



World Bank Administrative Tribunal

2015

Decision No. 516

**CW,
Applicant**

v.

**International Finance Corporation,
Respondent**

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

**CW,
Applicant**

v.

**International Finance Corporation,
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 revised Application was received on 10 September 2014. The Applicant was represented by Peter Hansen of The Law Offices of Peter C. Hansen, LLC. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 3 November 2015.

3. The Applicant challenges the: a) 13 May 2014 institution of an Opportunity to Improve Unsatisfactory Performance Plan (OTI); b) 2 June 2014 closure of the OTI and recommendation of termination; c) 3 June 2014 decision of the Vice President, Human Resources (HRVP) finding misconduct and imposing sanctions; and d) the 7 July 2014 Notice of Termination.

FACTUAL BACKGROUND

4. The Applicant joined the International Finance Corporation (IFC) in June 2007 as a Risk Analyst at grade level GE in a unit which addresses risk management (the Unit). In 2009, the Applicant was promoted to Risk Officer, a grade level GF2 position. His appointment type became open-ended in December 2010.

5. During this time, the Applicant received several awards, known as Spot Awards, for his work with one of the Unit's internal clients, as well as corporate awards shared by the Applicant and his colleagues. The Applicant received positive feedback on the quality of his work and technical expertise.

6. In 2011, Mr. X became the manager of the Applicant's unit. Between 2011 and 2013 the working relationship between the Applicant and his manager deteriorated. According to the Applicant, Mr. X was unable to manage the unit competently and was hostile towards him. The IFC on the other hand contends that the Applicant responded to Mr. X's attempts to actively manage the unit by challenging Mr. X's authority and engaging in behavior which was perceived by his colleagues as unprofessional and intimidating.

7. On 3 October 2012, the Applicant spoke with the Staff Association about his concerns regarding his relationship with his manager. Between 16 October 2012 and 9 May 2013 the Applicant was in contact with the Office of Ethics and Business Conduct (EBC) and held several meetings with the Director of the Applicant's unit (Unit Director) and a Senior Human Resources Officer. The Applicant ultimately decided not to pursue his claims through an EBC investigation. During this time the IFC contends that the Applicant's workplace behavior became increasingly confrontational and threatening.

8. On 9 May 2013, the Unit Director informed the Applicant that his colleagues were concerned he might engage in violent behavior and urged him not to report to work for the next two business days and, instead, reflect on the seriousness of the accusations made against him. The Applicant explained that due to his workload and the expectation of his clients he would prefer to come to the office.

9. On 14 May 2013, the Applicant was presented with a Notice of Administrative Leave effective the same day.

10. On 17 May 2013, EBC issued a Notice of Alleged Misconduct to the Applicant in which he was informed that EBC was conducting a review into allegations that he committed misconduct by:

- a. Harassing your colleague, Mr. [Y], by being repeatedly disrespectful of, aggressive towards and inappropriately critical of Mr. [Y], as well as embarrassing him and questioning his competence in the presence of other colleagues and clients, and as a consequence, creating a hostile work environment;

- b. Harassing your manager, Mr. [X], by being rude, belligerent, disrespectful and aggressive in your interactions with him both privately and publicly, embarrassing him in the presence of other colleagues and clients, disregarding his instructions and as a consequence creating a hostile work environment;
- c. Undertaking an activity where authority to do so has been denied; and
- d. Recklessly failing to identify or observe generally applicable norms of prudent professional conduct by being absent from work and frequently unaccounted for during work hours without leave, permission, notice or explanation.

11. On 17 July 2013, the Unit Director sent an email to the World Bank Group's Senior Occupational Health Specialist, Health Services Department requesting a Fitness for Duty Assessment of the Applicant in "accordance with Staff Rule 6.07 section 3.03." The Unit Director stated:

I believe that [the Applicant's] performance issues may be directly related to his health. This is based on a statement by [the Applicant] that he has not been well, in a meeting with me in October 2012. Despite repeated feedback from me and [Mr. X] that he needs to improve his behavior, he has continued to experience behavioral issues in the work place. For that reason, I am seeking a formal Assessment by an Independent Medical Examiner to determine whether or not he is Fit for Duty.

12. The Senior Occupational Health Specialist requested a meeting with the Applicant to advise him on the fitness for duty procedure and to initiate the process. Following objections by the Applicant's counsel that the evaluation request lacked the proper basis and was a tool to "influence a retaliatory ethics investigation launched by [his] client's accused managers," the request was not carried out.

13. On 2 August 2013, the Applicant submitted his Response to the Notice of Alleged Misconduct.

14. On 5 August 2013, the Applicant was informed by the Unit Director that he should complete his Performance Evaluation Plan (PEP) for Fiscal Year (FY2013). On 7 August 2013, the Applicant responded quoting advice from his counsel that the Applicant should inform the Unit Director that he was "not in a position to participate in the PEP process at least until the EBC process is completed, given that the process has been compromised by [his] management." When the Unit Director responded on 10 September 2013 that "an assessment will be provided regardless

of whether or not you choose to participate under the guidance of your lawyer in this process,” the Applicant referred to the Notice of Administrative Leave which made clear that he was not “expected to undertake any work or conduct any work related communications” while on administrative leave.

15. On 8 October 2013, the Unit Director informed the Applicant via email that his performance rating for FY2013 was 3.1 and that his salary increase was 1.056%.

16. On 12 November 2013, the Applicant was informed by letter that his administrative leave was extended until 15 January 2014 “unless withdrawn or extended prior to this date.”

17. On 3 December 2013, EBC transmitted its Draft Report to the Applicant.

18. On 22 December 2013, the Applicant presented his Response to the Draft Report. This response took the form of two memoranda drafted by the Applicant’s counsel in which EBC was criticized for its “inability to grasp a critical and basic factor in the case – [the Applicant’s] work program and fiduciary duties.” The response further stated that “[s]uch unheeding obtuseness pervades the Draft Report, crushing [the Applicant’s] right to have his case fairly heard.”

19. On 5 February 2014, the Applicant received the electronic version of EBC’s Final Report.

20. On 10 February 2014, the Applicant’s counsel sent a letter by email titled “[Applicant] – Protest Against EBC’s Wrongfully Withheld and Biased Final Report” to the Vice President and Chief Ethics Officer, EBC. Also copied were two members of the Staff Association, the HRVP, the manager of EBC investigations, the lead investigator assigned to the Applicant’s case, the Senior Human Resources Officer, and the Lead Human Resources Specialist.

21. In his letter, the Applicant’s counsel objected to what he termed “EBC’s serious violation of [his] client’s due process rights.” He challenged EBC’s finding that the Applicant conducted unauthorized work, and criticized the fact that EBC only interviewed 15% of the Applicant’s proposed witnesses. He added that:

Arguably, the most galling aspect of the EBC's Final Report is its retention of overtly racist elements, despite [the Applicant's] vigorous protest against their inclusion. [The Applicant], an award-winning quant entrusted with handling the IFC's massive financial trades, stands accused of being irrationally aggressive, of being 'violent' despite the lack of evidence of violent acts or threats, of worryingly resembling a deep-voiced 'little bear,' allegedly having 'violent' internal reactions (about which no one saw fit to do anything) and of intimidating his meek Japanese manager by his general demeanor so that [Mr. X] supposedly refrained from giving him honest performance evaluations. All of this is self-serving claptrap that shamelessly invokes and relies on anti-African stereotypes. It is shameful.

22. The Applicant's counsel stated that "[a]s EBC's Final Report is so clearly tendentious, illogical, poorly substantiated, and racially biased, [the Applicant] demands that it be withdrawn and removed from his record." The Applicant's counsel also stated:

The Bank is not entitled to commit manifest injustice under cover of silence and darkness. If the Bank were in any way to sanction, let alone terminate, [the Applicant] on the trumped-up charges laid against him, such a wrong would not only be vigorously contested, but would not be kept under wraps. The Bank has a long history of complaints alleging anti-African discrimination, and this case would be an example par excellence of such wrongs. Before working further injustice, the Bank would be well-advised to consider at last the broader implication of its acts.

23. On 21 February 2014, the Applicant, his counsel, the Senior Human Resources Officer and a mediator met to discuss the Applicant's return to work following the expiration of his extended administrative leave. The parties agreed that the Applicant could return to work in his unit at the IFC on 3 March 2014.

24. On 27 February 2014, Mr. X sent an email to the Applicant welcoming him back to the Unit.

25. The Applicant responded the following day stating:

I would like to thank you for the kind message and for making the necessary preparations to smooth my return on full duty next Monday. From my end I feel ready to run as I hit the ground. I expect there will be more administrative steps to bring a closure to the pending matters; my counsel has kindly agreed to follow up with the HRSVP on the pending matters and [the Senior Human Resources Officer] has also reassured me there will be some HR interactions at a lower level to wipe

the slate clean. All these elements make me believe I would have a respectful workplace and I should be able to focus on my work only.

26. Beginning on 4 March 2014, Mr. X set up regular review meetings with the Applicant to discuss the Applicant's work. On 12 March 2014, Mr. AB was assigned as the Applicant's supervisor, with Mr. Z placed in charge of handling the Applicant's "milestones." These individuals had been interviewed by EBC during its investigation of the Applicant's alleged misconduct, and had expressed their views on the Applicant as a difficult person to work with.

27. The Applicant was tasked to review the work performed by other team members on the Equity-Linked Notes model, and then to build on their model. The Applicant informed Mr. X and Mr. AB that after careful review of the model, he had found some errors and inconsistencies in their work. He stated that he could not build on top of the work as requested, but would rather prepare a new validation. The Applicant was asked to write up a critique of the model validation work for the Equity-Linked Notes model, but he did not do so.

28. Between 27 March and 13 May 2014, the Applicant's relationship with his manager and supervisor further deteriorated. The Applicant did not provide the written critique of the Equity-Linked Notes model, and did not respond directly to the milestones set for him. The Applicant also sent an email message to Mr. Z in a tone which Mr. Z found offensive. The Applicant in turn stated that he was being treated like a child by his manager, Mr. X, and queried the reasons for the weekly meetings which included the presence of Ms. W, a Human Resources Officer. The Applicant stated that he felt pressured at a time when he was trying to re-enter the IFC after ten months of administrative leave. He rejected the four-week time table he was given for the Equity-Linked Notes model validation and explained that he found the milestones set for him inapplicable to his work. The Applicant claims that at some of the weekly meetings Mr. X, Ms. W and Mr. AB raised their voices at him.

29. On 5 May 2014, the Applicant was reminded that one of the behavioral indicators for his successful work was to follow instructions from his supervisors, especially regarding his work program. The Applicant refused to participate in further weekly meetings.

30. On 13 May 2014, the Applicant, Mr. AB, Mr. X and Ms. W, the Human Resources Officer, met, and the Applicant was formally placed on an Opportunity to Improve Unsatisfactory Performance Plan (OTI) from 13 May to 30 June 2014. He was presented with an OTI memorandum which detailed the Applicant's professional and behavioral issues and set forth professional and behavioral objectives. The memorandum established a regular monitoring meeting schedule through weekly meetings, and specified the consequences should the OTI be unsuccessful. It stated in part:

- **Repeated failure to complete your work in a reasonable time.** You have failed to meet the target delivery date for the model validation of the Equity-Linked note model, as well as the due dates for the intermediate milestones.
- **Repeated refusal to share information with team members.** On multiple occasions, your manager [Mr. X] and supervisor [Mr. AB] requested you share intermediate results of the Equity-Linked note validation; you refused to provide that information.
- **Repeated refusal to incorporate feedback from your manager and supervisor, or to accept external guidance.** On multiple occasions, your manager and supervisor recommended changes to your validation approaches and requested that you follow the model validation template created by the WBG CRO's office; you refused to make the changes. You have also refused to attend meetings with the head of the model validation unit within the World Bank Group CRO's office to gain a better understanding of the WBG model risk management framework.
- **Directly insubordinate behavior and repeated refusal to follow reasonable instructions:** In many instances over the past two months, you have refused to follow the instructions of your manager and supervisor relating to your work program. Specific examples include your refusal to provide a written critique of the Equity-Linked note validation, your refusal to accept and follow the milestones and deadlines provided for you by your manager and supervisor (despite your initial acceptance of your work plan and milestones), your refusal to enter your objectives into the PEP system in a timely manner, and your refusal to initiate and complete specific tasks related to the Equity-Linked note validation.
- **Disrespectful behavior to your manager, supervisor, and other colleagues.** Specific examples include challenging the authority and competence of your manager and supervisor; claiming verbally in the presence of other team members and in writing that your manager and supervisor put the corporation at risk by their directions for model validation; consistently being late to staff meetings without reasonable justification; consistently making sarcastic

comments and inappropriate gestures during meetings; accusing your managers, supervisor and staff of yelling at you; and criticizing the work of your colleagues without basis, and failing to provide constructive feedback.

31. As part of the behavioral objectives, the Applicant was informed that he was expected to:

- o Follow your manager and supervisor's instructions and directions.
- o Report and remain at work during core business hours, except with prior approved leave, documented in writing.
- o Account for and receive approval for absences outside of the office prior to taking leave unless it is an emergency. In the event of an emergency, please inform your supervisor and me immediately by email when it is possible to do so.
- o Proactively share information and knowledge regarding your work program, project status and progress with your manager, your supervisor, and the larger [Unit] team at the weekly [Unit] status meeting. For example refrain from withholding work-related information from your supervisor, manager, and team.
- o Engage with all colleagues in a respectful manner, and if you disagree, present your opinions constructively and respectfully. For example, refrain from interrupting or demeaning colleagues while they are talking.
- o Refrain from broadcasting internal issues to both internal and external clients during conference calls and meetings.
- o Refrain from outward displays of anger, frustration or stress that may be interpreted by staff members as threatening, including shouting or property damage.

32. Between 13 and 30 May 2014, the Applicant continued with conduct which his manager and supervisor maintained violated the terms of the OTI. On 15 May 2014, after Mr. AB responded to an official pre-approval request from an internal client, the Applicant responded to the entire "IR-Validation" email group stating that "So many mailboxes hence the inefficiency."

33. Mr. AB sent the Applicant an email message reminding him that he had been previously requested not to use the IR-Validation mailbox unless authorized to do so. Mr. AB's email of 9 May 2014 in which the Applicant was told not to use official communication channels was attached, and the OTI memo was referenced.

34. On 20 May 2014, Mr. AB responded to a validation request from an internal client through the IR-Validation mailbox. The Applicant replied to the email, using the official channel stating:

“Dear [Mr. AB], are you asking [...] to also do our job. Indeed the validator should answer questions as the model limitations and provide tests results. Many thanks. Best Regards.”

35. Mr. AB sent an apology to the modeling team, explaining that the Applicant erroneously shared internal unit discussions with them.

36. On the same day, the Applicant submitted a 71-page draft of his review of the Equity-Linked Notes model.

37. The reports of the weekly meetings document that the concerns about the Applicant’s behavior were ongoing.

38. Between 22 and 23 May 2014, email messages were exchanged between Mr. X, Mr. AB, the Senior Human Resources Officer, the Unit Director and a representative of the Bank Group’s Corporate Security Department. The Corporate Security Department representative stated that she would request the “plain clothes security officer division to do a couple of extra sweeps on [the Applicant’s] floor.” She recommended that if the situation got to the point where Mr. AB and Mr. X could not “handle an unexpected outburst where there is a significant disruption in the work place” they should call the emergency number. She also stated: “I am happy to meet or talk with any staff individually who may have security concerns. I would prefer to meet management separately. We have to be careful not to give any appearance of the unit ganging up on him as that could exacerbate the situation and make him feel more alienated.”

39. On 28 May 2014, the Applicant sent an email message to the Unit divulging that the Unit’s management had been negotiating with a contractor to complete the model validation of the NESRIT Russian index-linked note. He stated he had a copy of this contract, disclosed the amount and made accusations against his manager and supervisor.

40. On 30 May 2014, at the weekly OTI meeting Mr. X informed the Applicant that the OTI was unsuccessful.

41. On 2 June 2014, Mr. X sent an email to the Unit Director with a memorandum titled “Recommended Action Following Repeated or Continuing Unsatisfactory Performance.” The Applicant received a copy. The memorandum stated in part:

2. Following our discussion, Mr./Ms. [Applicant] made efforts to address his/her performance deficiencies, and we provided support, resources and time to improve. His/her performance deficiency remains, in particular,

a) His repeated failure to complete work in a reasonable time, b) his refusal to share information with team members, supervisor and manager, c) his refusal to incorporate feedback from his manager, supervisor, and peers, d) his repeated insubordinate behavior and repeated refusal to follow reasonable instructions, e) his disrespectful behavior towards his peers, supervisor, and manager, f) his inability or unwillingness to meet the professional objectives set in the OTI memo, g) his refusal to accept training to address technical deficiencies, h) his ongoing broadcasting of internal issues to [...] clients, i) shouting and displays of aggression during staff meetings and weekly OTI progress meetings, and j) the general deterioration in behavior noted since the start of the OTI period.

In my judgment, continued efforts to improve are not in the Bank’s interest. I have consulted with [Ms. W] on next steps. Therefore, I recommend that:

[Applicant’s] employment be terminated in accordance with Staff Rule 7.01 Ending Employment, Section 11, Unsatisfactory Performance.

42. The Applicant was provided 14 calendar days to respond to this recommendation in accordance with Staff Rule 5.03.

43. On 3 June 2014, the HRVP issued his decision on the review conducted by EBC into the allegations of misconduct against the Applicant. The HRVP determined that there was sufficient evidence to support a finding that the Applicant engaged in the misconduct of:

(b) Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; failure to perform assigned duties; gross negligence in the performance of assigned duties; performance of assigned duties in an improper or reckless manner; ... undertaking an activity where authority to do so has been denied;

[...]

(e) Harassment; contributing to a hostile work environment.

44. The HRVP decided that the appropriate disciplinary measure was a written censure, which would remain in the Applicant's personnel file for two years.

45. On 17 June 2014, the Applicant sent his response by email to the recommendation to terminate his employment contract to Mr. X, copying the Unit Director, Ms. W, Ms. W's supervisor, and Mr. AB. This response was in fact a memorandum written by the Applicant's counsel and addressed to the Applicant. The Applicant also forwarded the accompanying email message from his counsel in which he was told: "Your managers, having failed to oust you with retaliatory Ethics charges, have clearly sought to drive you out by other means. While your managers have refused to mediate your work program, the memorandum makes this position legally untenable. If this matter heads to the Tribunal, I believe you have a solid case."

46. While normally communications between a counsel and his client will be treated as privileged, it appears from the foregoing that any privilege was waived by the Applicant in attaching the advice given to him by his counsel to his pleadings.

47. In the memorandum, the Applicant's counsel informed the Applicant that:

The overall impression given by the record since your return on March 3, 2014 is that you have had yet another Kafkaesque experience at your managers' hands. They have flagrantly perverted and misused established Bank programs (such as HR consultations, work programs and even OTIs) in order to win your ouster, which they were unable to achieve through their retaliatory Ethics charges.

[...]

Presumably, this memorandum will be forwarded to [Mr. X] and possibly others as part of your response to [Mr. X's] recommendation that you be terminated. While it is difficult to imagine that [Mr. X] will listen to reason at this point given his behavior and animus, it may be hoped that his more sober-minded superiors will step in finally to grant your longstanding request to mediate your work program and conditions. (Hopefully these officials will at least notice the heavy liability risk that [Mr. X's] abuses are creating for the Bank before the World Bank Administrative Tribunal.)

48. On 7 July 2014, the Applicant received a Notice of Termination from the Unit Director informing him that his contract would be terminated on 5 September 2014.

49. On 10 September 2014, the Applicant submitted this revised Application. The Applicant challenges: a) the institution of an OTI; b) closure of the OTI and recommendation to terminate his contract; c) the decision of the HRVP finding misconduct and; d) the termination of his employment. The Applicant seeks seven years' salary for direct, moral and intangible damage, reinstatement, review of his compensation, removal of "all wrongfully harmful materials from [his] personnel file," and "removal of any bar to rehire, entry or any other benefit." The Applicant also requests attorney's fees in the amount of \$101,553.91 which includes fees and costs incurred during the misconduct investigation.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's contention No. 1

The Applicant was subjected to a retaliatory EBC investigation

50. The Applicant makes several allegations concerning the EBC investigation namely that: a) EBC wrongfully ignored the retaliatory character of "the accusers' charges and actions"; b) his placement on administrative leave was unjustified and abusive; c) EBC wrongfully ignored the Applicant's listed witnesses; d) EBC wrongfully failed to understand the Applicant's work and that of his unit; e) EBC's analysis of the unauthorized work charges was unfounded and biased; and f) EBC's analysis of the charges concerning the Applicant's behavior was "ill-founded," "chauvinist," "biased," "misleading," "untrustworthy," and based on "racist stereotypes."

51. The Applicant also asserts that EBC failed to provide him with a copy of the Final Report in a timely manner, and the HRVP's decision "wrongfully went beyond EBC's findings."

The IFC's Response

The EBC investigation was warranted, reasonable and professional

52. The IFC argues that the record demonstrates that the EBC investigation was thorough, balanced and fair. According to the IFC the substantial evidence gathered by EBC during its

investigation confirmed that the Applicant's behavior was unwelcome, pervasive and merited the HRVP's finding that he committed misconduct.

53. The IFC avers that EBC observed the requirements of due process: the Applicant was kept informed and provided with the opportunity to comment on the Draft Report. The IFC contends that the Applicant has not shown that his due process rights were violated by EBC.

The Applicant's Contention No. 2

The Applicant's managers abusively pursued an unwarranted fitness for duty examination

54. The Applicant argues that three of the five emails which the Unit Director attached to support the request for a fitness for duty assessment were more than two years old. Furthermore, the Applicant contends that "[The Unit Director's] mendacious claim that [the Applicant] was mentally ill echoed those of [the Applicant's] openly collaborating accusers." The Applicant argues that there were fundamental violations of due process because, *inter alia*: 1) the Applicant was "wrongfully ordered to 'cooperate' with an open-ended medical evaluation 'process' when there had been no preliminary review of the request's merits"; 2) the Health Department "refused to involve EBC, or even Human Resources, even though the request was made by [the Applicant's] accusers in the midst of an EBC investigation; 3) the Health Department "ignored the [Applicant's] clear and reasoned concerns about the 'process' being used as a tool of harassment or retaliation."

The IFC's Response

The decision to request a health evaluation was reasonable

55. The IFC contends that the decision to request a health evaluation of the Applicant was reasonable. It asserts that the Applicant himself had indicated that his health situation might have caused him problems at work. The IFC further adds that "as can be seen from Applicant's pleadings, his managers had legitimate concerns for his mental health because of his erratic behavior in the work place." The IFC asserts that the Applicant has not demonstrated any harm as a result of the inquiry from the Health Services Department, and that it might have been accused of ignoring a potential health issue had it not suggested a fitness for duty evaluation.

The Applicant's Contention No. 3***The Applicant was subjected to a hostile work environment***

56. The Applicant argues that he was subjected to a hostile work environment upon his return to the Unit. He avers that the weekly review meetings were “unjustified and abusive,” and he was “abused upon his arrival by his lack of work program and computer.”

57. The Applicant also contends that he was given an impossible workload to which his consent was fabricated while his attempts to define a reasonable work program were dismissed. He further argues that he was “wrongfully faulted for his Equity-Linked Note model validation work.” The Applicant asserts that this work was a “model of substance and style, being elegantly written and, while beyond the ken of all but the most skilled experts (not to be found at [the Unit] apart from [the Applicant]), clearly the work of a practiced expert completely comfortable with modeling.” This model, according to the Applicant, should have been enough to “lift” an OTI based on alleged performance deficiencies.

The IFC's Response***The Applicant was not subjected to a hostile work environment***

58. The IFC maintains that the Applicant was given every opportunity to succeed at work. He was provided access to computers and software and the claims that he did not have a computer are untrue. The IFC contends that it was the Applicant who created a hostile environment for his colleagues through his behavior which was disruptive and reasonably perceived as threatening. According to the IFC “[g]uided by his attorney’s advice at every turn [the Applicant] appears to have used his return to work after March 4, 2014 solely as an opportunity to build a case against Respondent and not as a chance to succeed at work.”

The Applicant's Contention No. 4

The OTI was a fraud that led to an equally unjustified termination

59. The Applicant contends that the OTI was a means of harassment at the hands of his manager. He further contends that it was wrongfully cut short on the day that he chose to exercise his right to have a representative from the Staff Association present during the review meetings. According to the Applicant, Mr. X's list of his alleged failure to meet the terms of the OTI was not credible for two reasons: 1) there was no connection drawn between the allegations and any specific act or omission in the little more than two weeks since the OTI's inception; and 2) it was "not possible to disprove the charges on any facts."

The IFC's Response

The OTI was a legitimate process and the Applicant's continued performance problems led to the decision to terminate his employment

60. Regarding the duration of the OTI, the IFC argues that management complied with the Staff Rules governing termination of employment on the grounds of poor performance. According to the IFC, the manager responsible may apply reasonable discretion to determine the duration of the OTI in light of the performance problems and the specific circumstances. The IFC contends that in the present case Mr. X determined after several weeks that the Applicant was not willing to change his behavior and do his work as instructed.

61. The IFC argues that the "Applicant and his attorney misrepresent Applicant's failure to follow directions and incorporate professional feedback as a heroic defense of some imagined professional standards. Instead, these actions are really direct insubordination." Further, the IFC asserts that the Applicant's claims that his contract was terminated because he requested a Staff Association representative be present at the performance review meetings are baseless; in fact the Applicant was always encouraged to invite a Staff Association representative to his OTI meetings. According to the IFC, "if [the Applicant] had spent a little bit more time and energy listening to his manager and co-workers, and a little bit less energy preparing this case with his attorney, he

could have avoided termination. Instead, he consistently refused to make even a small adjustment to his attitude and behavior. [Mr. X] finally had no choice.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

The EBC Investigation and Disciplinary Sanctions

62. In reviewing disciplinary cases, the scope of the Tribunal’s review is well established. Its review extends to an examination of: (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 offense; and (v) whether the requirements of due process were observed. (*See e.g.*, *CK*, Decision No. 498 [2014], para. 57; *AB*, Decision No. 381 [2008], para. 53; *Mustafa*, Decision No. 207 [1999], para. 17; and *Carew*, Decision No. 142 [1995], para. 32.) Additionally, the Tribunal has held that the burden of proof of misconduct is on the Bank and the standard of evidence “in disciplinary decisions leading, as here, to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.” (*Dambita*, Decision No. 243 [2001], para. 21.) Similarly, there must be substantial evidence to support the finding of facts which amount to misconduct. (*See, e.g.*, *P*, Decision No. 366 [2007], para. 33 citing *Arefeen*, Decision No. 244 [2001], para. 42.)

The Existence of the Facts

63. In the present case, the Applicant was found, by the HRVP, to have committed misconduct under Staff Rule 3.00, paragraphs 6.01(b) and 6.01(e) namely:

(b) Reckless failure to identify, or failure to observe generally applicable norms of prudent professional conduct; failure to perform assigned duties; gross negligence in the performance of assigned duties; performance of assigned duties in an improper or reckless manner; [...] undertaking an activity where authority to do so has been denied;

[...]

(e) Harassment; contributing to a hostile work environment.

64. The HRVP based his finding on the EBC Final Report which he held demonstrated

clear and convincing evidence [...] to support a finding that you harassed your colleague and your manager by your intimidating and disrespectful behavior towards them, thereby creating a hostile and offensive work environment. Further the record shows your behavior interfered with the work program and had a negative impact on your colleagues. In addition, by pre-approving treasury models after you were notified that you were no longer authorized to validate or pre-approve these models, you were insubordinate by undertaking an activity where the authority to do so had been denied to you.

65. The Tribunal observes that the Applicant does not challenge the majority of the facts, but rather their characterization as misconduct. For instance, the Applicant claims EBC's finding that he performed unauthorized work was unfounded, yet he admitted to EBC investigators that he validated or pre-approved treasury models contrary to his manager's instructions. The Applicant contends however, that he did so out of a fiduciary duty owed to the IFC. The Applicant also admitted to arriving late to work, and being occasionally absent without providing advance notice to his manager. During his interview with EBC investigators he explained that he often worked late into the night, and while he knew he should inform his manager that he would be late or absent, he did not do so because he was displeased that in the past when he shared his health reasons for being absent, his manager had sent such emails to the rest of the department. The Applicant also admitted, as the record reveals, to sending email messages and using language which was perceived by the recipients as insulting.

66. The Applicant expressed surprise at the allegation that he behaved aggressively and challenges the finding that he occasionally raised his voice, banged his fist on a table, and took "an aggressive posture." The Applicant argues that it was his manager, Mr. X, who raised his voice and banged his fists on a table.

67. Of the witnesses interviewed by EBC, only one stated that he once witnessed Mr. X raise his voice. A witness stated that she had heard the Applicant raise his voice at unit meetings. The Applicant's former manager described the Applicant's demeanor in the HR meetings they held with the Unit Director as "very, very aggressive," adding that when he was head of the team: "The whole team was not comfortable working with [the Applicant]." Mr. AB stated that he witnessed

the Applicant display what he termed “intimidating body language” towards his manager, Mr. X. Other witnesses relayed hearsay. Two other witnesses stated that they did not witness the Applicant shout or raise his voice. The Tribunal notes that the record does not contain conclusive evidence that the Applicant shouted or “banged” a table with his fist.

68. Nevertheless, the Tribunal is satisfied that even in the absence of such evidence, other facts on which the disciplinary measures were based namely: the email messages the Applicant sent to, and about, Mr. X and Mr. Y; the fact that the Applicant undertook activity he had been instructed not to do; and that he was sometimes absent from work without leave, permission, notice or explanation, have been established.

Whether the Facts Legally Amount to Misconduct

69. The Tribunal now addresses whether the established facts legally amount to the misconduct of harassment contributing to a hostile work environment and reckless failure to identify, or failure to observe generally applicable norms of prudent professional conduct.

70. According to the Bank’s Code of Conduct, harassment is defined as “any unwelcome verbal or physical behavior that interferes with work or creates an intimidating hostile, or offensive work environment.” Illustrations include “public or private tirades or bullying by a supervisor, subordinate, or peer,” and “severe or repeated insults related to personal or professional competence.” The Code of Conduct makes clear that “if conduct is reasonably perceived to be offensive or intimidating – whether or not it was intended to be so – it should be stopped.” It further provides that a “single incident can be considered harassment if it is so severe that it has a negative impact on the individual or the work environment.” *See also* CS, Decision No. 513 [2015], para. 122. The record contains several examples and email communications, but a few will suffice as illustrations of the harassment the Applicant was found by the HRVP to have committed.

71. From 1 to 5 March 2013 the Applicant sent email messages in an email chain which included other staff of the Unit addressed to his colleague Mr. Y in which he questioned Mr. Y’s competence, and which Mr. Y felt were condescending and inappropriately critical of his work. In

this email chain, a staff member had contacted the Applicant and his team, requesting verification of calculations for a foreign exchange fixing and moratorium risk for a particular country. The Applicant sent his comments, and Mr. Y also sent some suggestions. The Applicant then responded stating: “[Mr. Y] so what is your suggestion exactly? Point 2, 3, 4 below you said are correct! Is it point 1?” Mr. Y responded, “Thanks [Applicant], doing my job.” The Applicant’s final response was:

I thought so but if I need to wait that long to learn from you we might become completely inefficient as a department don’t you think so?! We do not keep models here for seven (7) months! What if (hopefully) while doing your job you happen to find something that needs to be corrected whereas trades are being booked as I am told? Waste of time?

72. On 3 April 2013, the Applicant sent an email to an external auditor stating:

I am the only one staff fully responsible for Model Validation and Borrowings risk within [the Unit] and not [Mr. AB] as listed.
Could you please correct that in the [...] request? Otherwise [Mr. AB/Mr. X] would have to respond to your requests with some deliverables which I doubt they can produce or have.

73. During the EBC interview, the Applicant defended his 3 April 2013 email by stating that Mr. AB’s name was wrongfully placed next to functions which he, the Applicant, performed, and he was trying to correct the record. The Applicant explained that “I’m basically in a position where I’m resisting. Like they’re trying to take things away and this and that. And I will tell the auditor it’s not true.”

74. In an email chain on 17 April 2013 Mr. Z sent an email to some Unit clients informing them of certain changes to help implement a particular proposal. The Applicant responded to Mr. Z, copying the Unit, stating: “I thought [Mr. X] is the only [one] supposed to send emails out. Unless it only applies to me? Let’s make rules that work for everybody the same way.” Mr. Z responded: “I think [Mr. X] may only have been referring to the official approval notification for any model validation and not for all communication with external clients. In the current procedures, [Mr. X] is one to approve a model even though the model validation teams performs

the actual validation tests.” The Applicant responded, with the Unit still copied on the correspondence, stating:

I believe one must have the skills and competences to fulfill such a mandate. As noticed in the [...] trades people have doubts in their mind since he signed-off apparently on something he did not know about. This is putting the corporation at risk. And also why would I hand over the responsibilities I have been in charge of successfully for the past five years with no explanation? Why only me should give away his duties and not you for example or some other staff? I am being very careful as to not allow anyone to discriminate me, or harass me morally, or destroy my work or my career. I am working hard for it so I must protect it. This is not acceptable and this must stop.

75. During his interview with EBC, the Applicant defended this comment by stating that at the time he was under pressure, and felt constrained. He defended his comments about Mr. X’s competence by alluding to other examples where [Mr. X] had performed tasks with which clients were dissatisfied. The Tribunal finds that some of the Applicant’s emails could reasonably be perceived as offensive and not conducive to a good working environment.

76. Another element of the HRVP’s finding of harassment was that the Applicant’s colleagues found his conduct threatening, and were fearful that he might act violently towards them notwithstanding the fact that there is no evidence of the Applicant having engaged in violent acts. Witnesses attest to observing the Applicant exhibit intimidating “body language,” and conduct himself “aggressively,” behavior which can reasonably be perceived as offensive and disruptive to the work place.

77. According to the Applicant, “normal social cues and interactions cannot be expected” of quantitative analysts (“quants”), and EBC “wrongfully failed in its analysis to take account of the quant environment’s customs and modes of communication.” The Applicant makes this argument on one hand, and then on the other asserts that “though a quant,” he is “surprisingly normal and friendly person in ‘regular life.’” Quant or not, the Applicant is not exempt from the Staff Rules and Staff Principles which require him to conduct himself in a manner which is professional and “befitting [his] status as [an employee] of an international organization.” See Staff Principle 3.1(c).

78. The Tribunal further recalls that impact – not intent – is the essential element in assessing whether conduct can reasonably be considered harassment. The critical point is that the Applicant’s conduct negatively affected his colleagues, and, despite repeated requests that he stop that conduct, he maintained it. This is the essence of harassing behavior. It also falls short of the standards of professional conduct expected of the Applicant. The Tribunal finds that the Applicant committed misconduct within the meaning of Staff Rule 3.00, paragraphs 6.01(b) and 6.01(e).

Whether the sanction imposed is provided in the law of the Bank

79. The Tribunal finds that this requirement is met because the sanction imposed, a written censure to remain in the Applicant’s personnel file, is specified in Staff Rule 3.00, paragraph 10.06(a).

Proportionality

80. The Tribunal notes that the Applicant himself considered that this sanction of a written censure was “relatively lenient.” Having found that he committed misconduct, the Tribunal finds that the sanction of a written censure is not disproportionate to the misconduct found.

Due Process

81. The Tribunal now assesses the Applicant’s claims that EBC “committed glaring violations of due process.” Having held elsewhere that an investigation into a disciplinary matter is administrative and not adjudicatory in nature (*see e.g. Arefeen*, para. 45, and *Rendall-Speranza*, Decision No. 197 [1998], para. 57.), the Tribunal reiterates that “compliance with all technicalities of a judicial process is not necessary, if it is conducted fairly and impartially.” *CB*, Decision No. 476 [2013], para. 43.

82. As was held in *Kwakwa*, Decision No. 300 [2003], para. 29

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.

83. The Applicant asserts that EBC refused to “hear [his] witnesses,” “take notice or present any significant exculpatory evidence as to the gravamen of the actual charges,” and claims, *inter alia*, that EBC demonstrated “rampant bias in favor of [his] accusers.”

84. The record presents another picture. First, the Applicant complains that EBC interviewed only three out of his list of sixteen witnesses and argues that this violated Bank law, citing Staff Rule 8.01, Annex A. However, the Applicant relies upon an incorrect Staff Rule. The Staff Rules governing the activities of EBC are found in Staff Rule 3.00. There is no provision in Staff Rule 3.00 which requires the EBC investigator to interview all, or even some, of the Applicant’s character witnesses. *See CT*, Decision No. 512 [2015], para. 51.

85. Secondly, the Final Report notes under the heading “Exculpatory and Mitigating Factors,” the following: the Applicant’s allegation and testimonial evidence from two witnesses that Mr. X “needs to improve his management skills”; that the Applicant’s performance evaluations did not reflect the behavioral issues raised against him; that the Applicant justified why he either validated or pre-approved models contrary to his manager’s instructions; and that the Applicant’s colleagues described him as “very emotional,” “very passionate,” and as someone who has “a good heart.”

86. The Tribunal finds that these factors are not exculpatory of the allegations against the Applicant, and the record does not contain any evidence which was exculpatory of the charges or findings.

87. Finally, the Applicant has not demonstrated how his due process rights have been violated. The Tribunal is satisfied that EBC followed the proper procedures in the conduct of this investigation. The Applicant was appraised of the charges being investigated with reasonable clarity. He was given a reasonably full account of the allegations and evidence brought against

him and provided with a reasonable opportunity to respond and explain during his interview with the EBC investigators and through his comments on the EBC Draft Report.

The Applicant's remaining claims against the EBC investigation

88. The Tribunal now addresses the Applicant's remaining claims regarding the EBC investigation, and finds that these lack merit. According to the Applicant, only bias can explain what he terms EBC's "defective analysis" of the case. However, allegations of bias are insufficient as proof of bias. The Applicant bears the burden of substantiating his allegations of bias or improper motive. The Tribunal has carefully reviewed the record which includes the transcripts of the interview with the Applicant, the two complainants, Mr. Y and Mr. X, thirteen witnesses, and email communications from February 2012, and finds no evidence of bias or improper motive in the conduct of the EBC investigation.

89. Furthermore, the Applicant has not shown that he suffered any prejudice from what he terms EBC's "wholly deficient and misleading Final Report." According to the Applicant, he was left in "legal jeopardy" because of EBC's "quick turnaround" in producing the Final Report twelve calendar days after the Applicant and his counsel submitted two memoranda of comments to the Draft Report consisting of: a "'Cover Memorandum' of 16 pages with 85 footnotes which discussed [the Applicant's] critiques in a thematic format;" and a "'Second Memorandum' of 28 pages and 155 footnotes, which provided detailed, paragraph-by-paragraph responses to the Draft Report."

90. EBC cannot be faulted for performing its tasks expeditiously. The Tribunal observes that the Applicant and his counsel may have felt some frustration because what they characterize as "voluminous (and well-substantiated) comments" were not incorporated into the Final Report. However, EBC was under no such obligation. The Applicant was entitled under the Staff Rules to provide comments on the Draft Report and he duly exercised that right.

91. The Applicant further contends that EBC included its findings on the allegation that the Applicant shouted and banged his fist on a table in the Final Report but did not include these

findings in the Draft Report which contained the allegation. The Applicant argues that in failing to do so, EBC denied him the opportunity to comment on this finding prior to sending the Final Report to the HRVP. The Tribunal observes that though EBC's finding on this particular allegation was not included in the Draft Report, the Applicant provided detailed comments on this allegation in the memoranda he provided, which were submitted, in tandem with the Final Report, to the HRVP. While the Tribunal does not "consider it essential for the Bank to refer every minor amendment to a draft report [...] to the person whose conduct is in question," EBC must be careful to ensure that any additions to its Report after the subject of the investigations has provided comments do not amount to a violation of due process. *See Ismail*, Decision No. 305 [2003], para. 66.

92. The Applicant also levies allegations that EBC "failed to provide a copy [of the Final Report] by courier as had been agreed, and unbelievably sent the electronic version to [his] IFC email address" which according to the Applicant could not have been in error, as EBC asserts, but rather was the result of ulterior motives to delay "a vigorous reaction by [the Applicant] and his counsel for an indefinite period while the [HRVP] moved to a decision." The Tribunal finds these allegations of ulterior motives unpersuasive. The record shows that on 5 February 2014 the EBC investigator informed the Applicant by email that:

Further to our conversation on January 14, 2014, my understanding was that you did not wish to receive hard copies of the report, but preferred to receive soft copies. I immediately sent the report to you per email below. It seems I inadvertently sent it to your IFC email.

Please advise if you would still like hard copies of the report and we can have that delivered to you.

93. The Applicant responded the same day stating "I understand you used the wrong email address and many thanks for the final report. It is not worth it sending a hard copy. I will read it carefully and consult with my counsels."

94. Finally, the Tribunal will consider two of the Applicant's remaining claims against EBC, namely, that the investigation was "patently retaliatory," and reflected "racial animus." In respect of the retaliation claim, the Applicant bears the initial burden of proof as "[i]t is not enough for a

staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person. There must be a direct link between the alleged motive and the adverse action to amount to retaliation.” *AH*, Decision No. 401 [2009], para. 36.

95. In this case, the Applicant alleges that the EBC investigation was initiated in retaliation for his having considered filing complaints against Mr. X in October 2012. The record shows that the Applicant did not proceed with those complaints, and there is nothing in the record to indicate that Mr. Y, who first filed the allegations against the Applicant, was aware of the Applicant’s attempted use of the Conflict Resolution System. The Applicant does not attempt to draw a link, or demonstrate knowledge of his prior use of the system by his alleged “accusers.” The “obvious warning signs of managerial revenge” which the Applicant claims are not present in the record. The Tribunal finds no proof of retaliation, and the Applicant’s claims fail.

96. Regarding the alleged racial animus, the Tribunal is deeply concerned by the fact that the Applicant claims his manager, and EBC were racially motivated against him, an African, without providing evidence to support these claims. Relying on conjecture and suppositions, the Applicant asserts that this is the first case in the Tribunal’s history “where racially tinged animus was not only openly expressed, but also given a megaphone by EBC.” According to the Applicant, “[g]reatly aggravating EBC’s wrongdoing here was EBC’s racially charged and invidious misrepresentation of a witness quote in order to characterize [the Applicant] as having a violent character.” The Applicant further alleges that “EBC also ignored many statements indicated [sic] racial animus, while in its own Report manipulating evidence so as to give it a racially inflammatory effect that gave the impression that [the Applicant] was ‘aggressive’ because of his looks (‘like a little bear’) and deep voice.” According to the Applicant, “EBC’s proffered description of [him] as a deep-voiced ‘little bear’ was clearly intended to invoke the image of an angry, howling, rampaging animal.”

97. However, it was only to the Applicant that such an image was invoked as the Tribunal finds nothing in the EBC report or the record that bears any resemblance to the claims of manipulation, “racial animus” or “racially inflammatory effect.” On the contrary, it is the Applicant who mischaracterizes the testimony of the witness in question, the Applicant’s compatriot, who

described the Applicant's manner of expression as a "little bit like a little bear is going to say something." Such serious allegations of racial discrimination should not be made lightly.

Fitness for Duty Assessment

98. The Applicant asserts that his managers "abusively pursued an unwarranted fitness for duty examination" during the EBC investigation, and faults the Health Services Department (HSD) for not including EBC in the email correspondence on this matter.

99. The record shows that the Applicant's Director submitted a fitness for duty assessment to the HSD on 17 July 2013, two months after the Applicant was placed on administrative leave. Although this assessment was never conducted, the Applicant nevertheless alleges that the request itself was abusive and unwarranted.

100. Staff Rule 5.03 (Performance Management Process), paragraph 3.02 provides that if a staff member's performance is not satisfactory, the manager may request a health assessment under Staff Rule 6.07, paragraph 3.03 if performance problems are believed to be health-related.

101. The procedure for requesting a fitness for duty assessment is contained in Staff Rule 6.07 (Health Program and Services), paragraph 3.03 which provides that these assessments:

[M]ay be requested when performance problems are believed to be health-related or when a staff member has been on sick leave for an extended period. A fitness for duty assessment will determine the presence and extent of any health-related impairment to perform assigned duties. Fitness for duty assessments are conducted by HSD at the request of a staff member's manager or the Director, Health Services Department. [...] The manager shall copy the staff member and the Manager, Human Resources Team.

102. In *BE*, Decision No. 407 [2009], para. 31, the Tribunal held that "[a] manager has first-hand knowledge of the particular situation of his or her staff and, generally, is in a better position to determine whether the situation of a staff member warrants a fitness for duty assessment. A decision by a manager to request a fitness for duty assessment is important and must not be taken

lightly. The Tribunal will overrule such a decision by the manager if it can be shown that the decision lacked a reasonable basis.”

103. The record shows that the Unit Director had a reasonable basis to believe that the Applicant’s performance deficiencies could be health-related. The Applicant had previously indicated in an email on 24 June 2011 addressed to Mr. X that he was using medication which negatively affected him and about which he expressed concern.

104. While the Applicant’s email to Mr. X on his medication was sent in 2011, there is no evidence in the record that the Applicant stopped taking this medication. Furthermore, the Applicant’s Director’s request documented his concerns about the Applicant’s behavior namely: “on numerous occasions [he] failed to come to work on time or at all” and that the Applicant was “regularly disruptive in meetings and failed to listen to direct requests from his Manager.” The Unit Director noted that the Applicant engaged in behavior which was perceived as “inappropriate and unacceptable,” and because of this behavior other staff members had indicated that they felt “unsafe” in his presence.

105. The Tribunal finds that the request for a fitness for duty assessment was not an abuse of managerial discretion. The Unit Director followed the proper process and copied the Applicant, and the Manager of the Human Resources Team. The Applicant has not demonstrated what harm, if any, he suffered by the Director’s request, or what was the implication of what he terms the “odd timing” between this request and the ongoing EBC investigation. There is nothing in the Staff Rules which requires collaboration between HSD and EBC in the event a fitness for duty assessment is requested during an ongoing misconduct investigation.

Allegations of a Hostile Work Environment

106. The Applicant contends that he was subjected to a hostile working environment upon his return to the Unit on 3 March 2014. Illustrations of the alleged hostility include the fact that, in addition to working for Mr. X, the Applicant was required to work under the formal supervision of Mr. AB, with Mr. Z handling the Applicant’s “milestones.” To the Applicant, he was “put in

the hands of three of his most fervent accusers,” as he was aware of their testimony during the EBC investigation. The Applicant contends that the IFC had a duty to facilitate his return so that he was given a good faith opportunity to succeed. Instead, he contends, he was: a) subjected to unjustified and abusive “review” meetings; b) “abused upon his arrival by his lack of work program and computer”; c) given “an impossible workload to which his ‘consent’ was fabricated”; and d) “wrongfully faulted for his Equity-Linked Note model validation work.”

107. The IFC on the other hand contends that it was the Applicant who created a hostile work environment for his colleagues by consistently and intentionally refusing to comply with directions and failing to alter his behavior after ample notice. According to the IFC, management made a sincere effort to help the Applicant succeed, including providing necessary systems, knowledge, and an appropriate work plan. The IFC argues that the Applicant’s work program was reasonable and appropriate for an F-level staff in a model validation role with seven years of experience at the organization.

108. The Tribunal finds that the record does not contain any evidence to support the Applicant’s allegations. Indeed, the Applicant was greatly dissatisfied with his work environment, and had a historically difficult relationship with his manager, Mr. X, which continued upon his return to the Unit. While there is little corroboration of the Applicant’s claims that Mr. X acted abusively towards him and raised his voice, if this occurred the Tribunal reiterates that “screaming and yelling constitute an inappropriate response, particularly in a multicultural community like the Bank, to challenges presented by the character and work habits of a staff member. Such treatment can be expected to generate humiliation and resentment on the part of subordinates.” *Malekpour*, Decision No. 322 [2004], para. 27.

109. The business decision to keep the Applicant in the same unit, working with individuals who were witnesses in the misconduct investigation, cannot be faulted because it was stressful for the Applicant. As the Tribunal held in *Schiesari*, Decision No. 314 [2004], para. 34, “stress is not an actionable hostile environment. Managers have a responsibility to make business decisions [which] are not always favorable to individual employees.” Furthermore, the record shows that the

Applicant, advised by his counsel, engaged in mediation with the IFC on his return to the Unit. The Applicant was therefore aware of the people he would work with upon his return.

110. The crux of the issue is whether the Applicant has provided convincing evidence that he was placed in a hostile work environment, and the Tribunal finds that he has not. The Applicant's claims that he was "abused upon his arrival by his lack of work program and computer," is unsupported by the record which shows that the Applicant had access to a computer and some software by 14 March 2014. The record also shows that, on 19 March 2014, Mr. Z endeavored to ensure that the Applicant had the necessary additional software to do the tasks required of him. That the Applicant was unimpressed by the work program prepared for him does not negate the fact that he had one as of 27 March 2014, the date of the first weekly meeting.

111. Furthermore, having reviewed the record of the weekly review meetings, the Tribunal is not persuaded by the Applicant's assertions that these meetings were "abusive." The Applicant draws an unsubstantiated link between the review meetings and the then impending decision of the HRVP, claiming that the review meetings can "only be explained by a wrongful presumption of [the Applicant's] guilt." This argument lacks merit.

112. As the record demonstrates, the weekly meetings were instituted to document the Applicant's progress and facilitate his transition back to the Unit after ten months on administrative leave. The record of the meetings shows that, contrary to the Applicant's claim of abuse, his manager, supervisor and the HR officer responded to his questions and attempted to guide him in meeting assigned deliverables. The Applicant for his part was unwilling to accept tasks and objectives assigned to him. When asked to enter his objectives into the PEP system he complained and delayed in doing so. The Applicant also claimed that he was being treated differently than other Unit staff by being required to share work milestones during the weekly Unit meetings, an activity other Unit staff were required to do. The Applicant claimed deliverables he was asked for were "irrelevant for [his] work," and repeatedly objected to the presence of the HR officer at the meeting.

113. According to the minutes of the meeting of 1 May 2014, the Applicant stated that he “has his own notes on each meeting, that these were very different from the ones [Mr. AB] is distributing weekly, and that he would share those in the future.” Since such notes were not offered into evidence by the Applicant, the Tribunal has no reason to doubt the veracity of the minutes produced by the IFC which were made contemporaneously with the meetings and circulated to the Applicant who was invited to examine them for accuracy. The Applicant has produced nothing to call these minutes into question.

114. The Tribunal observes that outside of the weekly meetings, the Applicant’s behavior towards his manager, supervisor and certain colleagues did not improve. The Applicant continued to behave in ways which were not professional.

115. Finally, the Applicant claims his Equity-Linked Notes model validation work was wrongfully faulted, and his consent to the work program was fabricated. The first complaint is based on the Applicant’s perception of the superior nature of his work and may be characterized as a non-actionable grievance. The second complaint is not supported by the record.

116. In light of the foregoing, the record does not support the Applicant’s allegation of a hostile work environment.

The Opportunity to Improve Unsatisfactory Performance Plan (OTI)

117. As the Tribunal held in *AK*, Decision No. 408 [2009], para. 41, “decisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a staff member’s contract of employment or terms of appointment.” See *De Raet*, Decision No. 85 [1989], para. 67; *Marshall*, Decision No. 226 [2000], para. 21; *Desthuis-Francis*, Decision No. 315 [2004], para. 19. The Tribunal will examine the Applicant’s allegations according to this standard.

118. The Applicant asserts that “the OTI memorandum gave [him] no practical way to avoid failure,” and challenges his manager’s decision to terminate the OTI after seventeen days. According to the Applicant, “[t]he OTI’s abrupt end may be explained by three primary factors that occurred during this brief period” namely: 1) his “expert production of a replacement Equity-Linked Notes model validation and his critique of the earlier, failed validation by Messrs. [AB and Y], finding it hopelessly flawed”; 2) that mediation was instituted concerning his working conditions; and 3) that he exercised his right to be accompanied at the 30 May 2014 OTI meeting by a Staff Association representative, at which time Mr. X verbally announced that the OTI had failed.

119. First the Tribunal finds that, contrary to the Applicant’s assertions, the OTI memorandum paved the way for him to succeed. As noted in paragraph 31 above, the OTI memorandum set out clear behavioral objectives. The Applicant has failed to explain why it was difficult for him to comply with these objectives which reflect reasonable expectations of staff members in an international organization. With respect to his professional objectives, the Applicant complained that these tasks were impossible in the time requested. The decision to establish a staff member’s work program and set deadlines is a managerial decision which the Tribunal will not set aside unless there is evidence of discrimination, arbitrariness or improper motivation, all of which are absent here. The Tribunal is of the view that, based on the record, had the Applicant made a good faith attempt to meet the professional objectives set in his work program, any concerns about deadlines could have been addressed with his manager.

120. Secondly, the Applicant’s contentions in respect of the termination of the OTI are speculations without concrete support in the record. The Applicant refers to his “expert production” of the Equity-Linked Notes model. The fact remains that the Applicant submitted his Equity-Links Notes model validation on 20 May 2014, eighteen calendar days after the original deadline, and four days after the revised deadline in the OTI. After the Applicant submitted his model validation he was provided with comments and an explanation of why, in the view of management, the submitted work did not meet the validation standards set by the World Bank Group Chief Risk Officer. On 27 May 2014, the Applicant, his manager and supervisor as well as other members of the Unit met to conduct a technical review of the Applicant’s model validation

review. The record of the meeting notes that it was “terminated early because [the Applicant] continued to disrupt the meeting and interrupt those providing feedback.”

121. By submitting the Applicant’s Equity-Linked Notes model validation into evidence, the Applicant is in effect inviting the Tribunal to substitute its discretion for that of the IFC. The Tribunal finds that regardless of how expertly produced the Applicant’s Equity-Linked Notes model was, there was a reasonable basis for the managerial decisions adopted with respect to it.

122. The Applicant also claims that the OTI was terminated because mediation was instituted concerning his work environment. This claim has been made without any attempt to draw a connection, or demonstrate in what way the mediation caused the OTI termination.

123. Finally, the Tribunal finds that the Applicant’s third reason for the OTI termination, namely that it was terminated once he exercised his right to be accompanied by a Staff Association representative, is not sustainable. The record shows that the Applicant was encouraged on multiple occasions to bring a Staff Association representative to the OTI meetings. Indeed, the record shows that the Applicant was informed on 8 May 2014 that he was invited to bring a Staff Association Counselor to attend the first OTI meeting on 13 May 2014. This invitation was repeated on 9 May 2014. In fact, one of the OTI meetings was rescheduled twice to accommodate the Applicant’s request to bring a Staff Association representative. On 28 May 2014, the Applicant informed the other attendees of the OTI meetings that “[g]oing forward I will attend such meetings only with the presence of such a witness as advised by the Staff Association. Hence I regret to inform you that I will not attend tomorrow’s session.” On 29 May 2014, Mr. X responded:

You have been encouraged to invite a Staff Association counselor to accompany you to the weekly OTI feedback meetings since May 8th.

[...]

In order to accommodate your request, we are willing to postpone the OTI progress meeting by one day this week only.

124. When the Applicant responded that he was awaiting the response of a Staff Association Counselor, Mr. X replied stating:

In order to accommodate your request to have an SA Counselor at the meeting, we are again rescheduling the OTI progress meeting on Monday afternoon, June 2nd [...]

125. In conclusion, the Tribunal is satisfied that the decision to end the OTI was a reasonable exercise of managerial discretion. The record shows that the Applicant continued to conduct himself in a manner which was inconsonant with the OTI and which was not conducive to a professional work environment for him and his colleagues.

The Decision to Terminate the Applicant's Employment

126. The central issue here is whether the IFC violated the Applicant's contract of employment or terms of appointment by improperly terminating his employment for unsatisfactory performance. As was held in *Broemser*, Decision No. 27 [1985], para. 31:

That the Bank has the power to terminate a staff member's employment for unsatisfactory performance there is no doubt. The exercise of this power is a matter within the Bank's discretion and its appraisal in this respect is final unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

127. The Tribunal cannot find in the record of this case anything that would substantiate the Applicant's claim that the decision to terminate his employment was improper. The determination that a staff member's performance is unsatisfactory, and that an OTI is unsuccessful, is a matter within the IFC's discretion, and the Tribunal finds nothing that amounts to an abuse of discretion. According to the Applicant, the subsequent termination of his contract on 7 July 2014 was "the direct result of Mr. X's strenuous efforts to buffalo the returning [Applicant] into an impossible work program and into a psychologically crushing state of tutelage." This claim is not borne out by the record. The decision to terminate the Applicant's contract was based on a well-documented record of the Applicant's failure to comply with the terms of the OTI. The Applicant was given several opportunities to adjust his behavior and meet the professional objectives set for him. The Tribunal concludes that by terminating the Applicant's employment for unsatisfactory performance, the IFC did not violate his contract of employment or terms of appointment.

Concluding Remarks

128. The record shows that the Applicant's management made every reasonable effort to support him. While the Applicant had grievances regarding the inadequacy of his remuneration, work environment, and failure of Mr. X to conduct performance evaluations with him, these grievances do not exempt the Applicant from the requirement to conduct himself professionally in the workplace. Unfortunately for the Applicant, he consistently refused to alter his behavior. It is this conduct which led to the reasonable exercise of managerial discretion to terminate his employment at the IFC.

129. The Tribunal is constrained to observe that the tone and confrontational nature of some of the Applicant's pleadings are not in conformity with the standards expected of those appearing before the Tribunal.

DECISION

The Application is dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 13 November 2015