



World Bank Administrative Tribunal

2021

Decision No. 651

**FR,
Applicant**

v.

**International Finance Corporation,
Respondent**

(Merits)

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

**FR,
Applicant**

v.

**International Finance Corporation,
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 5 May 2020. The Applicant was represented by Nat N. Polito of The Law Offices of Nat N. Polito, 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 30 October 2020.

3. The Applicant is challenging "the process for the selection of the person to lead the Coordination Unit, [the Applicant's] non-selection to lead the Coordination Unit, as well as his demotion and removal from leadership."

FACTUAL BACKGROUND

4. The Applicant joined the IFC on 29 November 2004 as a Senior Financial Officer, Grade Level GG Tier 2 (GG-2). He was later promoted to Principal Financial Officer, Grade Level GH-1.

5. The Applicant states that he became the head of the Treasury Client Solutions (TCS) Global Support Unit on 1 July 2015. According to the Applicant, this unit was formed to design and implement two Capital Markets training programs – the Columbia-IFC Training Program and the IFC Milken Capital Markets Training Program – as well as other initiatives within the Treasury & Syndications Vice Presidential Unit (VPU) in which he worked. The Applicant received positive

performance evaluations in Fiscal Year 2016 (FY16) and FY17 highlighting his technical expertise and communication skills, and the Applicant's Salary Review Increase ratings over the course of his time with the IFC ranged from 3 to 4.

6. In 2017, the IFC decided to reorganize the VPU. IFC senior leadership decided to form a new unit, to be called the Coordination Unit (CU), encompassing the duties and responsibilities of the Applicant's unit and also spanning the entire VPU. The new head of the CU would report directly to the IFC Vice President (VP).

7. According to the Applicant, in July 2017, he was told by his immediate director (Director) that the TCS Global Support Unit would be dissolved in order to allow for the creation of the CU to be led by Mr. X. At the time, Mr. X was a Grade Level GG-2 staff member based in London. In a written statement filed with the Tribunal and dated 26 January 2021, the Director states, "I did not in July of 2017 or at any other time advise [the Applicant] that [the VP] had already decided that [Mr. X] was chosen to lead the Coordination Unit."

8. According to the Applicant, he raised the following concerns with his Director in July 2017:

- (a) [W]hy was he not considered to lead the CU [?]
- (b) [W]hat was the timing for the creation of the CU [?]
- (c) [W]hat was his role and job within IFC Treasury going to be going forward [?]
- (d) [W]hy was he tasked with helping to create and staff a CU that would require the abolition of his own Unit [?]
- (e) [W]as there going to be a process of considering these issues and some form of competitive selection [?]
- (f) [W]hat was the status of his leadership role within IFC Treasury [?]

9. In September 2017, the VPU held a leadership retreat in Switzerland. The Applicant attended this retreat. According to the Applicant, during the retreat the VP announced the organizational changes in the VPU including the formation of the new CU. The Applicant also states that, at the retreat, the VP "announced that he wanted [the Applicant] to remain involved

with Columbia-IFC Capital Markets Training Program indefinitely.” According to the Applicant, these announcements were made in public and without his prior knowledge or consent, and without the VP’s consultation with him.

10. On 19 October 2017, the Applicant received an email from Ms. A, an executive coach and facilitator of the IFC’s leadership retreat in Switzerland. The email’s subject line was “Follow up and notes from TCS Leadership Retreat in Switzerland – Sorry for the delay.” This email included a summary of Ms. A’s notes which covered “key issues raised during TCS Leadership Retreat.” The email stated, in pertinent part:

Serious concerns about the timeline for [Mr. X’s] transition from [a colleague’s] team to lead new team in DC. Strong preference for July 1, 2017 [*sic*] transition date rather than December 31st since [the colleague’s] team is severely resource constrained. Additionally, since [the Applicant] will likely still be responsible for Columbia program, he insists on having authority if he has responsibility. [The VP’s] comments about [the Applicant] staying involved in the Columbia program was confusing. Role clarity is needed.

[...]

Request that [the Applicant] be a co-supervisor for [another colleague’s] direct reports that are based in DC [...] and helping provide support and guidance on structured finance deals.

[...]

I shared honest feedback with [the VP] about TCS being at a breaking point and the importance of his really listening to concerns raised by [the Director] and the TCS leadership team especially around timing of new unit including transition of resources and [the Applicant’s] involvement with the education initiatives (authority being required while [the Applicant] is responsible for delivery). Please let me know if I have missed any thing in my notes and please consider me a resource going forward.

11. The IFC asserts that the above email from Ms. A is hearsay, and, in his written statement, the Director attributes Ms. A’s comments regarding Mr. X’s transition to D.C. to “a result of speculation by the participants at the retreat about who may be selected for the position of Head of the Coordination Unit.” The Director further states, “It does not reflect my own statements at the retreat, and [the VP] did not, to my knowledge, participate in these discussions.”

12. According to the Applicant, in late November 2017, he was informed by the Director that the CU would take effect in January 2018 rather than July 2018 as previously discussed.

13. On 3 December 2017, the Applicant submitted his resignation to VPU senior leadership via email.

14. On 4 December 2017, the Applicant had a one-on-one meeting with the VP. The parties dispute the conversation that took place during this meeting. According to the Applicant, the VP declined to accept his resignation and asked him to take a week to reconsider it. The Applicant further states that, during this meeting, the VP promised to propose the Applicant for progression to Grade Level GH-2 at the next promotion cycle in summer 2018, and promised that the Applicant would remain a member of the VPU leadership team. The IFC asserts that there is no contemporaneous evidence in the record that any promise was made, and that the VP denies making the alleged promise.

15. Additionally, on 4 December 2017, the Applicant corresponded with Mr. B, a member of VPU leadership copied on the Applicant's 3 December 2017 email announcing his resignation. In the 4 December 2017 email to Mr. B, the Applicant stated:

Thanks [Mr. B] – it has certainly been a pleasure working with you over the years as well. As an update, I had a long discussion with [the VP] this morning and he has requested that I take a week to further consider my decision in light of our discussion. I agreed to do so, so appreciate it if you could kindly avoid sharing this info with others quite yet.

16. On 11 December 2017, the Applicant rescinded his resignation during another one-on-one meeting with the VP. The specific discussion during this meeting and the reasons for the Applicant's decision to rescind his resignation are disputed by the parties. According to the Applicant, he "conveyed [his] decision to rescind [his] resignation based on the promises made by [the VP] on December 4." The VP denies making the alleged promises, and the IFC maintains that there is no evidence of a promise in the record.

17. Also on 11 December 2017, the VP sent a department-wide email with the subject line “Adjustment to the Treasury/Syndication VPU Structure.” The email stated, in pertinent part:

While the changes for the various VPUs and departments outside of our own VPU have been ongoing, we have also been thinking about how we can refresh the VPU structure and sharpen focus to align ourselves to better delivery [*sic*] our VPU’s value proposition for IFC. Over the past six months, the VPU senior leadership team has been discussing and refining ideas, resulting in an upcoming adjustment to our organizational structure, which has been approved by our CEO [Chief Executive Officer].

[...]

A new Coordination Unit will be created alongside the four Departments of the VPU to centralize functions related to VPU strategy, advisory, capacity building, knowledge management, social media, conferences as well as other initiatives and support services to the entire VPU. It also coordinates and supports the communications and budget functions. Staff of the unit will be transferred from [...] and [...], with a new unit head position reporting directly to me and the senior leadership team. The unit will be created by January 1, 2018 with a six months transition period to ensure minimal disruption. I expect the Unit to be highly flexible and entrepreneurial in approaches and over time will create new value propositions based on the VPU’s expertise and knowledge. The unit head position will be advertised soon. Until the head is recruited, [...] my advisor [the VP’s Advisor], will serve as the acting head of the Unit.

I’d like to give special recognition and thanks to [the Applicant], who has led the implementation of a number of the functions the new unit will inherit from, including the IFC/Milken Institute Fellowship program, the Columbia program for capital market and others. After the transition period, [the Applicant] will continue to provide guidance and advice to these two programs and to tap into the alumni’s network to deliver [...] mandate more effectively.

This adjustment does not impact [...] and [...]. It will be carried out on a budget neutral basis and no increase of senior staff (H&+ [Grade Level GH and above]) count.

18. The CU was formed in January 2018 with the VP’s Advisor as interim head.

19. The position of Head of the CU was advertised internally on 2 February 2018 with a closing date of 19 February 2018. The position was advertised as “Grade: GH – GH” for a term appointment of three years. Eleven candidates applied for the position. The Applicant did not apply.

20. The selection and interview panel for the position was composed of the Director, the VP's Advisor, Mr. B, a director from Blended Finance, and a Principal Financial Officer, Global Macro and Market Research, with a Senior Human Resources (HR) Business Partner providing HR support. The panel shortlisted and interviewed three candidates for the position in mid-March 2018, including Mr. X. In the applications for the Head of the CU position, provided by the IFC, Mr. X's title is listed as Senior Financial Officer, Grade Level GG.

21. With respect to the selection process, the IFC provided interview reports pertaining to each of the candidates and prepared by each of the panel members. In these reports each panel member provided their assessment of the candidate's relevant experience, technical experience, client relations, interpersonal/communication skills, fit with the IFC mission, and leadership skills. The interview report also allowed for an overall appraisal of the candidate, general comments, and a recommendation of whether or not to extend an offer to the candidate. With respect to Mr. B's reports, there is no interview report pertaining to Mr. X in the record, but there are reports from him for the other two shortlisted candidates.

22. According to the IFC, the interview panel recommended that Mr. X be offered the position of Head of the CU "because he was considered most qualified." Mr. X was then interviewed by the VP who, on 20 March 2018, gave his approval for Mr. X's appointment. The proposed appointment of Mr. X was sent to the IFC CEO for approval, which was given on 17 April 2018.

23. On 25 April 2018, the VP announced Mr. X as Head of the CU effective 11 June 2018.

24. In June 2018, there was a re-alignment of corporate titles within the IFC which included the abolition of the title "Head." According to the IFC, "[t]his triggered a discussion about the configuration of the [VPU] leadership team, and it was subsequently decided that the leadership team would consist of only staff who were managers or acting as managers." According to the Applicant, on 26 June 2018, the Director advised him that "the VP had decided to drop [him] from the leadership team and that he would not be proposed for progression to grade H2."

25. On 17 July 2018, the Applicant filed Request for Review No. 434 with Peer Review Services (PRS). According to the PRS Panel's Report, the Applicant's Request for Review challenged the following World Bank Group (WBG) decisions, actions, and inactions in FY18:

- (i) Removal from the Treasury and Syndications Vice Presidency (CFIVP) leadership team (Removal from Leadership Team Decision);
- (ii) Not to propose him for progression to Chief Officer, Level GH Tier 2 (GH-2) despite an alleged promise to do so (Progression Decision);
- (iii) Transfer of a substantial portion of his responsibilities and staff to a new unit (Transfer of Responsibilities Decision); and
- (iv) Realignment of units based on the feedback from unit staff in the Staff Engagement Survey (Realignment Decision).

26. The Applicant filed a second Request for Review, No. 449, with PRS on 4 December 2018. According to the PRS Panel's Report, the Applicant filed this Request for Review challenging

- (i) Retaliation in the form of facing a more rigorous nomination process for the IFC "Top 30 for IFC 3.0 Individuals Award Category" in FY18 (Corporate Award Decision);
- (ii) Retaliation in the form of being "dropped" from a CFIVP planned trip to New York City to meet with Columbia University Officials (Visit to Columbia University Decision); [and]
- (iii) "[I]nconsistent rules under which matters involving issues (discrimination, retaliation, among others) under the purview of EBC [Ethics and Business Conduct Department] interact with the PRS process, particularly in regards to the timeliness requirements of each" (Claim regarding Inconsistent Rules).

27. The PRS Panel held a hearing on 10 October 2019.

28. On 20 December 2019, the PRS Panel issued the Panel's Report in Consolidated Requests for Review Nos. 434 and 449. The Panel's Report included findings and conclusions regarding the Removal from Leadership Team Decision, the Progression Decision, the Corporate Award Decision, and the Visit to Columbia University Decision. The PRS Panel's Report also stated that the Panel had "also reviewed [the Applicant's] Claim regarding Inconsistent Rules with a view to

share any observations and recommendations with WBG senior management.” The Applicant’s other claims – the Transfer of Responsibilities Decision and the Realignment Decision – were previously dismissed on jurisdictional grounds.

29. In the PRS Panel’s Report, the Panel recommended that the Applicant’s requests for relief be denied. Specifically, the PRS Panel found that, with respect to the challenged decisions, the IFC had “(a) provided a reasonable and observable basis; (b) followed a fair and proper process; and (c) acted in good faith, and that [the Applicant] was treated in accordance with the terms of his appointment and contract of employment.”

30. During the course of the PRS proceedings, the VP stated that he did not recall making a promise to the Applicant regarding remaining on the leadership team, and the PRS Panel’s Report stated that no witnesses had testified to being aware of any such promise. Further, the PRS Panel found that the hearing testimony did not establish that the VP had promised the Applicant that he would be progressed or recommended for progression to Grade Level GH-2. According to the PRS Panel’s Report, “[the Applicant] clarified during the Hearing that [the VP] did not promise or guarantee him promotion/progression, but rather that [the VP] allegedly mentioned recommendation to the GH-2 progression panel as an ‘implied’ – quoting [the Applicant] – inducement to withdraw his resignation.” The PRS Panel also found that the record showed that the Director had in fact recommended the Applicant for progression from GH-1 to GH-2, but that the Applicant was not progressed due to staffing restrictions, competition, and a VPU-wide talent and performance review process.

31. Additionally, during the PRS proceedings, the PRS Panel learned that the Director had shared the parties’ written submissions with witnesses, in contravention of the PRS confidentiality standards. According to the PRS Panel’s Report, the Director stated that he had shared these documents with witnesses “to jog their memory.” The PRS Panel determined that these disclosures “(i) did not materially affect the Panel’s review, insofar as they were not determining and did not influence its objective, impartial and comprehensive consideration of the totality of the evidence and, therefore, (ii) did not negatively impact the outcome of the Panel’s review.”

32. On 21 January 2020, the IFC accepted the PRS Panel’s recommendation.
33. On 5 May 2020, the Applicant filed his Application with the Tribunal.
34. The Applicant states that he is contesting (i) “the process for the selection of the person to lead the Coordination Unit”; (ii) “his non-selection to lead the Coordination Unit”; and (iii) “his demotion and removal from leadership.”
35. As specific performance, the Applicant requests (i) “a finding that he should have been reasonably considered to lead the Coordination Unit”; (ii) “a finding that his demotion and removal from leadership lacked a reasonable basis or failed to follow a reasonable process”; and (iii) “to be nominated for progression and be restored to his leadership role and functions within the VPU.”
36. The Applicant also “seeks damages for lost career opportunity, reputational damage, inconvenience, and physical/mental stress, assessed at two year’s net salary, and such other and further relief as this Tribunal deems just and appropriate under the circumstances.” The Applicant requests legal fees and costs in the amount of \$28,053.00.
37. On 27 May 2020, the IFC filed a preliminary objection challenging the admissibility of some of the Applicant’s claims.
38. On 16 November 2020, in *FR (Preliminary Objection)*, Decision No. 639 [2020], the Tribunal dismissed the IFC’s preliminary objection and held it would consider the Applicant’s claims challenging “the process for the selection of the person to lead the Coordination Unit, [the Applicant’s] non-selection to lead the Coordination Unit, as well as his demotion and removal from leadership.” *Id.*, para. 60.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contentions

Mr. X was preselected for the position of Head of the CU, and the Applicant's non-selection and demotion constitute an abuse of discretion

39. The Applicant's main contention concerns his alleged non-selection or non-promotion for the position of Head of the CU, coupled with the claim that Mr. X was improperly preselected to lead the CU without a competitive process. The Applicant alleges that Mr. X's preselection led to the Applicant's effective demotion, which was without cause, was not due to any performance issues on his part, and lacked due process. The Applicant further contends that the VP failed to follow any reasonable protocol to protect the Applicant's career and that the damage to his career constitutes an abuse of managerial power and discretion. The Applicant invokes Principle 2.1 of the Principles of Staff Employment, and he asserts that IFC management failed to "act with fairness and impartiality" and failed to "follow a proper process in [its] relations with staff members," noting that, under the Principle, the IFC "shall not differentiate in an unjustifiable manner between individuals or groups within the staff."

40. The Applicant submits that he has suffered various adverse employment actions which occurred without deliberation or any sort of process, and which resulted in his unfair and unreasonable treatment. Specifically, the Applicant asserts that his leadership functions were taken away and his staff was removed, and, further, that he was not proposed for progression as promised and was not selected to head the CU, which he claims he created and was well positioned to continue to lead in title and function. He maintains that individuals who lacked qualifications were promoted or selected to head the CU in a temporary and permanent capacity.

41. The Applicant avers that the standard, pursuant to Tribunal precedent, is to review the decisions by which he allegedly has been affected for abuse of discretion. To the Applicant, precedent requires a non-selection decision to have a reasonable and observable basis, and the Tribunal must find the IFC to have abused its authority if the decision not to promote the Applicant and to demote him "altogether lacks support in factual or reasonable inference." Further still, the

Applicant asks the Tribunal to “establish clear precedent that the *de facto* demotions suffered by [him] are the type of adverse employment actions that must be rationally based and justified by the employer similar to termination, non-selection, non-extension and other such action.”

42. The Applicant contends that he was not given any reasonable explanation as to why he was not selected to lead the CU or why he was demoted, and that “there was no progressive punishment or opportunity to correct any behavior that should be afforded a staff member.” From the Applicant’s perspective, without reasonable bases to support the alleged adverse employment decisions, the Tribunal should find that his due process rights were not protected and should reverse the decisions. He contends that he is “entitled to relief, including placement in a leadership role and consideration for promotion/progression,” and that he is also “entitled to a reasonable explanation for the non-promotion and demotion decisions.”

43. The Applicant submits that he “was never considered a candidate” and “never had an opportunity to lead the newly reconstituted CU,” even though he was instrumental in forming the CU and was well qualified to lead it. The Applicant claims that he did not apply for the position for two reasons. First, he asserts that the job posting was a mere formality for a position that had already been filled, and was “a sham exercise and [...] he had no prayer of being selected.” In support of this contention, the Applicant references a statement from the VP’s 11 December 2017 email, prior to the job posting in February 2018, stating, “After the transition period, [the Applicant] will continue to provide guidance and advice to these two programs.” The Applicant posits that the VP’s statement indicates that it was understood that the Applicant would not be considered to lead the CU. Second, the Applicant submits that he did not apply for the position of Head of the CU because he did not want to jeopardize the agreement he had with the VP and because he “feared additional career damage if [he] were to be judged by [the VP] as challenging his plan.”

44. The Applicant insists that the designation of Mr. X as Head of the CU in fact took place in spring/summer 2017, long before the formal recruitment process which was in early 2018. According to the Applicant, Mr. X “was a favorite of the VP” and was preselected, and this preselection was well-known within the leadership team. The Applicant contends that the written statements of the VP and the Director submitted by the IFC in its pleadings “do not definitively

rule out the fact that [Mr. X] was the VP's predetermined choice and thus effectively precluded [the Applicant] from competing for the job." Further, the Applicant questions why the IFC has not solicited additional statements from staff members to rebut his claim of widespread knowledge of Mr. X's alleged preselection.

45. For the Applicant, the preselection of Mr. X before the competitive process began means the process failed to meet the Bank Group's standards. In particular, the Applicant asserts that "Tribunal precedent establishes that the principles of objectivity, transparency, rigor, and diversity should be applied in the selection process," and that these standards require "a demonstration of contemporaneous and detailed documentation of the deliberations of the interview panel in its selection process." The Applicant asserts that flaws existed in the selection process because Mr. X was known to lead the CU prior to the job announcement, and the Applicant contends that "[t]he fact that a process was followed for hiring [Mr. X] does not cure the pre-selection."

46. Moreover, the Applicant deems it extremely unlikely that members of the interview panel would not have known of the VP's intention for Mr. X to head the CU, and would not be influenced by the VP's desires, in light of the fact that they reported directly to him in their staff positions.

47. Further, the Applicant submits that the appointment of the VP's Advisor to lead the CU during the transition period before the position was posted also indicates that the Applicant was not being considered. To the Applicant, he was already leading the CU and, to minimize disruption, could have continued leading the CU while the hiring process took place. The Applicant asserts that there is no "documentary support such as an objective comparison analysis" to justify demoting him and appointing the VP's Advisor as acting Head of the CU and Mr. X as Head of the CU. He contends that the preselection of Mr. X was an abuse of authority, and he asserts that the selection decision should be overturned in favor of a competitive process in which he and others are duly considered.

48. The Applicant also alleges that it was in reliance on a promise from the VP to be proposed for progression and to remain on the leadership team that he did not apply for the position of Head of the CU. To support his claim, the Applicant asserts that the record reflects that he took specific

actions in reliance on this promise and consistent with the doctrine of promissory estoppel. These actions were to rescind his resignation, continue his employment with the IFC, and forgo applying for the Head of the CU position. The Applicant contends that a lack of recollection on the part of the VP with respect to the alleged promise during the PRS proceedings does not mean that the VP did not make the promise. The Applicant also suggests that the circumstances in his case “are sufficient to infer a promise ‘explicitly’ or by ‘unmistakable implication.’”

49. The Applicant further asserts that his removal from the leadership team and the failure to promote him as allegedly promised have placed him “at grave risk of termination due to an on-going workforce planning program that, within the Applicant’s specific VPU, affect[s] grade H-level non-managerial staff.” The Applicant proffers that Mr. X’s presence on the leadership team, even though he is not a manager, makes him “ring-fenced from potential redundancy,” and the Applicant takes issue with the creation of a new GH-level position to lead the CU, which he stresses was not in line with the CEO’s policy of reducing the VPU’s GH-level headcount. The Applicant claims that, had he been appointed, there would have been no need to create a new GH-level position because he was already at Grade Level GH-1, in contrast to Mr. X who was Grade Level GG-2.

50. For the Applicant, the managerial decisions alleged impacted his career, were arbitrary, and lacked due process. Citing *Barnes*, Decision No. 176 [1997], para. 10, the Applicant notes that the exercise of the employer’s discretion in deciding a staff member’s work program must be fair and not arbitrary. Further relying on *Barnes* [1997], he claims that the removal of his functions, staff, and leadership role left him “without a clear understanding of his future with the Bank.” He contends that the fact that his salary has not been reduced does not negate that he suffered a reduction in position, and he claims that his allegations amount to adverse employment actions similar to termination.

Confidential documents were improperly disclosed during the PRS proceedings

51. The Applicant contends that, prior to his PRS hearing on 10 October 2019, confidential documents were improperly leaked to witnesses with direct influence over his career and

performance evaluation. These documents included his filings with EBC regarding his allegations against the VPU in terms of abuse of authority and retaliation. He asserts that the disclosures are in breach of Bank Group rules, including Staff Rule 3.00, paragraph 7.03, regarding confidentiality of staff members in bringing allegations to EBC.

52. The Applicant suggests that the IFC's position is that any document may be given to a witness in a PRS proceeding for the purposes of "jogging the memory." To the Applicant, this is untenable, and there was "no reasonable justification for disclosing the sensitive information to witnesses testifying before the PRP [Peer Review Panel]." Moreover, the Applicant contends that the sharing of this information likely improperly influenced witness testimony and that the additional sharing of the information with his entire VPU senior leadership team, including the VP who was the subject of the Applicant's complaint to EBC, has likely materially harmed his career. He contends that, as a result of the disclosures, he has suffered moral and reputational harm which, "given the sharing of this information with key people with great influence over his career, have likely materially prejudiced his career and standing within IFC." He submits that he is entitled to relief.

The IFC's Response

The selection process for the Head of the CU was fair and reasonable and not an abuse of discretion, and the Applicant was not demoted

53. The IFC contends that Mr. X was not preselected to be Head of the CU. Further, the IFC maintains that the selection process for the position was fair and reasonable. The IFC submits that the relevant standard is found in Tribunal precedent – specifically, "a decision by the Bank to select a staff member for a particular position rests within the Bank's discretion, and may be overturned by the Tribunal only when it concludes that this discretion has been abused" (*Jassal*, Decision No. 100 [1991], para. 30). The IFC contends that the selection process did not constitute an abuse of discretion and that the Applicant's claim on this front should be dismissed.

54. The IFC asserts that the Applicant has failed to point out any deficiency in the IFC's selection process carried out in spring 2018. The IFC contends that the position of Head of the CU

was subject to a competitive selection process which followed HR rules and was open to anyone within the WBG, including the Applicant. The IFC notes that, in PowerPoint presentations in October 2017 and November 2017, the position was noted as to be “competitively advertised,” and that the VP also noted, in the email announcing the creation of the CU, that the position of Head would be one of several that would be “advertised soon.” The IFC underscores that the position was advertised on 2 February 2018 for more than two weeks and that a shortlisting and interview panel composed of high-level staff members evaluated the candidates. For the IFC, the Applicant could not possibly be selected for the position because he did not apply.

55. The IFC submits that three candidates were shortlisted and interviewed, and that each of the panel members individually evaluated the candidates and prepared interview reports. The IFC maintains that the interview panel recommended Mr. X “because he was the most qualified candidate” and that the VP subsequently interviewed Mr. X and agreed with the panel. The IFC submits that Mr. X’s selection was not an abuse of discretion by management in that it resulted from “a fair and reasonable selection process.”

56. The IFC relies upon separate written statements from the VP and the Director, both dated 26 January 2021, to contradict the Applicant’s claims. In particular, in the VP’s statement, he states, “I did not pre-select anyone for the position as Head of Coordination Unit.” He also states:

In December 2017, after having received [the Applicant’s] email announcing his resignation, I suggested to [the Applicant] that we meet to discuss. I did not want [the Applicant] to make a rash decision. Thus, when I met with [the Applicant], I asked him to take some time to consider his decision to resign. I did not promise [the Applicant] that he would remain a member of the leadership team, nor that he would be proposed for progression to level GH-2. I would not have been able to promise any staff member that they would permanently remain a member of the leadership team, since the composition of the team will naturally vary from time to time. I would also not be able to promise any staff member that they would be proposed for progression, which is a highly competitive process. In the case of H level staff progression, the selection and decision are at corporate level and thus beyond my delegated authority at the VPU level.

In the Director’s statement, he states, “I did not in July of 2017 or at any other time advise [the Applicant] that [the VP] had already decided that [Mr. X] was chosen to lead the Coordination Unit.” The Director also states, “However, I did mention that the position will be competitively

filled and all interested candidates could apply, including G2-level staff, and that competition is not restricted to only H-level staff.” The Director further states the following in his statement:

I have reviewed an email by [Ms. A] of October 19, 2017. [Ms. A] worked for IFC as an Executive Coach and participated in a retreat that was held in Switzerland in 2017. While [Ms. A’s] email appears to imply that [Mr. X] was going to lead a “new team in DC,” I believe this statement is a result of speculation by the participants at the retreat about who may be selected for the position as Head of the Coordination Unit. It does not reflect my own statements at the retreat, and [the VP] did not, to my knowledge, participate in these discussions. In our discussions among department leadership team (of which [the Applicant] was a member), we used to guess who are senior level G2 staff members who will be interested and compete for the new position and [Mr. X] was a possibility. I was concerned that no senior G2 staff should leave the department for other jobs without proper back-up arrangements or reducing some of the deliverables as our department was swamped with lot of deliverables and we were short on resources. We used to discuss this issue among the department leadership team and expressed our concern to [Ms. A] that if the somebody from our department is selected to lead the unit, then we should get appropriate back-ups. [Mr. X] being a senior level G2 staff member and wanting to grow to level GH was a possibility we used to discuss, and we wanted to be prepared in case he decided to leave our department. [The Applicant] used to be in these discussions and that is why the email from [Ms. A] is also addressed to him. These discussions are natural as being managers we need to be on the constant watch out on potential exits.

57. Based upon the above statements of the Director and the VP, the IFC contends that the Director never told the Applicant that Mr. X had been chosen by the VP to be Head of the CU, and that the VP denies preselecting Mr. X to lead the CU. The IFC also notes that the VP was not a part of the shortlisting and interview panel, and that the VP himself has indicated that he, as a veteran of international organizations, is well aware of the relevant HR rules governing hiring for senior posts. Further, the IFC relies upon the statement of the Director, which claims that the email from Ms. A is “a result of speculation,” to refute the Applicant’s contentions. In short, the IFC views the Applicant’s evidence of Mr. X’s alleged preselection as “hearsay within hearsay: neither [the] Applicant nor [Ms. A] spoke to [the VP], who was the hiring manager, about the matter and only purports to repeat statements by others who supposedly spoke to [the VP].”

58. With respect to the Applicant’s claims of demotion in the context of the creation of the CU, the IFC contends that “staff members are not entitled to decide the tasks on which they work, nor

are they entitled to permanently keep a work program once it has been assigned.” The IFC asserts that a staff member’s work program is a matter of managerial discretion and that this position is consistent with Tribunal precedent. The IFC contends that the Applicant is taking issue with the changed nature of his work program, and it states that “[the Applicant’s] work is perhaps less ‘high profile.’”

59. The IFC submits that, as a result of the 2017 reorganization, part of the Applicant’s work program was transferred to the CU. The IFC states that the senior leadership team decided on the reorganization and it was approved by the IFC CEO. The IFC also submits that, prior to its implementation, the reorganization was announced and discussed in leadership team meetings at which the Applicant was present. The IFC states that “the reorganization was not an abuse of discretion by management” and that “[i]t had a reasonable explanation, which was provided to [the Applicant] and other staff members prior to the reorganization.” The IFC asserts that the Applicant agreed with the creation of the CU and that, by its very nature, the reorganization of work that ensued was a “logical implication” and cannot reasonably constitute a demotion.

60. With respect to the Applicant’s claim that he was removed from the leadership team, the IFC contends that this does not constitute a demotion. The IFC asserts that the Applicant was removed from the leadership team due to the fact that he was no longer managing staff. More specifically, the IFC contends that the Applicant was removed because “he was no longer a ‘de facto’ Head” and that the decision was not based on his performance and was not targeted to the Applicant, as he was not the only staff member affected. To the IFC, the “Applicant was not a manager and would therefore not be part of [the] reconfigured leadership team.”

61. The IFC asserts that the Applicant’s modified work program and removal from the leadership team were neither arbitrary nor abusive, but rather had a reasonable basis in the creation of the CU. The IFC also contends that there was no actual demotion because the Applicant continues to work at the same grade level and has in fact “received generous annual salary increases following his alleged demotion.”

62. Further, the IFC asserts that the CU was a new unit created pursuant to the 2017 reorganization and that the Applicant's contention that he was already leading the CU and was removed cannot stand. Additionally, the IFC claims that the choice of the VP's Advisor to temporarily lead the CU was appropriate because, as a part of the selection committee, she would be precluded from applying for the position of Head and, accordingly, "no candidate would have an unfair advantage by already 'doing the job.'"

63. The IFC further submits that the Applicant has not shown either that the VP promised him that he would remain a member of the leadership team or that he would be proposed for progression to Grade Level GH-2. The IFC cites *EM*, Decision No. 578 [2018], para. 63, to claim that an enforceable promise by management requires a showing of "either an 'unequivocal' statement which amounts to a promise or circumstances which lead to the 'unmistakable implication' that a promise was made." In the IFC's view, the Applicant's claim of a promise is not supported in the record as he has not provided written evidence confirming an agreement with the VP or discussing the purported promise with others, and the VP himself denies making the alleged promise. The IFC avers that "[the VP's] statement must be reasonably sufficient evidence because [the] Applicant has, likewise, not submitted any evidence beyond his own statement."

The disclosure of documents during the PRS proceedings was permissible

64. Finally, with respect to the Applicant's claims regarding the disclosure of documents during the PRS proceedings, the IFC contends that this disclosure was not prohibited under the Staff Rules and that these documents were disclosed by the Director for the purposes of jogging the memory of the witnesses. The IFC asserts that "[t]here is nothing sinister about disclosing filings by the parties in the PRS proceeding to witnesses who are going to appear at the hearing." Further, the IFC submits that, under the Staff Rules, the witnesses are bound to treat the information confidentially. To the IFC, the disclosure was made to individuals who were going to testify in the PRS proceedings and would therefore necessarily have become aware of the Applicant's Requests for Review. The IFC submits that the Applicant has not shown any harm from the disclosures and contends that "no harm can reasonably have followed" from the disclosures. The IFC maintains that the Applicant has been provided an explanation for why the

documents were disclosed, and that the PRS Panel did not consider the process to have been tainted by the disclosures. The IFC submits that no further remedy is warranted.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

65. In his Application, the Applicant states that he is “contesting the process for the selection of the person to lead the Coordination Unit, his non-selection to lead the Coordination Unit, as well as his demotion and removal from leadership.” The Applicant also raises claims regarding disclosures of documents during the PRS proceedings. The Tribunal will consider the Applicant’s challenges below.

SELECTION PROCESS FOR THE HEAD OF THE CU AND THE APPLICANT’S NON-SELECTION

66. The decision to select a staff member for a particular position is firmly a matter of the Bank Group’s discretion. *See Jassal* [1991], para. 30. Accordingly, as the Tribunal has held and the parties here agree, the relevant standard by which to review a selection decision is for abuse of discretion. Further, as stated in *Riddell*, Decision No. 255 [2001], para. 23, “no staff member has a right to be selected to a particular position or to be included in a list of candidates for a position.” Thus, the Tribunal has clearly established that selection decisions are discretionary, and the Tribunal reviews these decisions for abuse of discretion. To put it more fully:

It is not for the Tribunal, in assessing the validity of the selection or non-selection of a staff member, to undertake its own examination of that staff member’s record, or a criterion-by-criterion assessment of his or her qualifications. That is for the Bank to do in the first instance, subject to review by the Tribunal only for abuse of discretion. But the Tribunal is charged with determining whether the Bank’s decision was the product of bias, prejudice, arbitrariness, manifest unreasonableness, or unfair or improper procedure. (*Jassal* [1991], para. 37.)

67. The Applicant contends that the selection process for the Head of the CU was unfair and biased. He insists that Mr. X was favored by the VP and preselected to be the Head of the CU prior to the competitive process for the position. Further, the Applicant asserts that the preselection of Mr. X was well-known within the leadership team. The Applicant contends that, because of the preselection of Mr. X, he was precluded from being selected for the position of Head of the CU.

68. The IFC asserts that the selection process for the Head of the CU was fair and reasonable, and insists that Mr. X was not preselected. The IFC contends that the Applicant could not have been selected as Head of the CU because he did not apply for the position, which was subject to an open and competitive selection process.

69. In respect of his claim, the Applicant states that, “in July of 2017, [the Director] advised me that [the VP] had already decided that [Mr. X] was chosen to lead the Coordination Unit.” However, the Tribunal observes that, in a written statement filed with the Tribunal, the Director explicitly refutes the Applicant’s contention. The Director states:

I did not in July of 2017 or at any other time advise [the Applicant] that [the VP] had already decided that [Mr. X] was chosen to lead the Coordination Unit. Positions like the Head of the Coordination Unit must under World Bank Group policies generally be competitively advertised, and I would not state to a staff member that another staff member had been “pre-selected” or “chosen” for a position that had not even been advertised.

Further, the VP states in his written statement filed with the Tribunal, “I did not pre-select anyone for the position as Head of Coordination Unit.” These statements from the Director and the VP clearly contradict the Applicant’s central claim of a preselection.

70. The Tribunal observes that the Applicant has expressed his subjective feelings of unfairness with respect to Mr. X’s selection. In support, he relies on the email from an executive coach at the VPU leadership retreat in Switzerland, Ms. A, recapping the retreat and referencing “[Mr. X’s] transition from [a colleague’s] team to lead new team in DC.” The Tribunal notes that Ms. A is not an IFC staff member and, therefore, the basis of her knowledge regarding IFC recruitment processes and decisions is unclear. The Tribunal finds that reading the record as a whole it cannot be concluded that there was any preselection or improper motivation by IFC management.

71. The Tribunal is also satisfied that the position of Head of the CU was filled through a reasonable process. The Tribunal notes that the position was advertised for over two weeks to candidates within the WBG. Further, prior to the job posting in February 2018, the position itself was discussed within the Applicant’s VPU as a position that would be competitively advertised.

The Tribunal notes that eleven candidates applied for the position and that three were shortlisted and interviewed. In this respect, the Tribunal also notes the contemporaneous interview reports from the interview panel members, which, with one exception, individually document each panel member's evaluation of each candidate. All of the interview reports pertaining to Mr. X recommend that he be offered the position. The Tribunal also notes that the panel was composed of appropriately senior staff members. Finally, the Tribunal notes that the Applicant has not provided any particular critique of the selection process upon review of the document production of the interview reports and, in fact, states, "The fact that a process was followed for hiring [Mr. X] does not cure the pre-selection."

72. As stated above, the Tribunal finds that there is no basis in the record for finding that there was a preselection of Mr. X. Further, given the competitive selection process outlined above, the Tribunal does not find that the selection of Mr. X "lacks support in factual evidence or reasonable inference" which would render it an abuse of discretion by the IFC. *Jassal* [1991], para. 37. At the conclusion of the interviewing process, the interview panel recommended Mr. X for the position. The Tribunal concludes that the selection process for the position of Head of the CU was reasonable and followed proper procedure.

73. Further, given that there was indeed an open, competitive process for the position of Head of the CU, the Applicant's decision not to apply naturally precluded him from being selected for the position. The Applicant's contention in respect of his decision not to apply for the Head of the CU position is twofold. First, he maintains that the job posting and selection process were mere formalities for a foregone conclusion. The Tribunal finds that this claim is not supported by the record as discussed above. Second, the Applicant contends that he did not apply to the position because he relied upon a promise from the VP and did not want to jeopardize their arrangement. The Tribunal will therefore consider whether an enforceable promise was made to the Applicant.

Whether there was a promise

74. The Applicant contends that on 4 December 2017 the VP made him a promise of two things with respect to the Applicant's career. First, the Applicant alleges that the VP promised to propose

the Applicant for progression to Grade Level GH-2 at the next promotion cycle, which would have been summer 2018. And, second, the Applicant alleges that the VP promised the Applicant that he would remain a member of the VPU leadership team.

75. The Applicant asserts that it is in reliance on these alleged promises that he did not apply for the position of Head of the CU. He therefore submits that he relied on promises from the IFC and, in effect, passed upon an opportunity – contention for the Head of the CU position – in reliance on these promises.

76. The IFC asserts that there is no evidentiary support in the record to substantiate that either of the alleged promises was made by the VP. Further, the IFC points to the VP’s written statement of 26 January 2021, in which he denies making the promises the Applicant alleges. The VP states in this respect, “I did not promise [the Applicant] that he would remain a member of the leadership team, nor that he would be proposed for progression to level GH-2.”

77. The Tribunal has explained that finding the existence of a promise requires that “the record must show either an ‘unequivocal’ statement which amounts to a promise or circumstances which lead to the ‘unmistakable implication’ that a promise was made.” *EM*, [2018], para. 63; *see also Moss*, Decision No. 328 [2004], para. 45; *Kopliku*, Decision No. 299 [2003], para. 10. Further, if there is indeed evidence of a promise, such promise must also have been made by someone with the authority to make a legally valid promise and with the capacity to take action attributable to the Bank Group. *See EM* [2018], para. 65; *Bigman*, Decision No. 209 [1999], paras. 9, 20.

78. Having reviewed the record, the Tribunal finds it clear that there is no “‘unequivocal’ statement which amounts to a promise.” There is no evidence that the VP gave the Applicant “a clear and irrefutable commitment or assurance.” *Moss* [2004], para. 45. In fact, through his 26 January 2021 written statement, the VP has unequivocally denied making the promise. Further, as stated in the PRS Panel’s Report of 20 December 2019, the Tribunal recalls that “[the Applicant] clarified during the Hearing that [the VP] did not promise or guarantee him promotion/progression, but rather that [the VP] allegedly mentioned recommendation to the GH-2 progression panel as an ‘implied’ – quoting [the Applicant] – inducement to withdraw his resignation.” And, further, the

Panel's Report states that "the hearing testimony did not establish that [the VP] or any other manager [had] promised or assured [the Applicant] that he would be progressed to GH-2 level or recommended for GH-2 progression."

79. The question remaining, therefore, is whether the record shows "circumstances which lead to the 'unmistakable implication' that a promise was made." *EM* [2018], para. 63. In this respect, the Tribunal observes that the Applicant has offered little beyond his own word. On review of the record, the Tribunal notes that it was the VP who requested the 4 December 2017 meeting with the Applicant during which the alleged promises were made. It is precisely the content of this meeting that is in contention. There is no written statement between the VP and the Applicant summarizing this 4 December 2017 meeting. The Tribunal notes that the only other documentary evidence in respect of this meeting is the email the Applicant sent to Mr. B on 4 December 2017, stating:

Thanks [Mr. B] – it has certainly been a pleasure working with you over the years as well. As an update, I had a long discussion with [the VP] this morning and he has requested that I take a week to further consider my decision in light of our discussion. I agreed to do so, so appreciate it if you could kindly avoid sharing this info with others quite yet.

The Applicant states that he had a "long discussion" with the VP and that he was asked to further consider his resignation decision "in light of" his discussion with the VP. But the email does not state that there had been a promise, nor does it mention the subject matter of the alleged promise – progression and the leadership team.

80. In consideration of the Applicant's assertions, the Tribunal observes that the Applicant's decision to rescind his resignation, as well as the fact that he did not apply for the position of Head of the CU, is consistent with the Applicant's contentions of a promise regarding his career. However, the Tribunal considers that there are many possible reasons why the Applicant, or any staff member, might rescind their resignation after a week of contemplation, and the Tribunal is unable to draw clear conclusions in respect of this decision of the Applicant.

81. The Tribunal must rely on the evidence in the record before it. The Tribunal recognizes that discussions of career plans and trajectories between staff and management may sometimes include informal discussions which are not memorialized. The Tribunal also recognizes that in such discussions one party might misunderstand a general statement of support. In the instant case, the record does not contain sufficient evidence for the Tribunal to find “circumstances which lead to the ‘unmistakable implication’ that a promise was made.” *EM* [2018], para. 63.

DEMOTION AND REMOVAL FROM LEADERSHIP

82. The Applicant contends that he was *de facto* demoted and removed from leadership and that this alleged demotion lacked a reasonable basis and failed to follow a reasonable process. Specifically, the Applicant states that the VP stripped him of his leadership role without following “any sort of reasonable protocol to protect [the Applicant’s] career.” He points to a loss of staff and functions, and contends that there has been serious damage to his career, that his treatment was unfair and inconsistent with the Staff Rules, and that the actions of the VP constitute an abuse of discretion. Further, the Applicant contends that his removal from the leadership team has put him at risk of termination due to redundancy because of an ongoing workforce planning program affecting GH-level non-managerial staff in his VPU.

83. In response, the IFC contends that the Applicant’s work program has been modified as a result of the reorganization which created the CU, the creation of which the Applicant himself supported. The IFC asserts that this is within managerial discretion and, further, that the Applicant was not actually demoted, as he has maintained the same grade level and has, in fact, received salary increases. The IFC also submits that the Applicant’s removal from the leadership team is connected to a wider reconfiguration of the leadership team and a corporate decision to abolish the title “Head,” and that the removal is unrelated to the Applicant’s performance and not specifically targeted to the Applicant.

84. The Tribunal has previously explained that a staff member’s work program is a matter of managerial discretion (*see Barnes* [1997], para. 20) and has recognized that the Bank Group may need to “adapt to meet evolving needs and circumstances” (*Koçlar*, Decision No. 441 [2010], para.

45). Such discretion and scope are not boundless, however. For instance, the Tribunal has found that a staff member is entitled to “a clear work program” (*Visser*, Decision No. 217 [2000], para. 47) and that the Bank Group’s freedom to make changes to a work program must comply with the Staff Rules and must be fair and not arbitrary (*see Barnes* [1997], para. 10). In particular, pursuant to Principle 2.1 of the Principles of Staff Employment,

The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members.

Still, as the Tribunal explained in *Sweeney*, Decision No. 239 [2001], para. 74:

Absent discrimination or other abuse of discretion, the Bank is entitled to reassign staff members in accordance with its needs. A staff member is in no position to declare that his or her “career was cut short” by such a reassignment; nor are staff members in a position to enter into detailed critiques of work programs as though they have a power of veto.

85. In light of the Applicant’s claims and the relevant standard, the Tribunal will consider whether the changes to the Applicant’s work program and his removal from the leadership team were an abuse of managerial discretion.

86. At the outset, the Tribunal notes that the Applicant’s VPU underwent a reorganization through which the CU was formed. The record reflects that the creation of the CU was discussed within the leadership team, of which the Applicant was a part, in the months before the changes to his work program took place. Additionally, the Applicant states that he first learned of the creation of the CU in July 2017 and that discussions of the CU took place during the September 2017 leadership retreat. Further, in the VP’s email of 11 December 2017 to the entire VPU, the VP explained in respect of the CU:

While the changes for the various VPUs and departments outside of our own VPU have been ongoing, we have also been thinking about how we can refresh the VPU structure and sharpen focus to align ourselves to better delivery [*sic*] our VPU’s value proposition for IFC. Over the past six months, the VPU senior leadership team has been discussing and refining ideas, resulting in an upcoming adjustment to our organizational structure, which has been approved by our CEO.

[...]

A new Coordination Unit will be created alongside the four Departments of the VPU to centralize functions related to VPU strategy, advisory, capacity building, knowledge management, social media, conferences as well as other initiatives and support services to the entire VPU. It also coordinates and supports the communications and budget functions. Staff of the unit will be transferred from [...] and [...], with a new unit head position reporting directly to me and the senior leadership team. The unit will be created by January 1, 2018 with a six months transition period to ensure minimal disruption.

87. The Tribunal considers the IFC's assertion that the changes to the Applicant's work program logically flowed from the reorganization of the VPU and the creation of the CU to be convincing. It is entirely reasonable that such an undertaking would result in shifting functions and roles, and the Tribunal finds this to be within the managerial discretion of the IFC.

88. The Tribunal also finds it convincing that the Applicant's removal from the leadership team was based upon the VPU restructuring and corporate title realignment. In the Tribunal's view, the IFC has explained and provided supporting documentation for the VPU changes which led to the Applicant's removal from the leadership team. The Tribunal takes note that the IFC has indicated that the Applicant was not the only person affected in this way. Further, the Tribunal considers that, at the PRS hearing, the Director and other witnesses consistently stated that the VPU organizational changes were the reason for the Applicant's removal from the leadership team, and that the PRS Panel concluded that the Applicant's removal from the leadership team followed a fair and proper process. The Tribunal finds the IFC's rationale to be reasonable and supported by the record.

89. The Tribunal also considers the Applicant's position that, when he first heard of the plans to create the CU in July 2017, he voiced concerns to the Director. The record reflects, through Ms. A's email, that the Applicant raised some concerns at the leadership retreat. The record does not clearly indicate with whom exactly the Applicant aired his concerns pertaining to his role in the VPU in light of the creation of the CU, or what responses the Applicant may have received. The Applicant states that his concerns were ignored, and the Tribunal notes that the IFC does not specifically refute this.

90. While it appears that the Applicant would have appreciated more communication from IFC management regarding his work program and leadership role in light of the VPU restructuring, the Tribunal finds no evidence of arbitrariness, improper motivation, or bad faith in respect of the Applicant which would suggest an abuse of managerial discretion.

91. The Tribunal is satisfied that the Applicant's removal from the leadership team and change in work program were discretionary managerial decisions which had a reasonable and observable basis in the creation of the CU and were not an abuse of discretion by management.

DISCLOSURE OF DOCUMENTS DURING PRS PROCEEDINGS

92. Finally, the Tribunal will consider the Applicant's allegations regarding improper disclosures during the PRS proceedings.

93. On 10 October 2019, the PRS Panel conducted a hearing in respect of the Applicant's Consolidated Requests for Review Nos. 434 and 449. The PRS Panel's Report of 20 December 2019 states that "management had shared the parties' PRS written submissions with several witnesses, in contravention of PRS confidentiality standards." Specifically, during the PRS hearing, the Director – the Responding Manager for purposes of the PRS proceedings – stated that he had shared the Request for Review and Manager's Response with certain witnesses "to jog their memory." The PRS Panel determined that these disclosures did not materially affect its review and did not negatively impact the outcome of its review.

94. The Applicant contends that these disclosures were improper and in violation of confidentiality rules.

95. The Tribunal notes that Staff Rule 9.03, paragraph 13.01, provides with respect to PRS:

Peer Review Members, the Peer Review Secretariat, the parties, their advisers, and individuals asked to participate in the peer review process by providing advice or testimony or by producing documents or information shall treat all information obtained in connection with the peer review process in a confidential manner.

“Confidential” means that such information is not disclosed except to persons who require access to it for legitimate business purposes of the Bank Group.

96. With respect to EBC, Staff Rule 3.00, paragraph 7.03, states, in pertinent part:

The identity of a Staff Member who brings a concern or allegation to EBC is confidential. Confidentiality means that a Staff Member provides his/her name, but EBC reveals the source of the allegations outside of EBC only on a need-to-know basis [...].

97. Further, Principle 2.1(a) of the Principles of Staff Employment states:

[T]he Organizations shall:

- a. establish and maintain appropriate safeguards to respect the personal privacy of staff members and protect the confidentiality of personal information about them[.]

98. Last, Principle 3.1(d) of the Principles of Staff Employment states that staff members shall

observe the utmost discretion in regard to all matters relating to the Organizations both while they are staff members and after their service with the Organizations has ended. In particular they shall refrain from the improper disclosure, whether direct or indirect, of information related to the business of The World Bank or the IFC.

99. The Applicant is particularly concerned that the documents disclosed in the context of his PRS hearing included references to an EBC complaint he had filed earlier regarding claims of the VPU’s abuse of authority and retaliation. For the IFC, “[t]here is nothing sinister about disclosing filings by the parties in the PRS proceeding to witnesses who are going to appear at the hearing,” and there has been no violation of the Staff Rules. The IFC seems to take the position that, because a PRS hearing is a confidential process and the witnesses were reminded of such at the Applicant’s hearing, and also because the Staff Rules require witnesses to treat information they learn during the PRS process confidentially, the Applicant has not been harmed.

100. The disclosures were limited to four staff members who were witnesses in the PRS process regarding the Applicant’s claims. The Tribunal notes that the PRS Panel expressed concerns about the disclosures but concluded that the disclosures did not affect the review process and the outcome.

Further, the Tribunal notes that the PRS Panel underscored its concern regarding the sharing of materials in advance of the hearing and “recommend[ed] that WBG senior management consider which actions may be appropriate to address [the Applicant’s] expressed concern about his possible future treatment by – or interactions with – any recipients of the disclosed information, including potential retaliation in the course of his career with the WBG.” The Tribunal reinforces this PRS Panel recommendation.

101. The Tribunal also takes note that the Applicant states that, on 5 May 2020, he filed a complaint with EBC regarding the disclosure of confidential documents. The record suggests that the EBC process has not yet concluded. Accordingly, it would be premature for the Tribunal to pronounce on this issue. Based on the record before the Tribunal, there is no material harm to the Applicant for which a remedy must be given at this time.

DECISION

The Application is dismissed.

/S/ Andrew Burgess

Andrew Burgess

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., * 7 June 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.