



World Bank Administrative Tribunal

2015

Decision No. 512

**CT,
Applicant**

v.

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

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

**CT,
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 Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani and Marielle Cohen-Branche.
2. The Application was received on 5 December 2014. The Applicant was represented by Peter C. Hansen and J. Michael King of the Law Offices of Peter C. Hansen, LLC. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration). The Applicant's request for anonymity was granted on 18 May 2015. Oral proceedings were held on 27 May 2015.
3. The Applicant challenges the 7 August 2014 decision of the Vice President of Human Resources (HRVP) finding that she committed misconduct and imposing disciplinary measures.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in July 1995 and became a resource management officer, level GF, in 2005. She held this position until August 2014 when her appointment was terminated for misconduct. The decision to terminate her contract followed investigations conducted by the Office of Ethics and Business Conduct (EBC) into allegations that the Applicant: (i) transmitted, via her World Bank Group (WBG) email address on her WBG assigned computer, emails which may be considered a disparagement of others; and (ii) transmitted to her manager, Ms. X, emails which were disparaging of, and which created a hostile and uncomfortable work environment for, Ms. X.

5. The email messages in question were exchanged between the Applicant and Mr. AB who joined the Bank in 1983. On the date in question he worked in a different unit from the Applicant and Ms. X. These messages included comments about Ms. X, a German national, who joined the Bank in 1994. In March 2014 she assumed duty as a senior manager in the same Vice-Presidential Unit (VPU) in which the Applicant was employed.

6. Ms. X had limited interaction with the Applicant, approximately six years prior to the date of the email exchanges. According to Ms. X she had no relationship with the Applicant; their brief interactions were indirect and at arm's length because the Applicant "was a member of the resource management group ... when [Ms. X] was a manager there." The Applicant confirms this and states that she perceived Ms. X as cold, aloof and hostile towards her. On the date of the email exchanges, Ms. X had been working in the unit where the Applicant was a resource management officer for less than four days. On the other hand, Ms. X and Mr. AB had interacted more frequently in the past when they worked in the same VPU.

7. On 26 March 2014, the Applicant sent an email to Mr. AB through the Bank's electronic mailing system. The email contained an internet link to a video clip of a nun performing a popular song. Shortly thereafter Mr. AB responded to the Applicant copying a link to a different video which featured scenes from the television show *Californication*. In those scenes a female character in the position of an office manager subjected her male subordinates to extended and explicitly sexualized rants.

8. The Applicant responded by describing the TV character and Mr. AB suggested that the Applicant should respond to others, including Ms. X, in the same manner.

9. On 27 March 2014, the correspondence between the Applicant and Mr. AB continued. Out of respect for the privacy of Ms. X and for reasons of decency, the Tribunal refrains from reproducing the contents of the email exchange.

10. Towards the end of the email exchange that day Mr. AB inadvertently copied Ms. X as a recipient on the email chain.

11. Later that day on 27 March 2014, Ms. X, who received and read the email exchange, contacted the EBC Helpline. She sent them the email exchange between the Applicant and Mr. AB and stated that she felt threatened and bullied by the email exchange.

12. On 31 March 2014, EBC conducted an interview in which Ms. X reiterated that she felt threatened and concerned by the email exchange. During the interview Ms. X indicated her preference to no longer work with the Applicant and expressed the view that “I don’t think there’s space in the organization for people with this kind of behavior.” When asked whether she would be willing to mediate with the Applicant, Ms. X expressed an unwillingness to speak with the Applicant stating “I have no obligation or interest or anything to gain from having a conversation about what has transpired there.”

13. On 14 April 2014, a Notice of Alleged Misconduct was issued to the Applicant. The notice informed the Applicant that EBC was conducting a review into allegations that she committed misconduct by:

- (a) Transmitting emails ... containing ethnic slurs, racial epithets and which may be considered a disparagement of others via the World Bank Group (WBG) email system on your World Bank Group (WBG) computer; and
- (b) Transmitting to [Ms. X], emails ... which were disparaging and which may be considered harassment of others and which allegedly created a hostile, abusive and uncomfortable work environment for [Ms. X].

14. On 15 April 2014, the Applicant sent Ms. X an email message in which she apologized for the email exchange with Mr. AB. She stated:

I would like to sincerely apologize for the correspondence. I wholeheartedly want to assure you that in no way did I have any intention to direct any e-mail to you (or have any knowledge of your name being included) and was completely unaware of my ex-colleague copying you in any message. It was upon receipt of the EBC letter that my colleague only found out that he had mistakenly copied you. I admit that it was a stupid way of voicing frustration in the workplace in a private and personal chat with an ex-colleague, who has no connection, affiliation, or interaction with any staff member in our current VPU.

Again, I assure you on my honor that there was no malicious intent to harass you or any deliberate attempt to be hostile to you. I am very sorry for the unintended and accidental transmittal. In no way would I ever think of triggering a hostile environment for the subordinate and the manager, and there was no intention whatsoever to hurt you in any way.

Please accept my apologies. If you allow me the chance to meet with you in person and explain myself, I would be most appreciative.

15. Ms. X did not respond to the Applicant.
16. On 17 April 2014, EBC interviewed the Applicant. During the interview the Applicant expressed remorse for the email exchange stating:

I just want to say that I – it was poor judgment on my part to engage in such conversation which was not in any way the true intention of my heart was to attack her or to, you know, purposely make it known to her, and second, you know, I really assure you that this is not me. It was just an instance of blowing off steam.

I apologize to the complainant for, you know, using such derogatory language. I can feel – I can feel the impact it must have had on her. I'm so sorry, truly sorry. I mean if I could be afforded a chance to sit with her face to face like this, you know, not in the office setting but something personal, I would just go to her and say, you know, this wasn't all intentions not deliberate. I'm ashamed of the language that I used. I've never done this before in the past when I worked with her, you know. I'm truly sorry. It was a time when my husband was at the hospital. I was alone manning the household. I was so stressed out, you know, all the context that triggered sort of human error.

17. The Applicant explained her behavior noting:

I always wondered, you know, is there something in my face or is it me. Is it just the way I look maybe that doesn't sink in with her. I had no idea. It was just really blowing steam with feeling of sort of feeling cut off, left out, being unfriendly towards me, and that reflected into, you know, the comments that I made which I admit were, you know, unprofessional, derogatory, in that email.

18. She further expressed a willingness to undertake "training on sensitivity" or improving relationships in the workplace.

19. When asked why she referred to Ms. X, a German national, as “Nazi Third Reich,” the Applicant stated that she was quoting Mr. AB, of German origin, who had used the words to describe Ms. X in a previous conversation. The Applicant asserted that “it had nothing to do with [Ms. X’s] nationality.” The EBC investigators enquired whether the Applicant knew why Mr. AB referred to Ms. X in that manner and the Applicant responded:

I don’t know. I’ll be honest, he has a dirty mouth, and it was, you know, poor judgment on my part to have been carried away in sort of getting into this kind of mode with him because when I chat with my other colleagues I don’t engage in this kind of language.

20. She further stated that Mr. AB used descriptive words in the email exchange, some of which she did not understand. When asked why she enquired about Ms. X’s sexuality, the Applicant stated:

I find her to be very enigmatic. She’s a brilliant woman ... and it was just out of curiosity and understanding why she acts the way she does. Again it was an expression of why could someone be hostile towards me. I wanted to understand the personality or the character.

21. On 17 April 2014, EBC interviewed Mr. AB. He informed EBC that he had resigned from his position and submitted thirty days’ notice to his supervisor after having been apprised of the allegations.

22. On 4 June 2014, EBC sent its draft Written Summary of Factual Findings and Recommendations to the Applicant for her comments.

23. On 6 June 2014, the Applicant provided EBC with her comments on the Draft Report. She again admitted to engaging in the email exchange with Mr. AB. The Applicant clarified that the exchange had been inadvertently sent to Ms. X by Mr. AB, and maintained that she did not intend to insult Ms. X or threaten her. The Applicant reiterated her apologies noting that “what occurred was wrong, totally improper and unprofessional.” She stated:

I do not take issue with the actual content of the emails between myself and [Mr. AB] ... I do not deny the gist of what occurred, but can only speak to the fact that

this is not reflective of my character or who I am as a person or an employee of the World Bank. [...]

1. What occurred was wrong, totally improper and unprofessional.
2. I am horrified when I read and reflect over some of the language and comments made and the fact that I took part in such an inappropriate and disgusting dialogue. I am not a racist or bigot. [...]
3. More importantly, I cannot take the comments back, but as I expressed with all my heart I am deeply sorry to [Ms. X] and the Organization as a whole. It is an embarrassment. The content of those emails was clearly not only vulgar, but deeply insulting and hurtful, and I cannot express more regret and remorse.

24. On 12 June 2014, EBC issued its Final Report of Findings to the Applicant and the HRVP. In its Report, EBC concluded that it found sufficient evidence to substantiate allegations that the Applicant had transmitted via her WBG email address using her WBG computer, emails “which may be considered disparaging of others and which contained ethnic slurs and racial epithets,” and that she transmitted to Ms. X “disparaging emails containing ethnic slurs and racial epithets and which may be considered a harassment of others and, which created a hostile, abusive and uncomfortable work environment for [Ms. X].” The Report noted that the investigators concluded that the Applicant’s actions amounted to:

- Unauthorized use of Bank Group computer resources;
- Sending derogatory and harassing email;
- A reckless failure to observe generally applicable norms of prudent professional conduct; and
- Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment.

25. The Final Report noted as mitigating factors that:

[The Applicant] admitted to the allegations saving EBC the time and expense of a protracted investigation.

[The Applicant] apologized to [Ms. X] and the WBG for her conduct. Upon becoming aware that she copied [Ms. X] ..., [the Applicant] immediately sent her an apology.

[The Applicant] offered to mediate with [Ms. X] and to take training on sensitivity or improving relationships at the workplace.

Although Staff Rule 3.00, paragraph 6.01 provides that misconduct does not require malice or guilty purpose, [the Applicant] explained that she did not intend to have the email exchange ... sent to [Ms. X], hurt her feelings, harass her or create a hostile work environment for her.

EBC is unaware of any prior disciplinary proceedings against [the Applicant]. [The Applicant] has been with the WBG for over 20 years.

26. On 11 August 2014, the Applicant received the 7 August 2014 decision of the HRVP who noted that:

After a careful and thorough review of the Final Report, I have determined that there was sufficient evidence to support a finding that you have engaged in misconduct, as defined under:

- a) Staff Rule 3.00, paragraph 6.01(a) – Misconduct includes unauthorized use of Bank Group computer resources.
- b) Staff Rule 3.00, paragraph 6.01(b) – Misconduct includes reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct.
- c) Staff Rule 3.00, paragraph 6.01(c) – Misconduct includes acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment including the requirement that staff ... conduct themselves at all times in a manner befitting their status as employees of an international organization and to avoid any action ... that would adversely or unfavorably reflect on their status ... (Principle 3.1(c)).
- d) Staff Rule 3.00, paragraph 6.01(e) – Misconduct includes harassment and contributing to a hostile work environment.
- e) Administrative Manual Statement 12.10 para 10 – The display or transmission of sexually-explicit images, messages or cartoons, or any transmission that contains ethnic slurs, racial epithets, or anything that may be construed as harassment or disparagement of others is not permitted on the Bank Group Email system.

27. The HRVP noted that to determine the proportionality of the disciplinary measures to be imposed he acknowledged that the Applicant stated that she felt frustrated and “got carried away because of negative work experiences of perceived hostility and aloofness towards [her] from this senior manager.” He also noted that the Applicant did not intend her language to be racial or discriminatory, that she apologized for her actions while admitting that she “exercised poor judgment in engaging in this email exchange,” and did not intend “to have the email exchange sent to the senior manager, hurt her feelings, harass her, or create a hostile work environment for her.”

He further observed that the Applicant offered “to mediate with the senior manager and to take training on sensitivity or improving relationships in the workplace.” He finally noted the Applicant’s “long tenure of service at the Bank and that [she had] no prior disciplinary finding.”

28. However, the HRVP stated that:

Notwithstanding the above, your behavior was not within norms of prudent professional conduct, including the obligation of staff to conduct themselves at all times in a manner befitting their status as employees of an international organization and was outside of the norms of the Bank’s Code of Conduct. This behavior is especially concerning in a multi-ethnic and diverse work environment such as the World Bank Group. Furthermore, the contents of your email exchange were perceived as threatening and caused the senior manager grave concern for herself and her family. Although the email exchange occurred on one occasion and over the course of one string of emails, I find the contents of these emails at variance with the expected norms and behavior of staff in this organization.

29. The HRVP imposed the following disciplinary measures against the Applicant: 1) termination of the Applicant’s employment; 2) ineligibility for future employment with the World Bank; and 3) indefinite placement of the disciplinary letter on the Applicant’s personnel record. The same disciplinary measures were imposed on Mr. AB on 7 August 2014.

30. On 5 December 2014 the Applicant filed this Application before the Tribunal. She seeks: 1) rescission of the HRVP’s decision of 7 August 2014; 2) reinstatement to a commensurate position and retroactive resumption of all staff benefits; 3) removal of all evidence of the disciplinary process from her personnel file; 4) rescission of the HRVP’s sanctions; 5) removal of all negative flags from her personnel file; 6) two years’ salary in moral damages; 7) reimbursement of attorney’s fees and costs in the amount of \$17,036.31; and 8) all other relief the Tribunal deems just and appropriate.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's Main Contention

The sanctions were significantly disproportionate to the misconduct

31. The Applicant's main contention is that the sanctions imposed by the HRVP were disproportionate. According to the Applicant termination is "the Bank's equivalent of the death penalty," and is specifically imposed as a mandatory sanction under the Staff Rules for certain types of misconduct namely: (a) misuse of Bank funds or abuse of position for personal gain; (b) conviction on a felony charge; or (c) refusal to file a financial disclosure form without a reasonable justification. Referring to Staff Rule 3.00, paragraphs. 10.10, and Staff Rule 8.01, paragraph 3.02, the Applicant argues that even in these extreme cases, a careful review is undertaken to determine whether this dire punishment should be imposed as a "mandatory" measure.

32. The Applicant argues that the HRVP has been inconsistent in the manner in which termination has been used as a disciplinary measure. The Applicant notes that the Bank invokes the circumstances in *CB*, Decision No. 476 [2013] to support its argument that the HRVP was justified in imposing on the Applicant its "most serious sanction." According to the Applicant "this is ironic since the case of *CB* involved a manager censured and reassigned by the HRVP – but not terminated – for sending more than twenty sexually charged emails and romantic advances to a subordinate, and then making unjustified complaints about the subordinate's performance when these advances were rebuffed." The Applicant further notes that the HRVP in *CK*, Decision No. 498 [2014] imposed sanctions "falling well short of termination on a manager found guilty of physically groping a subordinate on multiple occasions."

33. The Applicant asserts that the Bank ignored her position relative to Ms. X. She avers that she did not serve in a high executive position but was rather subordinate to Ms. X, a senior manager. The Applicant argues that there may have been an expectation of leniency considering that she expressed a strong desire to resolve the matter through mediation or a private one-on-one meeting and to improve her conflict resolution and interpersonal skills through workplace training.

According to the Applicant the HRVP did not give any humane consideration to her case or the mitigating factors listed by EBC.

34. Finally, the Applicant contends that the Bank ignored the isolated nature of her private, two-day email conversation with Mr. AB, and punishes her for comments made by Mr. AB. She notes that the HRVP's summary dismissal of evidence establishing that the emails were in fact an isolated occurrence unreflective of the Applicant's character or professionalism, and the fact that Ms. X was open to her reassignment, reveals the sanction to be disproportionate.

The Bank's Main Contention

The sanctions imposed were not significantly disproportionate to the offense

35. The Bank asserts that the decision as to the disciplinary measure is within the discretion of the HRVP. In the HRVP's statement appended to the Bank's Answer, the HRVP stated that:

A major factor in my decision to terminate [the Applicant's] employment was the seriousness of the matter. [The Applicant's] actions were especially concerning (a) from an institutional perspective, as the Bank Group is a multi-ethnic and diverse work environment; and (b) given the impact of her actions on [Ms. X] who felt threatened and worried by the content of the emails with respect to her privacy and her family.

36. The HRVP asserted that he carefully considered the "potentially exculpatory circumstances" but determined that these "did not rise to such a level as to override or diminish the seriousness of [the Applicant's] conduct." According to the HRVP, and relied upon by the Bank in its pleadings, while the Applicant

referred to the exchange as 'voicing frustration in the workplace in a private and personal chat,' in actuality she engaged in this email exchange on her World Bank issued computer using her Bank email account during office hours, the contents of the emails were ethnically disparaging and highly inappropriate, referencing sexual orientation, and discussing deeply personal and private information that involved [Ms. X's] family. Her apology came only after EBC approached her with respect to the emails she had sent. Critically important in my decision-making was also the nature of offense engaged in – for any German national or person from German descent, being labeled a Nazi is a matter of utter seriousness and sensitivity. Comments such as these and others made in the emails caused great concern and

discomfort to [Ms. X] and are completely at variance with the World Bank Group's intolerance for discrimination on any grounds.

37. The Bank contends that considering the totality of the circumstances in this case, the sanctions imposed by the HRVP are not significantly disproportionate as a single act of misconduct, if grave enough, can justify termination. According to the Bank the severity of the Applicant's misconduct relates to the interest of the Bank in fostering a work environment free of bigotry.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

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

its scope of review in disciplinary cases is not limited to determining whether there has been an abuse of discretion. When the Tribunal reviews disciplinary cases, it "examines (i) the existence of the facts, (ii) whether they legally amount to misconduct, (iii) whether the sanction imposed is provided for in the law of the Bank, (iv) whether the sanction is not significantly disproportionate to the offence, and (v) whether the requirements of due process were observed."

39. The Tribunal observes that the existence of the facts, whether they legally amount to misconduct, and whether the sanctions imposed are provided for in the law of the Bank are no longer in dispute between the parties. The Applicant concedes that her conduct amounted to misconduct under the Staff Rules. She apologized for her conduct during the EBC interview, in her comments to the EBC Draft Report, in her pleadings before the Tribunal and during the oral proceedings. Further, the Applicant does not contest that she violated Staff Rule 3.00, paragraph 6.01(a), namely the unauthorized use of Bank Group computer resources. She also acknowledges that she conducted herself, through the use of her words, in a manner which did not befit her status as an employee of an international organization, admitting that she acted in conflict with the general obligations of staff members set forth in Principle 3.1(c) of the Principles of Staff Employment. The Applicant further acknowledged during her interview with EBC and in her subsequent comments on the EBC Draft Report that she failed to observe generally applicable norms of professional conduct. She accepted that she used derogatory language in her email

messages and that she exhibited poor judgment to “keep using” the term “Nazi Third Reich” which she asserts was introduced by Mr. AB.

40. Therefore, it is without doubt that the Applicant’s conduct merited sanction. The central question however, is whether the termination of the Applicant’s contract, the ineligibility for future employment with the World Bank Group and permanent placement of a written censure on her personnel file are significantly disproportionate in light of the mitigating factors and the circumstances of the case. The Tribunal also notes that, while not an official sanction imposed by the HRVP, the Applicant asserts that a security flag and access restrictions have also been placed on her personnel file.

Proportionality

41. 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.” *Gregorio*, [Decision No. 14] 1983, para. 47. Disciplinary sanctions are reviewed on a case by case basis and the sanctions imposed depend on the gravity of the case. *See S*, Decision No. 373 [2007], para. 50 where the Tribunal held that:

Consistently with *Mustafa*, paragraph 3.01 [of Staff Rule 8.01] states that “[a]ny decision on disciplinary measures will take into account such factors as the seriousness of the matter, any extenuating circumstances, the situation of the staff member, the interests of the Bank Group, and the frequency of conduct for which disciplinary measures may be imposed.” It appears these factors were intended to guide the HRSVP in the exercise of his discretion concerning what disciplinary measures to impose. Thus if paragraph 3 is read in its full context, it is reasonable to conclude that in exercising his discretion under paragraph 3.02, the HRSVP should consider the factors listed in paragraph 3.01.

42. Having reviewed the record, the Tribunal notes that the Applicant did not make the majority of the comments which caused Ms. X to feel threatened or fear for the safety of her family. Mr. AB’s gross invasion of Ms. X’s privacy, repeated use of appalling and disgusting profanity and direct insults were inexcusable and, based on the record, merited the sanctions imposed on him. The Tribunal finds that the email exchange between Mr. AB and the Applicant, which she

characterized as “hilarious,” was vulgar and unacceptable in an international and multicultural organization like the World Bank. While the Applicant’s conduct was not as egregious as Mr. AB’s, her conduct certainly merited disciplinary sanctions since she participated in the exchange and used derogatory language.

43. In assessing the proportionality of the sanctions imposed, the Tribunal recalls the mitigating factors contained in the EBC Final Report, namely that:

[The Applicant] admitted to the allegations saving EBC the time and expense of a protracted investigation.

[The Applicant] apologized to [Ms. X] and the WBG for her conduct. Upon becoming aware that she copied [Ms. X] ..., [the Applicant] immediately sent her an apology.

[The Applicant] offered to mediate with [Ms. X] and to take training on sensitivity or improving relationships at the workplace.

Although Staff Rule 3.00, paragraph 6.01 provides that misconduct does not require malice or guilty purpose, [the Applicant] explained that she did not intend to have the email exchange ... sent to [Ms. X], hurt her feelings, harass her or create a hostile work environment for her.

EBC is unaware of any prior disciplinary proceedings against [the Applicant]. [The Applicant] has been with the WBG for over 20 years.

44. The Tribunal also considers the singularity of the case, the Applicant’s position as a junior subordinate of Ms. X and notes that the HRVP had not previously been faced with a case of this nature.

45. The Tribunal considers the termination of a staff member’s employment a most serious disciplinary sanction, and even in cases of misconduct for which the Staff Rules provide for mandatory termination, the Tribunal will still review such cases to determine whether the imposition of such a sanction was a proper exercise of discretion. *See e.g.* Z, Decision No. 380 [2008].

46. The Tribunal reviewed the comparative data on the use of termination as a disciplinary measure in the years between 2011 and 2014 which was provided by the Bank. The Tribunal

observes that in this period termination was imposed as a sanction in approximately twenty cases, excluding the present case and that of Mr. AB. These cases concerned fraud, theft, willful misrepresentation, conflict of interest, misuse of Bank assets, solicitation and receipt of personal loans from Bank clients, and abuse of position in procurement. Those whose sanctions mirrored the Applicant's (i.e. termination, ineligibility for future employment and letter to remain on HR record) had engaged in acts involving the falsification of receipts and invoices for financial gain, abuse of authority in a sexual relationship with a subordinate, misrepresentation and theft. In these cases the aggravating factors included: actions which caused serious bodily harm to a third party; lack of remorse; failure to cooperate during the investigations; and repeated willful misrepresentations.

47. The Tribunal takes note that in this case the Applicant cooperated fully with EBC investigators and expresses remorse for her conduct. Furthermore, there is no evidence in the record to indicate that the Applicant previously engaged in such conduct. Her actions could be contrasted with the illustrations above, as well as with the applicant in V, Decision No. 378 [2008], paras. 41 – 46 whose employment termination the Tribunal upheld taking into account the HRVP's findings that

- (a) the Applicant's misconduct was serious because he knowingly violated the Bank's rules on outside activities and interests;
- (b) there were no extenuating circumstances, since the Applicant had not been forthcoming during the investigation, made intentional misrepresentations, and showed no remorse for his actions; and
- (c) a review of the Bank's practice in disciplinary matters showed that two staff members had been terminated in the past for misconduct comparable to that of the Applicant.

48. The Tribunal considers that the following are relevant to an assessment of proportionality in the present case and should serve to mitigate the sanctions imposed: (a) the fact that this was the first instance of misconduct in an otherwise unblemished career of over nineteen years at the World Bank; (b) the fact that the Applicant showed remorse and took the initiative to apologize to Ms. X as soon as she became aware of the transmission of the email messages to Ms. X; and (c) the fact that the Applicant cooperated with the investigation.

49. The Tribunal finds that while the Applicant should be seriously sanctioned for her conduct, the combined sanctions imposed by the HRVP are significantly disproportionate in light of the circumstances of her case and mitigating factors. In reducing these sanctions, the Tribunal considers that the Applicant should be given an opportunity to rehabilitate herself.

Due Process

50. The Tribunal now addresses the final question of whether the requirements of due process were observed. The Applicant contends that EBC denied her due process rights by failing to interview her character witnesses. According to the Applicant, and in reliance on Staff Rule 8.01, EBC had an explicit duty to hear her witnesses, not least since she was entitled to present what she reasonably considered exculpatory or mitigating evidence.

51. The Tribunal is unpersuaded by the Applicant's arguments. First, the Applicant's counsel relies upon the incorrect Staff Rules. The Staff Rules governing the activities of EBC can be found in Staff Rule 3.00. There is no provision in Staff Rule 3.00 which requires the investigator to interview character witnesses. Secondly, while there may be an obligation to obtain exculpatory evidence concerning misconduct allegations, the Applicant's character was not at issue on the question of whether she committed the alleged misconduct. That the Applicant is otherwise professional and courteous does not eliminate the fact that she did in fact send email messages in violation of the Staff Rules.

52. In *Kwakwa*, Decision No. 300 [2003], para. 29 the Tribunal held that

the due process requirements for framing investigations of misconduct in the context of the World Bank Group's relations with its staff members are specific and may be summarized as follows: affected staff members must be appraised of the charges being investigated with reasonable clarity; they must be given a reasonably full account of the allegations and evidence brought against them; and they must be given a reasonable opportunity to respond and explain.

53. In light of the circumstances of the case, the Tribunal does not find that EBC violated the Applicant's due process rights.

Concluding Remarks

54. The Applicant's conduct was detestable, and profoundly unprofessional. It was an irresponsible use of Bank resources. The Applicant merited serious disciplinary sanctions. However, in light of the circumstances of the case and mitigating factors, the Tribunal finds that the disciplinary sanctions imposed were significantly disproportionate. Given the seriousness of the case, the Tribunal finds that the HRVP may impose any, or a combination, of the other disciplinary measures contained in Staff Rule 3.00, paragraph 10.06, short of termination.

DECISION

For the above reasons, the Tribunal orders that:

- (1) The disciplinary sanctions imposed on the Applicant are rescinded.
- (2) The Bank shall reinstate the Applicant to a position similar to the one she was occupying at the time of the termination of her employment, subject to the condition that the Bank may impose any disciplinary measure, or a combination of disciplinary measures contained in Staff Rule 3.00, paragraph 10.06, short of termination. The duration of those disciplinary measures shall be within the discretion of the HRVP.
- (3) The Bank shall pay the Applicant's attorney's fees in the amount of \$17,036.31.
- (4) All other pleas are dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 29 May 2015