



World Bank Administrative Tribunal

2021

Decision No. 646

**FU,
Applicant**

v.

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

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

**FU,
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 October 2020. The Applicant was represented by Stephen C. Schott of Schott Johnson, LLP. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 26 May 2021.

3. The Applicant challenges the determination by the Vice President, Human Resources Development (HRDVP) that there was sufficient evidence to support a finding that he committed misconduct and the imposition of disciplinary measures against him. The Applicant also contests the Bank's decision to "terminate his STC contract and non-payment of that contract."

FACTUAL BACKGROUND

4. The Applicant is a former Short-Term Consultant (STC) based in Washington, D.C., who worked at the World Bank Group (WBG) under various consultancy contracts from 2013 to 2018, including the Development Impact Evaluation group and Governance Departments for the Middle East and North Africa and Latin America and the Caribbean (LAC) regions.

5. On 1 July 2018, the Applicant commenced a new STC appointment with the Governance Global Practice, LAC Public Sector and Institutions Unit (GGOLP), providing support to a Task

Team Leader (TTL), Ms. X (hereinafter TTL). Prior to 1 July 2018, the Applicant's TTL in GGOLP was Mr. G (hereinafter former TTL).

6. The Applicant's Letter of Appointment (LOA), signed by the Applicant on 14 June 2018, stated that his services were expected "for about 30 days" from 1 July 2018 to 30 November 2018. The Applicant's LOA further provided:

Travel may be authorized by the World Bank in connection with this assignment. The policies regarding travel and subsistence are governed by the World Bank Group's Travel Procedure and Guidance document.

7. The Applicant's LOA contained several enclosures, including "Staff Rule 3.00, Office of Ethics and Business Conduct," "Staff Rule 3.01, Standards of Professional Conduct," "Principle 3[,] General Obligations of Staff Members," "World Bank Group Travel Procedure and Guidance," and "Administrative Manual Statement [AMS] 3.10 – Operational Travel Expense Reimbursement."

8. In 2018, the Applicant travelled to Santo Domingo, Dominican Republic, four times on approved missions in connection with a Trust Fund project. The mission durations were

- Mission Trip No. 1 (Trip Report No. 1000673740): 26 January to 24 February 2018;
- Mission Trip No. 2 (Trip Report No. 1000702980): 13 to 28 April 2018;
- Mission Trip No. 3 (Trip Report No. 1000730684): 14 to 22 July 2018; and
- Mission Trip No. 4 (Trip Report No. 1000751583): 28 September to 11 October 2018.

9. On 18 October 2018, one week after Mission Trip No. 4, the Applicant uploaded an invoice (confirmation No. 2462650) from Hotel Billini in Santo Domingo to his Trip Report No. 1000751583 in support of the \$2,168.32 in accommodation expenses claimed in his Statement of Expenses (SOE). During the processing of the Trip Report, the TTL's Program Assistant discovered irregularities in the Hotel Billini invoice uploaded by the Applicant. She informed the TTL and stated that she would follow up with the hotel to clarify the matter.

10. On 29 October 2018, the Program Assistant emailed Hotel Billini requesting that it confirm the authenticity of the invoice (confirmation No. 2462650) provided by the Applicant claiming \$2,168.32 in accommodation expenses. Later that day, the Hotel Billini General Manager replied to the Program Assistant, stating, “We inform you that the document ‘invoice Billini 11.10.18’ was not issued by us.” Hotel Billini further enclosed the original invoice, bearing the same confirmation number as the Applicant’s version, totaling \$687.93 instead of \$2,168.32, and a copy of the Applicant’s receipt showing that he had paid \$687.93 with a credit card.

11. On 12 November 2018, the TTL instructed the Applicant not to proceed with any further work.

12. On 22 May 2019, the Applicant’s contract was closed in the system.

EBC Investigation

13. On 30 October 2018, the TTL emailed the Ethics and Business Conduct Department’s (EBC) Ethics Helpline to report her suspicion that the Applicant had falsified invoices and receipts relating to his accommodation expenses at Hotel Billini in Santo Domingo during his fourth mission trip. The TTL noted that there were discrepancies between the invoices provided by the Applicant in his SOE and the invoices she received independently from the hotel, including differences in the daily rates and duration of stay.

14. Following the TTL’s report, EBC initiated a review of the allegations, including an analysis of the invoices the Applicant submitted in support of his SOEs for his four mission trips to the Dominican Republic in 2018.

15. On 1 November 2018, EBC conducted an intake interview with the TTL.

16. The TTL told EBC that the Applicant’s former TTL had warned her that there were “issues every time” the Applicant traveled, such as unauthorized changes to mission dates to include personal days and expense claims issues.

17. The TTL further told EBC that, shortly after she began supervising the Applicant on 1 July 2018, she began to experience similar travel- and expense-related issues with the Applicant.

18. The TTL added that, prior to the Applicant's first mission under her supervision in July 2018, she approved the Applicant's request to add personal days to his upcoming mission in the Dominican Republic but advised him of the applicable personal days rules and informed him that she preferred to minimize such "exceptions."

19. The TTL also told EBC about an incident in September 2018 where the Applicant claimed expenses for non-approved taxis in violation of the Bank's established safety protocols in the Dominican Republic requiring staff on mission to hire Country Office-approved taxis or Uber. The TTL stated, "At that point, I was feeling that I couldn't trust him to go on a mission honestly."

20. Following the TTL's intake interview and an assessment of the allegations, EBC determined that the Applicant's alleged behavior fell within EBC's mandate and concluded that there was sufficient factual basis to proceed with a preliminary inquiry.

21. On 26 November 2018, EBC interviewed the Applicant's former TTL.

22. The former TTL told EBC that, during his supervision of the Applicant, there had been "a lot of red flags" concerning the Applicant's SOEs because the Applicant "was claiming expenses that should not be claimed," including phone calls, clothes, taxis, and printing costs.

23. The former TTL told EBC that in July 2017, following an incident where the Applicant submitted a claim for hotel phone charges in his SOE having previously been cautioned against doing so, he wrote to the Applicant explaining the Bank's policy on work-related phone calls. He provided the Applicant with alternatives, such as WebEx and Skype, and reiterated that "we don't use hotel phone systems unless in case of emergency or other systems do not work."

24. The former TTL also submitted several documents to EBC showing that the Applicant was advised several times in 2017 and 2018 by his supervisors in GGOLP that taxis were to be paid

for by the Country Office using appropriate charge codes or, in the alternative, staff members were to use Uber.

25. The former TTL also stated that the Applicant, without his authorization, had changed pre-approved mission dates (sometimes to include personal days) “at least on three occasions.”

26. The former TTL shared with EBC an email which he had written to the Applicant following the third such occasion on 3 May 2018, stating:

Frankly, this is all quite disappointing. You knew very well what the dates were, we discussed it personally and you had clear exchanges where dates were always made clear, including by yourself. Despite this, you took the initiative (with no authorization) to change the dates with [the Bank’s Travel Desk], and informed nobody of this decision. Now the system indicates a red flag and we have to explain all this to management. I suppose you did [it] for personal reasons, but you should have informed me first. I am now calling [the Program Assistant] and fixing this, but another TTL could take a different course of action. This is the kind of behavior that is not tolerated in the Bank, so don’t do this again. When in doubt, always check with your TTL or [the Program Assistant] first.

27. The former TTL told EBC that the Applicant’s “issue” of claiming ineligible expenses on his SOEs was “systematic and recurrent.” He further stated that the issue was “worrisome for me to the point that [...] I highlighted this as part of my handover note to the new TTL.”

28. As part of its preliminary inquiry, EBC also obtained copies of the SOEs submitted by the Applicant for his trips to the Dominican Republic in 2018 as well as original invoices and receipts from Hotel Billini for the Applicant’s visits in question.

29. Following a review of the Applicant’s SOEs and the documentation provided by Hotel Billini, EBC observed a significant number of discrepancies and determined that there was a sufficient factual basis to proceed with a formal investigation.

30. On 10 December 2018, EBC emailed the Applicant informing him of the allegations of misconduct and requesting an interview with him on 12 December 2018, stating in relevant part:

We are contacting you because EBC recently completed a preliminary inquiry into allegations that you may have committed misconduct by misusing Bank Group funds related to travel expenses incurred in Santo Domingo, Dominican Republic. Specifically, it is alleged that you may have fraudulently claimed accommodation expenses in relation to several of your mission trips to Santo Domingo during 2018.

31. The email contained links to relevant staff rules and EBC procedures as well as a summary of the Applicant's rights and obligations, including the right to have another staff member present, stating:

Please note that you may bring another staff member with you to the interview as an observer. If you choose to do so, kindly send us his or her name, as this colleague will need to be authorized by EBC. Keep in mind that an observer cannot be connected to the matter under review and cannot be a member of the WBG Legal Vice-Presidency. The observer can be a representative from the Staff Association, except for Staff Association legal counsel.

32. Later that day, the Applicant acknowledged receipt of the email but declined the meeting due to personal travel. The interview was rescheduled to 29 January 2019.

33. On 29 January 2019, EBC provided the Applicant with a written Notice of Alleged Misconduct detailing the allegations against him, EBC's investigative process, his rights and obligations, and the applicable WBG rules and policies he was alleged to have breached. EBC interviewed the Applicant later that day.

34. On the morning of 29 January 2019, prior to the interview, EBC and the Applicant exchanged correspondence regarding a proposed advisor whom the Applicant wanted to bring to the interview. EBC determined that the proposed advisor was not a WBG staff member and may have been connected to the case as he may have helped review the Applicant's expenses.

35. EBC informed the Applicant that he could propose another eligible staff member, but the Applicant declined, stating, "Thank you for clarifying the role of the advisor. I will not plan on bringing anyone as an advisor or observer. I look forward to our meeting at 3:00pm."

36. On 15 February 2019, EBC provided the Applicant with a copy of his 29 January 2019 interview transcript for his review and comment. The Applicant provided EBC with his written comments on 1 March 2019.

37. On 13 March 2019, EBC provided the Applicant with a copy of its draft investigation report for his review and comment. The Applicant provided his comments on the draft investigation report on 10 April 2019 and provided additional comments on 16 April 2019.

38. On 2 May 2019, EBC sent the Applicant a revised draft investigation report incorporating the Applicant's comments as well as additional information received from Hotel Luca and Hotel Billini.

39. On 6 June 2019, EBC received an email from the Applicant's counsel stating that the Applicant's WBG contract was "prematurely terminated" and that, as a result, the Applicant was unable to access his WBG email account and thus unable to access information to assist him in preparing his response to the revised draft investigation report.

40. Over the course of the next few days, EBC worked with the TTL and the Data Science and Digital Platforms office (ITSDI) to reinstate the Applicant's WBG email access for the sole purpose of assisting him in preparing his response to the draft investigation report.

41. On 10 June 2019, EBC emailed the Applicant's counsel informing him that it was looking into the possibility of reinstating the Applicant's email access to allow him to prepare his response to the revised draft investigation report. In response, the Applicant's counsel stated,

We appreciate that EBC is making an effort to have [the Applicant's] access to his emails restored for a specific period to assist him in responding to the EBC Draft Investigation Report.

42. Between 25 June and 2 July 2019, the Applicant visited EBC's office on multiple occasions and had access to his emails.

43. On 18 July 2019, the Applicant provided his comments on the revised draft investigation report.

44. EBC completed its Final Investigation Report on 21 August 2019, which included its findings with respect to Mission Trip Nos. 1–4.

Mission Trip No. 1

45. The Applicant's first mission to the Dominican Republic in 2018 was from 26 January 2018 to 24 February 2018. In his SOE, the Applicant submitted accommodation invoices from Hotel Luca and Hotel Billini, indicating that he had stayed at Hotel Luca from 26 January 2018 to 1 February 2018 and again from 20 to 22 February 2018 (eight nights) and stayed at Hotel Billini from 3 to 20 February 2018 (17 nights).

A. Hotel Luca

46. In his SOE, the Applicant claimed an invoice (reservation No. 02193658) for his stay at Hotel Luca for \$1,582.08 at a rate of \$114.00 per night.

47. EBC contacted Hotel Luca requesting a copy of the Applicant's hotel invoice. In response, Hotel Luca provided EBC with a copy of the Applicant's invoice for February 2018.

48. EBC found several discrepancies between the invoice submitted by the Applicant and the one provided by Hotel Luca, including

- Duration: The Applicant claimed to have stayed at Hotel Luca for eight nights, whereas, per Hotel Luca's invoice, the Applicant stayed one night;
- Invoice Number: The invoice submitted by the Applicant does not have an invoice number whereas the invoice submitted by Hotel Luca has an invoice number;
- Nightly Rate: The Applicant's invoice indicates a room rate of \$114.00 per night versus \$105.00 per Hotel Luca's invoice;

- Total Amount: The total amount claimed by the Applicant in his SOE is \$1,582.08 whereas Hotel Luca's invoice indicates a total amount of \$134.40, a difference of \$1,447.68; and
- Payment Method: The Applicant claimed to have paid in cash whereas Hotel Luca's invoice indicates that the Applicant paid with a credit card.

49. EBC presented Hotel Luca with a copy of the invoice the Applicant submitted in his SOE (Trip Report No. 1000673740). In response, Hotel Luca stated, "The invoices sent [...] are not authentic and [...] the dates and the amounts are different, so please check with [the Applicant], because he didn't pay these amounts at [Hotel Luca]."

B. Hotel Billini

50. In his SOE, the Applicant submitted an invoice (confirmation No. 2145900) for his stay at Hotel Billini for a total amount of \$2,937.65 at a rate of \$135.00 per night.

51. EBC contacted Hotel Billini requesting a copy of the Applicant's invoice. Hotel Billini provided two invoices, the first for 11 to 12 February 2018 (confirmation No. 2164902) and the second for 12 to 15 February 2018 (confirmation No. 2145900).

52. EBC found several discrepancies between the Applicant's invoice and the invoices provided by Hotel Billini, including

- Duration: The Applicant claimed to have stayed at Hotel Billini for 17 nights, whereas, per Hotel Billini's invoices, the Applicant stayed four nights – a difference of 13 nights;
- Nightly Rate: The Applicant's invoice indicates a room rate of \$135.00 per night versus \$105.46 per Hotel Billini's invoices; and
- Total Amount: The total amount claimed by the Applicant in his SOE is \$2,937.65 whereas Hotel Billini's invoices total \$405.01.

53. Hotel Billini also provided EBC with payment receipts for the two invoices. Both receipts bore the Applicant's signature and indicate that he paid the total amount of \$405.01 in local

currency (DOP 19,845.51) with his personal credit card. During his interview with EBC, the Applicant acknowledged paying this amount.

Mission Trip No. 2

54. The Applicant's second mission to the Dominican Republic in 2018 was from 13 to 28 April 2018. In his SOE, the Applicant submitted accommodation invoices for Hotel Luca from 15 to 25 April 2018 (10 nights) and Hotel Billini from 25 to 28 April 2018 (three nights).

A. Hotel Luca

55. In his SOE, the Applicant claimed an invoice (reservation No. 04103959) for his stay at Hotel Luca for \$1,638.00 at a rate of \$114.00 per night.

56. EBC contacted Hotel Luca requesting a copy of the Applicant's hotel invoice. In response, Hotel Luca provided EBC with three invoices for the month of April 2018: (i) reservation No. 04103959 for 15 to 16 April 2018 (one night) totaling \$128.00, (ii) reservation No. 04113961 for 20 to 21 April 2018 (one night) totaling \$128.00, and (iii) reservation No. 04113962 for 22 to 25 April 2018 (three nights) totaling \$384.00.

57. EBC found a number of discrepancies between the invoice submitted by the Applicant and the invoices provided by Hotel Luca, including

- Duration: The Applicant claimed to have stayed at Hotel Luca for 10 nights, whereas, per Hotel Luca's invoice, the Applicant stayed five nights;
- Invoice Number: The invoice submitted by the Applicant does not have an invoice number whereas the three invoices provided by Hotel Luca have invoice numbers of 04103959, 04113961, and 4113962, respectively;
- Nightly Rate: The Applicant's invoice indicates a room rate of \$114.00 per night versus \$100 per Hotel Luca's invoices;
- Total Amount: The total amount claimed by the Applicant in his SOE is \$1,638.00 whereas Hotel Luca's three invoices total \$640.00, a difference of \$998.00; and

- Payment Method: The Applicant claimed to have paid in cash whereas Hotel Luca's invoices indicate that payment was made with a credit card.

58. EBC presented Hotel Luca with a copy of the invoice submitted by the Applicant in his SOE (Trip Report No. 1000702980) for comment. In response, Hotel Luca replied in the same terms as it had done when confronted with the invoice submitted in respect of the first mission trip, namely, that it was not authentic, that the dates and amounts did not match the hotel's records, and that the Applicant had not paid those amounts at Hotel Luca.

B. Hotel Billini

59. In his SOE, the Applicant submitted an invoice (confirmation No. 2257903) for his stay at Hotel Billini for a total amount of \$691.20 at a rate of \$135.00 per night.

60. EBC contacted Hotel Billini requesting a copy of the Applicant's invoice. Hotel Billini provided an invoice (confirmation No. 2257903) for 25 to 28 April 2018 (three nights) totaling \$384.02.

61. EBC found discrepancies between the Applicant's invoice and the invoice provided by Hotel Billini, including

- Duration: The Applicant claimed to have stayed at Hotel Billini for four nights, whereas, per Hotel Billini's invoice, the Applicant stayed three nights;
- Nightly Rate: The Applicant's invoice indicates a room rate of \$135.00 per night versus \$100.00 per Hotel Billini's invoice; and
- Total Amount: The total amount indicated in the Applicant's invoice is \$691.20 with an unpaid balance whereas Hotel Billini's invoice indicates a total of \$384.00 with a small balance of \$0.02. Moreover, Hotel Billini provided a copy of the receipt, signed by the Applicant, indicating that the invoice was paid with a credit card.

Mission Trip No. 3

62. The Applicant's third mission to the Dominican Republic in 2018 was from 14 to 22 July 2018. In his SOE, the Applicant submitted accommodation invoices for Hotel Billini from 15 to 21 July 2018 (six nights) and Hotel JW Marriott from 17 to 20 July 2018 (three nights), but he claimed accommodation expenses only for Hotel JW Marriott. He did not claim accommodation expenses for Hotel Billini.

A. Hotel JW Marriott

63. EBC confirmed directly with Hotel JW Marriott that the invoice and charges of \$764.16 claimed by the Applicant were authentic.

B. Hotel Billini

64. Although the Applicant did not claim expenses for his stay at Hotel Billini, EBC contacted Hotel Billini requesting a copy of the Applicant's hotel invoice to confirm whether it matched the one he submitted. In response, Hotel Billini stated that it did not have a record of the Applicant staying at the hotel during the month of July 2018.

65. Nonetheless, EBC reviewed the Applicant's invoice and made the following observations:

- Previously Used Confirmation Number: Confirmation No. 2257903 found on the left side of the invoice was the same confirmation number used for Hotel Billini's invoice claimed by the Applicant during his mission to the Dominican Republic in April 2018; and
- Mismatched Confirmation Numbers: The invoice had two different confirmation numbers (i.e., No. 2257903 and No. 2557403). All other invoices from Hotel Billini have the same confirmation number on the right and left side of the invoice.

Mission Trip No. 4

66. The Applicant's fourth mission to the Dominican Republic in 2018 was from 28 September 2018 to 11 October 2018. In his SOE, the Applicant submitted an accommodation invoice for Hotel Billini from 30 September 2018 to 11 October 2018 (11 nights).

67. On 26 September 2018, Hotel Billini communicated with the Applicant on his upcoming visit and provided him with reservation information ahead of his trip. The reservation was for 28 September 2018 to 11 October 2018 at a nightly rate of \$105.46 without taxes.

68. In his SOE, the Applicant claimed an invoice (confirmation No. 2462650) for his stay at Hotel Billini for \$2,168.32 at a rate of \$140.00 per night.

69. EBC contacted Hotel Billini requesting a copy of the Applicant's hotel invoice. In response, Hotel Billini provided EBC with an invoice (confirmation No. 2462650) for the Applicant's accommodation from 1 to 6 October 2018 (five nights). The nightly rate was \$105.46, and the total amount was \$687.93.

70. EBC found the following discrepancies between the invoice submitted by the Applicant and the invoice provided by Hotel Billini:

- Duration: The Applicant claimed six additional nights at Hotel Billini. The Applicant claimed to have stayed at Hotel Billini for 11 nights whereas Hotel Billini's invoice indicates that the Applicant stayed at the hotel for five nights;
- Nightly Rate: The Applicant's invoice indicates a nightly rate of \$140.00 per night versus \$105.46 per Hotel Billini's invoices;
- Total Amount: The total amount claimed by the Applicant in his SOE is \$2,168.32 whereas Hotel Billini's invoice indicates a total of \$687.93, a difference of \$1,480.39; and
- Payment Method: The invoice submitted by the Applicant shows an outstanding balance of \$2,168.32 whereas Hotel Billini's invoice indicates that the balance was paid in full by the Applicant using a credit card.

71. Hotel Billini also provided an invoice payment receipt for confirmation No. 2462650 signed by the Applicant indicating that he paid the total amount of \$687.93 in local currency (DOP 34,397) using his personal credit card.

EBC's Final Investigation Report

72. In its Final Investigation Report, EBC found sufficient evidence to substantiate the allegations that the Applicant

- (i) Submitted to the WBG false invoices for his accommodation at [Hotel Billini] and Hotel Luca pertaining to his mission trips in 2018 to Santo Domingo;
- (ii) Misrepresented his SOEs by claiming higher expenses for his accommodation at [Hotel Billini] and Hotel Luca in the amount of \$6,765.57; and
- (iii) Failed to ensure the accuracy of his SOEs by omitting to disclose accommodation expenses incurred during his mission trips, as required by [the] WBG's travel Directive/Procedures on official travel expenses.

73. EBC did not find sufficient evidence to conclude that the Applicant misused Bank Group funds related to his mission trips in 2018 in Santo Domingo.

74. EBC's Final Investigation Report also noted several explanations by the Applicant as part of his defense.

75. The Applicant acknowledged mistakenly submitting wrong invoices as a result of a lack of knowledge and overload of work but denied the allegations of fraud or mismanagement of funds.

76. The Applicant stated that small hotels' document production systems are subject to a complex process with arbitrary rules and that "boutique" hotels such as the ones in question would cooperate with the WBG so as not to jeopardize their relationships with the WBG. He stated that the hotels' representation of the nature of the invoices to the WBG should be scrutinized.

77. The Applicant further stated that his claimed accommodation expenses in his SOEs did not result in a “personal windfall” of \$6,765.57 but rather a discrepancy of only \$71.98 due to “involuntary mistakes.”

78. The Applicant provided additional invoices for his accommodation at Hotels Casa Naemie and Best Value House during his missions to Santo Domingo in 2018. He offered, without admission of liability, to repay the WBG the amount identified in the draft investigation report (\$6,765.57) “in good faith and in order to clear my name of these charges.” He further stated that a mediated outcome would appear to be the most efficient means for resolution of the matters in the draft investigation report.

79. However, the Final Investigation Report noted that EBC did not find the Applicant’s explanation to be credible due to the testimonial and substantial documentary evidence collected and analyzed by EBC, including independently obtained invoices and receipts.

HRDVP decision

80. On 5 December 2019, following a review of EBC’s Final Investigation Report, the HRDVP determined that there was sufficient evidence to support a finding that the Applicant engaged in misconduct, referring specifically to

- Staff Rule 3.00, paragraph 6.01(b) – Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; willful misrepresentation of facts intended to be relied upon;
- Staff Rule 3.00, paragraph 6.01(c) – Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3, “General Obligations of Staff Members,” of the Principles of Staff Employment and Staff Rule 3.01;
- Administrative Manual Statement (AMS) 3.10, Operational Travel Expenses, paragraph 25(a) – Travelers are responsible for keeping themselves informed of and adhering to all policies and procedures affecting operational travel; and
- Administrative Manual Statement (AMS) 3.10, Operational Travel Expenses, paragraph 25(i) – Certifying the authenticity and validity of any information in the Statement of

Expenses, ensuring that all claims are business related, and submitting the necessary receipts to support claims during its investigation of the reported misconduct.

81. In the HRDVP's decision letter, he stated, "I agree with EBC that your explanations are not credible." The letter added:

I also note your statements to EBC that you were under a lot of pressure and overwhelmed with your workload at the time, which may have caused you to make a mistake in preparing your expense reports. While a slight error or oversight may be reasonable, the evidence indicates that you made deliberate efforts to deceive the Bank by falsifying invoices and misrepresenting your expenses. [...]

My decision, therefore, is based on the inconsistent documentary evidence, as well as the statements from the hotels and your former TTLs who noted that they gave you repeated warnings and guidance on how to properly record your travel expenses.

82. The HRDVP noted the following mitigating factors: (i) the Applicant's offer, without admitting liability, to repay the World Bank Group \$6,765.57 as identified by EBC in good faith to clear his name of the charges; (ii) that, "ultimately, the difference between the amount [the Applicant] originally claimed in [his] SOEs and the amount of expenses [he] actually incurred was a relatively small sum of USD [United States dollar] \$71.98"; and (iii) the fact that the Applicant had no prior record of disciplinary proceedings against him since joining the Bank in 2013.

83. The HRDVP further noted that, although the Applicant questioned the reliability of the hotels' recordkeeping systems and claimed that they provided inconsistent paperwork, the Applicant used the invoices obtained by EBC directly from the hotels to justify his revised expenses in his response to EBC's revised draft investigation report.

84. After considering the entire record, the HRDVP imposed the following disciplinary measures: (i) a three-year hiring restriction, (ii) a three-year access restriction to WBG facilities, and (iii) a written censure to remain in the Applicant's personnel file.

After the HRDVP decision

85. On 27 February 2020, the Applicant's counsel wrote a letter to the HRDVP contesting the Applicant's contract termination, the outcome of EBC's investigation, and the HRDVP's "final sanctions decision." The Applicant's counsel indicated that the Applicant was considering filing an application with the Tribunal but first wanted to "accord the parties an opportunity to resolve the issues without litigation."

86. On 1 May 2020, the Bank wrote a letter to the Applicant's counsel and asked him to clarify what he sought for his client to resolve the case.

87. On 12 June 2020, the Applicant's counsel submitted proposed settlement terms to the Bank.

88. On 28 July 2020, the Bank informed the Applicant's counsel that it was not interested in responding at that time to the Applicant's "settlement demand" or "engaging in mediation" related to the Applicant's claims.

89. After several extensions to the application deadline, on 12 October 2020, the Applicant submitted his Application to the Tribunal challenging the HRDVP's determination that there was sufficient evidence to support a finding that he committed misconduct and the imposition of the disciplinary measures against him. The Applicant also contests the Bank's decision to "terminate his STC contract and non-payment of that contract."

90. The Applicant requests the following relief: (i) full payment of the unexpired period of his contract; (ii) one year's wages, namely, \$51,750.00 for loss of reputation, damage to career, and emotional stress; (iii) deletion of all record of the alleged unprofessional conduct from his personnel file; and (iv) legal fees and costs incurred, in the amount of \$17,918.75, for the period that started at the conclusion of the EBC investigation to the outcome of the Tribunal matter.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contentions

91. The Applicant challenges the HRDVP's determination that there was sufficient evidence to support a finding that he engaged in misconduct and the imposition of corresponding disciplinary measures. The Applicant contends that his actions do not amount to misconduct. To the contrary, he asserts that he made honest "mistakes" in his efforts to provide a thorough account of his travel expenses due to (i) being overworked, (ii) a lack of training regarding the Bank's travel policies, (iii) a lack of access to the Bank's travel system, and (iv) receiving inconsistent paperwork from small hotels in Santo Domingo. He further asserts that these errors were "without malice" on his part or an intent to mislead or defraud the Bank. The Applicant contends that by his own revised accounting his claimed accommodation expenses "registered a discrepancy of only \$71.98" and not the \$6,765.57 calculated by EBC.

92. The Applicant contends that EBC violated his due process rights during the investigation in four ways. First, the Applicant asserts that he was not accorded his right to receive a "fair statement" of the allegations and grounds for starting the investigation. Second, the Applicant alleges that (i) there were no reasonable grounds for initiating the investigation, (ii) the investigation was not justified, and (iii) the investigation was due to management's failure to discuss the situation with the Applicant. Third, the Applicant avers that he was denied access to the Bank and his emails, thereby denying him the means of the right of defense. Fourth, the Applicant states that he was denied his right to be accompanied by an attorney to his interview with EBC.

93. Finally, the Applicant contends that the Bank unfairly and prematurely terminated his contract based on "unproven issues of any misappropriation of Bank expense account monies." The Applicant asserts that, despite four years of good performance at the Bank, his contract was cancelled "well before" EBC issued its Final Investigation Report and the HRDVP's decision.

The Bank's Response

94. The Bank contends that the HRDVP's finding of misconduct and decision to impose disciplinary sanctions meet the standard for review established by the Tribunal in disciplinary cases. First, the Bank asserts that EBC's investigation established the existence of facts to a standard "higher than a mere balance of probabilities" that the Applicant committed misconduct. The Bank states that these facts were established as a result of (i) two witnesses' corroborating testimony, (ii) substantial documentary evidence demonstrating that the invoices submitted by the Applicant were not authentic, and (iii) the Applicant's testimony that he submitted the wrong invoices. Second, the Bank avers that the facts legally amount to misconduct in violation of Staff Rule 3.00, paragraphs 6.01(b) and (c), and AMS 3.10, paragraphs 25(a) and (i). The Bank states that, by submitting erroneous invoices, the Applicant engaged in each of the forms of misconduct identified in the HRDVP's letter. Third and fourth, the Bank contends that the sanctions imposed are provided for in the law of the Bank and that the sanctions imposed are proportionate to the offense, both of which the Bank states are not contested by the Applicant. Fifth, and last, the Bank contends that EBC observed all due process requirements with respect to the Applicant. Specifically, the Bank asserts that (i) the Applicant received a "fair statement" of the allegations against him, (ii) there were sufficient grounds to initiate an investigation, (iii) the Applicant was granted access to his emails, and (iv) the Applicant was afforded the right to be accompanied by a staff member at his interview.

95. The Bank dismisses the Applicant's categorization that his contract was "prematurely terminated." The Bank avers that the Applicant was hired in June 2018 as an STC for 30 days for the period from 1 July 2018 to 30 November 2018. According to the Bank, the Applicant completed a total of 42 days under the terms of his LOA and his contract was subsequently closed. The Bank contends that no balance remained on the Applicant's contract and the Bank was under no obligation to extend his STC contract or offer him a new one.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

THE SCOPE OF THE TRIBUNAL’S REVIEW IN DISCIPLINARY CASES

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

When the Tribunal reviews disciplinary cases, it “examines (i) the existence of the facts, (ii) whether they legally amount to misconduct, (iii) whether the sanction imposed is provided for in the law of the Bank, (iv) whether the sanction is not significantly disproportionate to the offence, and (v) whether the requirements of due process were observed.” (*Carew*, Decision No. 142 [1995], para. 32.)

See also *FA*, Decision No. 612 [2019], para. 138; *EZ*, Decision No. 601 [2019], para. 67; *CH*, Decision No. 489 [2014], para. 22; *CG*, Decision No. 487 [2014], para. 38; *CF*, Decision No. 486 [2014], para. 39; *CB*, Decision No. 476 [2013], para. 31; *AB*, Decision No. 381 [2008], para. 53; *Mustafa*, Decision No. 207 [1999], para. 17.

97. In *M*, Decision No. 369 [2007], para. 54, the Tribunal confirmed that it must “naturally ensure that a disciplinary measure falls within the legal powers of the Bank.” This, however, does not mean that the Tribunal is an investigative agency. As stated in *M* [2007], para. 54, the Tribunal

simply takes the record as it finds it and evaluates the fact-finding methodology, the probative weight of legitimately obtained evidence, and the inherent rationale of the findings in the light of that evidence. The judicial function cannot be reduced to a mechanical formula. Decisions will perforce be fact-specific; the ideal of perfect and general predictability must give way, to some degree, to the individual discernment of those called upon to judge a given case.

THE EXISTENCE OF THE FACTS AND WHETHER THEY AMOUNT TO MISCONDUCT

98. The Tribunal has held that the burden of proof in misconduct cases lies with the Organization. *See, e.g., Dambita*, Decision No. 243 [2001], para. 21. It has also clearly stipulated on multiple occasions that there must be “substantial” evidence to support the finding of facts which amount to misconduct. *See, e.g., EZ* [2019], para. 69; *P*, Decision No. 366 [2007], paras. 33–34; *Arefeen*, Decision No. 244 [2001], para. 42. In other words, “the standard of evidence in

disciplinary proceedings leading [...] to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.” *Dambita* [2001], para. 21.

99. The Tribunal observes that, pursuant to EBC’s Final Investigation Report, EBC found sufficient evidence to establish that the Applicant engaged in the following activities:

- (i) Submitted to the WBG false invoices for his accommodation at [Hotel Billini] and Hotel Luca pertaining to his mission trips in 2018 to Santo Domingo;
- (ii) Misrepresented his SOEs by claiming higher expenses for his accommodation at [Hotel Billini] and Hotel Luca in the amount of USD \$6,765.57; and
- (iii) Failed to ensure the accuracy of his SOEs by omitting to disclose accommodation expenses incurred during his mission trips, as required by [the] WBG’s travel Directive/Procedures on official travel expenses.

100. Based on these facts, the HRDVP determined that there was “sufficient evidence to support a finding that [the Applicant had] engaged in misconduct,” referring specifically to EBC’s findings in relation to Staff Rule 3.00, paragraph 6.01(b), namely reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct, and willful misrepresentation of facts intended to be relied upon; and Staff Rule 3.00, paragraph 6.01(c), namely acts or omissions in conflict with the general obligations of staff members set forth in Principle 3, “General Obligations of Staff Members,” of the Principles of Staff Employment and Staff Rule 3.01. He also referred to the provisions of AMS 3.10 on Operational Travel Expenses, pointing to the obligations of travelers to keep themselves informed of and adhere to all policies and procedures affecting operational travel (paragraph 25(a)) and to the requirement to authenticate and validate information in SOEs and to ensure that all claims are business related and supported by necessary receipts (paragraph 25(i)).

101. The Tribunal notes that the two general categories of misconduct found by the HRDVP in this matter concern (i) violations of Staff Rule 3.00, paragraph 6.01 (Scope of Allegations Addressed by EBC), and (ii) violations of AMS 3.10, paragraph 25 (Operational Travel Expenses). The facts underlying both categories are the same. The Tribunal will, therefore, consider the

existence of the facts and whether, taken together, they amount to misconduct in respect of the four violations in question, two of Staff Rule 3.00 and two of AMS 3.10.

Violations of Staff Rule 3.00, paragraph 6.01 (Scope of Allegations Addressed by EBC), and AMS 3.10, paragraph 25 (Operational Travel Expenses)

102. The Applicant admits to submitting the “wrong files” with his SOEs but contends that his actions do not amount to misconduct because he made honest “mistakes” in submitting his travel expenses. In his view, these “mistakes,” as noted above, were, allegedly, due to his not having received proper training regarding the Bank’s travel policy, his being overworked and overwhelmed, and his receiving inconsistent paperwork from small hotels in Santo Domingo. They were, he claims, “without malice” on his part or any intent to mislead or defraud the Bank. The Applicant also claims that Bank management should have handled these issues as performance issues rather than misconduct.

103. In addition to his admission that he submitted the “wrong files” with his SOEs, the Applicant, in his 18 July 2019 response to EBC’s revised draft investigation report, further stated, “I regrettably was not attentive to detail in managing and maintaining my travel records, and I take responsibility for that.” As noted under Staff Rule 3.00, paragraph 6.01, misconduct does not require malice or guilty purpose. Consequently, the Applicant cannot use the alleged absence of malice on his part to contend that his actions do not amount to misconduct. The Applicant’s admission in itself confirms that he contravened AMS 3.10, paragraphs 25(a) and (i). These provisions require traveling staff members to keep themselves informed of applicable travel policies and to certify the information they submit in their SOEs. In this regard, the Applicant’s admission thus supports a finding of misconduct insofar as he failed to observe Staff Rule 3.00, paragraphs 6.01(b) and (c), and AMS 3.10, paragraphs 25(a) and (i).

104. The Tribunal will now review the facts in the record to determine whether there existed substantial evidence, higher than a mere balance of probabilities, and, if so, whether that evidence supports the HRDVP’s decision that the facts, as established, amounted to misconduct under Staff Rule 3.00, paragraphs 6.01(b) and (c), and AMS 3.10, paragraphs 25(a) and (i).

105. The Tribunal observes that the record demonstrates that on several occasions the Applicant was put on notice by his TTL and former TTL of the need to adhere to the applicable Bank rules regarding operational travel.

106. The record shows that EBC interviewed the Applicant's current and former TTLs on 1 and 26 November 2018, respectively. The TTL and former TTL provided corroborative testimonial evidence of concerns relating to the Applicant's travel-related expense claims. The TTL and former TTL stated that the Applicant had, while under their supervision, flouted operational travel rules and that they had both advised him, in writing, to adhere to applicable Bank rules and policies related to operational travel.

107. The Tribunal notes that the TTL told EBC that, shortly after she had begun supervising the Applicant on 1 July 2018, the following travel-related issues occurred:

- On 6 July 2018, the TTL approved the Applicant's request to add personal days to his upcoming mission in the Dominican Republic but advised him of the applicable personal days rules and informed him that she preferred to minimize such exceptions.
- On 7 September 2018, the Applicant submitted taxi receipts and hotel expenses associated with personal leave as part of his SOE. On 11 September 2018, the TTL's Program Assistant informed the Applicant that these expenses were not reimbursable and provided the Applicant with the relevant excerpt of AMS 3.10.
- In late November 2018, the Applicant's claims for in/out transportation expenses exceeded applicable WBG rates by as much as 440%, raising red flags in the travel system. The issue was escalated to the GGOLP Practice Manager, who asked the Applicant to justify his expenses. Following the Applicant's explanation, whereby he offered to cover the expenses in question and work *pro bono*, the Practice Manager declined the offers but stated, "What I would ask in the future is to please consult with the TTL *ex ante* about expectations re mission expenditure and guidelines for use of cars, support from office, etc."

108. The Tribunal notes that, following the 7 September 2018 incident above, the TTL told EBC, "At that point, I was feeling that I couldn't trust him to go on a mission honestly." In addition

to her interview, the TTL provided EBC with documentary evidence, mainly emails, in support of her testimony that she had advised the Applicant to comply with the applicable travel rules and had provided him with the relevant travel policies.

109. The record further indicates that the former TTL, who stated that there were “a lot of red flags” concerning the Applicant’s travel expenses, also provided substantial documentary evidence, consisting mainly of emails, in which he had informed the Applicant of ineligible expenses, reprimanded the Applicant for unauthorized changes of travel dates, and directed the Applicant to the applicable travel policies.

110. The Tribunal recalls that the former TTL also submitted several documents to EBC showing that the Applicant was advised on a number of occasions in 2017 and 2018 by his supervisors in GGOLP that only taxis paid for by the Country Office using appropriate charge codes were to be used or, in the alternative, that staff members were to use Uber.

111. The Tribunal notes that in the Applicant’s response to EBC’s revised draft investigation report, furnished to EBC on 18 July 2019, he stated:

The Draft Report is the first time I have heard that [the TTL] or [the former TTL] have any concerns in relation to my travel expenses. These alleged concerns were not put to me in my interview with EBC. [...] They have never provided me with [a copy of the] travel policy [...], access to [the] intranet on a WB computer or [given] me warnings on this issue to my knowledge [...].

112. The Tribunal considers that the record does not support the Applicant’s contention that he was unaware that his TTL and former TTL had concerns in relation to his travel expenses. Nor does it support his claim that he was never provided with a copy of the travel policy. In addition to the emails sent to the Applicant from the TTL and former TTL in which they provided the Applicant with relevant sections of the travel policy, the record also indicates that the Applicant signed his LOA acknowledging having received, reviewed, and understood the Bank’s travel policy and, in particular, AMS 3.10 (Operational Travel Reimbursement).

113. The Tribunal recalls that, as stated in AMS 3.10, paragraph 25(a), it is the staff members' responsibility to keep themselves informed of and to adhere to all policies and procedures affecting operational travel.

114. In the Applicant's response to EBC's revised draft investigation report, furnished to EBC on 18 July 2019, he stated, "At the relevant time, the overwhelming demands of the mission took all of my focus and I was unable to thoroughly document and keep track of receipts and invoices." Insofar as the Applicant purports this to be an explanation for his behavior, the Tribunal is not convinced.

115. In *Z*, Decision No. 380 [2008], the Tribunal observed that the applicant's unusually heavy workload and stressful environment were "certainly not an excuse for not following the rules of the Bank. No matter how busy he or she may be, a staff member cannot be 'exempted from the inconvenience of obeying applicable rules.'" *Id.*, para. 42, citing *K*, Decision No. 352 [2006], para. 39. The same holds true for the Applicant in this case.

116. The Tribunal also observes that, based on documentary evidence presented by EBC, the record supports a finding of "willful misrepresentation of facts intended to be relied upon."

117. The record indicates that EBC obtained compelling documentary evidence – invoices and receipts – directly from the hotels in question during the Applicant's four trips to the Dominican Republic in 2018. As described above, EBC noted a significant number of discrepancies between the information provided by the Applicant in his SOEs and the invoices and receipts provided by the hotels.

118. Notably, EBC's factfinding and analysis uncovered discrepancies in (i) duration of the stays, (ii) nightly rates claimed, (iii) total amounts claimed, (iv) invoice numbers, (v) payment method (*i.e.*, cash versus credit card), (vi) invoice balances, and (vii) confirmation numbers.

The record shows that both Hotel Luca and Hotel Billini refused to authenticate the invoices submitted by the Applicant. Importantly, when EBC presented Hotel Luca with a copy of an

invoice submitted by the Applicant in his SOE (Trip Report No. 1000673740) for comment, it responded, “The invoices sent [...] are not authentic and [...] the dates and the amounts are different, so please check with [the Applicant], because he didn’t pay these amounts at [Hotel Luca].”

119. When EBC sought to verify with Hotel Billini the Applicant’s July 2018 invoice, the hotel provided the following responses:

[W]e confirm [to] you that the invoice that you just sent us, is invalid. That invoice was created manually by someone else outside of the hotel. The confirmation number that is used in that invoice is for a reservation of [the Applicant] from April 2018. [...]

Regarding the invoice from April 2018, we determined it because looking [at] the confirmation number in our system it detects it’s the invoice I’ve attached [and sent to] you with the name “[The Applicant] Invoice April 2018” since it has the same confirmation number. [...]

As you can see[,] the screenshot [of] the invoice presents two confirmation numbers. All of our invoices have the same confirmation number on both [the] right and left side of the invoice. The confirmation No. 2257903 corresponds to the invoice I have sent you on the email before which you can see [is] attached once again as “[The Applicant] Invoice April 2018.” As for the confirmation No. 2557404[,] [it] does not exist in our system.

120. The Tribunal recalls that in his decision letter the HRDVP explained why he believed the Applicant’s actions constituted a willful misrepresentation of facts. He stated:

While a slight error or oversight may be reasonable, the evidence indicates that you made deliberate efforts to deceive the Bank by falsifying invoices and misrepresenting your expenses. This is proven not only by [Hotel Billini’s] and Hotel Luca’s statements, but also by the fact that your invoices contained inculpatory information, most notably, two different confirmation numbers that were displayed on an invoice from [Hotel Billini] for your accommodation in July 2018. Yet, the hotel explained that each of their invoices show identical confirmation numbers on the left and right sides. My decision, therefore, is based on the inconsistent documentary evidence, as well as the statements from the hotels and your former TTLs who noted that they gave you repeated warnings and guidance on how to properly record your travel expenses.

121. In view of the substantial evidentiary record of inaccurate filings by the Applicant of his SOEs, the Tribunal considers that his purported explanation of having committed honest “mistakes” is simply implausible. The Applicant’s position is wholly undermined by the robust and substantial documentary evidence obtained by EBC in this matter.

122. In view of the Applicant’s admissions, in addition to the strong and well-developed evidentiary record consisting of compelling and robust testimonial and documentary materials, the Tribunal is satisfied that the Bank has met its burden of proof and that there is substantial evidence, “higher than a mere balance of probabilities,” to support a finding of misconduct in violation of Staff Rule 3.00, paragraphs 6.01(b) and (c), and AMS 3.10, paragraphs 25(a) and (i).

WHETHER THE SANCTIONS IMPOSED ARE SIGNIFICANTLY DISPROPORTIONATE TO THE OFFENSE

123. The Tribunal notes that the Applicant does not challenge the sanctions imposed on the basis that they are not provided for in the law of the Bank.

124. The Tribunal further observes that the Applicant does not specifically challenge the proportionality of the disciplinary measures imposed. In his Application, the Applicant simply contests “the decision to place a no-hire notice for three years on his personnel file and deny him access to the [World Bank] premises.”

125. In view of the fact that the Tribunal has determined that the evidence in this case supported a finding of misconduct, it will now assess whether the disciplinary measures imposed were significantly disproportionate to the misconduct.

126. In *Gregorio*, Decision No. 14 [1983], para. 47, the Tribunal held:

[I]n order for a sanction to be proportionate, there must be some reasonable relationship between the staff member’s delinquency and the severity of the discipline imposed by the Bank. The Tribunal has the authority to determine whether a sanction imposed by the Bank upon a staff member is significantly disproportionate to the staff member’s offense, for if the Bank were so to act, its action would properly be deemed arbitrary or discriminatory.

127. In *Houdart*, Decision No. 543 [2016], para. 95, the Tribunal reiterated the principle of proportionality and observed:

[I]n addressing the issue of proportionality, its job is not to decide what sanction the Tribunal would impose or whether the [HRDVP] chose the best penalty, but, rather, whether the [HRDVP] reasonably exercised his discretion in this matter. [...] [T]here is no mechanical formula on how to weigh these considerations. The selection of the sanction in a given case requires a judgment of balancing the relevant factors by the [HRDVP]. That discretionary judgment is for the [HRDVP] to make, and as long as [the HRDVP's] decision was not unreasonable, the Tribunal will not interfere.

128. In the present case, the Tribunal observes that the HRDVP imposed the following disciplinary measures upon the Applicant: (i) a three-year hiring restriction; (ii) a three-year access restriction to WBG facilities; and (iii) a written censure to remain in the Applicant's personnel file.

129. In the HRDVP's decision letter, dated 5 December 2019, he stated that, to decide on the proportionality of the disciplinary measures to be imposed, and in accordance with Staff Rule 3.00, paragraph 10.09, he considered such factors as

the seriousness of the matter, the interests of the World Bank Group, any extenuating circumstances, the situation of the staff member, and the frequency of the conduct for which disciplinary measures may be imposed.

130. In the decision letter, the HRDVP also expressly identified and considered the following mitigating factors in determining the disciplinary measures to be imposed:

By way of mitigating factors, I note that, without admitting liability, you offered to repay the World Bank Group the amount of USD \$6,765.57 as identified by EBC in good faith and to clear your name of the charges. I also note that, ultimately, the difference between the amount you originally claimed in your SOEs and the amount of expenses you actually incurred was a relatively small sum of USD \$71.98. Further, I am aware that you do not have prior disciplinary proceedings against you since you joined the World Bank Group in 2013.

131. The Tribunal reiterates that "there is no mechanical formula on how to weigh these considerations. [...] That discretionary judgment is for the [HRDVP] to make, and as long as [the]

[HRDVP's] decision was not unreasonable, the Tribunal will not interfere." *Houdart* [2016], para. 95.

132. In the present matter and having regard to the nature and persistence of the misconduct in question, the Tribunal finds no reason in the record to hold that the HRDVP's decision on sanctions was unreasonable, nor does it find any other grounds upon which the imposed sanctions should be set aside.

133. The Tribunal is, therefore, satisfied, on the basis of the circumstances of this case, that the sanctions imposed on the Applicant are not disproportionate, significantly or otherwise, to the offense.

WHETHER THE REQUIREMENTS OF DUE PROCESS WERE OBSERVED

134. The next issue for the Tribunal to address in its examination of this case is whether the Bank observed the requirements of due process.

135. In *AJ*, Decision No. 389 [2009], para. 120, the Tribunal stated that claims related to an alleged lack of due process "must be examined bearing in mind that the Bank's disciplinary proceedings are administrative rather than criminal in nature." In *Kwakwa*, Decision No. 300 [2003], para. 29, the Tribunal observed that the Bank is not required to accord a staff member accused of misconduct "the full panoply of due process requirements that are applicable in the administration of criminal law."

136. In *Rendall-Speranza*, Decision No. 197 [1998], para. 57, the Tribunal explained the nature of disciplinary proceedings in the Bank as follows:

In order to assess whether the investigation was carried out fairly, it is necessary to appreciate the nature of the investigation and its role within the context of disciplinary proceedings. After a complaint of misconduct is filed, an investigation is to be undertaken in order to develop a factual record on which the Bank might choose to implement disciplinary measures. The investigation is of an administrative, and not an adjudicatory, nature. It is part of the grievance system

internal to the Bank. The purpose is to gather information, and to establish and find facts, so that the Bank can decide whether to impose disciplinary measures or to take any other action pursuant to the Staff Rules. The concerns for due process in such a context relate to the development of a fair and full record of facts, and to the conduct of the investigation in a fair and impartial manner. They do not necessarily require conformity to all the technicalities of judicial proceedings.

137. The Applicant in this case alleges that the Bank failed to observe his due process rights in four specific instances, namely, that (i) he did not receive a “fair statement” of the misconduct allegations against him, (ii) there were insufficient grounds to initiate the investigation against him, (iii) he was denied access to his emails thereby denying him the means of the right of defense, and (iv) he was denied his right to be accompanied by an attorney to his interview with EBC.

138. The Tribunal will assess each of these claims, in turn, through the lens of due process requirements articulated in the Tribunal’s jurisprudence as cited above.

Whether the Applicant received a fair statement of the allegations against him

139. The Tribunal notes the Applicant’s contention that he was not accorded his right to “receive a fair statement of the allegations” and grounds for starting the investigation.

140. Staff Rule 3.00, paragraph 8.02, provides:

A Staff Member whose conduct is at issue is notified in writing of the allegations against him/her, and of the Staff Member’s rights and obligations, at the onset of any of the procedures set forth in clauses (a), (b), or (c) of paragraph 8.01 of this Rule.

141. The Guide to EBC’s Investigative Process states:

At the conclusion of a preliminary [inquiry], if a decision is made to proceed with an investigation, EBC will send a Notice of Alleged Misconduct to the staff member who is the subject [of the investigation]. The notice will include the following information:

- A description of the allegation(s)
- The relevant Bank Group standards involved
- An overview of EBC’s investigative process

- A summary of the staff member's rights and obligations.

142. In *King*, Decision No. 131 [1993], para. 53, the Tribunal summarized the essential elements of due process as being

the precise formulation of an accusation, the communication of the precise accusation to the [a]pplicant, the giving to the [a]pplicant of an opportunity to rebut in detail the specifics of the charge and the opportunity to invoke all pertinent factors[.]

143. The record shows that EBC, on two occasions, informed the Applicant of the allegations against him. It also provided the Applicant with information and/or links regarding (i) his corresponding due process rights and obligations, (ii) the relevant Bank Group standards involved, and (iii) an overview of EBC's investigative process.

144. On 10 December 2018, EBC emailed the Applicant, stating:

We are contacting you because EBC recently completed a preliminary inquiry into allegations that you may have committed misconduct by misusing Bank Group funds related to travel expenses incurred in Santo Domingo, Dominican Republic. Specifically, it is alleged that you may have fraudulently claimed accommodation expenses in relation to several of your mission trips to Santo Domingo during 2018.

145. Furthermore, on 29 January 2019, EBC emailed the Applicant a Notice of Alleged Misconduct, stating:

[EBC] is conducting an investigation into allegations that you may have committed misconduct under the World Bank Group (WBG) rules and policies. It is alleged that you have misused WBG funds related to travel expenses incurred in Santo Domingo, Dominican Republic. Specifically, its [*sic*] alleged that you may have fraudulently claimed accommodation expenses in relation to several of your mission trips to Santo Domingo in February, April, July, and October 2018.

146. The Tribunal is satisfied that such notices of allegations were sufficiently precise to apprise the Applicant of the allegations against him and to give him an opportunity to rebut in detail the specifics of the charge and to invoke any relevant or pertinent factors. In particular, the subject matter of the allegation, the relevant time, and the specific location were all explicitly identified to the Applicant.

147. Having read both notices, it is fair to assume that the Applicant would reasonably have known that he was being investigated for fraudulently claiming accommodation expenses in relation to several of his mission trips to Santo Domingo, Dominican Republic, in 2018.

148. Based on the foregoing, the Tribunal rejects the Applicant's claim that he did not receive a fair statement of the allegations against him.

Whether there were sufficient grounds to initiate an investigation

149. The Tribunal will now assess the Applicant's second due process contention, namely, that there were insufficient grounds for his TTL to report his conduct to EBC, and for EBC to initiate the investigation.

150. Staff Rule 3.00, paragraph 7.01, states:

Staff Members are encouraged to report suspected staff misconduct that falls within the scope of matters addressed by EBC, as set forth in Section 6, "Allegations of Misconduct Addressed by EBC," of this Rule, to EBC or to line management, but are not required to do so. A Manager who suspects or receives a report of suspected staff misconduct, however, has an obligation to report it either to EBC or, as provided in this rule, to [Integrity Vice Presidency (INT)].

151. In *DM*, Decision No. 542 [2016], para. 58, the Tribunal held, "It is a discretionary decision of EBC to determine in what cases to conduct an initial review and when to proceed to a formal investigation." Moreover, in *BS (No. 2)*, Decision No. 545 [2016], para. 53, it concluded that, "as long as the Tribunal finds there is a sufficient basis for EBC's decision to proceed with a formal investigation, the Tribunal will not question such a discretionary decision of EBC."

152. With regard to determining an evidentiary standard for initiating a preliminary inquiry, the Tribunal held in *BB*, Decision No. 426 [2009], para. 73, that the threshold to "justify the initiation of a formal investigation is low. All that it needs to find is that the allegation is sufficiently credible to merit a formal investigation." *See also DQ (Merits)*, Decision No. 555 [2017], para. 61.

153. The Tribunal notes that the Applicant claims that EBC's factual findings and the HRDVP's finding of misconduct were an abuse of discretion because the matter was a "performance management" issue. He states that his TTL was a "new and inexperienced manager" who should have first sought to resolve the "expense account" issue with him before turning to EBC "with rather vague allegations." The Applicant claims that "there was no need to resort to EBC."

154. The Tribunal observes that the record shows that the TTL's Program Assistant noticed discrepancies in the Applicant's Mission Trip No. 4 SOE regarding nightly room rates. It further shows that the TTL then authorized the Program Assistant to follow up with the hotel and to obtain copies of the invoices related to the Applicant's stay. Upon receiving the invoices from the hotel, the TTL found additional discrepancies regarding the duration of the Applicant's stay.

155. Given the nature of the information obtained by the TTL, coupled with the Applicant's prior history of claiming ineligible expenses and of making unauthorized changes to mission dates, the TTL reported the matter to EBC in accordance with her managerial obligation in Staff Rule 3.00, paragraph 7.01: "A Manager who suspects or receives a report of suspected staff misconduct, however, has an obligation to report it [...] to [EBC or INT]." The Tribunal notes the Bank's position that the "Applicant's TTL is a decorated manager with more than 13 years of experience at the World Bank" and "had an obligation to report the matter to either EBC or INT." The Tribunal is satisfied that, contrary to the Applicant's belief that his TTL had the discretion to manage the issue as a "performance issue," she had, in fact, a managerial obligation to report the matter to EBC or INT.

156. The Applicant contends that, given the small amount of the discrepancy in his final analysis, \$71.98, EBC's investigation amounted to an abuse of discretion and a misuse of the Bank's resources. In this regard, the Tribunal recalls that the Staff Rules do not establish a cost-benefit test for determining when an investigation can or should be conducted. It is the Bank's duty to investigate all forms of misconduct. Moreover, the WBG endeavors to be a leader in international efforts to eliminate corruption and to improve governance. Where financial discrepancies or irregularities are suspected or identified in any part of the Bank's workforce, it is incumbent on the Bank, in pursuit of its commitment to integrity and its promotion of the highest

standards by staff members in the performance of their duties, to investigate such discrepancies and irregularities and to be satisfied that any such discrepancies and/or irregularities have been fully accounted for and satisfactorily explained. It cannot “turn a blind eye” to such matters.

157. The Tribunal observes that the amount of the discrepancy relied upon by the Applicant, namely \$71.98, is based on his revised SOEs, which he furnished only after the allegations were brought to his attention and with the benefit of his having received the actual invoices which the Bank obtained from the hotels. When calculated on the basis of the falsified invoices initially submitted by the Applicant with his SOEs, the discrepancy in the amount he claimed as distinct from the amount due to him was significantly higher, namely, \$6,765.57. EBC’s Final Investigation Report explains, clearly, how this discrepancy arose.

158. The Tribunal is satisfied that EBC conducted a sound preliminary inquiry and a thorough investigation. Based on the record, EBC interviewed and obtained testimonial and documentary evidence from two of the Applicant’s TTLs during its preliminary inquiry. This revealed that there had been several incidents where the Applicant had claimed ineligible expenses and had made unauthorized changes to pre-approved mission dates. Furthermore, the record shows that EBC then obtained invoices and receipts from Hotel Billini that contained several discrepancies with the invoices provided by the Applicant in his SOEs. Upon receiving and analyzing this information, EBC determined that the allegation was credible. The Tribunal notes that the Applicant was given the benefit of the doubt in his revised calculation of his actual expenses insofar as additional invoices submitted in support thereof were taken at face value. It further observes that the evidence disclosed an egregious and persistent pattern of falsification of invoices. In such circumstances, the Tribunal is satisfied that EBC had a sufficient basis to proceed with a formal investigation and, accordingly, finds no reason to question or to interfere with the exercise by EBC of its recognized discretion.

159. Based on the foregoing, the Tribunal concludes that there were sufficient grounds to initiate the investigation by EBC and that its actions were reasonable and did not constitute an abuse of discretion.

Whether the Applicant was granted access to his emails

160. The Applicant contends that he was “denied access to the Bank and his email denying him [the] means of the right of [defense].”

161. The record shows that, on 6 June 2019, EBC received an email from the Applicant’s counsel stating that the Applicant’s WBG contract was “prematurely terminated” and that, as a result, the Applicant was unable to access his WBG email account and thus unable to access information to assist him in preparing his response to the revised draft investigation report.

162. The record further provides that, over the course of the next few days, EBC worked with the TTL and ITSDI to reinstate the Applicant’s WBG contract for the sole purpose of facilitating him in accessing his email.

163. On 10 June 2019, EBC emailed the Applicant’s counsel informing him that it was looking into the possibility of reinstating the Applicant’s email access to allow him to prepare his response to the revised draft investigation report. In reply, the Applicant’s counsel stated,

We appreciate that EBC is making an effort to have [the Applicant’s] access to his emails restored for a specific period to assist him in responding to the EBC Draft Investigation Report.

164. The record shows that, between 25 June and 2 July 2019, the Applicant visited EBC’s office on multiple occasions during which he had access to his emails.

165. However, on 2 July 2019, the Applicant informed EBC that he still did not have access to certain emails and documents, and he requested “at least” an additional five days from the date he received all of the documents to submit a “substantive response” to the draft investigation report. EBC granted the extension request the next day.

166. It is clear from the record that, on 10 July 2019, after working with ITSDI and the TTL to retrieve the remaining documents requested by the Applicant from the WBG email and cloud

servers, EBC provided the Applicant with a copy of all 206 documents he had requested. EBC then gave the Applicant the five business days he had sought within which to submit his input on the revised draft investigation report.

167. On 18 July 2019, the Applicant furnished his views on the revised draft investigation report.

168. The Tribunal observes that EBC reacted promptly to the Applicant's request for access to his emails and spent a considerable amount of time ensuring that he was provided with such access in order to enable him to prepare his defense.

169. Based on the foregoing, the Tribunal finds that the Applicant was not denied access to his emails and was not denied the means to exercise his right of defense.

Whether the Applicant was denied the right to be accompanied by an attorney at his EBC interview

170. Finally, the Tribunal will examine the Applicant's contention that he was "not accorded his right to be accompanied by an attorney to his first and only interview with EBC."

171. WBG Directive/Procedure, "Conduct of Disciplinary Proceedings for EBC Investigations," Section C, paragraphs 7(ii) and (v), states:

- ii. Personal legal or financial advisors will not be permitted to attend interviews, or meetings held during the course of disciplinary proceedings. [...]
- v. Although investigators will endeavor to accommodate subject staff members who obtain legal or finance advisory assistance, the investigator is not obligated to correspond with subject staff members through their personal legal or financial advisors.

172. The prohibition on personal legal advisors attending interviews is reflected in the "Guide to EBC's Investigative Process," under the heading "Interviews." The Guide states that in

scheduling interviews EBC may grant subject staff members time to seek the counsel of personal legal or tax advisors at their own expense; “[h]owever, personal legal or tax advisors are not permitted to attend interviews.”

173. Staff Rule 3.00, paragraph 10.02, clarifies the scope of permissible attendees to an EBC subject interview, stating:

A Staff Member against whom the allegations at issue have been made may be accompanied at interviews in the course of a fact finding by another Staff Member who is reasonably available, who is not connected to the matter under review, and who is approved in advance by the World Bank Group Chief Ethics Officer, EBC. The presence of such a person does not relieve a Staff Member of the obligation to respond personally in the matter under review. Members of any Legal Vice Presidency or Legal Department of the Bank Group may not represent, advise or otherwise assist a Staff Member in connection with fact findings under this Rule.

174. WBG Directive/Procedure, “Conduct of Disciplinary Proceedings for EBC Investigations,” Section A(I), paragraph 6, states:

Subject staff members may be accompanied to their interview by another staff member as an observer so long as the accompanying staff member is reasonably available and is not connected to the matter under investigation. The accompanying staff member may be a Staff Association representative. In order to protect the confidential nature of the proceedings, the accompanying staff member will be required to sign a non-disclosure agreement.

175. It is clear from the above provisions that the relevant investigative framework does not confer upon a staff member the right to be accompanied by an attorney. That being so, the Applicant’s contention that he was denied “his right to be accompanied by an attorney to his first and only interview with EBC” on 29 January 2019 is misplaced because such a right does not exist.

176. Furthermore, pursuant to Section C, paragraph 7(v), of the Conduct of Disciplinary Proceedings for EBC Investigations, EBC’s investigators were under no obligation to correspond with the Applicant’s legal advisors. The Tribunal observes, however, that as a courtesy to the Applicant the investigators did correspond with the Applicant’s legal advisors, having been informed on 23 May 2019 that he had hired counsel.

177. The Tribunal recalls that the Applicant chose not to avail himself of his right to be accompanied to the subject interview by a staff member, despite being advised of this right on several occasions by EBC, including (i) on 10 December 2018 in EBC's email inviting the Applicant to an interview concerning the alleged misconduct and (ii) twice on 29 January 2019, first in the Notice of Alleged Misconduct and then in correspondence regarding the Applicant's attempt to bring an ineligible advisor from outside of the Bank to his subject interview.

178. The record demonstrates that, in the 29 January 2019 email correspondence between EBC and the Applicant, EBC informed the Applicant that the person he had proposed to accompany him was ineligible because he could have been connected to the case through "helping you review your expenses." EBC, however, added, "You are more than welcome to call in another staff member who has [no] direct knowledge of the matter, this person can also be a member of the staff association."

179. In response to this assurance, the Applicant stated, "Thank you for clarifying the role of the advisor. I will not plan on bringing anyone as an adviser or observer."

180. Based on the foregoing, the Tribunal is satisfied that the Applicant was (i) not denied what he has asserted as "his right to be accompanied by an attorney" to his EBC subject interview because no such right exists, and (ii) afforded the right to be accompanied by a staff member at his subject interview, pursuant to Staff Rule 3.00, paragraph 10.02, and the Directive/Procedure on the Conduct of Disciplinary Proceedings for EBC Investigations Section A(I), paragraph 6, but chose not to avail himself of that right.

181. In view of the foregoing, the Tribunal finds that the Bank observed all requirements of due process with regard to the Applicant. As set out above, EBC's investigation was conducted fairly and impartially in accordance with Staff Rule 3.00 and the Directive/Procedure on the Conduct of Disciplinary Proceedings for EBC Investigations. Moreover, the HRDVP's decision was an objective one, based on substantial documentary and testimonial evidence and on the Applicant's own admissions.

WHETHER THE BANK WAS OBLIGATED TO MEDIATE THE DISPUTE WITH THE APPLICANT

182. For the sake of completeness, the Tribunal will consider the Applicant's submission to the effect that EBC was obligated to mediate "the claims in dispute." The Applicant states that the Guide to EBC's Investigative Process "contains no prohibition of mediation" and "actually provides in its contact list in that document information on the Mediation Office implying thereby that mediation is open to a staff member subject to an EBC investigation."

183. The Bank maintains that it was under no obligation to enter into mediation with the Applicant "as the mediation process is purely voluntary." The Bank submits that the mere fact that contact information is provided in a widely circulated brochure does not create an obligation to mediate and that the information provided in the brochure is simply a resource tool for staff to find additional resources.

184. The Tribunal recalls that mediation "is considered to be a voluntary remedy" (*Rittner*, Decision No. 335 [2005], para. 36) and that "[p]arties to a mediation start the process consensually and are not compelled to conclude agreements" (*EY*, Decision No. 600 [2019], para. 136). Accordingly, the Tribunal takes no issue with the Bank's discretionary decision not to mediate with the Applicant.

OTHER MATTERS

185. In his Application, the Applicant challenges the Bank's decision to "terminate his STC contract and non-payment of that contract." However, the Applicant provides no further explanation in support of these claims.

186. In response to these claims, the Bank states as follows in its Answer:

Under the terms of his LOA, which provided that [the Applicant's services] would be required for approximately 30 days, [the] Applicant completed a total of 42 days and the contract was subsequently closed out in the system on May 22, 2019. [...] No balance remained on his contract.

187. In his Reply, the Applicant does not deny or contest the Bank's above assertion.

188. The Tribunal notes that the record shows that the Applicant's contract was closed in the system on 22 May 2019. However, by the time the Applicant submitted his first request for an extension of time on 27 February 2020 to file his Application with the Tribunal, he was already out of time to challenge the alleged termination of his STC contract. Regarding the Applicant's claim of any non-payment under his contract, the Applicant must timely exhaust all internal remedies before raising such claim with the Tribunal. This, the Applicant has failed to do. In any event, based on the record, these claims have no basis on the merits.

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.