



**World Bank Administrative Tribunal**

**2008**

**No. 388**

**AD,  
Applicant**

**v.**

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

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

**AD,  
Applicant**

**v.**

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

1. The present 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, Francisco Orrego Vicuña and Francis M. Ssekandi, Judges. The Application was brought directly before the Tribunal with the Bank's consent. It was received on 12 February 2008. The Applicant's request for anonymity was granted on 28 March 2008.

2. The Applicant contests the decision to terminate his employment with the Bank on 26 October 2007 as a result of an investigation by the Department of Institutional Integrity ("INT"). The INT Final Report concluded that the Applicant had "intentionally defrauded" the Bank by a persistent pattern of misconduct when he

- (i) submitted grossly inflated ground transport receipts on his SOEs [Statements of Expenses] and received reimbursement from the Bank based upon such receipts; ...
- (ii) categorized personal days spent in his home country [...] as operational days ...
- (iii) improperly accounted for personal leave, either by failing to charge it to annual leave and/or categorizing personal days as rest stops; and
- (iv) improperly sought reimbursement for expenses incurred on personal days.

The Final Report also noted that of 19 travel-management cases referred by the Bank's Internal Audit Department ("IAD") over a period of 15 months, the Applicant's case "had one of the highest number of possible abuse indicating exceptions."

3. In light of this Report, the Managing Director of the Bank determined that the Applicant had deliberately abused his position for personal gain. The Applicant claims that the Managing Director's decision to terminate his employment and ban him from rehiring by the Bank was improper and should be set aside. He also claims that the investigation by INT was "[u]nfair, incomplete, and flawed," and seeks compensation and costs.

#### FACTUAL BACKGROUND

4. The Applicant began his career at the Bank on 1 February 2001. At the time of the contested decision, he was a Senior Management Consultant, Level G, working on Bank-client learning programs in various parts of the world.

5. The Applicant's Overall Performance Evaluations ("OPEs") were mostly indicative of a well-respected and hard-working staff member. Except for his most recent OPE, his work had been increasingly rated as "Fully Successful," "Superior" and "Outstanding" in some categories. The last OPE, signed by a new supervisor, was more critical of his work.

6. In early 2005 IAD conducted an audit of the Bank's travel management policies between January 2003 and March 2004. It identified a number of exceptions among mission travel claims that may have constituted an abuse of the Bank's travel policies. On the basis of the IAD findings, INT conducted a preliminary investigation of the Applicant's travel claims between April 2003 and February 2005. A full investigation ensued. The specific allegations were:

- a) That from February 2003 through January 2005, [the Applicant] submitted travel expense statements which indicated a pattern of Bank travel policy abuse regarding: (1) personal days and associated leave; (2) rest stops; and (3) related expenses; and
- b) That during the same period, [the Applicant's] travel expense statements suggested a pattern of misrepresentation of certain trip

segments as operational, whereby [the Applicant] claimed, received, and benefited from expense reimbursements to which he was not entitled.

7. INT examined 13 mission travel claims submitted by the Applicant during that time. INT further reviewed a number of travel claims between March 2005 and December 2006 (outside the initial investigation period) in order, as it explained, to “verify if Applicant had ceased violating travel rules and policies as he had said he had done.”

8. The Applicant received a Notice of Alleged Misconduct on 24 March 2005 (“Notice of Alleged Misconduct”), on the occasion of his interview about the allegations.

9. The Applicant subsequently submitted to INT a written response with numerous attachments. Although he was shown the SOEs on which the alleged violations were based during the interview, he claims that he was not given copies. His written response denied any intent to defraud the Bank, explaining that his many errors were a result of his “sloppy” record keeping and busy work schedule. He apologized for taking more than the two allowable rest days on occasion, as well as for the unmatched records explaining that he did not know how to correct the electronic records in the Bank’s travel management software (“SAP”) whenever his travel plans changed during a trip. He noted that although his home country and two other countries in the same region were not “focus/target countries,” he took the opportunity whenever possible to interact with the relevant communities there to learn and develop models for operation. He submitted certain documents intended to prove that he had legitimate business in his home country.

10. Nevertheless, he admitted to INT that:

I may have broken all the rules you invoked. I should admit that this is the first time I have gone back to read these rules since I came to the Bank .... I regret it and am sorry for what I did wrong.

11. On 11 June 2007, INT gave the Applicant a Draft Report of Investigation (“Draft Report”) soliciting his comments, which he provided on 2 July 2007. He explained in his comments that during 2005-2007 his work in his home country had become more substantial. Although during the interview he appeared to accept INT’s allegations, apologizing and explaining that “it was possible” that he forgot to account for some of his annual leave, as he was “not very precise when he fill[ed] out the SOEs,” his comments on the Draft Report disputed some of the factual allegations. After checking the accuracy of the information in the Draft Report, he said it became clear that his accounting of leave was accurate and his taxi fares were not excessive. The record shows that he was called by the travel accounting department about some of the mistakes, apologized for the errors and offered to pay back any reimbursements he received in error.

12. With his justifications and apologies he submitted a checklist of steps he had taken to correct his past conduct with respect to his travel records. He submitted the names of individuals who could confirm some of the statements that he made throughout the investigation.

13. INT completed its investigation and concluded that there was “reasonably sufficient evidence to find that [the Applicant] intentionally defrauded the Bank and repeatedly disregarded Bank policies, in violation of Staff Rule 8.01,” on the grounds set out in paragraph 2 above.

14. On the basis of the INT Final Report, the Managing Director found that there was “substantial evidence showing that [the Applicant] carried out [his] actions deliberately, with the intent to receive funds to which [he was] not entitled – which makes [his] conduct even more egregious.” He concluded that “[i]n light of these considerations, [he] decided

that it [was] not in the interest of the Bank Group to continue to maintain [the Applicant's] employment." He added that "a finding of abuse of position for personal gain in any event mandates termination."

#### THE PARTIES' CONTENTIONS

##### *The Applicant's First Contention: The Bank did not Meet its Burden of Proof to Support a Finding of Misconduct and Improperly Terminated the Applicant*

15. The Applicant alleges that the Bank wrongly concluded that he went to his home country only for personal reasons and that he incorrectly recorded his trips to his home country as operational. He contends that the Record of Interview on which INT relied is inaccurate. As evidence of his work in his home country, he submits correspondence from alleged clients, and the curriculum vitae of a consultant he interviewed in there at that time. He also notes that his supervisor in 2006-2007 confirmed that his work program included "any work anywhere in [the entire region in which his home country is situated]."

16. He further alleges that many of the recordkeeping errors pointed out by the Bank were not errors at all. For example, the Bank did not account for weekends and holidays for many of the days he allegedly did not record as annual leave days.

17. As to transportation costs, the Applicant argues that the fact that he filled out taxi receipts himself is common practice, and not an indication that he was trying to defraud the Bank. He produced more recent receipts that were within the range of what he had previously charged.

18. With respect to the taxi charges in the countries to which he traveled, the Applicant argues that due to the poor economic situation in those countries, he was a target for robbery and possible terrorist attacks. Accordingly, he hired the most reputable taxis and drivers available for entire stays at a time. He would pay them at the end of his stay. As to

the information obtained by INT from three local administrative staff members about taxi fares in those countries, the Applicant notes that their qualifications and reliability are unknown. He explains that he did not take “straight-forward” trips but rather went to multiple places on any one trip. In his home country, he also often stayed at his parent’s house instead of staying at a hotel; the additional transportation charges were less than the hotel would have cost.

19. The Applicant maintains that the staff rules do not prohibit a staff member from taking rest stops in his or her home country; his supervisor’s attempt to prohibit him from doing so was an abuse of managerial discretion.

20. The Applicant further argues that the Bank failed to show that he acted with intent to defraud. The Applicant explains that in *K*, Decision No. 352 [2006], a travel-related case where the applicant made errors in his expense reports, the Vice President of Human Resources (“HRSVP”) did not find that the applicant intended to defraud the Bank even though his actions were deliberate. That applicant’s employment was therefore not terminated because the HRSVP “was not convinced that [Mr. K] intentionally set out to defraud the Bank.”

21. In *Z*, Decision No. 380 [2008], another travel-related case, the applicant mistakenly double billed the Bank. The Applicant notes the Tribunal’s observation in that case that “fraud is never presumed” and that INT and the HRSVP had not given sufficient weight to exculpatory evidence of intent to defraud, notably the applicant’s unusually heavy workload. The Applicant alleges that he was overworked, as was the applicant in *Z*, and made mistakes as a result. The Tribunal ordered that *Z* be reinstated. The Applicant argues that he deserves the same treatment. INT’s findings of intent in the present case are

based on the second investigation which lacked due process and was limited to certain allegations by his director, which were not disclosed in the record, and the testimony of his most recent supervisor who took over that role after the events being investigated.

22. On the issue of inaccurate recording of leave days, the Applicant asserts that there were mitigating circumstances. He admits that he made mistakes, and that contrary to the Bank's assertions, the fact that he continued to make mistakes even after he was given the Notice of Alleged Misconduct about his alleged wrongdoing shows he was sloppy and did not act intentionally. He also was willing to cooperate fully with the Bank and offered to correct his records and pay back any amount that had been reimbursed to him erroneously.

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

23. The Bank argues that the Applicant did not dispute that he improperly classified days (as either operational or rest stops) and received Bank funds to which he was not entitled, that he regularly sought and received reimbursement for excessive ground transportation costs, and that he took unjustified opportunities to route his trips to the region through his home country. The Bank notes that the Applicant's justifications over time evolved as prior explanations failed.

24. In particular, the Bank observes that in his written response to the Notice of Alleged Misconduct the Applicant acknowledged that he violated the Bank's travel rules and policies. In his comments on the Draft Report he apologized again for "any breach of the rules, any abuses, mistakes, and sloppy actions." He stated he did not want his excuse of being sloppy and overworked to "override any breaches that he may have committed." The Bank notes that the Applicant admitted that he had a personal interest to be in his home country and stated that he did not think it was a breach of the rules to always arrive



in the capital of that country on a Friday in order to take his rest and personal days. The Bank maintains that the Applicant's assertions that his home country was part of his portfolio were rejected by his supervisors, and that the evidence he submitted in support of his assertions was unconvincing. Furthermore, his claim that he could not provide information because it was confidential was undercut by the fact that he was able to provide such information about countries other than his home country.

25. Moreover, the Bank argues, the Applicant's responses about his work portfolio were inconsistent. When first asked about which countries were in his portfolio, he omitted his home country from the list, but when he later had to explain his expenses he insisted that his home country was part of his portfolio.

26. The Bank asserts that the Applicant's statement of his transportation costs "significantly exceeded prevailing market rates," contained inconsistent explanations, and lacked evidence to support his assertions. In particular, with respect to his taxi fares in and out of Washington, the Bank explains that it was not concerned with the fact that he filled out the receipts himself, but with the excessive amounts.

27. As to the taxi fares in the countries to which he traveled, the Bank observes that his justifications evolved over time, and argues that the Applicant brought his alleged security concerns to light for the first time in his comments to the Draft Report. Furthermore, his justifications were inconsistent: he argued that he hired only the very best taxis because wealthier travelers were the target of robbery and terrorist attacks, but at the same time took the taxis – in spite of his security concerns – to his hometown about 100 kilometers away from the airport, presumably late at night or early in the morning. He never raised security issues with anyone at the Bank.

28. The Bank concludes that these facts amount to misconduct. The Applicant's actions were not only the result of carelessness or mistake, but were deliberate. He was told many times that his practices were inconsistent with the Bank's rules and policies, but continued the same practices arguing ignorance and sloppiness. Furthermore, the Bank states, as a senior staff member who traveled as frequently as he did, he was fully familiar with the computerized travel system and could not credibly argue that he made the same mistakes over and over. The Bank also notes that he benefited financially from his "mistakes," and showed a "keen" knowledge of the travel rules when he risked losing money.

29. Relying on the Tribunal's judgment in *V*, Decision No. 378 [2008], the Bank concludes that the Applicant intentionally engaged in misconduct on the basis of both direct and circumstantial evidence. The Bank met its burden of proof: it drew a reasonable inference as to the Applicant's culpability and the Applicant failed to rebut the presumption.

30. The Bank also observes that the sanction imposed is expressly provided for in Staff Rule 8.01, paragraph 3.03, which defines misuse of funds for private or financial gain as fraud, sanctioned by mandatory termination.

31. The Bank argues that the Applicant's intent is evidenced by the fact that the Applicant "fashioned the rules as he saw fit." He failed to rebut the presumption of culpability which he created by his own statements, his own evidence, as well as the witness statements and other evidence gathered by INT. The Bank observes that in its judgment in *K*, the Tribunal stated at para. 40 that:

Any staff member may have ideas for refashioning the Bank's rules in a multitude of ways that might make life less bureaucratic. ... Yet the Bank

would be ungovernable if staff members were allowed to construct *post facto* rationalizations for their disregard of the rules, and thereby be excused if the Bank – totally unaware of these mental rewritings of the rules, and therefore not organized to monitor each individual’s way of complying with his or her “conscience” – cannot disprove the rationalization.

32. The Bank insists that contrary to the Applicant’s arguments, *K* and *Z* are distinguishable from the present case and do not help the Applicant’s case. Unlike the Applicant in the present case, the applicant in *K* was not warned repeatedly about his travel reporting errors, which may in any event have been due, at least in part, to what was at the time an unidentified anomaly in SAP. Also unlike the Applicant in the present case, the applicant in *Z* made the reporting errors during a very brief period of time; she had an impeccable reputation for honesty, little experience in travel, and an abnormally busy schedule.

33. The Bank further argues that even without a finding of intent, termination was appropriate in view of the Applicant’s disregard for the Bank’s rules and policies. It alleges serious misrepresentations in the affidavit he submitted with his Application. His willingness to reimburse the Bank for any excesses does not make up for the irreparable breach in trust. Importantly, the Applicant failed to submit credible evidence with his alleged justifications, instead providing information that contradicted his arguments.

*Applicant’s Second Contention: The INT Investigation Violated his Rights to Due Process and Fundamental Fairness*

34. The Applicant alleges that: (1) INT failed to provide him with notice of all the charges, (2) INT denied him his right to defend himself against all the allegations, (3) the investigation was conducted with neither requisite dispatch nor completeness, and (4) the INT investigators failed to maintain a presumption of innocence.

35. He asserts that he was not given notice of a second investigation which examined travel between 2005 and 2007, a period of time that was not part of the original investigation, and was not provided with a copy of the communication that triggered it. In addition, the Applicant states, INT made substantive changes to the Draft Report after he had reviewed it, interviewed additional witnesses for the first time, and added eight pages to the report in rebuttal of his comments, but he was not given the new draft to review.

36. The Bank, he further contends, did not interview anyone who worked directly with him, knew about his work program, or was aware of his work in his home country during the trips that were being investigated. He notes that INT has an obligation under its own rules to obtain, evaluate and analyze all available information, both inculpatory and exculpatory, and it failed to do so. As noted in *V*, Decision No. 378 [2008], para. 35, “the Applicant bears no burden to prove his innocence.”

37. The Applicant complains that the investigation was overly lengthy and took almost twice as long as the average investigation. IAD referred the case to INT on 27 January 2005. The Final Report was sent to him in June 2007 and to the HRSVP on 18 September 2007.

38. He alleges that he was denied the presumption of innocence by being subjected to a hostile and intimidating interview lasting three and a half hours, where three investigators pressured him to confess. He contends that he was not provided advance notice that he could bring another staff member with him to the interview, that he was presented with over 200 pages of records from 13 different trips, and that the Record of Interview was “hopelessly inaccurate.” He was not given copies of the records shown to him during the

interview and therefore did not have them when preparing his written response to the allegations.

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

39. The Bank asserts that all requirements of Staff Rule 8.01 were met throughout the investigative process: the Applicant was notified in writing of the allegations against him; the investigative process was explained to him; he was given an opportunity to respond in person and in writing; he received a copy of the final report and he was afforded the opportunity to comment on it, which he did; and his comments were incorporated in the Final Report.

40. The Bank notes that the Applicant's complaints about the flaws in the investigation were not raised until the present Application. The Bank vigorously denies all of the Applicant's allegations as to the impropriety of the investigation. It argues that while the Applicant had the motive (extreme eagerness to retain his job) to misrepresent what happened during the interview, the investigator accused of impropriety had no motivation for coercing the Applicant into making a confession, and denied doing so in a sworn affidavit.

41. With respect to the Applicant's claim that INT did not interview any staff member who worked directly with the Applicant and knew his work program, the Bank explains that the Applicant did not list them as staff who could testify about his work program, and in particular, his work in his home country. He listed them only to attest to his hard work, which was not at issue in the case.

42. The Bank also contends that there was no second investigation. The only reason INT looked at the travel patterns of the Applicant between 2005 and 2007 was to ascertain

whether he had changed his practices, which he had failed to do. The review of the later travel was done strictly for the purpose of ascertaining intent. The Bank cites the Tribunal's decision in *K* in support of its argument. The travel records showed a pattern, which, according to the Tribunal's holding in *Z*, Decision No. 380 [2008], para. 34, would determine intent:

the existence of a pattern is an important factor (if not always essential) in determining intent to defraud ... [and] where the staff member "persisted in and showed a pattern of abuse, the Respondent is entitled to take a serious view of [the staff member's] misconduct." *Planthara*, Decision No. 143 [1995], para. 39.

43. With respect to the length of time of the investigation, the Bank admits that it took "longer than one would hope" but explains that the delay was due to an increasingly heavy workload in INT. In addition, the Bank notes, it was to the Applicant's benefit since he remained employed longer than he would have been otherwise.

44. The Bank also states that the Applicant was not given another opportunity to review the report because there were no material changes.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

45. 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.

46. The Applicant has insisted that he did in fact have a significant work program in his home country. The INT investigation did not yield clarity in this regard. One witness did not know whether his home country was part of his work program and referred the INT investigators to two other individuals who, he said, were in a better position to testify on that point. INT interviewed the Applicant's supervisor in the period 2006-2007, who testified that the Applicant's portfolio at that time did include the entire region in which his home country is situated – but 2006-2007 was outside the period under review. The Bank submits several e-mails from the Applicant's former supervisors in which only one of them confirms that he was aware of the Applicant's travel to his home country and had an understanding with the Applicant about the rest stops there. The others provided no useful information on the matter.

47. Based on the scant record on this point, it cannot be concluded that the Applicant did not have any legitimate business in his home country. Still, the Tribunal cannot dispel a feeling of unease with respect to the Applicant's apparent inability to provide tangible evidence of his work there.

48. The Applicant argues that many of the recordkeeping errors pointed out by the Bank were not errors at all. For example, the Bank did not account for weekends and holidays for many of the days allegedly not recorded as annual leave days. The errors, he clarifies, included "29 days on weekends, Christmas and New Years." As for other days, the Applicant explains that they were mistakes due to his sloppiness. He also reimbursed the Bank whenever he was asked to do so by the travel accounting department.

49. The Bank responds that the Applicant did not dispute the fact that he did not keep proper records and recorded the wrong number of rest stops and personal days. He admitted that he broke the rules, and most pertinently admitted that he tried to route as many of his trips as possible through his home country for personal reasons.

50. The Tribunal finds that the record is clear on this point; the Applicant repeatedly charged more than the allowable two-day rest stops and obtained reimbursement of per diem expenses for the excess rest stops. Even taking the Applicant's word at face value, he did not account for all his personal days and received per diem expenses and sometimes hotel expenses for those days. There were many other inconsistencies in his records; on a number of trips the dates on the receipts submitted did not match the dates in his travel records.

51. In sum, the Bank has readily met its burden of proof on this point. There is little doubt that the Applicant failed to account properly for personal days and rest stops and received reimbursements for expenses to which he was not entitled.

52. The Tribunal is convinced by the evidence that the Applicant's costs for taxis exceeded prevailing market costs. The Bank did not penalize the Applicant for writing his own receipts, but for the actual excessive charges, both in the United States and in the countries to which he traveled. As evidence, the Bank submitted a chart with approximate costs of taxis in the Washington area to Washington Dulles Airport. The Bank also sought information with respect to approximate taxi fares in the countries to which the Applicant traveled. In both categories, the Bank observed, the Applicant's claimed costs were up to more than twice the prevailing rate.



53. The Tribunal finds ample evidence that the Applicant extravagantly rounded his taxi fares upwards, and did not report actual numbers. For each of the 13 trips analyzed by INT, he had charged the same amount (\$180) for a round trip from his home to the airport. After the Applicant became aware of the investigation, his claims for taxi fares declined. For the trips that were reviewed in the two subsequent years, his taxi fares to the airport were well below his previous claims, but he continued to submit rounded and estimated numbers. Although the charges went down, indicating that the earlier charges were excessive, they may still have been above the true charges.

54. As for his claims of costs incurred in the countries to which he traveled, the facts are less clear. The Bank has provided official fares obtained from the country office, and states that they show that the Applicant's claims were excessive. The Applicant answers that his travels often included multiple destinations, which explains why his claims should not be compared to standard point-to-point rates. The Tribunal finds that the frequency, questionable nature, and lack of prior authorization for the Applicant's claims related to travel to and within his home country, the absence of any evidence of his multiple-destination explanation, his use of drivers hired for days at a time without prior approval to be at the Applicant's disposal rather than paid trip-by-trip, and the shroud of mystery that surrounds his work in the country, unsupported as it is by reports or any other work product, all converge to support the Bank's conclusion, well above a balance of probability, that the Applicant engaged in a pattern of unsupported charges.

55. Staff Rule 8.01, paragraph 2.01 provides in relevant part:

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

- a) Failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment. ...
- b) Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; failure to perform assigned duties; gross negligence in the performance of assigned duties; performance of assigned duties in an improper or reckless manner; failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group; undertaking an activity where authority to do so has been denied; or 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 Principle 3 of the Principles of Staff Employment and Staff Rules 3.01 through 3.05. Omissions may include, and are not limited to, failure to file a timely, complete and accurate financial disclosure form.
- d) Misuse of Bank Group funds or other public funds for personal gain of oneself or another in connection with Bank activities or employment, or abuse of position in the Bank for personal gain of oneself or another.

56. The Applicant repeatedly entered incorrect information in SAP in violation of the Bank's travel rules, thereby breaching the Staff Rules, and as a result received reimbursements (per diem expenses and others) to which he was not entitled. There is sufficient evidence to find that the Applicant sought reimbursements for personal days and excessive taxi fares. The Applicant thus breached paragraphs 2.01(a), (b) and (c) of Staff Rule 8.01. He did so throughout 2003 and 2004, and continued this conduct while the investigation was ongoing, even though his travel accounting was being questioned.

57. Staff Rule 8.01, paragraph 3.01, provides for mandatory termination in part "where it is determined that ... the following misconduct has occurred:

- a) misuse of Bank Group funds or other public funds for the personal gain of oneself or another in connection with Bank Group activities or employment, or abuse of position in the Bank Group for the personal gain of oneself or another; ...

58. In *Z*, Decision No. 380 [2008], the Tribunal reasoned at para. 21 that:

Intent to defraud cannot be automatically inferred simply because some documentary evidence contradicts the accused staff member's version of events. A fuller examination of the facts and circumstances of the case must precede a determination about the presence of intent to defraud.

59. In determining intent to defraud, the Tribunal in *Z* was particularly attentive to the evidentiary record (SOEs), the applicant's "reputation for truth and integrity in transactional dealings in the Bank" (para. 35), the applicant's "unusual workload" (para. 29), the actions of other staff in similar circumstances (para. 30), and a pattern of behavior (para. 34). The Tribunal found at para. 41 that "the record [did] not contain sufficient evidence to conclude that the Applicant had the intent to defraud."

60. In *K*, Decision No. 352 [2006], the Bank did not terminate the applicant's position. Instead, he was downgraded, made ineligible for promotion for three years, and received no increase in salary for the period during which his misconduct occurred. *K* is not, in any event, a precedent for the proposition that misuse of funds for personal gain may, in the event that intent is not established, lead to a more lenient sanction than termination. Rather the absence of intent negates the motive of personal gain; where such motive exists, so does intent.

61. The Tribunal in *K* rejected every one of the mitigating factors invoked by the applicant, many of which are similar to this case. In particular, the Tribunal stated in paras. 39-42:

... [The mitigating factors] suggest that the Applicant feels himself exempted from the inconvenience of obeying applicable rules. A senior staff member ... should lead by example, not presume to be entitled to indulgences denied to colleagues at more modest levels of the hierarchy.

Any staff member may have ideas for refashioning the Bank's rules in a multitude of ways that might make life less bureaucratic. ... Yet the Bank would be ungovernable if staff members were allowed to construct *post*

*facto* rationalizations for their disregard of the rules, and thereby be excused if the Bank – totally unaware of these mental rewritings of the rules, and therefore not organized to monitor each individual’s way of complying with his or her “conscience” – cannot disprove the rationalization.

Equally unpersuasive is the Applicant’s reference to his willingness to reimburse the improper payments. People who have benefited from cutting corners but are found out are often eager to make restitution, but misconduct is not so easily expunged.

The overall economic consequences to the Applicant of the sanctions imposed for his misconduct may seem harsh if compared to the likely aggregate amounts of overpayments to him. But the evaluation of a claim of disproportionality is not only a matter of sums. In this case, the Bank was quite unconvinced by the Applicant’s insistence that he was merely committing a common error, when in fact he had for many years not obtained these payments on account of his “personal” Montreal visits, and then by the fortuitous default setting of the SAP itinerary collected reimbursements on dozens of identical occasions. The Tribunal is also unconvinced by his explanations, and disinclined to reconsider the sanctions imposed by the Bank.

62. The relevant conduct of the Applicant in this case may be summarized as follows.

He recorded erroneous information in SAP between 2003 and 2007. He knew that he reported his travel incorrectly and in violation of the rules because he was told many times by the travel accounting department about his errors. He continued to do so not only after he was told of his mistakes, but even after he became aware of the INT investigation. He claimed excessive taxi fares for in and out travel in Washington, although he reduced them after he learned of the investigation. He collected reimbursements for travel expenses to which he was not entitled. He submitted receipts that did not match the electronic records he completed. He felt justified in taking rest and personal days whenever he “needed it.”

63. The Applicant’s misconduct was in no respect caused by the system. Nor was his conduct limited to errors in identifying the nature of his travel days (operational, rest or personal); he also made repeated claims for excessive amounts that he did not seek to

justify then and has not been able to justify now. He submitted erroneous claims for his travel over a period of two years, and continued to do so in the following two years.

64. Accordingly, the Tribunal finds that the Bank was entitled to find that he abused his position for personal gain, thereby mandating termination.

65. As to the Applicant's claims that INT conducted a second investigation without giving the Applicant proper notice, the fact is that no charges were added as a result of the review of the additional travel documents. The additional information may however have had a bearing on the outcome of the investigation and the Managing Director's decision: the review of the additional records allowed the Bank to ascertain that the conduct continued, thereby possibly making a determination of intent of personal gain more definite. In addition, a comparison of taxi fares between the period under investigation and the second period was useful in determining that the fares were excessive and that the Applicant continued to disregard the rules.

66. The record supports the conclusion that the Applicant engaged in misconduct on the basis of the facts elicited in the first investigation only, without any need for the additional information. Furthermore, the Applicant was given a chance to comment when he received a copy of the Draft Report, and he did so. Accordingly, the "second investigation" did not prejudice the Applicant's due process rights. The Applicant has not suggested that he could have contradicted the facts ascertained by looking at the additional voyage records.

67. The Applicant complains that he was denied the opportunity to review the Draft Report a second time. The Final Report included five additional pages describing the additional trips. It also included eight pages responding to the Applicant's comments on

the Draft Report. The total report was 30 pages long; only about half of it related to the actual allegations. It appears that INT gave weight to the new information without giving the Applicant an appropriate opportunity to comment. As stated in *Ismail*, Decision No. 305 [2003], para. 66, “[t]he failure to send it to the Applicant was in the circumstances a breach of procedural fairness.” Nevertheless, the Tribunal concluded at para. 73 that “these procedural irregularities do not negate the validity of the Bank’s determination to terminate the services of the Applicant.”

68. In the present case, the conclusions would have been warranted even without the review of the 11 additional trips. The initial investigation was over a two-year period, long enough to show a pattern of conduct evincing intent to defraud.

69. Furthermore, the new three e-mail exchanges between INT and the Applicant’s former supervisors about whether there had been an agreement of any sort between them and the Applicant about his travel to his home country did not change the conclusions of INT. There was no other investigative activity on the part of INT.

70. The Tribunal finds that the failure to give the Applicant the opportunity to review the five additional pages fell short of the standard of procedural fairness, but did not negate the validity of the Bank’s decision.

71. The Applicant argues that his due process rights were violated in any event because the investigation took over two and a half years to complete. The Bank responds that the delay was due to “competing investigative demands,” which of course is a function of the size of INT’s staff and the volume of cases referred to it. The Tribunal stated in *L*, Decision No. 353 [2006], para. 31, that it “is not persuaded that a lengthy investigation is

*per se* an interference with due process if the investigation is reasonably proportionate to the complexity of the facts of the case.”

72. In view of the fact that the investigation was limited to an examination of the Applicant’s travel records, and impugned few interviews, the two and a half year duration of the investigation appears excessive. The complexity of the case does not seem to have been proportional to the length of the investigation. However, rather than resulting in prejudice to the Applicant, the lengthy investigation allowed the Applicant to remain in his position and gave him the opportunity to amend his practices.

73. The Applicant also alleges that INT did not maintain the presumption of his innocence as required by its rules. Specifically, he argues that the investigative process, in particular the interview, was too long and abusive. The Bank sharply disagrees, and submits an affidavit from one of the investigators denying any abuse. The Tribunal finds that the Applicant has not provided evidence to support a finding of oppression or prejudice.

74. Finally, the Applicant complains that INT did not interview anyone who would have known about his work program. The Bank maintains that the Applicant did not provide any names of persons who could be interviewed on that subject.

75. It appears that INT had information about individuals it could have interviewed about certain facts, especially the work program of the Applicant and his business in his home country. The Bank’s excuse that the Applicant did not specifically request that it do so is insufficient in view of its responsibility to seek all exculpatory and inculpatory evidence. This failure of inquiry on the part of INT merits criticism. Still, the concrete matter to be ascertained here was the extent to which the Applicant had a significant work

program in his home country. It is quite extraordinary that the Applicant himself would not be able to furnish traces of his deliverables and evidence of reporting and supervision. INT's failure to go further in investigating this matter cannot seriously be considered to have affected the outcome.

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