



World Bank Administrative Tribunal

2021

Decision No. 664

**Fion de Vletter (No. 2),
Applicant**

v.

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

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

**Fion de Vletter (No. 2),
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Andrew Burgess (President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche (Vice-President), Janice Bellace, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.
2. The Application was received on 12 May 2021. The Applicant was represented by Stephen C. Schott of Schott Law Associates, LLP. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency.
3. The Applicant challenges the misattribution and wrongful taking of his intellectual property and “the unannounced decision to blacklist [the] Applicant for [short-term] consultancies.”

FACTUAL BACKGROUND

4. The Applicant first joined the Bank in 1989 and, since that time, has held around twenty consultancies with the Bank in Mozambique, Madagascar, and Angola, as well as numerous consultancies with other international development organizations. In his work, the Applicant specializes in agriculture and rural finance in southern Africa, and he has extensively published in those fields. On 30 June 2017, the Applicant was offered a Short-Term Consultant (STC) contract with the “Let’s Work Program” pilot initiative in the Bank’s country office in Maputo, Mozambique. The STC appointment was for 150 days from 1 July 2017 to 30 June 2018. The Bank states that the Applicant’s role in the Let’s Work Program was that of a country coordinator and that his functions included “liaising with government officials in Mozambique and keeping them abreast of progress being made.”

5. In early March 2018, the Applicant was engaged in an email conversation with International Labour Organization (ILO) counterparts regarding a proposed business breakfast. On 5 March 2018, the Applicant wrote to an ILO counterpart, requesting to “hold off on the title for the time being.” The ILO counterpart responded the same day, stating that the invitation needed to be sent and could not be delayed any further. The Applicant responded, writing: “You will wait the few hours. Please don’t [even insinuate] that we have been holding you up in any way. I was only told about this event on Thursday [through] our consultant not the ILO.”

6. Later that day, the Applicant’s Task Team Leader (TTL) at the time (hereinafter then-TTL) emailed him, writing: “I asked you to calm down and let [another team member] handle the communication – and the next time I open my emails I see you have sent an abrupt, frankly rude message. Did you even read my message?”

7. The Applicant responded on 6 March 2018, copying another team member, with a lengthy email in which he stated that the then-TTL was “[g]utless,” expressed his dissatisfaction with the working environment, and wrote:

I would like to point out that [the Country Director’s] response to a string of emails regarding collective efforts to arrange his trip to Niassa is arrogant and obnoxious and, if it were not for the embarrassment that it might cause his gracious hosts, I would have told him to get stuffed.

8. On 9 March 2018, the Applicant’s then-TTL emailed him, writing:

With reference to your letter of appointment dated June 30, 2017, and as per the 3rd paragraph in the first page of the said letter of appointment, we have decided to end your consultancy with the “Let’s Work Program”, with immediate effect.

9. The Bank states that the “Applicant was paid for the work he completed, and his contract was subsequently closed out of the system.” The Applicant states that, “[i]n fact, the [then-]TTL soon afterwards asked [the] Applicant to work additional days after being dismissed and therefore [his contract] was not closed out of the system.” There is nothing in the record to indicate whether or not the Applicant worked additional days for this STC contract after the 9 March 2018 email. The Applicant challenged the termination decision in an application to the Tribunal, but the

application was dismissed for lack of timeliness in *de Vletter (Preliminary Objection)*, Decision No. 619 [2019].

10. On 10 May 2018, the Applicant emailed a Senior Agriculture Economist, who later became his TTL, (hereinafter TTL) referencing a discussion they had and stating that he had attached to the email:

1. Impact study on FAO [Food and Agriculture Organization] e-voucher programme (focusing on agro-dealer network, study on smallholder beneficiaries to be done soon). This has not been approved yet by the FAO so is confidential.
2. The study on agricultural and rural financial products that I did for the agricultural NLTA [Non-Lending Technical Assistance] in 2015 (not much has changed)[.]
3. A preliminary analysis of the sample agricultural censuses from 1999–2015 (this is a work in progress for a smallholder study I am working on)[.]
4. My CV [*curriculum vitae*]. I am available for short-term assignments.

11. On 12 October 2018, the TTL emailed the Applicant, writing:

We are working on a task to support MASA [Mozambique Ministry of Agriculture and Food Security] with the formulation of a private sector strategy.

I know you and the Bank have not been best friends lately, but I am writing to ask you if you would be interested in participating as part of the team to support MASA to formulate the strategy. I am copying [another staff member] who is helping me on this, so he can share with you the TORs [Terms of Reference] and give you an idea of how many days this task would entail.

Let us know if you are interested/available in principle.

12. The Applicant claims that, in December 2018 while discussing the contract for the project, the TTL told him that he

had been blacklisted (and that any suggestions of [his] being considered for a consultancy were immediately handled “like a hot potato”) and explained how [the TTL] had made arrangements through an administrative consultant based in Boston [...] to process [his] contract without the knowledge of the Maputo Office.

13. On 27 December 2018, the Applicant was offered an STC appointment with the Africa Agriculture Global Practice under the management of the TTL. The Applicant signed his Letter of Appointment (LOA) to accept the appointment on 29 December 2018. The LOA provided that the appointment was to last for 30 days from 29 December 2018 to 31 March 2019. Emails between the Applicant and the TTL in December 2018 indicate that the TTL intended to extend the contract by 20 days at a later time to allow for budget flexibility, and the contract was later extended by the 20 days.

14. The Bank states that the TTL was responsible for an Advisory Services and Analytics (ASA) titled “Technical Support to Mozambique’s Agri-food System Strategy.” The Bank explains that there were three deliverables under the ASA:

- a) Report of technical assistance activities carried out to support the Government of Mozambique to operationalize the extended National Agriculture Investment Plan (*Plano Nacional de Investimento Agrario*) (“PNISA”). This was considered the primary deliverable;
- b) Light Agriculture Public Expenditure Review; and
- c) Private Sector Strategy (the “Private Sector Strategy”).

15. The Bank explains that deliverables b) and c) were intended to be inputs to the first deliverable a) and that the Applicant “was hired to work on the draft and final report on the Private Sector Strategy, with responsibility for coordinating the work of local consultants who, in turn, were tasked to prepare components of the Private Sector Strategy.”

16. The Applicant states:

By April 2019, I submitted the following deliverables to the TTL: i) a Draft Report including the strategy referred to as SERPS [Strategy for Expanding the Role of the Private Sector] [...]; ii) a detailed matrix of issues raised by private sector responses about government-imposed constraints[;] iii) Reports written by 8 private sector consultants on value chains; and three Reports written by the consultants which I summarized as chapters in the Draft Report.

17. The Bank states that the Applicant’s contract closed on 10 April 2019, “after which he was not expected to perform additional work on the Draft Report.” However, the Applicant continued to work on the Draft Report until 2 May 2019. The Bank also states that the TTL was unsatisfied with the quality of the Draft Report and hired another consultant (Consultant) on 24 April 2019 to “overhaul [the] Applicant’s Draft Report in order to have an acceptable Private Sector Study as ASA deliverable c), in preparation for the Bank’s formal ASA Decision [M]eeting on June 4, 2019.”

18. Meanwhile, the Applicant continued his work on the Draft Report and, on 2 May 2019, sent his TTL his final version of the Draft Report, writing in the email:

Please find attached the full strategy report which has 7 background chapters including the introduction. All these chapters are summaries of the research conducted during the consultancy. [...]

[...]

This should be treated as a very editable draft. Given that this will be ultimately used as a government document, I would expect some of the language to be toned down a bit for public consumption. [...]

[...]

I have enjoyed this consultancy even though it was way too ambitious for the time allowed! It was also a great pleasure working with my consultants who all, with the exception of [another consultant], performed their duties very well.

19. The TTL responded on 6 May 2019, writing:

As you say, this is a very editable draft, and from this point onward we are taking it forward internally to make it a Bank document that will be shared in due time with the government, once we have gone through our own internal quality assurance process.

20. The Applicant replied to this email, updating the TTL on outstanding matters that would be submitted by other consultants. The TTL responded the same day, writing:

From an administrative point of view this task is closed, as I have been saying repeatedly for a long time now. So please have anyone with anything outstanding

redirected to [another team member] and I, and we will deal with them directly on a case by case basis. Similarly, please do not ask anyone to do any additional work related to this task.

21. The Applicant's STC contract was closed out of the system on 6 May 2019, and he had no further role in preparing the report. After this time, the Consultant revised the Applicant's Draft Report and added new sections to create the final report, "Agrarian Sector Transformation: A Strategy for Expanding the Role of the Private Sector" (ASA Private Sector Report), which was reviewed at the ASA Decision Meeting on 4 June 2019. The Bank states that the "Private Sector Report was originally classified as a Working Paper for 'official use' but inadvertently marked for disclosure at the close of the ASA."

22. On 14 June 2019, the Applicant was invited to a workshop organized by MASA at which the ASA Private Sector Report was shared. The Applicant states that he was

surprised by the fact that the Report/paper was attributed entirely to [...] an external consultant, despite the fact that it reproduced my Draft Report with additional tables, [...] being my own independent research, introduced into the Report without my permission but which I had shared with the TTL 6 months prior to the start of the consultancy.

23. The Applicant refers to the acknowledgments section of the ASA Private Sector Report, which reads:

This Report was produced by a team from the World Bank Group led by [the TTL] (Senior Agriculture Economist), [...] (Senior Agriculture Specialist) and [...] (Agriculture Economist). The technical team was composed of [the Consultant] (consultant) who wrote the main report based on background papers from [...], [...], [...], [...] which were summarized and further elaborated by [the Applicant] (consultant). Additional support was provided by [...].

24. The Applicant emailed the TTL on 14 June 2019, writing:

I am not at all happy about how my role in the preparation of the report was described

"which were summarized and further elaborated by [the Applicant] (consultant)".

I coordinated their work which was not very good at first and elevated their contributions to very acceptable pieces, I wrote much of one of the chapters with considerable new analysis relating to investments and smallholder data, I developed the strategy, put together the matrix and collected the private sector contributions. The description is quite insulting. [Emphasis in original.]

25. On 15 July 2019, the Applicant submitted a complaint of retaliation and blacklisting to the Ethics and Business Conduct Department (EBC). In his submission, the Applicant wrote that he

feels confident that the EBC will find irrefutable evidence of retaliation, starting with his March 2018 dismissal in response to criticism of his then TTL's [...] unprofessional actions and also to [the Country Director's] treatment of his potential hosts for a planned provincial trip. [The Country Director] has continued his retaliatory behaviour through the imposition of a blacklist and a management style that can only [be] described as intimidatory.

26. In October 2019, EBC informed the Applicant that EBC had closed the case as it "did not find that there was sufficient evidence to substantiate the allegations" raised. On 10 October 2019, EBC emailed the Applicant regarding the decision, writing:

EBC as a neutral fact finder, reviews and weighs all the evidence gathered in the course of a review. During the preliminary inquiry stage of this matter, we carefully reviewed [...] the evidence, including the emails you provided, your testimony, and the testimonies of other witnesses. We did not find sufficient basis to move on to the next phase i.e. the investigation phase.

27. In the meantime, on 12 August 2019, the Applicant submitted a Request for Review to Peer Review Services (PRS), disputing:

1. Misrepresentation, and [i]ntentional false description of my role in a major consultancy.
2. Intentional wrong attribution of my contributions to the draft (and widely circulated) report relating to the findings of the consultancy[.]
3. Plagiarism of personal research conducted over past 3 years which was not commissioned by the World Bank[.]

28. On 23 November 2020, the PRS Panel issued its report. The PRS Panel

concluded that the Misattribution Decisions lacked reasonable and observable bases under WBG [World Bank Group] management's obligation to abide by the WBG's core ethical values of teamwork, fairness and respect in its treatment of staff members. The Panel concluded that management followed relevant Principle[s] of Staff Employment, Staff Rules and Administrative Manual Statement[s] (AMS) regarding the assertion of WBG's ownership of, and copyrights over, work done by staff members while employed by the WBG. The Panel determined that there was no evidence of bad faith or improper motives regarding the Misattribution Decisions.

29. The PRS Panel recommended:

(i) that the Publication be revised to properly acknowledge [the Applicant's] full contribution, namely that the Draft Report served as a basis for the Publication, with the insertion of the Publications sources where these consist in [the Applicant's] original work prior to his employment with [the Bank]; (ii) an apology letter addressed to [the Applicant]; and (iii) monetary compensation in the amount of five days of [the Applicant's] daily STC rate at the time he prepared the Draft Report. In relation to the insertion of sources in (i) above in this paragraph, management may wish to review the Tables 3.3A on page 11; Table 3.3B on page 12; Table 3.3C on page 13; and Table 3.4 on page 14 of the Publication.

30. On 2 December 2020, the Vice President, Eastern and Southern Africa, accepted the PRS Panel's recommendation. The Bank states that it has since taken the following corrective measures:

(i) on December 2020, [the Bank] issued payment in the amount of USD3,000 as monetary compensation; (ii) on February 1, 2021, the current Practice Manager of the responsible operational unit, issued an apology to [the] Applicant; [...] and (iii) the first paragraph of the Acknowledgment section of the ASA Draft Private Sector Report now reads as follows: This Report was produced by a team from the World Bank Group led by [the TTL] (Senior Agriculture Economist), [...] (Senior Agriculture Specialist) [...] (Agriculture Economist) and [the Consultant] (consultant). [The Applicant] prepared the draft which served as a basis of the report which was in turn based on background papers from [...], [...], [...], [...], and [...]. Additional support was provided by [...].

31. The Bank states that,

[w]ith respect to the PRS Panel's recommendation to review the tables in the ASA Private Sector Report, [the Bank] has no access to [the] Applicant's unpublished research. [The Bank's] review will be completed when [the] Applicant provides [it] with the alleged source document.

The present Application

32. On 12 May 2021, the Applicant submitted the present Application. The Applicant challenges the misattribution and wrongful taking of his intellectual property and “the unannounced decision to blacklist [the] Applicant for STC consultancies.”

33. The Applicant requests the following relief: “USD 400,000 for wrongful taking of [the] Applicant’s intellectual property including reputational damage; loss of income; wrongful attribution of authorship; plagiarism; emotional stress and frustration over a period of 3 years,” as well as “[d]eletion from [the] Applicant’s personnel records of any prohibition on [the] Applicant’s engagement as an STC,” “[c]o-authorship of the Final Report to be acknowledged and included in the Report,” “[a]cknowledgments that the Applicant was the Lead Consultant for the SERPS Consultancy,” the “Applicant’s intellectual property not attributable to [the] Applicant’s consultancy to be properly recognized in the Report,” and a “[l]etter of [a]pology and explanation.”

34. The Applicant claims legal fees and costs in the amount of \$12,606.25.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant’s Main Contentions

35. The Applicant contends that the Bank misrepresented the Applicant’s role in preparing the ASA Private Sector Report and misattributed his work on the Report to other consultants. The Applicant asserts that, although he wrote much of the introduction and the strategy for the Report, he was not credited with co-authorship and his role was minimized. The Applicant also contends that the Bank’s revision to the acknowledgments section of the Report is inadequate as it incorrectly suggests that his Draft Report was based on the work of the other consultants.

36. The Applicant next contends that the Bank plagiarized his unpublished research by including it in the ASA Private Sector Report without his knowledge or consent. The Applicant

references tables included in the Report that were not included in his Draft Report and asserts that these tables were shared with the TTL in May 2018, before he began his consultancy.

37. The Applicant finally contends that he was blacklisted from Bank consultancies in retaliation for his having criticized his former TTL and the Country Director. The Applicant alleges that he was told by his new TTL that he had been blacklisted and as a result his STC contract would need to be administered by a third party. The Applicant also alleges that around October 2019 he was denied a Bank consultancy on the basis of his blacklisting.

The Bank's Response

38. The Bank contends that it has taken all corrective measures related to the ASA Private Sector Report and that, as such, the Applicant's misattribution claim should be dismissed. With regard to the Applicant's contention of plagiarism, the Bank states that, "[u]pon receipt and review of [the] Applicant's unpublished work, [it] will add the proper citation for these tables, should [the] Applicant's unpublished work show that these are indeed his original work."

39. The Bank finally contends that the Applicant does not allege sufficient facts to constitute a *prima facie* case of retaliation, stating that his claim "is based on self-described circumstantial evidence [...], relies solely on hearsay [...], and is not founded on any factual evidence." The Bank also notes that the Applicant has been able to obtain STC contracts since his alleged blacklisting, including his work on the ASA Private Sector Report and a World Bank Growth Poles Project. The Bank avers that, even if the Tribunal finds the Applicant has made a *prima facie* case of retaliation, "the recruitment of staff members is entirely a discretionary decision and management is under no obligation to offer a former STC any additional contracts or other types of appointments."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

MISATTRIBUTION

40. Principle 2.1 of the Principles of Staff Employment states in relevant part:

The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members. They shall not differentiate in an unjustifiable manner between individuals or groups within the staff and shall encourage diversity in staffing consistent with the nature and objectives of the Organizations. They shall respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal.

41. Principle 9.1 of the Principles of Staff Employment states in relevant part, “Staff members have the right to fair treatment in matters relating to their employment.”

42. Principle 3.2 of the Principles of Staff Employment provides, “All rights in any work produced by staff members as part of their official duties shall belong to The World Bank or the IFC [International Finance Corporation] unless such rights are explicitly relinquished.”

43. Paragraph 9 of AMS 14.50 on copyright states:

The World Bank owns the copyright to any work produced by staff and consultants within the scope of their employment. (Refer to Principle 3.2 of the Principles of Staff Employment.) The Bank Group retains the right to publish or disseminate in any form all work prepared by authors in their capacity as Bank staff members or consultants. This right is administered by EXTOP [Office of the Publisher].

44. In *FB (Merits)*, Decision No. 613 [2019], paras. 106–110, the Tribunal, for the first time, considered a claim of misattribution and noted the jurisprudence of the Administrative Tribunal of the ILO (ILOAT), which had twice held that, while the decision to name authors of a work is within the discretion of an organization, once the organization has decided to name any authors of a publication, it must name “all those who can claim authorship” and not mislead as to the contributions each author has made, in line with the principles of equality and fair treatment. *See In re Press*, ILOAT Judgment No. 66 (1962), para. 3; *In re Nielsen*, ILOAT Judgment No. 611

(1984), para. 11. In *FB (Merits)* [2019], the Tribunal adopted the ILOAT’s approach and found that Bank staff members have a right to be treated fairly regarding the attribution of work produced in their official capacity, meaning that, while the Bank has the discretion not to give anyone attribution or recognition on a publication, once the Bank decides to give attribution to staff members, in this case other STCs, then the Bank should give attribution or recognition to all STCs who contributed to the publication in a manner that adequately reflects their respective contributions, based on the core principles of fairness and equal treatment. *Id.*, paras. 106–110.

45. The Applicant contends that the original acknowledgments section of the ASA Private Sector Report did not properly recognize his contributions to the Report and that the Bank’s correction to the acknowledgments “does not change anything.” The Tribunal recalls that the acknowledgments section originally recognized the Applicant’s contributions as follows: “The technical team was composed of [the Consultant] (consultant) who wrote the main report based on background papers from [...], [...], [...], [...], [...] which were summarized and further elaborated by [the Applicant] (consultant).” The Bank states that, in response to the PRS Panel’s recommendations, the acknowledgments section has been updated to read: “[The Applicant] prepared the draft which served as a basis of the report which was in turn based on background papers from [...], [...], [...], [...], and [...].”

46. The Tribunal will therefore consider whether the updated attribution adequately reflects the Applicant’s contributions, based on the core principles of fairness and equal treatment.

47. A comparative review of the ASA Private Sector Report and the Applicant’s Draft Report reveals that, while the final product did substantially revise the Draft Report by adding new sections and revising and expanding upon the original draft, the ASA Private Sector Report followed the general structure of the Draft Report and reproduced verbatim many sections of the Draft Report. Further, the Applicant states regarding the ASA Private Sector Report:

[The Consultant’s] version replicated verbatim [the] Applicant’s section of the agricultural sector and financial access issues as well as some of the section relating to the consultants’ reports. Instead of keeping the introductory section brief as agreed, it was 52 pages and largely an analysis of the Doing Business Report which was explicitly not to have been referred to. Furthermore, there is an Action Plan

presented that did not have any discussions with the stakeholder institutions, ministries, and departments. Moreover, the actual strategy presented by [the Consultant] presents 7 strategic objectives of which 5, and all the related activities, are extracted verbatim from the Applicant's draft report. These are then again repeated in the "Road Map" section and the "Action Plan."

48. The Tribunal considers, from its own review of the two documents and the Applicant's statements, that significant revisions were made following the Applicant's submission of his Draft Report to the TTL that went beyond the Applicant's own vision for the project. In light of this, the Tribunal finds that it is both fair and accurate to state that the Applicant produced the draft which served as the basis for the final product.

49. The Tribunal will also consider whether the second half of the updated attribution, stating that the Applicant's draft "was in turn based on background papers from" other consultants, adequately reflects the Applicant's contributions. The Applicant contests this attribution, stating that it "strongly suggests that the report is based on the background papers of the consultants while, in fact much of the report including the strategy was undertaken by [the] Applicant." The Tribunal notes, however, that the Introduction of the Applicant's Draft Report reads, "This report summarises the research undertaken by the consultants, three of which have produced comprehensive papers cited in the summary chapters." Further, in his Application, the Applicant states that he summarized reports written by the consultants as chapters in the Draft Report. Noting these statements, the Tribunal finds that it is both fair and accurate to state that the Applicant's draft was based on the background papers of the consultants, as that is what the Applicant's Draft Report itself provided.

50. With these considerations, the Tribunal concludes that the Bank's correction to the acknowledgments section adequately reflects the Applicant's contributions to the ASA Private Sector Report, based on the core principles of fairness and equal treatment. The Tribunal also notes the Bank's confirmation that the report is "an official document and was not intended for public disclosure" and that it is "no longer available on the Bank's public website."

51. The Applicant avers, however, that copies of the original ASA Private Sector Report with the misattribution remain available online and asserts that he continues to be harmed by the

misattribution. To support this assertion, the Applicant states that the ASA Private Sector Report is required reading for an Agriculture 406 course at Nevada State College, referencing the Report's availability on Course Hero as evidence for his assertion. The Tribunal notes that Course Hero is a crowd-sourced platform aimed at students and teachers where anyone can upload documents and it is therefore not possible to determine from Course Hero how many people may have accessed or downloaded the document or whether the document was actually used for a college course. The Bank states that it has conducted several internet searches and has been unable to find evidence to confirm the Applicant's claims. Additionally, the Bank states that it has contacted Nevada State College regarding the assertion but has yet to receive a response. Finally, the Tribunal notes that the course catalogs publicly available online for Nevada State College do not show that there is any Agriculture 406 course taught at the institution.

52. The Tribunal therefore finds that the Applicant has failed to demonstrate that the ASA Private Sector Report is actually being used by Nevada State College. The Tribunal also finds that the Bank has taken reasonable steps to determine if its internal document was being used by another institution. Thus, the Tribunal finds that the Applicant has not met his burden of proof of establishing actual or ongoing harm as the result of the ASA Private Sector Report's inadvertent publication.

53. However, the Tribunal notes that, as of 23 October 2021, the ASA Private Sector Report available internally on the World Bank Group's eLibrary continues to use the original acknowledgments section, despite the Bank's assertion that the acknowledgments section was updated following the PRS Panel's recommendations. Since this version of the document is available internally, it is likely that those who might hire or recommend the Applicant for future work would have access to this document in the Bank's eLibrary. Given the Applicant's continuing career as a consultant specializing in international development and agriculture in southern Africa, such persons would look for the Applicant's most recent work on these topics. Therefore, the Tribunal considers that the Applicant remains subject to ongoing harm to his reputation and career prospects as a result of the continued availability of the misattributed document. In light of these considerations, the Tribunal finds that this delay in completing the stated corrective measures warrants some compensation. In making this finding, the Tribunal observes that allegations by

STCs of misattribution should be treated with sensitivity, noting that STCs may be particularly vulnerable in their contract situations and that the Bank must take adequate care to ensure that, if any attribution is given, it is done fairly and with regard to the principles articulated in *FB (Merits)* [2019].

54. The Tribunal will now consider whether the Bank misappropriated the Applicant's original research by including tables he claims he had prepared prior to his consultancy without his knowledge or permission. The Tribunal notes that the Applicant's contention is with regard to Table 3.3A on page 11, Table 3.3B on page 12, Table 3.3C on page 13, and Table 3.4 on page 14 of the ASA Private Sector Report. The Bank has stated that it "has not been provided [the] Applicant's unpublished research in order to base its review on whether or not these tables were [the] Applicant's original work" and that, "[u]pon receipt and review of [the] Applicant's unpublished work, [it] will add the proper citation for these tables, should [the] Applicant's unpublished work show that these are indeed his original work."

55. Considering that the Applicant has the burden of proof to demonstrate that the included tables were the product of his original research, the Tribunal ordered the Applicant to produce a copy of the email to his TTL in which he claimed to have attached his original research that was the source of these tables, as well as a copy of his original research with information regarding the dates on which the tables were compiled. The Applicant then produced a 10 May 2018 email from himself to the TTL in which he stated that he had attached a "preliminary analysis of the sample agricultural censuses from 1999–2015 (this is a work in progress for a smallholder study I am working on)." The Applicant also produced six annexes, one of which was titled "Ag Census Analysis – tables.docx" and contained the tables which the Applicant identifies as the source of the tables that appear in the ASA Private Sector Report, and which may be presumed to be the document he had attached to the 10 May 2018 email.

56. The Tribunal notes that, while the Bank has speculated that the Applicant's research was the product of an earlier consultancy with the Bank, it has not produced any evidence to show that this research was related to his earlier consultancy that ended in March 2018. Nor has the Bank presented any evidence to refute the Applicant's claim, as he stated in his 10 May 2018 email to

the TTL, that the material he was sharing was “a work in progress for a smallholder study I am working on,” or demonstrated that the Applicant ever gave permission for the Bank to use this research without attributing it to him.

57. The Bank has stated that “[g]iven the uncertainty surrounding the origins of the tables [it] is willing to remove them from the unpublished report.” The Tribunal notes that the Bank has full discretion to determine what is included in its publications and that it is within the Bank’s discretion to remove any reference to the contested tables. The Tribunal therefore finds that the Bank may choose either to remove the tables from the ASA Private Sector Report or to attribute the tables to the unpublished research of the Applicant.

BLACKLISTING

58. The Applicant also contends that he was blacklisted from Bank consultancies in retaliation for his criticisms of his former TTL and the Country Director.

59. Staff Rule 8.02, paragraph 2.04, provides:

Managers and other Staff Members are expressly prohibited from engaging in any form of retaliation against any person for reporting suspected misconduct under this Rule, or for cooperating or providing information during an ensuing review of allegations under Staff Rule 3.00, “Office of Ethics and Business Conduct (EBC),” or investigative process under Staff Rule 8.01, “Disciplinary Procedures.” Under the Code of Conduct for Board Officials, Board Officials are prohibited from retaliating against an individual who reports in good faith suspected misconduct by a Board Official. This prohibition against retaliation extends also to retaliation against any person because such person was believed to be about to report misconduct or believed to have reported misconduct, even if such belief is mistaken. For purposes of this Rule, retaliation shall mean any direct or indirect detrimental action recommended, threatened, or taken because an individual engaged in an activity protected by this Rule. A Staff Member who believes s/he has been retaliated against in violation of this provision may seek relief in accordance with Section 3 of this Rule. A Staff Member who engages in such retaliation shall be subject to proceedings under Staff Rule 3.00, “Office of Ethics and Business Conduct (EBC).”

60. Staff Rule 8.02, paragraph 3.01, provides:

Where a staff member has made a *prima facie* case of retaliation for an activity protected by this Rule (i.e., by showing that the staff member reported suspected misconduct under this Rule and has a reasonable belief that such report was a contributing factor in a subsequent adverse employment action), the burden of proof shall shift to the Bank Group to show – by clear and convincing evidence – that the same employment action would have been taken absent the staff member’s protected activity.

61. In *Bauman*, Decision No. 532 [2016], para. 95, the Tribunal reaffirmed that the prohibition against retaliation also applied where staff members used the conflict resolution system, holding:

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

62. The standard of proof for any claim of retaliation is that an applicant must make a *prima facie* case to show the retaliatory motives behind the impugned decision. *See Bodo*, Decision No. 514 [2015], para. 77. However, as stated in *Bauman* [2016], para. 99,

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

63. The Tribunal notes that the Applicant has not alleged that he engaged in a protected activity such as reporting misconduct or using the Bank’s conflict resolution system. Rather, the Applicant alleges that he was blacklisted as a result of his criticizing his former TTL and the Country Director. As evidence of this alleged blacklisting, the Applicant contends that his new TTL told

him that he was blacklisted and that his STC contract would be administered through a third party in order to process it without the knowledge of the Bank's country office in Mozambique.

64. The Tribunal notes that the Applicant submitted a complaint to EBC regarding the alleged retaliation and that EBC closed the case for insufficient evidence. Further, the Tribunal considers that, although the Applicant alleges his new TTL told him he was blacklisted, he was soon after hired as an STC with the Bank. While the Applicant asserts that his contract was processed by a third-party consultant to conceal his involvement, in fact his LOA was addressed to him and arranged by a World Bank consultant who also processed the contracts for the other six consultants working with the Applicant on the project. This does not amount to evidence of retaliation.

65. The Applicant also claims that, around October 2019, he was told by an acquaintance that this acquaintance was approached by a Senior Economist at the Bank's Mozambique country office to conduct a consultancy regarding agriculture finance. According to the Applicant, the acquaintance declined and suggested that the Applicant was better suited to such an opportunity. The Applicant claims that the Senior Economist told the acquaintance that he knew the Applicant but that the Bank was looking for a consultant who had not previously worked with the Bank.

66. To the Applicant, this occurrence demonstrated that he must be blacklisted as he was "essentially the only person in Mozambique who ha[d] sufficient experience to undertake this assignment." However, even assuming these events occurred as the Applicant now relates them, the Applicant has not suggested that he ever pursued this opportunity.

67. In sum, the Tribunal finds that the Applicant's allegation is far too tenuous to constitute *prima facie* evidence of retaliation. Accordingly, the Tribunal dismisses this claim.

REMEDIES

68. The Tribunal notes that the Applicant has already been paid \$3,000.00 regarding the misattribution decision following the PRS Panel's recommendation. As stated in *DB*, Decision No. 524 [2015], para. 133, "the Tribunal is free to take into account any compensation already received

by an applicant, and to adjust accordingly any award the Tribunal itself chooses to make.” The Tribunal considers that, despite the Bank’s corrective measures, there was still some harm to the Applicant as the ASA Private Sector Report with the misattribution remains available internally on the World Bank Group’s eLibrary. Noting that any continuing harm may be minimal as the document is not public, the Tribunal considers that an additional award of \$2,500.00 is sufficient to compensate the Applicant for the continued misattribution.

69. The Tribunal also notes that the Applicant has claimed legal fees and costs in the amount of \$12,606.25. Considering that the Applicant has partially succeeded in his claims, the Tribunal awards the Applicant legal fees and costs in the amount of \$6,500.00.

DECISION

- (1) The Bank shall pay the Applicant \$2,500.00 for continued harm resulting from the misattribution decision;
- (2) The Bank shall ensure that the correct acknowledgments section is included in the ASA Private Sector Report, including where it is published in the Bank’s online resources;
- (3) The Bank may choose either to remove Table 3.3A, Table 3.3B, Table 3.3C, and Table 3.4 from the ASA Private Sector Report or to attribute the tables to the unpublished research of the Applicant;
- (4) The Bank shall contribute to the Applicant’s legal fees and costs in the amount of \$6,500.00; and
- (5) All other claims are dismissed.

/S/ Andrew Burgess

Andrew Burgess

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., * 8 November 2021

* In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.