



World Bank Administrative Tribunal

2008

No. 384

**AA,
Applicant**

v.

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

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

**AA,
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Jan Paulsson, President, Francisco Orrego Vicuña, Sarah Christie, Stephen M. Schwebel, and Francis M. Ssekandi, Judges. The Application was received on 3 October 2007. The Applicant's request for anonymity was granted on 28 November 2007.
2. The Applicant claims that the Bank wrongfully terminated an agreement with her for external service and that it failed to protect her personnel information and reputation.

RELEVANT FACTS

3. The Applicant joined the Bank in 1997. She received an Open-Ended appointment in 1999 and was assigned to the Middle East & North Africa Region ("MNA") as a level G Gender Specialist. Her title subsequently changed to Senior Gender Specialist, and then to Senior Communications Officer. From 2002 to 2005, she served as Acting Manager, External Relations and Outreach, MNA. In 2005, she applied for a level H position in MNA. She was on the short list of candidates but did not complete the process given subsequent events which are also at the origin of her Application.
4. A new President joined the Bank in June 2005. Before assuming his functions, he made disclosure of a personal relationship with the Applicant. This circumstance created a potential conflict of interest under the Bank's rules, and was referred to the Ethics Committee of the Board of Executive Directors.

5. The Ethics Committee decided that the best way to resolve the conflict of interest would be to place the Applicant on external service with pay (“external service”). The Ethics Committee concluded that the potential disruption to the Applicant’s career should be taken into account, and raised the possibility of granting her a promotion to level H upon the commencement of her external service, since she would need to withdraw as a candidate for the level H position for which she had applied.

6. At the suggestion of the Chairman of the Ethics Committee, in August 2005 the President asked the Vice President of Human Resources (“HRSVP”) to meet with the Applicant to discuss the possible terms of an agreement for external service.

7. On 11 August 2005, the HRSVP met with the Applicant, who was accompanied by a friend (an attorney). According to the HRSVP, the Applicant proposed the following terms:

- she would go on external service to an institution of her choice;
- she would be promoted to level H before commencing the external service;
- she would maintain her current employment with the Bank, including salary and benefits;
- as part of the promotion to level H, her salary would be substantially increased;
- her annual merit increases during the external service period would reflect a mid-5 merit increase category;
- after 5 years, she would come back to the Bank at level I; or after 10 years, at level J.

8. On the same day, the President sent a memorandum to the HRSVP directing him to accept the Applicant's proposed terms, including the promotion that would also increase her salary, and future promotions to level I or J depending on the length of his term as President.

9. On 1 September 2005, the HRSVP and the Applicant signed the following agreement governing the terms and conditions of her external service ("the Letter of Agreement"):

[Para. 1] As you know, the Ethics Committee has determined that the President faces a conflict of interest with regard to your alleged relationship. Although he submitted a recusal from any personal decisions bearing on your employment, the Ethics Committee decided that this was not sufficient and instructed the President to explore the possibility of assigning you somewhere outside the World Bank Group (the Bank), while respecting your longstanding professional contribution as an employee of the Bank and preserving the same opportunities for professional development and career advancement that you would otherwise have had. Accordingly, I was directed to work with you on a possible solution. While we recognize that this perceived conflict is not of your making and you are under no obligation to accept the following proposal, we very much appreciate your willingness to do so.

[Para. 2] There is no precedent of this kind and no personnel policy that clearly applies to resolve it. Therefore, this letter defines a set of actions and guidelines to help resolve this unusual circumstance.

[Para. 3] The Bank proposes that starting September 12, 2005 you will be detailed to the U.S. Department of State. The detail may be changed by mutual agreement to another institution consistent with Bank staff rule 5.02 for such detail. The period of the detail may exceed any otherwise applicable World Bank policies or guidelines and will be reviewed by the Bank and you after a term of five years from the commencement of the detail. At the end of the five-year term, you will have the option to extend the detail by mutual agreement for an additional five years, for a total of ten years from the commencement of the detail. However, should the conditions at the Bank resulting in your detail change, you are guaranteed re-entry at any time to the Bank to a position which makes full use of your professional qualifications either in the Middle East and North Africa Vice-Presidency or other appropriate VPU, with all your pre-existing rights and benefits.

[Para. 4] During the entire term of the detail, the Bank agrees that you will continue to be treated as an open-ended Bank employee and receive in full, on the same terms and conditions as other Bank employees, all of the benefits currently available to Bank employees, including but not limited to health care, life, disability and other insurance benefits, full rights under all pension and retirement plans, vacation and home leave allowance, child dependency allowances as stated in the staff rules, and emergency and travel assistance in the case of death. The World Bank also agrees to renew your G-4 visa and/or any other applicable immigration related documents upon your request or the request of the institution to which you are detailed.

[Para. 5] In addition, since you are being detailed while under active consideration for promotion, the Bank agrees that at the commencement of the detail you will be promoted to a grade H level as defined by current Bank guidelines and will be paid a net salary of ... per annum. Notwithstanding any otherwise applicable Bank guidelines, policies, or staff rules during the period of the detail you will receive an annual salary increase at mid-point performance category 5, which, in the 2005 salary review matrix represented an increase of about 8 percent. During the period of the detail you will also receive any salary increases that result from changes in the salary structure for Bank employees.

[Para. 6] It is further agreed that after the first five-year term of the detail you will be considered for promotion to a grade level I subject to the following terms and conditions: a promotion to grade level I is contingent upon an evaluation of your performance reviews to be submitted by an appropriate supervisor at the institution to which you are detailed. The performance reviews will be evaluated by a three-person panel comprised of the supervisor from the institution to which you are detailed and two Bank employees appointed by mutual agreement between you and the Vice President of Human Resources. In evaluating the promotion to I level, the panel will apply performance standards that are relevant to the duties and responsibilities of the position you are detailed to and consistent with promotion criteria of the Bank. A majority vote will be sufficient to approve the promotion. These terms and conditions will apply regardless of whether you remain on detail or return to the Bank at the end of five years. In addition, in the event that the I level promotion is approved, should you remain on detail from the Bank for an additional five years, at the end of the tenth year, you will be considered for promotion to a J level subject to the same terms, conditions and procedures governing the promotion to grade I level set forth above.

[Para. 7] Furthermore, on retirement from the Bank, you will be entitled to all the benefits and pension entitlements of other Bank staff at the same grade level at which you retire.

[Para. 8] It is the intention of the parties to this Letter of Agreement that all terms and conditions in this Letter of Agreement are binding on both you and the Bank for the entire term of the detail, regardless of changes in the management or staff at the Bank. It is further understood that this Letter of Agreement represents the entire agreement between the Bank and you concerning the terms and conditions of your detail and should remain confidential to assure your privacy and rights.

10. To effect her external service, the Applicant was first assigned to the U.S. Department of State. On 15 September 2005, the HRSVP wrote a memorandum to the Applicant approving her external service with the U.S. Department of State. According to the Bank, this memorandum was intended to implement, but not amend, the 1 September 2005 agreement. On 21 September 2005, the HRSVP wrote a letter to the U.S. Department of State confirming that the term of the external service assignment with the Department of State was for two years, from 19 September 2005 through 19 September 2007, renewable thereafter by mutual agreement.

11. On 1 October 2006, the Chairman of a newly-established foundation (“the Foundation”) wrote to an advisor to the Bank’s President requesting the transfer of the Applicant from the State Department to the Foundation subject to the same arrangement agreed with the State Department.

12. On 14 December 2006, the HRSVP wrote another memorandum to the Applicant approving the substitution of the Foundation for the State Department as the external service employer. The HRSVP noted that his 15 September 2005 memorandum would be amended accordingly and she “will return to work on a date to be determined between the World Bank (HRSVP), the Foundation ..., and yourself.” According to the Bank, the purpose of this statement was to acknowledge that the arrangement could continue only with the agreement of all three parties. It was not intended to be understood as granting the Applicant the right to continue working for the Foundation on external service

indefinitely, and beyond the date when the arrangement no longer suited either the Bank or the Foundation.

13. In the meantime, the terms of the Applicant's external service were leaked to the media, creating a controversy. In May 2007, the President announced that he would resign effective 30 June 2007.

14. In view of the President's resignation, in June 2007 the Bank wrote to the Applicant:

With his resignation, the reason for your external assignment as outlined in [the HRSVP's] letter to you of September 1, 2005, comes to an end. The external assignment had been arranged as a way to deal with the conflict of interest situation that resulted from your personal relationship with [the President].

15. After consulting the Foundation, the Bank informed the Applicant that her external service would end on 31 December 2007. This date was pushed back while the Bank and the Applicant discussed the conditions for her return to active Bank service. On 19 February 2008, the Applicant reentered the Bank in the position of Lead Gender Specialist at level H.

16. In order to facilitate the Applicant's reentry, the Bank allowed the Applicant to telecommute from her home until the Tribunal issued a decision on her Application, which had been filed directly with the Tribunal on 3 October 2007. The Applicant accepted the reentry arrangement, with the caveat that she was not "waiving any claims in her Application before the Tribunal."

17. Read together with the Applicant's Reply of 12 May 2008, the Application raises two main claims before the Tribunal: (i) the Bank breached the binding contractual agreement of 1 September 2005; and (ii) the Bank failed to safeguard the Applicant's personnel data and protect her reputation, thereby causing her humiliation and harm. The

Applicant seeks compensation for actual damages for breach of contract, and for the irreparable harm and damage to her personal and professional reputation, as well as costs of legal representation.

THE CONTENTIONS OF THE PARTIES

The Applicant's First Claim – The Bank Breached the Agreement of 1 September 2005

18. The Applicant contends that the Bank breached the Letter of Agreement of September 2005 in the following two respects.

19. First, the Bank breached the Letter of Agreement by demanding her immediate return to the Bank before the expiration of the guaranteed five-year term for external service. Paragraph three of the Agreement specifies that the Applicant has a right to remain on external assignment for an initial term of five years. It specifies that the matter “will be reviewed by the Bank and you after a term of five years from the commencement of the detail.” The Applicant asserts that this time period was a key term in the contract since the Applicant could not hope to complete a major project outside the Bank with a term of less than five years. By forcing the Applicant to abandon the external service and return to a far less responsible job at the Bank after a period of only two years, the Bank breached the Letter of Agreement, causing severe harm to the Applicant's professional standing and career.

20. The Applicant moreover contends that pursuant to the Letter of Agreement of 1 September 2005, the Bank was precluded from terminating her external service because she alone could demand an early return to the Bank, in the first five years of external service, “should the conditions at the Bank resulting in [her] detail change.” The Agreement's effectiveness was independent of the tenure of a particular officer of the

Bank. Paragraph eight of the Letter of Agreement states that “[i]t is the intention of the parties to this Letter of Agreement that all terms and conditions in this Letter of Agreement are binding on both you and the Bank for the entire term of the detail, regardless of changes in the management or staff at the Bank.”

21. Second, the Bank breached the Letter of Agreement of 1 September 2005 by refusing to provide her with an appropriate position upon her compulsory return to the Bank. The Applicant explains that the job she was given is not consistent with the Bank’s contractual obligation to provide her with “a position which makes full use of [her] professional qualifications either in the Middle East and North Africa Vice-Presidency or other appropriate VPU.” The job assigned – Lead Gender Specialist – is a technical position outside a managerial career path. She asserts that although her grade level has remained at level H, the position has proven to be a largely make-work assignment to create data bases and organize literature. In contrast, at the time she accepted her external service, the Applicant’s position at the Bank was Acting Manager for External Relations in MNA, which was within a managerial career path. Similarly at the Foundation she had broader responsibilities than in the current position. Finally, upon her reentry, the Bank failed to give her salary increases as stated in the Letter of Agreement.

The Bank’s Answer to the Applicant’s First Claim

22. First, the Bank points out that the first paragraph of the Letter of Agreement explains that the external service arrangement was intended to avoid a conflict of interest stemming from the Applicant’s personal relationship with the President, while “preserving the same opportunities for professional development and career advancement that you would otherwise have had.” The third paragraph describes the duration of the external

service as five years, with the possibility of a further five years, subject to one important caveat:

should the conditions at the Bank resulting in your detail change, you are guaranteed re-entry at any time to the Bank to a position which makes full use of your professional qualifications either in the Middle East and North Africa Vice-Presidency or other appropriate VPU, with all your pre-existing rights and benefits.

23. In the Bank's view, the "conditions at the Bank resulting in [the Applicant's] detail" – the conflict of interest due to her personal relationship with the President – manifestly changed when the President resigned effective 30 June 2007. At that time, the Bank was within its rights to call for the Applicant's reentry. As for the Applicant's argument that her reentry could not be required before the end of ten years due to language in the final paragraph of the Letter of Agreement stating that "all terms and conditions in this Letter of Agreement are binding on both you and the Bank for the entire term of the detail, regardless of changes in the management or staff at the Bank," the Bank contends that it must fail in view of the fact that the caveat quoted in paragraph 22 above was precisely one of the "terms and conditions" of the Agreement that remains binding on both parties, and that it expressly allows the Bank to shorten the "term of the detail." By requiring the Applicant's reentry after the President's resignation, the Bank is enforcing the terms of the Agreement, not violating them.

24. Second, although the Applicant complains that her new position is not a managerial one, she neglects to mention that she was never selected for a managerial post before her external service. There is no "managerial career track" at the Bank. Rather, managerial positions are advertised, staff members may apply, and selections are made competitively. Nothing in the Bank's rules restricts a level H technical specialist like the Applicant from seeking a managerial position in a competitive process.

25. In addition, the Bank continues, it has abided by the terms of the Letter of Agreement as it has provided the Applicant with “the same opportunities for professional development and career advancement that [she] would otherwise have had.” The Letter of Agreement did not require that she reenter the Bank into a managerial position, but refers to a position that “makes full use of [her] professional qualifications.” The Bank acted reasonably in assigning her to a level H Lead Gender Specialist position, given her background and experience. Whether the position ultimately “makes full use” of the Applicant’s qualifications depends to a large degree on the Applicant’s initiative and desire to allow that to happen, to her as well as the Bank’s benefit.

The Applicant’s Second Claim – The Bank Failed to Safeguard the Applicant’s Personnel Data and Protect Her Reputation

26. The Applicant contends that the Bank is obligated under the staff rules and the Letter of Agreement to safeguard the Applicant’s personnel data and to protect her reputation. In May 2007, the website of a Washington-based non-governmental organization (“NGO”) announced that it was “posting an open letter from the Bank staffer who originally sent us [the Applicant’s] payroll records.” The Bank, the Applicant contends, is responsible for this disclosure.

27. The Applicant maintains that the Bank’s suggestion that the severe reputational harm suffered by the Applicant was the unavoidable consequence of the necessary whistleblowing lacks foundation. Nothing in the Bank’s rules, or draft rules, or in the traditions or ideals of whistleblowing, permits specific employee data to be disclosed and broadcast to the public at large as well as to the international mass media, as happened in the case of the Applicant.

28. The Bank cannot maintain the position that it bears no responsibility for any intrusion into protected data concerning the Applicant, if the act of intrusion or publication was that of an officer of the World Bank Staff Association. Staff Association members are bound by the Bank's rules not to disclose any confidential information. The Staff Association's repeated broadcast of the Applicant's personnel information engages the direct responsibility of the Bank, because it failed to take any steps at all to caution or remind the officers of the Staff Association of their duty as Bank employees to observe the Bank's rules concerning the privacy of staff members. Nor did the Bank take any steps to discipline Bank employees, including members of the Staff Association, who failed repeatedly to observe the Bank's rules on nondisclosure of confidential information, and therefore the Bank is liable for that failure.

29. Finally, the Applicant contends that the reputational harm to her was significantly exacerbated by the Bank's unjustifiable refusal to permit her to give a public statement in answer to the accusations made against her. While the Applicant was vilified in the press, she asked the Bank to permit her to write comment in the local newspaper in her defense. The Bank refused. Thus, the Bank unfairly applied an asymmetric policy to the Applicant – acting to her detriment by failing to take steps to enforce the Bank's rules to prevent or limit the circulation of information about her, yet forbidding the Applicant from answering.

30. The Bank acknowledges that there was unauthorized disclosure of the Applicant's salary data by a purported whistleblower. Regardless of whether the disclosure by the purported whistleblower was justified, the Bank examined whether it was possible to identify the source of the leak but could not single out any individual. The Bank has since issued additional notices to staff who have access to confidential data reminding them of their responsibilities to maintain and respect that confidentiality.

31. The Bank argues that it cannot be held liable for statements made by the Staff Association, whose role is to represent staff and express viewpoints that are independent from, and sometimes in opposition to, Bank management. The Bank cannot prescribe the manner in which the Staff Association carries out its mandate. This is fully consistent with the independence and autonomy that are essential to the staff's right to association.

32. Finally, the Applicant's complaint about a "gag order" hindering her ability to respond in the media should be rejected. The record indicates that the Applicant's viewpoint somehow managed to find expression in the media. It is also unclear that it was in her interest to raise her media profile in 2007, since the ensuing public reactions may well have exacerbated her discomfort.

33. In view of the above, the Bank requests that the Tribunal dismiss the Application.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

The Termination of the External Service

34. The Letter of Agreement of 1 September 2005 established the basic terms of the Applicant's external service arrangement. It was an unprecedented solution to avoid a conflict of interest stemming from the Applicant's personal relationship with the President of the Bank. The external service was contemplated for a five-year period, with a

possibility of a five-year extension. The fact that Presidential terms are for five years was not a coincidence; the ten-year overall timeframe gave reasonable prospects of a solution to a difficult problem which would not have to be revisited.

35. The Letter of Agreement was under the signature of the then HRSVP, and countersigned by the Applicant. A copy was sent to the President. The HRSVP implemented this arrangement under the direction of the President, who was the HRSVP's direct superior. This fact gave rise to criticism, but is not of significance for present purposes since the Bank has not questioned that the Letter should be given effect.

36. The text of the Letter of Agreement was inadequately drafted. Considering its context and the fact that both parties had more than adequate opportunity to seek advice (and obvious reason to do so given the sensitivity of the matter), the Tribunal does not apply the *contra proferentem* rule against the Bank on the grounds that it drafted the Letter. Instead, the Tribunal applies that rule in its at least equally legitimate sense to the effect that ambiguities are resolved, if necessary, against the party seeking to rely on the text. The key paragraph is this:

The Bank proposes that starting September 12, 2005 you will be detailed to the U.S. Department of State. The detail may be changed by mutual agreement to another institution consistent with Bank staff rule 5.02 for such detail. The period of the detail may exceed any otherwise applicable World Bank policies or guidelines and will be reviewed by the Bank and you after a term of five years from the commencement of the detail. At the end of the five-year term, you will have the option to extend the detail by mutual agreement for an additional five years, for a total of ten years from the commencement of the detail. However, should the conditions at the Bank resulting in your detail change, you are guaranteed re-entry at any time to the Bank to a position which makes full use of your professional qualifications either in the Middle East and North Africa Vice-Presidency or other appropriate VPU, with all your pre-existing rights and benefits.

37. In the second sentence, the expression “mutual agreement” fails to deal with the consequences of the position of the obviously relevant third party, i.e. the institution to which the Applicant would be detailed. What would happen if her initial external assignment (“detail”) ended and no new detail were found, or indeed agreed? In the fourth sentence, what is the meaning of an “option” conditional on “mutual agreement”? Is it an option at all? As for the fifth and final sentence, was the “change-of-conditions” caveat intended to end the arrangement, or merely give the Applicant the option (“you are guaranteed”) to return or stay away, according to her preference? Did the caveat apply generally, or only in the course of the second five-year period?

38. The Applicant seeks to rely on the final paragraph of the Letter of Agreement, which provides that its “terms and conditions” would endure “regardless of changes in the management or staff at the Bank.” She argues that this means that the resignation of the President effective 30 June 2007 was excluded from having any effect on the arrangement. The Tribunal is unable to accept this argument. The paragraph in question appears as a catch-all, generally applicable to all of the terms of the Letter, and must cede to the specific terms of the paragraph quoted above. The final paragraph provided generally that the Letter of Agreement would be binding on future managers – such as any successor to the HRSVP. It did not neutralize the “change-of-conditions” caveat of the earlier paragraph. It is quite plain that the principal “condition” that “resulted” in the “detail” was the identity of the President; once the President was replaced, conditions were radically and obviously altered.

39. In other words, the answer must be found by interpreting the inadequately worded paragraph quoted above.

40. To begin with a relatively easy point, the Applicant simply did not have an unqualified entitlement to a second five-year external assignment, because the second period was subject to mutual agreement. Especially in view of the resignation of the President three years before the expiry of the first five-year period, and even if one considers that the Bank could not have withheld its agreement in an unreasonable manner, in context reliance on such an entitlement would be illusory.

41. As for the first five-year period, the Applicant makes the plausible argument that the “change-of-conditions” caveat is worded as her right, and not that of the Bank. The proposition that such was in fact the intention and understanding of the parties is, however, undercut to some extent by the 15 September 2005 countersigned Memorandum of Agreement, which referred to the Applicant’s imminent assignment to the U.S. Department of State. The Memorandum remarkably does not state a termination date for the assignment, but rather blandly states that upon its “completion” the Applicant “may expect to return” to the Bank in accordance with the Letter of Agreement. In fact the Applicant left the Department of State to join the Foundation. It is not clear that this was previously approved by the Bank (it resulted from a request by the Chairman of the Foundation addressed to the President’s adviser), but the transfer did not prove a problem; in a second countersigned Memorandum of Agreement dated 14 December 2006, the HRSVP merely noted her transfer (“It has come to my attention”) and provided that “you will return to work on a date to be determined between the World Bank (the HRSVP), the Foundation ..., and yourself.” There was no provision for the consequence of a failure of such a tripartite agreement. Although the other terms of the Letter of Agreement remained unchanged, the Foundation was not a party to that document.

42. The arrangements between the Bank and the Applicant thus created considerable ambiguity. Supervening events and the conduct of the parties, however, clarified the situation. By the time of the President's departure from the Bank, the Applicant found herself in the status of being "detailed" to the Foundation. After his resignation, the Bank informed the Applicant that it wished to terminate the external assignment. The Chairman of the Foundation then wrote to the new Bank President and requested that the Applicant's services at his Foundation (still paid for by the Bank) be continued for a transition period until the end of 31 December 2007. This request was granted, and acknowledged with appreciation by the Chairman, who expressed his hopes for "future collaborations with the Bank." The Applicant's return was subsequently extended to 1 February 2008, and her first day of work was 19 February. She was by agreement given the right to work from home, using telecommunications, for one year – as she continues to do at present.

43. In sum, considering the terms and the context of the Letter of Agreement and all the circumstances of which it is aware, the Tribunal does not find the termination of external service to be unlawful or unreasonable. Her secondment to other institutions was clearly and essentially contingent upon the tenure of the Bank's President.

44. The Applicant further claims that the termination of her external service and subsequent reentry into the Bank would result in her facing a "hostile work environment." The Tribunal does not view this as at all inevitable. The telecommuting arrangement is expected to ease the Applicant's reentry. The Tribunal expects that the Bank will further ensure that the Applicant can return to a suitable work environment, and is unwilling to assume that this cannot be achieved.

45. The Applicant also claims that upon her reentry, the Bank failed to give her a position that makes “full use of [her] professional qualifications” as required by the Letter of Agreement. Considering the Applicant’s background and experience, the Bank assigned her to the position of Lead Gender Specialist at level H. This position is similar to the advertised position of “Grade H Lead Public Sector Specialist” in which the Applicant had expressed interest during her reentry negotiation with the Bank, stating this is a “position which I believe I am particularly suited to and that I would do well at.” The Applicant may now pursue management positions commensurate with her professional qualifications in accordance with the applicable Bank rules that apply to all staff. The Applicant complains about the specifics of her work program, which the Bank outlined in a memorandum to her dated 19 February 2008. The Tribunal does not micromanage staff members’ work program. Nothing prevents the Applicant from negotiating her work program with her managers by following the Bank’s internal processes.

46. Finally, the Applicant complains that the termination of the external service results in the abandonment of the salary and promotion arrangements guaranteed in the Letter of Agreement. Understandably, with the termination of the external service, the special arrangements for promotion and salary increase associated with the external service also come to an end. Having reentered, the Applicant like other staff members at the Bank is eligible for salary increase and promotions in accordance with the applicable Bank rules. This is, in the Tribunal’s view, consistent with the objective stated in the Letter of Agreement of “preserving the same opportunities for professional development and career advancement that [she] would otherwise have had.” During the external service, in view of the disruption of the Applicant’s career at the Bank, the Applicant received a promotion to

level H and special salary increases in both 2005 and 2006, as per the Letter of Agreement. Although these special arrangements have come to an end, she is expected to continue benefiting from the increases granted in 2005 and 2006 until her retirement from the Bank and even after.

Alleged Failure to Safeguard Personnel Information and Reputation

47. As to the Applicant's argument that the Bank is liable for the action of the staff member who disclosed her personnel information to the NGO, the Tribunal emphasizes that the Bank must establish and maintain appropriate safeguards to ensure that confidential personnel information pertaining to a staff member remains confidential, and to take reasonable remedial action in the event confidentiality is breached. In the present case, the disclosure of the personnel information was not in any manner approved or condoned by the Bank's management. Nor has the Applicant identified safeguards which the management neglected. Neither the Applicant nor the Bank could identify the individual who leaked the information. The Bank cannot be made liable for its inability to take action against the individual who disclosed the information. In response to the disclosure, the Bank examined whether it was possible to identify the source of the leak. It explains that there were at least 88 individuals who, in the normal course of their duties, could have accessed the Applicant's personnel data, but could not single out anyone. The Bank observes that it subsequently issued additional notices to staff who have access to confidential data reminding them of their responsibilities to maintain and respect that confidentiality. In these circumstances, the Tribunal does not hold the Bank liable for the disclosure.

48. The Applicant also asserts that the Bank is liable for the alleged defamatory statements made by some staff members, even though made in their personal capacity, against her. Based on the record before it, the Tribunal cannot find the Bank liable for the various public comments made by individual staff members regarding the Applicant.

49. Nor does the Tribunal accept that the Bank is accountable for the actions of the Staff Association in circulating the Applicant's personnel data and repeatedly broadcasting confidential information about her. The Applicant has not advanced a clear legal basis for holding the Bank liable for the actions of the Staff Association. The Tribunal agrees with the Bank that the Staff Association is not part of management; its primary purpose is to represent staff and to express viewpoints independent from, and sometimes in opposition to, Bank management. In *Mr. "V" v. IMF*, IMFAT Judgment No. 1999-2, the Administrative Tribunal of the International Monetary Fund recognized the autonomy of the Staff Association. In that case, a staff member of the Fund argued *inter alia* that the Fund is liable for the action of the Staff Association Committee ("SAC") because it made available a confidential report about the staff member at its information desk, which was available for review by any staff member. The IMFAT stated that (at paras. 113-114):

[I]t is clear from the Staff Association's constitutive documents and from its actual work that it acts independently of the Fund. While it may sometimes function in an advisory role to management, its primary purpose is to act as representative of staff (vs. management) interests. There is nothing in the circumstances of this case to suggest that its purpose was otherwise here. Indeed, even Applicant alleges that if the SAC made available to staff members copies of the SBF [Separation Benefits Fund] Report it did so "in furtherance of its goals", not the goals of the International Monetary Fund. If the SAC Chairman regarded it as within the scope of his responsibilities as representative of staff interests to make the Report available to members of the staff at large, it would be difficult to treat such an act as a "decision taken in the administration of the staff of the Fund" within the meaning of Article II of the Tribunal's Statute.

Accordingly, the Administrative Tribunal concludes that, whatever complaint or remedy Applicant may or may not have against the Staff Association Committee for its actions with respect to the 1996 SBF Report, that complaint or remedy cannot be pursued in the Administrative Tribunal.

50. In the present case, the Tribunal cannot find the Bank liable for the Staff Association's actions. There is no evidence that the Staff Association acted at the instruction of management or under the effective control of management, or that the Bank provided confidential information to the Staff Association, or otherwise negligently allowed such information to be accessible to individuals having no proper administrative reason to be in possession of it.

51. With respect to the Applicant's complaint about denial of permission to publish a response to media reports, the Bank stated: "As the substance of the OpEd article relates to a matter that is presently the subject of a Board proceedings, the constraint provision of the Disclosure Policy [of the Bank] precludes any discussion of the matter in an OpEd piece." The Tribunal does not find the Bank's response unreasonable.

52. Finally, in her Application of 3 October 2007, the Applicant claimed that the Bank improperly and unfairly investigated her for possible misconduct. Based on specific allegations of potential misconduct, in June 2007, the Bank appointed an outside law firm to conduct an investigation in accordance with Staff Rule 8.01. The law firm completed its investigation in December 2007 concluding overall that it would be "quite unfair to make a finding of misconduct." The Bank accepted the findings.

53. These events transpired well after the Applicant's submission of her grievance before this Tribunal. At the time of filing, the Applicant understandably may have been apprehensive about the misconduct investigation as well as the terms of her return to the Bank. It appears that the Applicant is no longer pursuing any claim relating to the

investigation in view of its outcome. Her Reply of 12 May 2008 was silent in this respect. Furthermore, in a letter dated 2 June 2008 to the Tribunal, she confirmed that she was “satisfied that the independent inquiry has been resolved in her favor” and that her Reply of 12 May 2008 “covered the salient issues for the Tribunal consideration.”

54. In any case, the complete report of the investigation is part of the record. The Tribunal finds no wrongdoing on the part of the Bank.

55. Given the lack of basis for the Applicant’s claims, the Tribunal awards no costs.

DECISION

For the above reasons, the Tribunal dismisses the Application.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Paris, France, 18 July 2008