



World Bank Administrative Tribunal

2009

No. 393

**AF,
Applicant**

v.

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

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

**AF,
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, Sarah Christie, and Florentino P. Feliciano. The Application was received on 16 July 2008. The Applicant's request for anonymity was granted on 26 August 2008.
2. The Applicant held an Open-Ended appointment in the East Asia and Pacific Region ("EAP") of the Bank at grade level F. She worked with the Bank for nearly ten years.
3. The Applicant challenges the Bank's decision to place her on paid administrative leave in response to her alleged unauthorized disclosure of certain confidential Bank documents relating to the investigation of Bank-financed projects in India by the Department of Institutional Integrity ("INT").
4. In particular, on 10 March 2008, a New York-based newspaper ("the Newspaper") published an editorial about INT's investigation into alleged fraud and corruption in health sector projects in India. On the same day, the Newspaper also posted on its website four confidential Bank documents relating to the investigation. Among them were two confidential e-mail messages that the Acting Director of INT had sent to some INT staff members on 4 and 5 March 2008.

5. On 12 March 2008, the Acting Director of INT spoke to one of the Bank's Managing Directors about the Newspaper's publication of the confidential Bank documents and the need to determine whether it was possible to identify the source of the leak in the Bank. He told the Managing Director that management at that point had neither any information to indicate that any specific staff member was responsible, nor any basis to begin an investigation. He suggested requesting the Bank's Information Solutions Group ("ISG") to conduct a search of the Bank's electronic records to determine: (i) whether it was possible to track the path taken by the two e-mail messages in question within the Bank and whether they were sent to someone outside the Bank; (ii) whether any e-mail message was sent from the Bank's computer system to the Newspaper's Internet address; and (iii) whether any call had been made from the Bank's telephone system to two phone numbers that were known to belong to the author of the article, a reporter of the Newspaper (the "Reporter").

6. On 13 March 2008, according to the Bank, the Managing Director, with the concurrence of the Acting Vice President and General Counsel, authorized ISG to conduct the search pursuant to the Bank's Information Security Policy for Information Users (Administrative Manual Statement (AMS) 6.20A, 2007) ("Information Security Policy").

7. ISG concluded its search on 18 March 2008. As part of its search, ISG had examined the Bank records of outgoing telephone calls in March 2008 to determine whether any calls had been made to two telephone numbers known to belong to the Reporter. The search revealed that several calls were made from the Applicant's

telephone extension to the Reporter's numbers shortly before the 10 March 2008 publication of the confidential Bank documents.

8. On 19 March 2008, the Acting Director of INT showed the results of the ISG search to the Acting Vice President of EAP, who was one of the Applicant's managers. The latter then consulted the Vice President of Human Resources ("HRSVP") and the Acting General Counsel about placing the Applicant on administrative leave. The Applicant's manager decided that she needed more information before making a decision.

9. On 21 March 2008, the Acting Director of INT asked the Bank's Managing Director to designate a person outside of INT to conduct a preliminary inquiry under Staff Rule 8.01 (Disciplinary Proceedings) and, if necessary, a full investigation into whether the Applicant had disclosed confidential Bank documents without authority. The Acting Director felt that INT should not be involved because an INT staff member was implicated in the unauthorized disclosure. The Bank appointed an investigator from the Legal Department to conduct the preliminary inquiry, and if necessary, a full investigation. The investigator commenced the preliminary inquiry into the Applicant's conduct on or about 21 March 2008.

10. During the preliminary inquiry, the investigator accessed the Applicant's e-mail records and found numerous e-mail messages sent from the Applicant's computer to the Reporter relating to the information published on 10 March 2008.

11. Based on the additional evidence gathered, on 30 March 2008 the Applicant's manager wrote a memorandum to HRSVP requesting that the Applicant be placed on administrative leave. In the memorandum, the manager advised that there was considerable evidence linking the Applicant to unauthorized disclosure of confidential

information, and requested that the Applicant be placed on administrative leave to prevent further unauthorized disclosures.

12. HRSVP placed the Applicant on paid administrative leave effective 31 March 2008 under Staff Rule 6.06 (Leave), paragraph 9.09. In a memorandum to the Applicant dated the same day, HRSVP advised the Applicant that:

This is to inform you that in accordance with Staff Rule 6.06, paragraph 9.09 you are being placed on Administrative Leave with Pay effective today, March 31, 2008, until further notice, in relation to possible unauthorized disclosures outside the Bank of confidential Bank information, while this matter is being reviewed. You will be contacted shortly about how the Bank will proceed.

13. The investigator continued the preliminary inquiry, and based on his findings, decided to commence a full investigation on 18 April 2008. The Applicant received a formal Notice of Alleged Misconduct on 22 April 2008.

14. On 23 April 2008, HRSVP placed the Applicant on administrative leave for a six-month period under Staff Rule 6.06, paragraph 9.08, and Staff Rule 8.01, paragraph 4.07, pending completion of the formal investigation. In a memorandum dated 23 April 2008, HRSVP advised the Applicant that:

On March 31, 2008, I informed you of my decision to place you on Administrative Leave with Pay, in accordance with Staff Rule 6.06, paragraph 9.09, effective that day and until further notice, in relation to possible unauthorized disclosures outside the Bank of confidential Bank information, while the matter is being reviewed.

This is to inform you that, further to the above, I have decided to place you on Administrative Leave with Pay *beginning on April 23, 2008*, for a period of six months, *pending completion of an investigation*, pursuant to the authority conferred on me by *Staff Rule 6.06, paragraph 9.08* (Administrative Leave).

During the period of Administrative Leave, you will continue to receive your full pay and benefits. You will need the approval [of the Bank] to enter the Bank Group premises.

Staff Rule 8.01, paragraph 4.07 states that administrative leave can last up to six months, and can be extended when the Vice President, Human Resources for the Bank determines that additional time is needed to complete an investigation. (Emphasis added.)

15. On 20 May 2008, the Applicant asked HRSVP to revoke the administrative leave decision. The request was denied on 11 June 2008.

16. On 24 June 2008, the Applicant wrote to the Bank seeking its consent to filing directly with the Tribunal an application challenging the Bank's decision to place her on administrative leave. The Bank agreed. On 16 July 2008, the Applicant filed her Application challenging the imposition of administrative leave upon her. The Applicant requests that the Tribunal set aside the administrative leave decision and award damages and attorney's costs.

PRINCIPAL CONTENTIONS OF THE PARTIES

The Applicant's contentions

17. The Applicant claims, first, that the administrative leave decision lacked a proper basis. The Bank placed the Applicant on administrative leave without sufficient evidence that she had improperly leaked information and documents to the press.

18. Second, the Applicant argues that the Bank did not follow proper procedures in deciding to place her on administrative leave. The Applicant claims that instead of conducting an investigation under Staff Rule 8.01, the Bank improperly carried out a "special" investigation outside Staff Rule 8.01.

19. Third, the Bank violated Staff Rule 8.01 in reaching the administrative leave decision.

20. Fourth, the Applicant claims that the Bank's search of the electronic records leading to the administrative leave decision violated the Bank's Information Security

Policy, and lacked prior authorization from either a Managing Director or the General Counsel.

The Bank's response

21. The Bank contends that the imposition of administrative leave on the Applicant was a proper exercise of managerial discretion.

22. Second, the Bank did not conduct a Staff Rule 8.01 investigation immediately after the confidential documents first appeared in the Newspaper because at that time the Bank had no information as to who had leaked the documents to the press. Its search was therefore initially limited to determining whether any staff member had forwarded the e-mail messages to someone outside the Bank. This limited search was, in the Bank's view, reasonable given the circumstances.

23. Third, the Bank complied with Staff Rule 8.01.

24. Fourth, the Bank contends that the search of electronic records was conducted in accordance with its Information Security Policy. The Bank had obtained authorization from the proper officials.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

Whether the Bank had a proper basis for the administrative leave decision

25. Under Staff Rule 6.06, paragraphs 9.08 and 9.09, HRSVP has authority to place a staff member on paid administrative leave in the following circumstances:

Administrative Leave under Rule 8.01, "Disciplinary Measures"

9.08 The Vice President, Human Resources may place a staff member on administrative leave in accordance with the provisions of Rule 8.01, "Disciplinary Proceedings."

Administrative Leave at the Direction of the Vice President, Human Resources

9.09 The Vice President, Human Resources may place a staff member on administrative leave for up to 6 months for reasons which he or she determines are sufficient after consulting with the staff member's manager.

26. In the present case, HRSVP placed the Applicant on paid administrative leave first on 31 March 2008 under paragraph 9.09, and then on 23 April 2008 under paragraph 9.08 of Staff Rule 6.06. A decision to place a staff member on administrative leave under paragraph 9.08 or paragraph 9.09 is always a matter of managerial discretion. Thus, when an administrative leave decision is challenged, the Tribunal will not exercise its broader review power as it does in cases of disciplinary measures, but will undertake a more limited review of whether the Bank has abused its discretion in placing the staff member on administrative leave. In *G*, Decision No. 340 [2005], the Tribunal stated at para. 67:

The jurisprudence of the Tribunal is clear to the effect that the scope of its review in connection with disciplinary cases is broader than with respect to decisions of a purely managerial or organizational nature. (*Kwakwa*, Decision No. 300 [2003], para. 20.) But the *Tribunal has also stated that placing a staff member on administrative leave ... is, in itself, not a disciplinary measure*. If a decision to impose administrative leave is challenged, the Tribunal will consider whether the decision was an abuse of discretion – while still acknowledging that it is indeed a matter of discretion. (*Ismail*, Decision No. 305 [2003], para. 54.) (Emphasis added.)

27. With respect to reviewing discretionary managerial decisions, such as HRSVP's decision to place the Applicant on administrative leave, the Tribunal has consistently held that: "The Tribunal's general approach to decisions involving the exercise of discretion is that it will not interfere or substitute its own judgment unless the decision constitutes an abuse of discretion." *Nunberg*, Decision No. 245 [2001], para. 40 (citing *de Merode*, Decision No. 1 [1981], and *Bertrand*, Decision No. 81 [1989]). Here, HRSVP's decision would be an abuse of discretion if it lacked a reasonable basis, or was arbitrary or carried

out in violation of a fair and reasonable procedure. *Desthuis-Francis*, Decision No. 315 [2004], paras. 19, 23.

28. The Tribunal has on record a signed declaration dated 16 October 2008 by HRSVP explaining the basis for placing the Applicant on paid administrative leave as follows:

On March 29, 2008, I was contacted by [one of the Applicant's managers] regarding her recommendation ... to place one of her staff members [the Applicant] on administrative leave. *During the conversation, [the Applicant's manager] shared that [the Applicant] had shared undisclosed Bank information. Specifically, she made calls to staff of the [Newspaper] and sent messages from her personal E-mail account (while at work) and Bank E-mail account which contained titles and information consistent with internal documents referenced in the March 10, 2008, [Newspaper] article.*

During my conversation with [the Applicant's manager], she provided me with details regarding [the Applicant's] alleged misconduct. We discussed the case thoroughly and I received assurance that there was enough information to justify the placement of [the Applicant] on administrative leave pending a further review of the matter.

I was particularly struck by the fact that *[the Applicant] appeared to have gained access to and shared information that was not related to her current work program with individuals outside the Bank. I was very concerned about the potential risk to the Bank, and what further action she would possibly take if she remained in the Bank with access to confidential Bank information.*

On March 29, 2008, [the Applicant's] manager sent a draft of her Memorandum requesting the placement of [the Applicant] on administrative leave to Human Resources ... for our initial review. On Sunday, March 30, 2008, [the Applicant's manager] sent the final copy of the Memorandum for my review and signature.

Prior to drawing my conclusion in this matter, there was extensive consultation between myself and my staff ..., [the Applicant's] manager, and the Legal Department We take these allegations very seriously. My decision was based on the facts presented. I followed the procedures applicable to these cases.

Based on an informed assessment of the potential risks posed by [the Applicant's] continued access to the Bank, *I decided on March 30, 2008,*

to place her on administrative leave and signed the related documents on Monday, March 31, 2008. I again decided on April 23, 2008, when I received additional information, to place her on administrative leave, at that time in accordance with Staff Rule 6.06 (Leave), paragraph 9.08, pending the outcome of the 8.01 investigation. (Emphasis added.)

29. The Applicant claims that the administrative leave decisions of 31 March and 23 April 2008 were arbitrary. She explains that the 31 March 2008 decision was made under paragraph 9.09 of Staff Rule 6.06, but that the factual record before the Bank up to that day was insufficient for placing her on administrative leave. The Bank presented “no evidence known to the Respondent on March 31, 2008, that shows and/or substantiates the allegation of any improper disclosure or can justify the decision to place Applicant on administrative leave.” Similarly, on 23 April 2008, the Bank placed her on administrative leave based on a few e-mail messages that she had purportedly sent to the Newspaper Reporter. But at that time, the Applicant argues, there was “no evidence of who sent these emails or what they forwarded, if anything.” The Bank had placed her on administrative leave without clear evidence of her involvement in the disclosure of the confidential documents.

30. The Tribunal analyzes as follows the factual record that was in the Bank’s hands before it placed the Applicant on administrative leave on 31 March 2008. First, after completing its search of the Bank’s outgoing phone records on 18 March 2008, ISG found that between 4 and 7 March 2008, multiple phone calls originated from the Applicant’s Bank phone extension to the Reporter. The Acting Vice President of EAP, one of the Applicant’s managers, found the Applicant’s contact with the press unusual because her work program did not include press relations. The manager, however, insisted that more evidence was necessary to place her on administrative leave.

31. Second, in light of the results of the ISG search, on or about 21 March 2008 the Bank commenced a preliminary inquiry into the Applicant's potential involvement in the disclosure of confidential documents. The Bank accessed the Applicant's e-mail records and found that the Applicant had sent several e-mail messages to the Reporter in the days leading up to and after the publication of the 10 March 2008 article. Some of these messages are quoted below:

- (i) on 5 March 2008, a message from the Applicant's computer to the Reporter entitled "INDIA DIR-WB Follow UP" reads: "The deadline is the difference between the scoop and something that the Bank spins its own way" The message attached two documents relating to India projects;
- (ii) on 7 March 2008, a message from the Applicant's computer to the Reporter entitled "India DIR – The minutes of RBZ meeting" reads: "LOOK at THIS read, [Reporter's name], Yes, you can post it and the documents as well ... (as usual, let's check that all is ...)." This message had three attachments relating to India projects;
- (iii) on 12 March 2008, a message from the Applicant's computer to the Reporter entitled "India DIR Follow up" reads: "[Reporter's name], Tomorrow, the Board will meet informally on the India DIR follow up ...";
- (iv) on 14 March 2008, a message from the Applicant's computer to the Reporter reads: "Good feedback from the Hill ... on Your Various WB articles, [Reporter's name], This is on Behalf of our common friend; friends on the Hill very much like the India....";

- (v) on 14 March 2008, another message sent to the Reporter, entitled “India-
DIR Follow up” reads: “[the Reporter’s name], See comments to a piece on
Follow up on India recently posted on the Intranet”

32. After reviewing the telephone and e-mail records gathered by ISG during the preliminary inquiry, the Applicant’s manager and HRSVP concluded that the evidence warranted placing the Applicant on administrative leave. The Applicant does not deny making the phone calls or sending the e-mail messages. She insists nevertheless that the record as it existed on 31 March 2008 did not contain sufficient evidence that she had engaged in misconduct by improperly disclosing confidential information.

33. The Tribunal is not persuaded by the Applicant’s argument. A decision to place a staff member on administrative leave is an interim or provisional measure. HRSVP is not required to have conclusive evidence of misconduct before placing a staff member on administrative leave. In this case, the Applicant was placed on administrative leave on 31 March 2008 under Staff Rule 6.06, paragraph 9.09, which states that: “The Vice President, Human Resources may place a staff member on administrative leave for up to 6 months for reasons which he or she determines are sufficient after consulting with the staff member’s manager.” Paragraph 9.09 gives substantial discretion to HRSVP. Under this paragraph, he can place a staff member on administrative leave for reasons he determines to be sufficient after consulting with a staff member’s manager. This discretion is of course not unlimited; it is not a license to be arbitrary or to act abusively.

34. The factual record described above led HRSVP to conclude that the administrative leave was warranted. The evidence gathered indicated that the Applicant had indeed broadcasted confidential documents without authority. HRSVP consulted the

Acting Vice President of EAP, one of the Applicant's managers, who confirmed after talking to the Applicant's immediate manager that the Applicant's work program did not include Bank press relations with the outside world. The Applicant's manager and HRSVP agreed that placing the Applicant on administrative leave was necessary to prevent further unauthorized release of confidential information. The Tribunal considers that HRSVP had a sufficient basis on 31 March 2008 to place the Applicant on administrative leave.

35. After completing the preliminary inquiry, on 18 April 2008 the Bank's investigator concluded that circumstances required a full investigation and provided the Applicant with a Notice of Alleged Misconduct on 22 April 2008. A full investigation having been commenced, HRSVP the following day again placed the Applicant on administrative leave, this time under paragraph 9.08 of Staff Rule 6.06 and paragraph 4.07 of Staff Rule 8.01. The Tribunal considers that the factual record that the Bank had before the 31 March decision, joined with the tracing of the e-mail messages to the Reporter back to the Applicant's Bank computer, constituted a sufficient basis for the 23 April decision to place the Applicant on administrative leave under paragraph 9.08 of Staff Rule 6.06 and paragraph 4.07 of Staff Rule 8.01, and to initiate a full investigation of possible misconduct.

36. The Bank has a legitimate business interest in protecting its confidential information. The Tribunal is reluctant to second-guess this type of managerial exercise of discretion. *See G*, Decision No. 340 [2005], para. 69. The Applicant insists that before she was placed on administrative leave, the Bank did not have sufficient evidence of misconduct on her part. Whether the Applicant has engaged in misconduct is another

question that is still the subject of an investigation, which the Bank formally launched on 18 April 2008. A finding of misconduct is not a precondition for paid administrative leave, which is a preventive measure, and not a punitive one.

37. The Applicant also claims that the administrative leave decision was a retaliatory measure imposed on her because she had worked with the former President of the Bank and the former Director of INT. The Tribunal in *G*, Decision No. 340 [2005], para. 70, emphasized that “a finding of improper motivation cannot be made without clear evidence (*Lysy*, Decision No. 211 [1999], para. 71).” After reviewing the record before it, the Tribunal finds that the Applicant has adduced no evidence supporting her allegation of retaliation.

Whether the Bank followed proper procedures

38. *Alleged “special” investigation.* The Applicant argues that the Bank did not follow proper procedures when placing her on administrative leave. The Applicant contends that Staff Rule 8.01 provides procedures for cases of possible misconduct, including the way to place staff on administrative leave. But, instead of pursuing an investigation under Staff Rule 8.01, the Bank conducted a “special” investigation which included ISG’s search of electronic records, outside the Staff Rules.

39. The Tribunal is not persuaded that the Bank violated the Applicant’s rights in any manner by conducting a general inquiry after confidential Bank documents appeared on the website of the Newspaper on 10 March 2008. At that point, the Bank had neither information to indicate that any specific staff member was responsible nor any basis to begin an investigation. In this context, the Managing Director authorized ISG to examine the electronic records of the Bank, including the outgoing calls from the Bank’s phone

system, to find out whether any calls were made to the phone numbers known to belong to the author of the 10 March article. Accordingly, ISG conducted a general search. The Applicant has not shown how this general review by ISG has resulted in a violation of her rights.

40. *Alleged violation of Staff Rule 8.01.* The Applicant claims that the Bank violated Staff Rule 8.01 in a number of respects. First, the Bank had no proper basis to begin the preliminary inquiry that led to the administrative leave decision. Second, the Acting Director of INT was involved in the investigation of the Applicant thereby violating conflict of interest rules. Third, the Bank failed to give her a Notice of Alleged Misconduct prior to placing her on the first administrative leave on 31 March 2008. Fourth, the Bank did not discuss its suspicions with the Applicant, nor give her an opportunity to explain her position, before placing her on administrative leave.

41. The Tribunal rejects the Applicant's contentions. The Bank had a proper basis to commence a preliminary inquiry into the Applicant's conduct. ISG completed its search of the Bank's electronic records, including records of outgoing phone calls, on 18 March 2008. It found that between 4 and 7 March, multiple phone calls originating from the Applicant's Bank phone extension were made to the telephone numbers of the Newspaper Reporter who had authored the article published on 10 March 2008. It is not disputed that the Applicant's work program did not include Bank press relations. On the next day, 19 March 2008, the Acting Director of INT discussed the results of the search with the Acting Vice President of EAP, the Office of the President, the Acting General Counsel and HRSVP. All agreed that a further inquiry would be desirable to determine whether the Applicant had herself made these unauthorized telephone calls from her

Bank extension. The Acting Director of INT then requested the Managing Director of the Bank to appoint someone outside of INT to conduct a preliminary inquiry and if necessary a full investigation. A senior lawyer from the Legal Department was appointed and he commenced a preliminary inquiry on or about 21 March 2008. The Tribunal finds that a preliminary inquiry under Staff Rule 8.01 was not unreasonable in these circumstances.

42. Staff Rule 8.01 does not require that a threshold quantum of evidence be present before a preliminary inquiry is initiated. As the Tribunal explained in *G*, Decision No. 340 [2005], para. 78:

The first matter to be considered is whether there must be a defined evidentiary basis for initiating a preliminary inquiry. It is difficult to articulate a positive standard. Neither Staff Rule 8.01, paragraph 4.02, nor INT's Standards and Procedures for Inquiries and Investigations define any threshold in this regard; it appears to be a matter of discretion. A meaningful negative answer, on the other hand, was given by the Tribunal in Koudogbo, Decision No. 246 [2001], at para. 43, to the effect that a preliminary inquiry cannot be launched on the basis of rumors or allegations from questionable sources. An inquiry may be disruptive. It should not be triggered merely because there have been isolated, anonymous, indirect, word-of-mouth tips. Such indications may be very valuable in law enforcement everywhere, but they must be considered critically. The line to be drawn may be difficult to define in the abstract, but the need to do so does not arise in this case. The facts upon which the preliminary investigation was launched were objective. (Emphasis added.)

43. Here, the search of 18 March 2008 produced objective evidence sufficient to sustain the Bank's exercise of managerial discretion in this context.

44. The Applicant also contends that since the Acting Director of INT had forwarded some of the confidential documents to a number of INT staff members who were also suspects, he should not have been involved in the preliminary inquiry and the investigation of the Applicant, under the rules on conflict of interest. This contention is

not supported by the record. When the Acting Director of INT requested that the Managing Director approve a search of the Bank's electronic records, he made it clear to the latter that (as stated in his signed declaration filed with the Tribunal) "management at that point did not have any information to indicate that any specific individual was responsible, or any basis to begin an investigation." There was thus no such conflict at that point.

45. When evidence linking the Applicant to the phone calls to the Reporter was found, the appointed investigator came from outside INT. The Tribunal concludes that the Acting Director of INT was not materially involved either in the preliminary inquiry or in the full investigation.

46. The Tribunal rejects the Applicant's complaint that the Bank failed to give her a Notice of Alleged Misconduct prior to placing her on administrative leave the first time. Staff Rule 6.06 does not require that such formal notice always be given before a staff member is placed on administrative leave. Paragraph 4.03 of Staff Rule 8.01 states that: "Where it is determined that there is a sufficient basis to merit an investigation, the staff member will be notified in writing of the alleged misconduct at the onset of the investigation." As noted earlier, a written memorandum was sent to the Applicant on 31 March 2008 notifying her that she was being placed on administrative leave on the same day until further notice while "possible unauthorized disclosures of Bank confidential information [were] being reviewed." Subsequently, on 18 April 2008, the investigator concluded that sufficient evidence did exist to warrant a full investigation. Accordingly, he provided the Applicant with a Notice of Alleged Misconduct on 22 April 2008 and the Applicant was for the second time placed on administrative leave on 23 April 2008 under

Staff Rule 8.01. The record suggests that from 21 March to 18 April 2008, the investigator was engaged in his preliminary inquiry, gathering specific evidence to determine whether a full investigation of the Applicant was warranted. On 18 April 2008 he concluded that such evidence existed. He informed the Applicant about it on the same day and gave her the formal Notice four days later. The Applicant has not shown that the investigator delayed notification in any improper way.

47. Finally, the Applicant contends that the Bank should have discussed the matter with her before placing her on leave. Neither Staff Rule 6.06 nor Staff Rule 8.01 required that the Bank discuss administrative leave with the Applicant before imposing it on her. In both the 31 March 2008 memorandum and the 23 April 2008 notice of administrative leave, the Bank explained the bases for its decisions. Moreover, the investigator interviewed the Applicant on 23 April 2008. At that interview she had an effective opportunity to present her position. The Tribunal finds no violation of the Applicant's rights in this respect.

48. *Alleged violation of the Bank's Information Security Policy.* The Applicant asserts that the Bank's search of the electronic records leading to the administrative leave was conducted in disregard of the Bank's Information Security Policy. First, the ISG search should have been conducted under paragraph 14 of the Information Security Policy. Second, the Bank failed to obtain formal written authorization from either a Managing Director or the General Counsel before initiating the ISG search.

49. The Tribunal rejects the Applicant's arguments. It is useful to quote here the relevant paragraphs (paragraphs 11-14) of the Information Security Policy.

[Paragraph] 11. The World Bank Group reserves the right to, but will not screen, monitor or examine the content of computer files, electronic mail

messages, voice mail messages, telephone records, or similar stored electronic activities, or the record of usage of such electronic activities of Information Users with access to such facilities *unless there is a genuine business justification or there is a reasonable basis to suspect a violation of World Bank Group policy, a criminal act, or other misconduct.*

[Paragraph] 12. In the event that there is a genuine business justification for monitoring of an Information User, approval for this activity will be authorized and pre-approved by the staff member's Vice President. If the staff member is a Director or a Vice President, then permission shall be obtained from a Managing Director. If the individual is a Bank Group contractor, then permission shall be obtained from the Vice President or Managing Director responsible for the hiring unit.

[Paragraph] 13. A genuine business justification means that there is a legitimate reason connected to the work program of the Bank Group for a review of electronic activities and that such review is not done for personal reasons. Access might, for example, be required to obtain necessary information when an Information User is away on vacation.

[Paragraph] 14. Misconduct Investigations: *In the event that there is a reasonable basis to suspect a violation of Bank Group policy, a criminal act, or other misconduct, then all instances of staff activity screening or monitoring must be pre-approved by (1) the senior manager responsible for the investigation, (2) a Managing Director, and (3) the Vice President and General Counsel.* Such staff activity screening or monitoring must be stopped as soon as the investigation is complete. The senior manager responsible for the investigation must ensure that screening or monitoring facilities are not abused and that only necessary information has been captured. (Emphasis added.)

50. Under these paragraphs of the Information Security Policy, the Bank has the right to review the electronic records of staff members if there is a "genuine business justification" or "there is a reasonable basis to suspect a violation of World Bank Group policy, a criminal act, or other misconduct." Paragraphs 12 and 13 govern reviews conducted for business reasons; paragraph 14 governs reviews conducted in connection with misconduct investigations.

51. The Applicant contends that when the Acting Director of INT discussed the search with the Managing Director, the former already suspected a violation of the

Bank's disclosure policy. Therefore, the search of the electronic record should have been conducted under paragraph 14 of the Information Security Policy, which imposes stricter requirements.

52. The record is clear that before the search, management did not have any information to suggest that any specific Bank staff member was responsible for improper disclosure of confidential information, nor any basis to begin an investigation. Thus, the Bank reasonably, if provisionally, concluded that paragraph 14 of the Information Security Policy was not applicable. The Bank nevertheless had a genuine business reason to find the source of the leak to the press, in order to safeguard its confidential information and protect the Bank from future breaches. Accordingly, management authorized ISG to conduct a search of the Bank's electronic records under paragraphs 11-13 of the Information Security Policy. The search was a general one; it did not target the Applicant. The Applicant has not shown how this general search of the Bank's electronic records violated her rights.

53. The Applicant next complains that neither the Managing Director nor the General Counsel formally (on a hard copy bearing actual signature) approved the search. After reviewing the record, in particular the e-mail communications among the Acting INT Director, the Acting General Counsel and the Managing Director, the Tribunal is satisfied that the search had in fact been approved by the appropriate officials.

54. Moreover, the Bank conducted the search of the Applicant's e-mail records under paragraph 14 of the Information Security Policy. Once the ISG search had produced evidence specific to the Applicant, the special investigator accessed the Applicant's e-mail records. This was done in accordance with the applicable formal procedure. The

special investigator wrote a memorandum setting out the reason for requesting access to e-mail records and both the Managing Director and the Acting General Counsel formally approved such access.

Additional claims and alleged injuries

55. The Applicant for the first time in her Reply raised new claims under a heading “additional injury.” She claims that on 10 June 2008 she sent an e-mail from her private e-mail account to the Human Resources (“HR”) general e-mail address, stating that her G4 visa would expire on 23 October 2008 and requesting information on what procedure she would need to follow to renew it. She further states that on 12 June 2008 she received a message from HR’s general e-mail address stating that “World Bank policies do not allow for the renewal of the G4 visa when a staff member is on administrative leave.” The Applicant states that her visa expired on 23 October 2008 and that she had to visit her ailing father; she therefore resigned from the Bank to be eligible to come back to the United States under a visa waiver program available to nationals of her country.

56. The Bank explains that in response to this new claim, it asked the HR Service Center to review the Applicant’s claim. The HR Service Center confirmed that it had no record either of the incoming e-mail message from the Applicant’s private e-mail account on 10 June 2008 nor of the alleged outgoing e-mail message from the HR Service Center on 12 June 2008. The Bank explains that under HR procedure, all incoming e-mails to the HR Service Center are automatically forwarded to the Remedy system, which assigns a case number to each inquiry. There was no record in the Remedy system of the Applicant’s alleged 10 June 2008 inquiry. Furthermore, the information said to have been provided on 12 June 2008 was flawed. The Bank is not prohibited from renewing

G4 visas for staff on administrative leave; on the contrary, as long as they remain Bank staff, they are entitled to renewed visas. The Bank questions the authenticity of the e-mail records submitted by the Applicant.

57. The Tribunal finds the Applicant's conduct in this respect somewhat surprising. She apparently sent her e-mail message on 10 June 2008 and apparently received an HR response on 12 June 2008. The HR response was not signed by anyone from HR. From 12 June to 23 October 2008, the day her visa expired, she did not make any further inquiry. During this four-month period, she never tried to find out who in HR had sent the e-mail, nor to seek clarification of her eligibility for visa renewal. Instead she simply let her visa expire on 23 October 2008 and resigned from the Bank to travel under a different visa program. The Tribunal finds the claim quite implausible. Indeed, the Applicant took no further action in respect of her visa status after the Bank stated that the copies of the e-mail exchanges relating to visa extension submitted by her were not authentic.

58. As for her resignation, there is no indication in the record that the Bank had asked her to resign. This type of resignation under assumed protest does not make the Bank liable. In *Sweeney*, Decision No. 239 [2001], paras. 71, 77, the Tribunal stated that

the concept of "resigning in protest" has no place in the relationship between a staff member and the Bank. A resignation is a resignation: its legal consequences are unaffected by declarations of disagreement with the employer's conduct. The protest may give satisfaction in some moral or psychological sense, but it cannot validate an otherwise unfounded legal contention. ... If [a staff member] is adversely affected by an ill-advised resignation, that is not a matter which the Bank has any obligation to redress.

59. The Applicant claims compensation for the stress she states she suffered because of the imposition of administrative leave, and a resulting weight loss of more than 20

pounds. The Tribunal has stated before that “the fact that a manager’s decision causes distress does not per se make it a case of abuse of discretion.” *Sweeney*, Decision No. 239 [2001], para. 54. In this case, the Tribunal has concluded that placing the Applicant on administrative leave was a valid exercise of managerial discretion. It follows that no compensation is warranted.

60. Finally, the Applicant contends that in May 2008 she received a number of threatening e-mail messages in her private e-mail account from an unnamed person also using a private e-mail account. This individual’s e-mail messages stated, in abusive language, that she was guilty of misconduct and should leave the Bank. The Applicant states that she brought the e-mail messages to the Bank’s attention, but the Bank declined to investigate.

61. The Bank responds that its designated investigator dealt with the complaint. The investigator concluded that because the messages were sent to her personal e-mail account and not her Bank account, the Bank would not be able to ascertain the source of the messages. The Bank has asked the Applicant to provide additional information which might assist them in responding to her concerns.

62. The record does not indicate that the Applicant provided more specific evidence. The e-mail messages were indeed inappropriate but it is unclear what else the Bank might have done.

DECISION

For the reasons given above, the Tribunal dismisses all of the Applicant’s claims.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, DC, 25 March 2009