



**World Bank Administrative Tribunal**

**2008**

**No. 386**

**AC,  
Applicant**

**v.**

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

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

**AC,  
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 Francisco Orrego Vicuña and Stephen M. Schwebel. The Application was received on 18 December 2007. The Applicant's request for anonymity was granted on 7 February 2008.

2. The Applicant challenges the decision of the Vice President, Human Resources ("HRSVP") of 25 May 2006, as amended on 11 September 2007, to bar him for one year from future employment with the Bank and from access to Bank facilities. The Applicant seeks to cancel and withdraw the HRSVP's letter from his file, and to receive compensation equivalent to 60 days of salary at his established rate for, *inter alia*, alleged reputational damage.

#### FACTUAL BACKGROUND

3. The Applicant joined the Bank in March 1988. From 1993 to 1997, he was the Resident Representative at the Bank's Mission in Argentina. He resigned from the Bank in 2000 and held several consultancy appointments between 2002 and 2004.

4. The central issue in this case is the role played by the Applicant in the importation of a vehicle to Argentina belonging to a Bank staff member (AB) whose application before the Tribunal was dismissed in March 2008. *AB*, Decision No. 381 [2008]. The

controversy relates to a letter (referred to as “the October Letter”) allegedly signed by the Applicant to facilitate the importation of AB’s vehicle.

5. AB, an Argentine national on assignment at the Bank’s Mission in Argentina between 1996 and 2000, was charged with misconduct in 2005 following an investigation by the Department of Institutional Integrity (“INT”). The investigation concerned statements made in the October Letter that allowed him to import his vehicle into Argentina without paying import taxes. INT separately investigated the activities of AB and the Applicant, and found both to have engaged in misconduct. They were barred by the HRSVP from future employment with the Bank and from access to Bank facilities for different periods of time. Each sought relief from the Appeals Committee, which recommended that AB’s sanction be reduced from a permanent bar to a three-year bar from future employment with the Bank and access to Bank facilities, which the Bank accepted. The Tribunal upheld the three-year bar in AB. As to the Applicant’s sanction, the Appeals Committee recommended that it be reduced from a three-year bar from employment with the Bank and from access to Bank premises to a one-year bar, which the Bank also accepted. The bar expired on 25 May 2007.

6. On 18 October 1996, the October Letter, which was signed by the Applicant and addressed to Mr. Y, the Resident Representative of the United Nations Development Programme (“UNDP”) in Argentina, requested diplomatic exemption for AB’s car. The car was described as an “official vehicle intended for the use of our Representative’s office in Argentina.” The October letter was sent with three attachments, including a Certificate of Title issued in the State of Virginia, a purchase invoice, and a Bill of Lading, all of which clearly identified AB as the owner of the vehicle.

7. On 21 October 1996, Mr. Y sought from the Minister of External Relations in Argentina authorization to import AB's vehicle, stating the vehicle was "for official use of the World Bank Representative in Argentina." The request was made pursuant to Article 6 of Decree No. 25/70, which governs the import of vehicles owned by international agencies and imported for official use.

8. The Minister of External Relations approved the importation of the vehicle subject to two limitations, namely: the vehicle was "not eligible for permanent inward clearance" and the importation was a "temporary importation."

9. The vehicle registration, dated 30 October 1996, indicated that the owner of the vehicle was the Bank, the purpose of the car was "Official Use," and AB was the authorized driver. His signature was affixed to the registration along with that of Mr. Y.

10. When AB's contract with the Bank expired, AB kept the car in his possession and failed to return the car's diplomatic plates to the Bank's Mission or to any Argentine authority.

11. In 2004, UNDP sent an inquiry to the Bank's Mission in Argentina about the status of AB's car, as well as that of other vehicles owned by the Bank or Bank employees. Bank officials at the Argentine Mission could not find any record of AB's car and asked UNDP to send them copies of the paperwork. When the Bank's Resident Representative did not find any records, he referred the case to INT for investigation.

12. The INT investigation of the Applicant found, *inter alia*, that the evidence was "reasonably sufficient to conclude" that the Applicant "knew or should have known" that the statements in the October Letter were false. INT stated:

[A]bsent actual knowledge ... as a Resident Representative, [the Applicant] was responsible for avoiding reputational risk and protecting

the Bank's privileges and immunities vis-à-vis a member nation government. As such, [the Applicant] was charged with the accuracy of the representations he made ... particularly when those representations involved diplomatic courtesies extended to the Bank by a member government. Based on the investigative record, there is reasonably sufficient evidence to conclude that the misrepresentation in the October 18, 1996 request was a departure from accepted norms of conduct. This provides reasonably sufficient evidence of a failure to observe generally applicable norms of prudent professional conduct.

... The letter was not prepared through normal channels, and the author of the letter was unable to be determined. However, [the Applicant] has admitted that he signed this letter.

... If [the Applicant's] letter had properly described the vehicle as a private vehicle belonging to [AB], [AB's] tax obligations for the car would have totaled approximately 60 percent or more of the value of the car.

13. On 25 May 2006, the HRSVP notified the Applicant that he had “thoroughly reviewed the [INT] Final Report” and concluded as follows:

While there is no evidence indicating that the misrepresentation was based on ill-motives on your part, your arguments in defense of the misrepresentation are difficult to reconcile when considering the totality of the documentary evidence and witness testimony. In assessing your arguments I also considered your position of trust and responsibility as a Resident Representative and, in this respect, your heightened obligation to pay extra care and attention to matters involving the World Bank's relations with the United Nations.

... I have decided, pursuant to Staff Rule 8.01, section 4, that the appropriate disciplinary measure is to bar you from future employment with the Bank ... during which time you will not have access to Bank premises.

14. On 11 July 2006, the Applicant filed a statement of appeal with the Appeals Committee challenging the HRSVP's decision of 25 May 2006 and requesting, *inter alia*, vacation of the decision and its removal from his personnel files. He also asked for reimbursement related to the Appeals Committee hearing, and compensation for 30 days at his established consultancy rate. The Appeals Committee held a hearing on 30 April 2007,

following which it concluded that the HRSVP “did not abuse his discretion in determining that [the Applicant] committed misconduct because there was sufficient evidence in the INT Report to show that [the Applicant] failed to observe applicable norms of prudent professional behavior.” The Appeals Committee, however, found that “the disciplinary measures [the HRSVP] imposed were not proportionate to the misconduct committed by [the Applicant].”

15. The Appeals Committee therefore recommended that the bar be reduced to one year to begin on 25 May 2006 (the date the HRSVP issued its original decision), which the Bank accepted.

#### THE CONTENTIONS OF THE PARTIES

16. The Applicant contends that he did not knowingly provide false information to UNDP, as alleged by INT. He contends that the fact that he sent the October Letter with three attachments that contradicted the information provided in the letter itself shows that he did not intend to provide false information. In addition, the Applicant argues that the Bank applied the wrong version of Staff Rule 8.01 to his alleged misconduct, and consequently the wrong sanction. Finally, the Applicant asserts that the INT investigation by its length and the way it was conducted damaged his reputation.

17. The Bank answers that the letter contained a misrepresentation, and that it was not necessary to show intent for misconduct to be found. Although the version of Staff Rule 8.01 that INT applied was different from the one in existence at the time of the misconduct, the sanction was appropriate. Finally, INT complied with the rules and procedures applicable to its investigation and did not breach the Applicant’s due process rights.

#### THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

18. The Tribunal's scope of review 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.”

19. 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.

*The Existence of Facts*

20. The Applicant admits that the cover letter “had a mistake” because it did not state that AB was the owner of the vehicle. He explains that the letter included three attachments, without which UNDP allegedly would have returned the letter without processing the request. The attachments (which initially were not included in the Draft INT Report) clearly identified AB as the owner of the vehicle. He contends that the Bank “systematically ignored the attachments to the cover letter,” and that only the attachments were sent to the Argentine authorities. He adds that the agencies involved in processing the request (the Bank, UNDP, and the Argentine Ministry of Foreign Affairs) testified that they knew that the owner of the vehicle was AB and not the Bank. He asserts finally that on the basis of the facts, the Appeals Committee concluded that there was no evidence that the Applicant “willfully or maliciously misrepresented this information.”

21. Contrary to the Applicant's allegations, the Bank argues that the letter did not simply contain a typing mistake. The Tribunal in *AB*, Decision No. 381 [2008], para. 54, found that the letter contained a misrepresentation. The Bank adds that the omission that AB was the owner of the vehicle would not be cured by a correction, because the letter also noted that the car was an "official vehicle," an affirmative misrepresentation. Moreover, the letter, a copy of which was provided to the Applicant by INT at the beginning of the investigation, was a "stand alone letter" that did not include or refer to any attachments.

22. The Bank contends that it is unlikely that the Applicant would have signed the letter without reading it; it was a short letter and he had a reputation for paying great attention to detail. Finally the Bank argues that the Applicant cannot assert as he did that the letter was a mistake because he would have signed it anyway, having admitted his belief that AB was entitled to the tax exemption.

23. The Tribunal finds that the facts established are the following. The Applicant signed the October Letter seeking diplomatic exemption from import taxes for AB's car. The October Letter was sent to UNDP with several documents that were inconsistent with the information contained in the letter. It made no mention of the fact that AB was the owner of the vehicle and stated that the vehicle was for official use. As a result of the letter, AB imported his vehicle into Argentina without paying import taxes. The evidence also shows that UNDP staff members and other individuals at that time knew that the car belonged to AB and that he was to be the only driver of the vehicle. There is no evidence that the Applicant received any benefit from signing the October Letter.

24. The Bank's argument about whether the Applicant signed the October Letter without reading it is speculative. Still, the letter contained information that was at a



minimum inaccurate, confusing and possibly misleading. On that basis, the Tribunal concludes that there was a misrepresentation.

*Did the Applicant's Actions Amount to Misconduct?*

25. Pursuant to Staff Rule 8.01, paragraph 3.01 (in effect in 1996, the time the alleged offense took place):

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 ...

26. 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.

27. The Applicant argues that his signing the October Letter does not constitute misconduct and that the “misrepresentation” in the letter was but an inconsequential “mistake” because others knew that AB was the true owner of the car and there was no evidence that the Applicant willfully made any misrepresentations. The Bank responds that the Applicant’s actions constituted misconduct under Staff Rule 8.01, paragraph 3.01 quoted above. The fact that others knew that AB was the owner of the car does not correct the misrepresentation. The Bank argues that it is not relevant that the Applicant did not know that his actions constituted misconduct. As held in *Kwakwa*, Decision No. 300 [2003], Staff Rule 8.01 does not require a finding of willfulness or maliciousness for

misconduct to be found. In any case, the Bank notes, “[r]egardless of whether there was a malicious intention, a given result was sought and obtained by means of this representation” (*O’Humay*, Decision No. 140 [1994], para. 32). The Bank states that “[i]f anything, his claim shows that he had collusion in perpetrating the misrepresentation, which is still inexcusable. A wrongdoing is no less a wrongdoing simply because others knew about it or took part in it.”

28. In *AB*, Decision No. 381 [2008], the Tribunal found that the facts that AB received a benefit to which he was not entitled, and that he became aware of the misrepresentation soon after it took place and did not attempt to correct it, and finally that he failed to comply with the Argentine law for about four years after he left the Bank constituted enough evidence that he acted in a way incompatible with his position as a Bank staff member. Accordingly, the Tribunal found that he had engaged in misconduct.

29. The Applicant in this case did not receive any benefit, the misrepresentations appear not to have been intentional, and there is no indication that the Applicant had any involvement with the car other than signing the October Letter. However, the Applicant signed the October Letter as the Resident Representative of the Argentine Mission. The letter was inconsistent with the documents to which it was attached. Signing an official letter without reading it is not exculpatory. The Tribunal notes that, as the head of the Argentine Office, the Applicant should be held to a high standard of care and is responsible for all that he signs, however small the matter. By affixing his signature to the letter he vouched and took responsibility for its contents. Furthermore, the inclusion of the inconsistent documents with the letter was, to put it as favorably as possible, unprofessional. In sum, signing the letter constituted gross negligence.

30. In *K*, Decision No. 352 [2006], the applicant was also found to have been grossly negligent and therefore to have engaged in misconduct without any finding of intent. In view of Staff Rule 8.01, which defines misconduct broadly, the Tribunal concludes that it was reasonable for the Bank to find that his signing the October Letter with all its inconsistencies constituted misconduct.

*Was the Sanction Imposed Provided for in the Applicable Rules?*

31. The Applicant does not dispute the disciplinary measure imposed “as it is now meaningless.” He argues, however, that (1) the Bank applied the wrong version of the Staff Rules (the Bank applied the 2005 version instead of the 1996 version applicable at the time the alleged misconduct took place), and (2) neither version of the Staff Rules would apply to him because the 1996 version does not apply to former staff members – as he was in 2005-2006 during the INT investigation – and the version applied by the Bank would not apply because it was not in effect when he was a staff member.

32. The Bank responds that the 1996 version would apply because he was a staff member in 1996; he cannot “escape sanction for his misconduct simply because he is now a former staff member.” In any case, the Bank contends, the 2005 version that was applied would still be valid, first because such sanctions “have always existed and been applied in the annals of disciplinary proceedings at the Bank,” and second because his appointment could have been terminated for misconduct, and inability to seek reemployment would have been a consequence of such termination. Accordingly, barring him from employment was a permissible sanction.

33. Although the bar against employment has now expired, the Tribunal must determine whether the sanction imposed was provided for in the applicable rules.

34. Staff Rule 8.01, paragraph 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 ...:

- (a) Oral or written censure;
- (b) Suspension from duty with pay, with reduced pay, or without pay;
- (c) Restitution and/or a 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.

35. It is clear that no provision in the 1996 Staff Rule bars a staff member from future employment or Bank access.

36. The Tribunal nevertheless cannot accept the Applicant's argument that none of the Staff Rules would apply to him because he was no longer a staff member at the time the Bank took action against him. The Staff Rules are applied to particular conduct. The conduct took place when the Applicant was a staff member and the applicable rule would be the one in effect at the time the conduct took place.

37. The Bank's argument that his appointment could have been terminated for misconduct, thereby making his inability to seek reemployment a permissible sanction, will be discussed in the next section about proportionality.

38. With respect to the bar to access to Bank premises, the Bank, relying on *Mwake*, argues that denial of access is not an abuse of discretion. As discussed in *AB*, and previously discussed in *Mwake*, Decision No. 318 [2004], para. 35, the Tribunal reaffirms its holding that:

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.

*Was the Sanction Disproportionate to the Offense?*

39. The Bank argues that the sanction was proportionate when established at three years, and was *a fortiori* proportionate when reduced to one year, as per the recommendation of the Appeals Committee. The Bank explains that termination would have been the appropriate sanction had the Applicant still been a staff member, thereby justifying the imposition of a bar.

40. The Tribunal finds that the Bank did not err in finding that the Applicant had engaged in misconduct. However, the Tribunal finds that the sanction applied to the Applicant was not proportionate to his misconduct in this case where there is no indication that he profited thereby. Accordingly, as he has already been barred from employment and from access to the Bank's premises for a year, a bar which has now expired, the Tribunal finds that the sanction received was sufficient and that his personnel records should so reflect.

*Were the Requirements of Due Process Observed?*

41. The Applicant contends that due process was not observed because he was under investigation for a long time – since March 2005 – and could not seek employment during that time. He feared that if he had agreed to accept an assignment and INT concluded its investigation in the meantime, he might not have been able to complete the assignment. His reputation was therefore harmed. Although he provides no evidence, he asserts that his termination letter had been circulated to the Latin American and Caribbean Vice President of the Bank and to others.

42. The Bank disagrees insisting that INT provided the Applicant with written notice of the allegations; he was interviewed; he responded in writing to the allegations; and he received a copy of the draft report of investigation on which he commented.

43. The Bank further argues that its purpose in informing the Applicant that the investigation could affect his eligibility for future employment with the Bank was to respect his due process rights. The Bank states that the letter to him “never stated or suggested, as insinuated by Applicant, that he could not start an assignment because he was under investigation”; it was his decision, and his alone, to refrain from seeking to work for the Bank. Finally, the Bank asserts that there was nothing improper or prejudicial about the length and characteristics of the investigation.

44. On the basis of the facts discussed above, the Tribunal cannot find that the Applicant’s due process rights were breached. As was the case in *AB*, the events in this case took place many years prior to the investigation, in a country outside the U.S. Many of the people involved in the matter were not readily available. Accordingly, it does not appear unreasonable that the investigation took one and a half years to complete.

Furthermore, the Tribunal concludes that there is no basis to find that the Bank did not follow proper internal procedures in its investigation.

45. Since the Tribunal finds that the Bank did not abuse its authority in finding that the Applicant engaged in misconduct, no compensation will be granted.

#### DECISION

The Tribunal therefore decides that:

- (i) the Bank shall forthwith remove from the Applicant's personnel files the INT Final Report and HRSVP's letter, as amended, and instead include a copy of this judgment; and
- (ii) all other pleas are dismissed.

/S/ Jan Paulsson  
Jan Paulsson  
President

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Paris, France, 18 July 2008