



**World Bank Administrative Tribunal**

**2008**

**No. 381**

**AB,  
Applicant**

**v.**

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

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

**AB,  
Applicant**

**v.**

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

1. This judgment is rendered by a Panel of the Tribunal established in accordance with Article V(2) of the Tribunal's Statute, and composed of Jan Paulsson, President, and Judges Stephen M. Schwebel and Francis M. Ssekandi. The Application was received on 9 October 2007. The Applicant's request for anonymity was granted on 4 January 2008.

2. The Applicant challenges the decision of the Vice President, Human Resources (HRSVP) of 25 May 2006 to bar him permanently from future employment with the Bank and access to Bank facilities. He also challenges the Managing Director's decision of 11 June 2007 to accept the Appeals Committee's recommendation, by which the bar was reduced to three years but not removed. He specifically asks the Tribunal to quash the Final Report of the Department of Institutional Integrity (INT), rescind the HRSVP's disciplinary sanction, as amended by the Managing Director, remove all evidence of the INT investigation from his personnel records and compensate him for the professional and reputational harm he has suffered.

#### FACTUAL BACKGROUND

3. The Applicant, an Argentine national, joined the Bank headquarters as a Long-Term Consultant in June 1991. In 1996 he accepted a two-year assignment in Argentina, which was extended for another two years and expired in June 2000.

4. The issue in this case revolves around the importation of the Applicant's vehicle to Argentina while on assignment between 1996 and 2000, and the status of the vehicle after his appointment with the Bank ended.

5. It appears that prior to his departure for Argentina, the Applicant had consulted with the Argentine Consulate to inquire about the importation of his vehicle to Argentina for personal use. Based on information provided by the Applicant, after he arrived in Argentina, in late September 1996, Mr. X, driver and coordinator of administrative matters at the Bank's Mission in Argentina, suggested to him that he address the matter of his car to the United Nations Development Programme (UNDP), where his accreditation as an International Officer would also be processed. The Applicant accordingly provided UNDP with a number of documents to take care of the formalities, including a copy of his Argentine passport, his UN Laissez-Passer, photos, a copy of his terms of reference (TORs) reflecting his appointment to the Argentine Mission, his U.S. driver's license and the title to his car which listed him as its owner. He also indicated that he would be the only authorized driver of his vehicle.

6. On 18 October 1996, a letter signed by the Bank's then-Resident Representative in the Bank's Mission in Argentina, Mr. Y, and addressed to the Resident Representative of UNDP in Argentina (the October Letter), requested diplomatic exemption for the Applicant's car. The car was described as an "official vehicle intended for the use of our Representative's office in Argentina." The investigators were unable to determine who drafted the letter, and whether the Applicant was aware of the letter, and the misrepresentation it contained, at the time it was issued.

7. On 21 October 1996, the Registered Representative of UNDP wrote to the Ministry of External Relations in Argentina requesting authorization to import the Applicant's vehicle, stating that it was "for official use of the World Bank Representative in Argentina." The letter included an annotation to the effect that this was a request for temporary importation. The request was made pursuant to the provisions of Article 6 of Decree No. 25/70 on Custom Privileges and Immunities of a Diplomatic Nature.

8. The Ministry of External Relations approved the importation of the Applicant's vehicle subject to two limitations: "not eligible for permanent inward clearance" and "temporary importation." Thereafter, license plates for the car were sent indicating, via an OI (international officer) annotation, that the car was an official vehicle.

9. The parties agree that it was not a typical import authorization. Had the Bank been the sole owner of the vehicle, it would not have had a restriction on nationalization. The Bank would have been able to nationalize the car after four years and sell it in the local market.

10. The vehicle registration card, dated 30 October 1996, indicated that the owner of the vehicle was the Bank. The purpose of the car was listed as "Official Use." On the back of the card, the Applicant was listed as the authorized driver and his signature was affixed with that of the Registered Representative of UNDP.

11. The Applicant maintains that he did not find it "wrong or suspicious" that the Bank was listed as the owner, or that he was listed as the authorized driver. He stated that the authorization was consistent with what he was told at the Argentine Consulate in Washington, DC. He also said that he had "no reason ... to second guess procedures

carried out by UNDP officers who for years had had the responsibility of processing such accreditations on behalf of international organizations.”

12. When the Applicant’s contract with the Bank expired in 2000, he stayed in Argentina and worked as an independent consultant with the Bank for about four years. His U.S. G-4 visa had expired and he did not return to the U.S.

13. The Applicant alleges that he tried to find a buyer for his vehicle and had sent Mr. X several e-mails over four years to ask him for help in the matter, but that he did not receive any response. He testified that he sent Mr. X an e-mail every six months to a year asking whether any qualified Bank Mission employees would be interested in buying the car (an employee who could then re-export the car to the U.S.). There is no evidence, however, in the record to that effect. The only communication in the record is dated in 2004, after the Applicant became aware that the Bank was investigating the arrangements relating to his car.

14. It appears that after 2000, the car remained mostly parked in various garages, as the Applicant was aware that he was not permitted to drive it with its diplomatic license plates after he left the Bank.

15. In 2004 the Bank’s Mission in Argentina received an inquiry from UNDP about the status of the Applicant’s car. Bank officials could not find any record of the car and asked UNDP to send them copies of the paperwork. The then new Resident Representative of the Bank, Mr. Z, became suspicious and referred the case to INT for investigation, on the basis that Argentine nationals are not entitled to import their personal belongings free of taxes.

16. INT conducted its investigation into the matter and issued its Final Report of Investigation on 27 February 2006 (INT Final Report). INT based its investigation on the fact that the October Letter contained a misrepresentation of the true ownership of the car. The investigation uncovered a number of irregularities in the processing of the import permit of the car, including the lack of any records of the car at the Bank's Mission in Argentina, the mystery surrounding the identity of the person who drafted the October Letter, and the unusual restrictions imposed on a car considered to be Bank property.

17. INT also considered potential motives for the Applicant's alleged improper conduct. In evaluating the motives, INT obtained and reviewed the law applicable to import of cars in Argentina by Argentine nationals. INT concluded that an Argentine national could not import a vehicle free of taxes.

18. The Applicant responded to the INT report by denying the allegations. He argued that he did not know of the October Letter and that he received no benefit from the situation because of the cost of the parking since 2000 and his inability to sell the car.

19. The INT Final Report concluded, *inter alia*, that

[The] record contains reasonably sufficient evidence to support a finding that [the Applicant] allowed his personal vehicle to be imported into Argentina as an official vehicle of the World Bank Group in violation of the Diplomatic Exemption Regime applicable to Argentine nationals in 1996.

There is no direct evidence that [the Applicant] drafted the October 18, 1996 letter, and he has denied so. ... [T]he evidence suggests [the Applicant] was personally involved in the preparation and delivery of the letter .... However, the evidence ... is not reasonably sufficient to demonstrate that [the Applicant] knew or should have known of the specific misrepresentation in the October 18, 1996 letter at the time it was delivered to UNDP.

There is reasonably sufficient evidence that [the Applicant] knew or should have known, at or around the time of their submission, that the UNDP documents concerning his vehicle were false.

Argentine law [does not provide] exemptions from import tax ... to Argentine nationals. ... Despite the law, [the Applicant] contended he was told, and believed, that he was entitled to a tax-exempt temporary import license for his vehicle.

This evidence ... demonstrates that [the Applicant] knew he would be required to pay high taxes and attempted to evade these taxes. Thus, INT concludes that there is reasonably sufficient evidence that [the Applicant] knowingly allowed his vehicle to be misrepresented as an official car for Bank use, in order to obtain a personal benefit to which he was not entitled.

At a minimum, even absent a conclusion of knowing misrepresentation by [the Applicant], his acquiescence in the misrepresentation of the status of his vehicle, his acceptance of the benefits of the avoidance of the Argentine import taxes, and his knowing misuse of Argentine diplomatic license plates ... after the termination of his posting in 2000 provides reasonably sufficient evidence of a failure to observe generally applicable norms of prudent professional conduct, as well as reasonably sufficient evidence of acts or omissions in conflict with the general obligations of staff members set forth in Chapter Three of the Principles of Staff Employment.

20. On 25 May 2006 the Applicant received from the HRSVP notification that after a “thorough review of the Final Report,” he had concluded

that there is reasonably sufficient evidence to support the ... allegation. The totality of the evidence does not lend credibility to the explanations you provide in response to the allegation. You were aware that your personal vehicle was listed with the United Nations as an official Bank vehicle, which was a clear misrepresentation you never sought to rectify or at least bring to the attention of the Bank. The misrepresentation resulted in you being able to avoid the payment of taxes and duties you otherwise would have had to pay. I find it difficult to believe that the designation of your vehicle as an official World Bank vehicle, and your designation as a World Bank driver, would not have raised concerns or questions with you.

Since you have left the services of the Bank, I have decided ... that the appropriate disciplinary measure, is to permanently bar you from future employment within the World Bank Group. In addition, you will be prohibited from access to all World Bank Group facilities, absent

exceptional circumstances as decided by the Vice President, Human Resources.

21. On 18 August 2006, the Applicant filed a statement of appeal with the Appeals Committee challenging the 25 May 2006 decision of the HRSVP and requesting, *inter alia*, rescission of the decision and its removal from his personnel files, written assurances that he would be eligible for rehire at any time, and monetary compensation. An Appeals Committee Panel held a hearing on 28 March 2007 and issued a report on 6 June 2007. The Panel concluded that the HRSVP

did not abuse his discretion in determining that [the Applicant] committed misconduct based on the findings of the INT investigation. However, the Panel finds that the disciplinary measures [the HRSVP] imposed were not proportionate to the misconduct .... Specifically, because the Panel found that the evidence in the INT Report is not reasonably sufficient to show that [the Applicant] maliciously or willfully intended to misrepresent to UNDP and the Argentine Government that his vehicle was an official vehicle of the Bank, the Panel finds that [the Applicant's] misconduct does not justify barring him from future Bank employment and accessing Bank premises indefinitely. The Panel finds that this type of disciplinary action by [the HRSVP] would require conclusive evidence that [the Applicant] willfully or maliciously intended to misrepresent the status of his vehicle to UNDP or the Argentine Government.

22. The Panel therefore recommended that the bar be reduced to three years, counting from 25 May 2006, the date the HRSVP issued his original decision.

23. On 11 June 2007, the Bank's Managing Director informed the Applicant that he agreed with the Appeals Committee's recommendation.

#### THE PARTIES' CONTENTIONS

*The Applicant's First Contention: INT's Determination that he Engaged in Misconduct was Unreasonable, Unsubstantiated, and an Abuse of Discretion*

24. The Applicant contends that there is no reasonable evidence to support INT's assertions that he misrepresented the status of his vehicle or abused his position in order



to avoid import taxes. The Bank's arguments to the contrary are based on "disputed or misplaced facts, misinterpretations of Argentine law, and sweeping generalizations." In fact, he notes, INT stated that it "didn't have sufficient evidence to necessarily demonstrate [the Applicant's] knowledge of the misrepresentation at the time."

25. The Applicant insists that he never concealed from his supervisors, the Bank or UNDP his intent to import his car for his personal use. He discussed the matter with the Argentine Consulate prior to his departure to Argentina, he discussed the matter with Mr. Y, and then again with UNDP. He submitted paperwork to UNDP that clearly indicated that he was an Argentine national, with a Term appointment to the Bank's Mission in Argentina, and that he was the owner of the vehicle. He signed the registration papers as the owner and driver of the car.

26. As to the letter signed by Mr. Y, the Applicant asserts that the Bank's argument that the Applicant knew or should have known about its contents at some time thereafter is unfounded. He had no reason to believe that a letter had been sent on his behalf and only learned about the letter during the INT investigation. The fact that the letter was not drafted through normal channels does not prove that he had any involvement in the alleged irregularities. The Bank, the Applicant alleges, speculated that the information could only have come from the Applicant. He should not be held responsible for INT's incomplete investigation, Mr. Y's actions or the poor record-keeping practices of the Bank's Mission in Argentina.

27. The Applicant further explains that he was unable to return the diplomatic license plates to the Argentine authorities when his employment ended because there was no procedure for doing so. Diplomatic plates stay with a vehicle for its life, unless it is

nationalized, exported out of the country, or destroyed in an accident. His only option, contends the Applicant, was to find a buyer who could re-export the vehicle under his own name. He alleges that he tried.

28. The Applicant also states that he did not derive any financial gain from the alleged misrepresentation. Taxes, he affirms, would be due at the time the vehicle would be nationalized, but since the car could not be nationalized pursuant to the registration, no taxes were due.

29. The Applicant also argues that the Bank misinterpreted the Argentine law, in particular Articles 2(g) and 15 of Decree No. 25/70. Article 2(g) describes a category of individuals for whom the taxes would be waived. This includes “[h]olders of foreign diplomatic or official passports, or of a Laissez-Passer issued by [an international agency] on mission temporarily in Argentina or in transit through the country, provided they are not Argentine nationals as defined by Argentine law, or resident in Argentina.” Article 15 provides in part that diplomatic officials may “be authorized to bring an additional automobile in on a temporary-admission basis for a period of not longer than three years, which can be extended for up to a further three years.” Contrary to the Bank’s assertions, the Applicant suggests, Article 2(g) clearly states that Article 15 applies to him, and together they provide the Applicant, a national of Argentina, the ability to temporarily bring his vehicle into Argentina without paying import taxes, but with the restriction that the vehicle cannot be nationalized and must be re-exported after the expiration of the temporary period.

30. The Applicant further argues that in disciplinary cases, the Tribunal is empowered to “exercise broader powers of review in relation to both facts and law,” *Planthara*,

Decision No. 143 [1995], para. 24, and requires the Bank to produce “substantial evidence” in order to support a finding of misconduct.

*The Bank’s Answer to the Applicant’s First Contention*

31. The Bank asserts that the October Letter included a misrepresentation, that the specific information in the October Letter could only have come from the Applicant, and that he was the beneficiary of the October Letter. The Bank argues that it was established that the Applicant knew or should have known of the misrepresentation when he received the registration card. Even if he did not know at the time the October Letter was prepared, he knew about the continuing misrepresentation. The Bank recalls the Applicant’s contention that he understood that he was entitled to import his vehicle on a temporary basis and that his vehicle was considered an official vehicle because he worked at the Bank. This contention, the Bank argues, “conflicts with common sense or his profession of expertise about the Argentine import regulation.”

32. The Bank further maintains that the Applicant’s reliance on Articles 2(g), 15 and 16 of Decree No. 25/70 to assert that he was entitled to temporary import was misplaced. He would have been entitled to diplomatic franchise only if he had been the permanent representative of the World Bank in Argentina, which was not the case.

33. In addition, the Bank notes that the Applicant’s admission that he was aware that his right to drive the vehicle expired when he left the Bank in 2000 does not cure the misrepresentation.

34. The Bank asserts that the Applicant’s claim that he attempted to sell his vehicle prior to 2004 is not convincing. The only evidence in the record relates to his attempt to sell the vehicle in 2004, after he was contacted by UNDP about the car. The Bank further

argues that if the misrepresentation in the October Letter were truly an error, he would not have needed to ask the Bank to relinquish its rights of ownership of the car, as he did when he found a buyer in 2004.

35. In response to the Applicant's argument that everyone who was involved in processing the importation permit for his car knew that he was the owner of the car, the Bank states that "[i]f his argument has any utility, it is that others were complicit in the misrepresentation but it does not excuse the misrepresentation or exculpate the Applicant."

36. The Bank asserts that when he learned of the misrepresentation "he had a duty to correct it, but failed to [do] so."

37. The Bank contends that the Applicant's conduct legally constitutes misconduct under Staff Rule 8.01, para. 2.01(b) and (c) (previously 3.01(b) and (c)). In its view, he abused his employment with the Bank to circumvent Argentine import regulations. Relying on *Kwakwa*, Decision No. 300 [2003], para. 32, the Bank notes that whether he knew that his conduct was impermissible is irrelevant in view of the misrepresentation or omission.

38. The Bank relies on *O'Humay*, Decision No. 140 [1994], para. 32, to argue that it is not necessary to determine whether the misrepresentation was willful; what is important is the fact that a benefit was received because of the misrepresentation.

*The Applicant's Second Contention: INT's Investigation Violated Basic Principles of Fairness, Impartiality, and Due Process*

39. The Applicant contends that INT's investigation and Final Report were one-sided, unbalanced, incomplete, and unjustifiably lengthy. INT refused to interview Argentine officials suggested by the Applicant to better understand Argentine law and practice with

respect to tax exemptions applicable to Argentine nationals. The Bank later also opposed the testimony of some of these individuals during the Appeals Committee hearing on the basis that the record was complete. The Applicant argues that, contrary to INT's belief that these individuals could only answer hypothetical questions, they in fact could have explained specific instances where Argentine nationals received a diplomatic franchise, and would have explained why there were two restrictions on the permit that was granted. He states that had INT interviewed these Argentine officials it would have discovered that the Applicant followed the proper channels required to import his vehicle and did not engage in any wrongdoing. Finally, the Applicant argues that the Bank's statement that he should have provided the official explanation of the import process for Argentine nationals is "extraordinary"; that should have been done by the Bank in order to complete its investigation.

40. The Applicant states that INT also failed to investigate fully whether the Applicant had attempted to sell his vehicle after his employment with the Bank was terminated and whether he had portrayed himself as a driver for the mission.

41. The investigation, alleges the Applicant, also violated the Applicant's presumption of innocence. INT immediately concluded on the basis of the October Letter that the Applicant was guilty of misconduct, even prior to its investigation, and he was unofficially determined ineligible for Bank employment.

*The Bank's Answer to the Applicant's Second Contention*

42. The Bank contends that it has complied with the due process requirements by providing the Applicant with a written notice of the allegations, allowing him to answer them, and providing him with the opportunity to review the final report and submit

comments. Accordingly, consistent with the requirements described in *O'Humay*, the Bank observed the Applicant's due process rights.

43. The Bank also argues that it did not have to interview additional witnesses as it had obtained sufficient information about two Argentine nationals, one of whom was also a staff member. The staff member had imported her vehicle but did not obtain any tax exemption. The other individual, the head of the Mission in Argentina of the United Nations Educational Scientific and Cultural Organization, was granted an exemption under a different rule than the one applicable to the Applicant. In addition, a reasonable reading of the applicable law does not support the Applicant's interpretation.

44. Finally, in response to the Appeals Committee's observation that INT could have conducted a more thorough investigation, the Bank cites the Tribunal's finding in *K*, Decision No. 352 [2006], para. 20, that it "does not seek to impose its own views of the micro-management of procedures put in place by the Bank's management. .... Its assessment of the Bank's conduct at the ... investigative process, is limited to verifying that the requirements of due process have been met."

*The Applicant's Third Contention: The Bank's Punishment is Disproportionate to the Applicant's Alleged Misconduct*

45. The Applicant argues that because the Bank's findings were arbitrary and an abuse of discretion, there were no grounds to impose any disciplinary sanctions.

46. Even assuming that he had engaged in misconduct, the Applicant claims that his punishment was disproportionate to his alleged offense. Staff Rule 8.01, para. 3.01, provides that the sanction would be imposed on a case-by-case basis, taking into account several factors, including personal circumstances, tenure, the nature of misconduct, the frequency of the misconduct, and whether any benefit had been received. The Applicant

argues that he did not obtain any benefit from the alleged misrepresentation or his “acquiescing in the misrepresentation,” the misconduct was “not of a very serious nature,” he had an “outstanding” 13-year track record, the alleged misconduct was a one-time event, and the Bank improperly imposed the “harshest” sentence, contrary to Tribunal precedent.

47. The Bank only focused on one element, the status of the Applicant, and almost ignored all mitigating factors. The Applicant noted that, on the basis of the Tribunal’s judgment in *D*, Decision No. 304 [2003], para. 53, the Bank must consider “the quality and longevity of [a staff member’s] service, the lack of prior discipline and the one-time nature of [the misconduct].”

48. While it is true that the Bank had the ability to impose a permanent bar, the issue, argues the Applicant, was rather whether the bar was disproportionate to the offense in the case. INT’s procedural and substantive deficiencies justified setting aside any punishment.

49. Furthermore, the Bank’s argument does not pass the standard set out in *Gregorio*, Decision No. 14 [1983]: the Bank has not demonstrated a “reasonable relationship” between the staff member’s conduct and the discipline imposed by the Bank.

*The Bank’s Answer to the Applicant’s Third Contention*

50. The decision to deny the Applicant access to the Bank’s premises is not an abuse of discretion. The Bank explains that, as stated by the Tribunal in *Mwake*, Decision No. 318 [2004], para. 35, the Bank has discretion in deciding whether a Bank employee or former employee can access its premises. The more so when the former staff member had engaged in misconduct.

51. Under the Staff Rules in existence at the time of the misconduct, the Bank asserts, had the Applicant been employed when the misconduct was discovered, his position would have been terminated and he would automatically have been ineligible for reemployment. Accordingly, although the sanction he received was not directly contained in the Staff Rules at the time, the sanctions that were imposed were permissible. The fact of his having already separated from the Bank should not allow the Applicant to escape sanction for his misconduct. Similarly, the Bank maintains that being a good performer does not entitle him to be excused with a mere “slap on the wrist” and it does not provide him immunity.

52. In any case, the Bank concludes, it has already accepted the Appeals Committee’s recommendation to reduce the bar to three years.

#### THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

53. The scope of review by the Tribunal in disciplinary cases is now well-established.

In *Koudogbo*, Decision No. 246 [2001], para. 18, the Tribunal stated that:

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

It is also well-established, as stated in *Dambita*, Decision No. 243 [2001], para. 21, that:

In disciplinary matters, strict adherence to the Staff Rules is imperative and a conclusion of misconduct has to be proven. The burden of proof of misconduct is on the Respondent. The standard of evidence in disciplinary decisions leading, as here, to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.

54. The evidence in the record shows that the Representative of the Bank’s Mission in Argentina signed a letter in October 1996 with regard to the Applicant’s vehicle.



Although the vehicle belonged to the Applicant and was imported to Argentina for the Applicant's personal use, the letter stated that the vehicle in question was property of the Bank and was to be used for official business. On the basis of that letter, a request was made to the Ministry of External Affairs with respect to the vehicle on the ground it was Bank property and intended to be used for official business. This was clearly a misrepresentation. There is insufficient evidence, however, to determine who drafted the letter, who provided the information for the letter, and whether the Applicant had any involvement in the letter.

55. Whatever the state of his prior knowledge, however, the Applicant plainly became aware of the misrepresentation when he received the registration card, which identified the Bank as the owner; moreover, the vehicle was listed for "official use."

56. Once the facts are established, the Tribunal needs to determine whether the facts constitute misconduct. Principle 3.1(c) of the Principles of Staff Employment generally provides that misconduct may be found where a staff member engages in behavior unbecoming his position as a Bank staff member.

57. Staff Rule 8.01, para. 3.01 (in effect in 1996, the time the alleged offense took place) provided in relevant part as follows:

Disciplinary measures may be imposed whenever there is a finding of misconduct. Misconduct does not require malice or guilty purpose. Misconduct includes, but is not limited to, the following acts or omissions:

- (a) Failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment (e.g., ... abuse of authority ...);
- (b) Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; ... willful misrepresentation of facts intended to be relied upon;

- (c) Acts or omissions in conflict with the general obligations of staff members set forth in Chapter Three of the Principles of Staff Employment and Rule 3.01...;

...

- (e) Acts that violate applicable criminal law (e.g., theft, fraud, felonious acts, use or possession of illegal drugs, physical assault).

58. The next question therefore is whether the facts in this case amounted to misconduct under Staff Rule 8.01, para. 3.01, above. The Bank acknowledged that the evidence was “not reasonably sufficient to demonstrate that [the Applicant] knew or should have known of the specific misrepresentation in the October 18, 1996 letter at the time it was delivered to the UNDP.” The Bank asserts, however, that “there is sufficient evidence that [the Applicant] knowingly allowed his vehicle to be misrepresented as an official car for Bank use, in order to obtain a personal benefit to which he was not entitled.”

59. The Applicant explained that he did not believe that he received a benefit to which he was not entitled. He believed that he was entitled to bring his vehicle tax-free as an Argentine national working for an international organization in Argentina on a temporary assignment. He relies on his own interpretation of the language of the Decree, and states that he had discussed the question with the Argentine Consulate in Washington, DC, before returning to Argentina. However, the plain text of the law as presented in the record does not support the Applicant’s position.

60. The Applicant also argues that because he understood the law to allow him to import his vehicle tax-free – based on his reading of the law and the information provided to him by the Argentine Consulate, a UNDP official and the Bank’s Registered Representative in Argentina – the fact that the car was registered as a Bank vehicle for

official business did not raise any red flags for him, especially since he had provided UNDP with his ownership title, a copy of his passport, and other relevant information. He testified that he believed it was standard procedure, and did not want to question UNDP who had been processing such papers for a long time.

61. The Bank responds that he could not have reasonably believed that he was entitled to any benefit as an Argentine national. The law, according to the Bank, is clear that Argentine nationals are not entitled to tax-free treatment. He obtained a benefit in contravention of the law, a conduct “unbecoming of an international civil servant [which] reflects adversely upon the reputation or integrity of the World Bank.”

62. The Tribunal finds that it was reasonable for the Bank to conclude that the Applicant knew or should have known that he received a benefit because of the misrepresentation. It is uncontroversial that he was aware (by his own admission) of the misrepresentations after he received the registration card for the car. By his own admission he was aware that the tax exemption was granted because the vehicle was for official use of the Bank, not because he owned it. It is also noteworthy that no records of the car or the October Letter were found at the Bank’s Mission in Argentina, and no information was found about who drafted the Letter. These irregularities in the processing of his permit and registration raise questions that the Applicant did not adequately answer.

63. According to the Bank, the Applicant had a duty to correct the misrepresentation when he found out about it. He failed to do so. In fact, Principle 3.1 of Principles of Staff Employment provides that a staff member must act in such a way as not to reflect adversely on the Bank. By not correcting the error, the Applicant in fact created a

situation that could reflect adversely on the Bank. By doing so, he engaged in misconduct.

64. The Tribunal does not believe it is necessary to determine with certainty whether the Applicant would have received a benefit without resorting to misrepresentation. As stated in *O'Humay*, Decision No. 140 [1994], para. 32, “[r]egardless of whether there was a malicious intention, a given result was sought and obtained by means of this misrepresentation.” Thus, the Tribunal can only find that the Applicant’s conduct, in particular his failure to correct the misrepresentation after he learned of it, constituted misconduct under Staff Rule 8.01. The Tribunal recalls *O'Humay*, para. 28:

Whether a specific situation involving a personal debt may be brought under Staff Rule 8.01 will of course require determination by the Respondent on a case by case basis. To this end the Respondent should normally initiate an investigation in order to determine whether the evidence available supports a finding that the standard of Rule 8.01 has been satisfied and that the personal conduct in question adversely reflects upon the institution.

65. The Applicant’s conduct in this case adversely reflects upon the Bank, especially because the letter including the misrepresentation was signed by a Bank official on Bank stationery and the Applicant received a benefit that may have been only available because of his position as a Bank staff member.

66. The next question is whether the sanction imposed is recognized by the Staff Rules applicable at the time of the offense. Staff Rule 8.01, para. 4.01 (1996 version) provided in relevant part:

Disciplinary measures ... shall be determined on a case-by-case basis, taking into account the seriousness of the matter, extenuating circumstances, the situation of the staff member, the interests of the Bank Group, and the frequency of conduct for which disciplinary measures may be imposed, except that termination of service shall be mandatory where it is determined that any of the following misconduct has occurred:

- (a) misuse of Bank funds or other public funds for private gain in connection with Bank activities or employment, or abuse of position in the Bank for financial gain;
- (b) criminal offenses defined under applicable law as felonious acts.

Staff Rule 8.01, para. 4.03 (1996 version) provided in relevant part:

Depending on the circumstances of the case, one or more of the following disciplinary measures may be taken by the Bank Group when misconduct is determined to have occurred, provided the determination is made within three years from the date the misconduct is discovered, except that no time limitation shall apply to a determination of misconduct for which mandatory termination is to be imposed:

- (a) Oral or written censure;
- (b) Suspension from duty with pay, with reduced pay, or without pay;
- (c) Restitution and/or forfeiture of pay, including reduction of a merit award in respect of a prior year in which it is later determined misconduct occurred, either to penalize the staff member or to compensate the Bank Group for losses attributable to misconduct;
- (d) Removal of privileges or benefits, whether permanently or for a specified period of time;
- (e) Reassignment;
- (f) Assignment to a lower level position;
- (g) Demotion without assignment to a lower level position;
- (h) Reduction in pay, including withholding pay increases; and
- (i) Termination of appointment.

67. Based on a reading of the Staff Rules above, it appears that the sanction of a permanent bar from employment with the Bank was not a sanction specifically provided for in the Staff Rules in 1996. This particular sanction was only added later to the Staff Rules. The Bank argues that his offense, had he still been employed, would have resulted in termination, thus justifying the permanent bar.

68. While the Tribunal agrees that the sanction imposed by the HRSVP, a permanent bar on reemployment, was not clearly set out in the Staff Rules in effect in 1996, the Appeals Committee has recommended that the sanction be reduced to three years from the time of the decision of the HRSVP and the Bank has accepted this recommendation. Accordingly, this question is now moot.

69. As to the Applicant's right of access to the Bank premises, the Tribunal has stated in *Mwake*, Decision, No. 318 [2004], para. 35, as follows:

Unlike a present staff member who seeks to come onto Bank premises in order to pursue his official assignments, a former member is not presumed to have the same access rights, but must rather have a legitimate justification to enter upon the Bank's premises. Consultation with offices within the CRS [Conflict Resolution System] may, under appropriate circumstances, constitute such a justification. But even when a former staff member can assert a convincing justification, the Bank in turn has the discretion to exclude him or her, and the Tribunal will not overturn such an exercise of discretion except when that exercise of discretion is arbitrary or unreasonable, or is in violation of the staff rules. The Tribunal has held that even a current staff member has no absolute right to access Bank premises, and the Bank's interests are even more compelling with respect to a former staff member. Here, the case of *B*, Decision No. 247 [2001], para. 30, is relevant:

In the Tribunal's view, it would be a reasonable security measure in certain circumstances to deny or restrict access of a staff member to the Bank's buildings or to a specific office, or to condition the access to the availability of an escort. The Tribunal has held that access to the Bank's buildings is an issue connected with Bank security.

70. As is the case with the permanent bar on employment, the duration of the bar on entry to the Bank premises has also been reduced to three years. Accordingly, the Tribunal also finds this sanction not to be unreasonable. The Bank is under no obligation to guarantee access to Bank premises to a non-staff member.

71. Under these circumstances, the sanction imposed by the HRSVP may have been disproportionate to the offense. Once the Managing Director reduced it to three years, however, the Tribunal cannot find that there was a lack of proportionality.

*Due Process*

72. The Applicant complained that the INT records, and in particular the summaries of interviews, contained many inaccuracies. Furthermore, the investigation took too long to complete, which violated the Applicant's due process rights. The Tribunal notes that an examination of the record shows that the Applicant was not found to have engaged in misconduct on the basis of the disputed facts, but on the facts that were proven.

73. Furthermore, the investigation took a total of about one and a half years (August 2004 to February 2006). Considering that this case consists of events that took place many years prior to the investigation, in a country outside of the U.S., and that many of the people involved in the matter were not readily available, it does not appear unreasonable that the investigation took one and a half years to complete.

74. In interpreting the Argentine law on car imports, INT interviewed several individuals. It did not, however, interview or seek clarification from any Argentine official on that point, although the INT report stated that it had examined whether an individual in the Applicant's circumstances would have a motive to circumvent Argentine vehicle import restrictions. It would be reasonable to understand that statement to mean that the Applicant would have had a motive to break the law had he not been able to obtain tax-exempt status otherwise. If there were other means of obtaining that status, then the misrepresentation could be an inconsequential mistake. Accordingly, for its investigation to be absolutely complete, it appears that the Bank

would have had to determine whether the Applicant could have obtained a tax-free permit without the misrepresentation. The Tribunal notes, however, that the Applicant also did not provide any information on this question on which he allegedly relied in his defense.

75. The Tribunal finds that these omissions by INT are not so serious as to render the investigation flawed and an abuse of process.

76. The Applicant also complains that his contract was not renewed after the investigation began, in violation of the presumption of innocence in disciplinary cases. The Tribunal notes, however, that the Bank is under no obligation to renew a Short-Term consulting agreement. Accordingly, the Tribunal cannot find that the Bank breached the due process rights of the Applicant and concludes that the Bank has acted in accordance with the Staff Rules. The Tribunal has stated in *McKinney*, Decision No. 187 [1998], para. 10, that:

As a matter of principle, there is no justification for requiring that the Bank provide a reason for the non-reappointment of a person who is employed by the Bank on an appointment that is expressly stated, in the letter of appointment, to be temporary, and the termination date of which is expressly set forth in that letter. Absent unusual circumstances, the individual should be fully aware of the reason why his or her appointment does not continue beyond the stipulated date: because the parties so agreed and have stipulated to that effect in the employment contract. As the Tribunal has stated in *Mr. X* (Decision No. 16 [1984], para. 35): “A fixed-term contract is just what the expression says: it is a contract for a fixed period of time.”

#### DECISION

For the above reasons, the Tribunal dismisses the Application.



/S/ Jan Paulsson

Jan Paulsson  
President

/S/ Zakir Hafez

Zakir Hafez  
Counsel

At Washington, DC, 18 March 2008