBC's conclusion that the Applicant's actions were "not made in good faith" and "in contrast with the spirit of the Mediation agreement" to be unfounded. Managers often encounter conflicts between unit strategy and productivity needs and individual career aspirations. The Tribunal is mindful that mediation agreements are not created in a vacuum, and, here, the timeline of events demonstrates that, following and unrelated to the mediation, CAO underwent a unit-wide review of staffing needs.

209. Next, in reviewing the testimony documented in the Final Investigation Report, it is evident that Ms. A found it difficult to work with the Applicant. However, in assessing whether alleged workplace differences "inappropriately contributed" to the Applicant's non-renewal recommendation, the more relevant inquiry is whether there is substantial evidence demonstrating that the Applicant viewed the workplace relationship as difficult, such that it inappropriately contributed to his non-renewal recommendation.

210. The Tribunal notes that several witnesses testified to observing the Applicant behave harshly toward Ms. A. The Tribunal considers, however, that, in a misconduct finding of abuse of authority for a pretextual non-renewal recommendation, there must be substantial evidence demonstrating that the subject staff member had some animus particular to the staff recommended for non-renewal and that the animus inappropriately contributed to the recommendation.

211. Here, the record demonstrates that witnesses observed a wide-spread pattern of occasional harsh behavior on the part of the Applicant toward many staff members, and not a pattern of behavior unique to his interactions with Ms. A or substantially demonstrating a targeted dislike of Ms. A. Indeed, even the other GE-level analyst on the Compliance team recounted encounters in which the Applicant used terse language with her and behaved in a “rude” manner.

212. The Tribunal observes, in the Final Investigation Report, EBC’s summary of witness testimony regarding the Applicant’s general behavior, namely, that

witnesses described [the Applicant] as generally abrupt in his communications. For example, [a witness] told EBC that she observed [the Applicant’s] interactions with [the former Head of CAO], which she described as “not fun” because both were “going at each other.” Similarly, [another witness] described [the Applicant] as someone who talks over people and is dismissive.

213. The Tribunal concludes, based on its review of the record in this case, that there is not substantial evidence, higher than a mere balance of probabilities, that the Applicant had a particular animus toward Ms. A that inappropriately contributed to his non-renewal recommendation.

214. The Tribunal does not, through this judgment, condone the Applicant’s behaviors brought to light through the testimony of witnesses, but considers that such behaviors are more appropriately addressed through performance management processes. The Tribunal notes the incongruence of awarding the Applicant high performance ratings despite certain workplace behaviors identified for development, and then relying on those same workplace behaviors to support the issuance of a disciplinary finding.

215. In the Tribunal's reading, the testimony in the record documents a difficult work environment for Ms. A within CAO. Under the WBG's rules, however, misconduct is specific to the individual, and the Tribunal reviews the particular allegations and the available evidence to determine whether the IFC has met its burden of proof. The Tribunal reiterates that, "in the context of disciplinary proceedings, if the evidence is inconclusive, the benefit of the doubt must go to the accused." *HR* [2024], para. 211.

216. The Tribunal considers that WBG managers and supervisors make various staffing decisions on a continual basis, including decisions on hiring, promotion, performance evaluation, renewal, and forms of termination decisions. In making those professional judgments, a manager or supervisor may make an error of judgment. The traditional process to correct any such error of judgment is for the aggrieved staff members to challenge those decisions through the internal justice forums and ultimately through the Tribunal process. These forums then generally evaluate whether a particular decision has a reasonable basis or whether there was an abuse of discretion or otherwise improper decision. If these forums find that a manager or supervisor made an error of judgment or otherwise abused his or her discretion, then the aggrieved staff member is awarded appropriate remedies. Any shortcomings of a manager or supervisor may also be addressed through the performance management processes. But a disciplinary matter is a different issue in that, from the facts and circumstances of the case, the Tribunal must be convinced that there is substantial evidence, or a preponderance of evidence, as applicable, that the conduct of the manager or supervisor has risen to the level of misconduct. The Tribunal cannot make such a finding here.

217. The Tribunal finds that the record does not provide substantial evidence, higher than a mere balance of probabilities, that the Applicant's non-renewal recommendation was pretextual, thereby removing the foundation of the finding of misconduct under Staff Directive 3.00, paragraph 6.01(a-c). The Acting HRDVP's disciplinary findings and sanctions are hereby set aside.

218. Because the Tribunal has set aside the finding of misconduct in this case, the disciplinary measures imposed are also set aside and there is therefore no need to consider their proportionality.

## WHETHER THE REQUIREMENTS OF DUE PROCESS WERE OBSERVED

219. Principle 2.1 of the Principles of Staff Employment provides that the IFC “shall at all times act with fairness and impartiality and shall follow a proper process in [its] relations with staff members.” It also obliges the IFC to “respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal.”

220. The Tribunal’s insistence on due process in the investigation of allegations of misconduct is manifested in numerous decisions. *See, e.g., Koudogbo* [2001], paras. 41–54; *Ismail*, Decision No. 305 [2003], para. 75.

221. In *King*, Decision No. 131 [1993], para. 29, the Tribunal emphasized that the Staff Rule describing disciplinary proceedings is “intended to give expression to the basic principles of due process of law with respect to disciplinary measures. It contains a number of essential components—none of which can be neglected if it is to be properly applied.”

222. The Applicant claims that he was subjected to a drawn out, unfair, abusive, unduly burdensome, and invasive EBC investigation from beginning to end, and that the Acting HRDVP applied the wrong standard of evidence and made a “freestanding” abuse of authority misconduct finding.

223. The Tribunal notes that the Applicant’s complaints in this respect must be examined bearing in mind that the WBG’s disciplinary proceedings are administrative rather than criminal in nature. In *Kwakwa*, Decision No. 300 [2003], para. 29, the Tribunal observed that the WBG is not required to accord a staff member accused of misconduct “the full panoply of due process requirements that are applicable in the administration of criminal law.” The Tribunal in *Rendall-Speranza*, Decision No. 197 [1998], para. 57, explained the nature of disciplinary proceedings in the WBG as follows:

In order to assess whether the investigation was carried out fairly, it is necessary to appreciate the nature of the investigation and its role within the context of disciplinary proceedings. After a complaint of misconduct is filed, an investigation

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

224. Against this background, the Tribunal turns to the specifics of the Applicant's contentions and will review EBC's process in conducting its investigation, including its (i) provision of notice, (ii) provision of an opportunity for the Applicant to respond to the allegations, (iii) overall treatment of the Applicant, and (iv) presentation and analysis of the evidence.

225. An applicant who alleges lack of fairness or impartiality in an investigation must substantiate those allegations with evidence. In the context of alleged bias, for example, the Tribunal has held that "allegations of bias are insufficient as proof of bias" and that applicants bear the burden of substantiating allegations of bias or improper motive. *CW*, Decision No. 516 [2015], para. 88.

226. In previous cases where applicants have alleged unfairness in the context of investigations of misconduct, the Tribunal has looked to the manner in which the investigations were conducted and the fairness of the investigation reports. For example, in *CH* [2014], paras. 77–78, the Tribunal noted that the transcript of the applicant's interview did not show that the investigators "arrived with a pre-determination of guilt or that the interview was just a formality," and that there was "no evidence in the record that the investigators acted improperly."

227. In *P*, Decision No. 366 [2007], paras. 66–69, the Tribunal scrutinized the fairness of the misconduct investigation report at issue, noting that it included "subjective evaluations of the [a]pplicant" and relied on "farfetched" deductions and "impressionistic" evidence.

228. In review of the due process claims, the Tribunal first observes that EBC provided the Applicant with a Notice of Alleged Misconduct on 21 September 2022, which informed the

Applicant, in writing, that EBC was investigating “allegations that [he] may have committed misconduct [...] by abusing [his] authority, retaliating, and discriminating against Ms. [A].” While the Applicant takes issue with the fact that the Acting HRDVP found that his conduct amounted to an abuse of authority, without finding that the Applicant retaliated or discriminated against Ms. A, the Tribunal is satisfied that the Applicant was sufficiently apprised, with reasonable clarity, that he was being investigated for alleged abuse of authority pertaining to his treatment of Ms. A, including the non-renewal recommendation, such that he had adequate opportunity to defend himself against these allegations. Thus, the Tribunal is satisfied that an appropriate provision of notice took place in this case.

229. While the Applicant claims that his due process rights were violated because EBC did not interview all of his proposed witnesses, the evidence in this case demonstrates that EBC was proactive in seeking out witnesses, including those proposed by the Applicant.

230. The Tribunal has carefully examined the record and observes that EBC (i) interviewed nineteen witnesses, eight of whom were requested by the Applicant; (ii) reviewed documents the witnesses provided; (iii) provided several extensions of time for the Applicant to comment on the Draft Investigation Report; (iv) reviewed and considered the Applicant’s comments on his interview transcript and the Draft Investigation Report; and (v) reviewed and considered the documents the Applicant submitted in support of his position.

231. The Tribunal considers that the Applicant was provided with a meaningful opportunity to respond to and dispute the allegations and evidence against him and that his testimony and documentation were considered by EBC and included in the Final Investigation Report. The fact that EBC formed a conclusion different from that for which the Applicant wished does not mean that EBC ignored or misrepresented the Applicant’s version of the events.

232. In considering the length of the investigation, the Tribunal is mindful that “misconduct investigations should be completed without unreasonable delay.” *CH* [2014], para. 86. Nevertheless, the Tribunal is cognizant that it “does not micromanage the activity of investigative bodies.” *Houdart*, Decision No. 543 [2016], para. 112.

233. The Tribunal observes that, in the present case, EBC notified the Applicant of the investigation on 21 September 2022 and concluded its investigation on 12 September 2023. Given the time required to gather documents, prepare and conduct interviews with witnesses, analyze the evidence, and prepare a thorough report, the Tribunal considers the investigation, in the present circumstances, to have been completed without unreasonable delay.

234. The Tribunal considers that, in the evaluation of requests for extensions of time of deadlines in the investigatory process, it may be appropriate for EBC to request some form of documentation supporting the legitimacy of the reasoning for such requests. Based on the documented communications from EBC to the Applicant and HR, the Tribunal is satisfied that EBC did not request confidential medical information.

235. Based on the foregoing, and considering the entire record, the Tribunal is satisfied that EBC's investigation and Final Investigation Report are in accord with the applicable Staff Directives and the due process rights of the Applicant.

236. The Tribunal observes that the Misconduct Advisory Committee is not procedurally required to meet with witnesses or the subject staff member. The Tribunal therefore finds that no procedural irregularity arose from the fact that the Misconduct Advisory Committee did not meet with the Applicant.

237. The Tribunal next observes that the Acting HRDVP issued his misconduct decision on 11 November 2024 and that, in forming his decision, the Acting HRDVP applied the preponderance of the evidence standard. The Tribunal notes that the Acting HRDVP's misconduct decision in this case predated the publication of the Tribunal's rulings in *HR* [2024] and *HQ* [2024] in which the Tribunal determined that the substantial evidence standard is the appropriate standard of evidence applicable to conduct occurring before 17 May 2023. The Tribunal notes that the disciplinary decision-making process complied with the standard of evidence management believed to be applicable at the time. The Tribunal finds that, in the present circumstances, an appropriate avenue for redress for the misapplication of the standard of evidence is through the Tribunal's review of

the misconduct finding under the substantial evidence standard, as was done in the present case, and that the misapplication of the standard is not additionally a violation of due process in the circumstances of this case.

238. The Tribunal also observes that EBC provided its Final Investigation Report to the then HRDVP on 12 September 2023 and that, approximately thirteen months later, on 11 November 2024, the Acting HRDVP provided the Applicant with the determination that the Applicant had committed misconduct. The IFC claims that the delay was justified by the retirement of the HRDVP on 31 December 2023, the creation of the Misconduct Advisory Committee announced in July of 2023, and the selection and training of the members of said committee.

239. In *BN*, Decision No. 451 [2011], para. 75, the Bank provided a similar line of reasoning to justify a period of more than one year for making a misconduct determination. In that case, the Tribunal was not persuaded by the Bank's position, noting that the Bank did not provide "a cogent explanation why the Acting Vice President could not carry out this official business of HR." *Id.*, para. 76. Nevertheless, the Tribunal did not find that the circumstances in that case warranted compensation to the applicant, because the delay ultimately benefited the applicant when the decision was taken more than three years after the start of the investigation and disciplinary sanctions could therefore no longer be imposed. *Id.*

240. In *HA (Merits)*, Decision No. 696 [2023], para. 81, the Tribunal similarly noted that the Bank failed to adequately explain why the HRDVP, or an acting or interim HRDVP, could not carry out the official business of HR by making a misconduct determination prior to the appointment of a new HRDVP. In that case, the misconduct determination took place five months after EBC had concluded its investigation. Ultimately, the Tribunal determined that the five-month period it took the HRDVP to issue the determination that there was no misconduct was "perhaps less than ideal," but was not "so inordinate as to rise to the level of an abuse of process warranting compensation." *Id.*, para. 82.

241. Unlike the applicant in *BN* [2011], here, the Applicant was not ultimately benefited by the extensive period it took for the Acting HRDVP to make his misconduct determination. Moreover,

in comparison to the circumstances in *HA (Merits)* [2023] where the Tribunal opined that the five-month period for making a misconduct determination was “less than ideal,” here, the misconduct determination was made more than one year after EBC issued its Final Investigation Report.

242. While the IFC maintains that the delay resulted from the retirement of the HRDVP three months after EBC issued the Final Investigation Report, the Tribunal considers that this explanation does not account for the thirteen-month period it took for the misconduct determination to be made. The Tribunal furthermore considers the IFC’s additional explanation, namely the creation and training of the Misconduct Advisory Committee, to be similarly unpersuasive. The creation of the Misconduct Advisory Committee, which first convened approximately ten months before the misconduct determination, provides no adequate explanation as to why the Acting HRDVP could not have issued his misconduct determination in a timely manner.

243. Although the investigation itself was prompt, the Tribunal finds that the unreasonable delay in the Acting HRDVP’s issuance of the final misconduct determination constituted a due process violation. This delay meant that the Applicant remained under the cloud of a serious misconduct allegation for an unnecessarily extended period, causing prolonged stress and uncertainty regarding his professional standing and future at the IFC. In the circumstances of this case, and recalling Principle 2.1 of the Principles of Staff Employment, namely, that the IFC “shall at all times act with fairness and impartiality and shall follow a proper process in [its] relations with staff members,” the Tribunal finds the length of time it took the Acting HRDVP to issue the misconduct determination regarding allegations of retaliation to be a due process violation warranting compensation on the basis of its impact on the Applicant and his professional reputation during that time.

#### REMEDIES

244. The Tribunal has determined that the IFC did not discharge its burden of proof to establish by substantial evidence that the Applicant committed misconduct. The Tribunal thus holds that the misconduct finding and sanctions shall be rescinded, the disciplinary record shall be removed from

the Applicant's personnel file, and the Applicant shall be compensated for the imposition of disciplinary measures. *See DR and DS*, Decision No. 550 [2016].

245. Moreover, the Tribunal found a due process violation with respect to the duration of time it took to issue a misconduct determination in this case. In *Garcia-Mujica*, Decision No. 192 [1998], para 25, the Tribunal recognized that a finding of a "defect in the [WBG's] treatment of a staff member" may merit compensation as one form of remedy. *See also CK*, Decision No. 498 [2014], para. 101.

246. In assessing compensation, the Tribunal considers the gravity of the defect, the impact it has had on an applicant, and all other relevant circumstances in the particular case.

247. Having succeeded in a majority of his claims, the Applicant shall also be awarded legal fees and costs for the proceedings before the Tribunal.

#### DECISION

- (1) The finding of misconduct and disciplinary sanctions are hereby rescinded;
- (2) The IFC shall remove from the Applicant's personnel file all records relating to the allegations of misconduct, including the Final Investigation Report and the decisions of the Acting HRDVP;
- (3) The IFC shall pay the Applicant compensation in the amount of three months' net salary based on the last regular salary drawn for the improper imposition of disciplinary measures;
- (4) The IFC shall pay the Applicant compensation in the amount of three months' net salary based on the last regular salary drawn for the due process violation;
- (5) The IFC shall pay the Applicant's legal fees and costs in the amount of \$68,262.50; and
- (6) All other claims are dismissed.

/S/Janice Bellace  
Janice Bellace  
President

/S/ Zakir Hafez  
Zakir Hafez  
Executive Secretary

At Washington, D.C., 14 November 2025