



World Bank Administrative Tribunal

2009

No. 409

**AL,
Applicant**

v.

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

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

**AL,
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, composed of Jan Paulsson, President, and Judges Stephen M. Schwebel, and Francis M. Ssekandi. The Application was received on 24 November 2008. The Applicant's request for anonymity was granted on 21 July 2009.

2. The Applicant is one of sixteen current and former staff members working in the Bank's Department of Institutional Integrity ("INT") contesting decisions taken by the Bank in August 2008 not to award the entire relief, in particular monetary compensation, recommended by an INT Staff Grievance Review Panel ("Grievance Panel").

3. The fact that the present Application forms part of this group of cases has had some unusual procedural implications. All the Applicants worked in INT, and they all allege variations on the same recurrent themes: a hostile work environment, unfair treatment, abuse of discretion, and violations of due process at the hands of INT management between October 2005 and January 2008. In recognition of the unusual circumstances presented, the Bank set up an *ad hoc* Grievance Panel to review the allegations made by the INT staff members. In response to the Applicants' request for consolidation of the cases pursuant to Rule 27 of the Tribunal's Rules, the Tribunal decided on 31 March 2009 that

the cases will be treated separately, and separate judgments will be rendered in each case. Nevertheless, the Tribunal considers that there are practical reasons why efficiency militates in favor of *ad hoc* accommodations to the specifics of the

situation. All Applicants are represented by the same counsel. The Bank is represented by its Legal Vice Presidency. The cases will be decided by the same judges. Accordingly, counsel may make joint submissions where appropriate, and may make extensive use of cross-references to documents and information that are common to all or some of the Applications in order to avoid the need for unnecessary duplication of documents.

Pursuant to this ruling, the sixteen Applicants and the Bank submitted pleadings that contain joint submissions and cross-references to documents and information that are relevant to more than one of these cases.

GENERAL BACKGROUND

4. INT was established in 2001 when the Anti-Corruption and Fraud Investigations Unit and the Business Ethics Office were merged, with the intent that it would take responsibility for the independent investigation of allegations of fraud and corruption in Bank Group operations, as well as certain allegations of staff misconduct.

5. In October 2005 the President of the Bank appointed Ms. X as Acting Director of INT. She became Director of INT in January 2006. At the time of her appointment, she was a Counselor in the Office of the President (“EXC”). In announcing her appointment as Director, the President confirmed that Ms. X would continue to serve in EXC “as my Counselor.” Ms. X’s tenure as Director was turbulent and disputatious within INT as well as in the Bank generally. There were acute controversies as to both principle and method. The claims made by the Applicant as well as the other fifteen staff members in INT are based on events that occurred during Ms. X’s tenure as Director.

6. Upon Ms. X’s appointment as Director, INT management began implementing a “comprehensive plan,” the purpose of which was stated to be the improvement of the “quality, consistency, and timeliness” of INT investigations. This included: (i) a new work program with higher performance expectations for INT staff; (ii) mandatory training workshops for all

investigators; and most controversially (iii) performance improvement plans (“PIPs”) for INT staff with “technical shortcomings or behavioral issues.” The management of INT at the time acknowledged that it “fully understood that the PIPs would be controversial in many instances and generate tensions within the Department.” It nevertheless decided that it was essential to resort to these measures in order to improve INT’s performance.

7. Within a short period an unusually high rate of staff turnover was observed. In September 2006 a group of INT staff members sent an anonymous letter to the Bank’s Board of Directors and the World Bank Group Staff Association (“SA”) complaining about what they considered to be a hostile work environment in INT. They alleged harassment, retaliation based on allegations of disloyalty to INT management, verbal abuse, humiliation, favoritism, non-compliance with normal Human Resources (“HR”) practices and threats of termination of employment and revocation of G-4 visas. They also alleged arbitrary adverse personnel actions relating to their Overall Performance Evaluations (“OPEs”), Salary Review Increases (“SRIs”), PIPs, grade level classifications and compensation. In addition, they alleged a conflict of interest arising from Ms. X’s dual role as both Director of INT and Counselor to the President which, they contended, impeded INT’s ability to work independently and effectively because its work program and priorities were being dictated by EXC.

8. In the course of 2006 and 2007, several INT staff members reported to the Ombudsman concerns about Ms. X’s “abusive and retaliatory” management practices. They also complained about HR’s “ratification” of these practices. The Applicants contend that the Ombudsman confirmed that he had conveyed these concerns to the Bank’s senior management.

9. In the meantime, the Bank’s President and its Board of Directors established an independent panel of experts (“the Volcker Panel”) in March 2007 “to carry out a comprehensive

review of INT to assess how it can best contribute to the Bank's poverty reduction mission and to safeguard the institution from legal, fiduciary and other risks." The focus of the Volcker Panel's review was the scope of INT's mandate and its relationship with other parts of the Bank. Its terms of reference also required it to assess and make recommendations regarding INT's budget and staffing. In the course of the Volcker Panel's work, several INT staff members were interviewed. In addition, the Volcker Panel interviewed the Vice President, Human Resources ("HRSVP"), and requested and received some data from HR.

10. The Volcker Panel issued its report in September 2007. With respect to the management and staffing issues, and as a consequence of the representations submitted by the INT staff, as well as responses from INT management, the Volcker Panel observed that "the number of PIPs used by INT far exceeds their relative use by any other unit within the Bank." It also noted that the manner in which INT's management resorted to PIPs was not in conformity with normal HR practice. The normal practice was stated to be as follows: (i) a staff member whose performance is not satisfactory will be advised of that fact and given the opportunity to improve "without management's further intervention" in the first instance; (ii) if there is insufficient improvement, the staff member will ordinarily be asked to agree to a monitored work program; (iii) if the staff member still fails to improve, a formal PIP is imposed, and failure to comply with the terms of the PIP may result in termination of the staff member's employment. In contrast to this practice, the Volcker Panel found that INT did not resort to the "intermediate management mechanisms" before placing "a relatively large number of staff" on PIPs, and that this had led to "resentment and a high level of uncertainty" among INT staff. It noted, however, that INT used PIPs in this manner with the concurrence of the designated HR representative in INT, and that Ms. X had advised the President of the Bank of the actions taken.

11. The Volcker Panel also noted that:

In general, staff turnover at INT has been high. Intensive time demands and uncertainty about INT's status within the Bank are said to be significant contributing factors. Managerial issues have also been cited by a number of staff. Efforts to address these concerns are clearly needed.

12. In his interview with the Volcker Panel, HRSVP expressed concerns about INT's HR practices. His successor subsequently communicated these concerns to the Bank's Senior Vice President and General Counsel by e-mail on 29 June 2007. In addition to confirming the observations of the Volcker Panel in its report regarding the use of PIPs, the new HRSVP noted firstly that the rate of completion of OPEs in INT was "among the very lowest" in the Bank, which indicated "a lack of agreement between managers and staff on performance assessments," "a breakdown of constructive management" within the unit, and "overly critical" assessments of performance. Secondly, HRSVP noted that the attrition rate in INT was unusually high for any unit within the Bank in 2006. Thirdly, some HR policies had not been correctly implemented in INT since Ms. X became Director. HR was not allowed to participate in INT's external recruitment processes "in the way they normally do," and the Senior HR Officer assigned to work with INT "was asked not to work with staff and managers in the department." HR thus had "less insight" into the implementation of HR policies in INT. In addition, HRSVP found that

INT staff in separation discussions with INT management were asked to sign confidentiality agreements with INT management, undertaking not to discuss the terms of their agreement with anyone except INT management or their families. This is not an accepted HR practice in the Bank and should not have been required of INT staff. It effectively denied INT staff in these situations the right to counsel and advice through the CRS.

13. HRSVP's observations stand in unresolved contrast with the Volcker Panel's findings, as described in paragraph 10, to the effect that the management decisions taken by Ms. X were done with the concurrence of the HR officer in INT and the President of the Bank was kept informed.

14. The 29 June 2007 e-mail message from HRSVP was communicated to the Bank's senior management on 30 June 2007. The record before the Tribunal does not describe any action taken to address these concerns at that time.

15. On 15 December 2007 an "Open Letter to President Zoellick" signed by "INT staff members" was sent by e-mail to several addressees (including the President's Chief of Staff, the Bank's Managing Directors and some Executive Directors), reporting serious concerns about Ms. X's management of INT. In response to this message, a second set of e-mail messages was sent by "Dedicated INT Staff Members" on 16 and 17 December 2007 to the Bank's senior management, alleging misconduct by several INT staff members and publicizing sensitive details of their personal lives.

16. In January 2008 President Zoellick (who had taken office in July 2007) ordered an inquiry into the allegations contained in the messages of 16 and 17 December 2007, containing specific allegations against certain INT staff members, but significantly not the allegations made against Ms. X in the 15 December 2007 email. The Acting General Counsel who carried out the investigation found, in each case, no evidence to support the allegations against the named INT staff. Ms. X resigned from the Bank in January 2008.

17. That same month, INT's Acting Director decided to address the concerns of INT staff members, in particular their allegations of mistreatment by the management of INT during Ms. X's tenure, by establishing the Grievance Panel. The Panel's Terms of Reference provided as follows:

Several staff of the Department of Institutional Integrity claim that they were treated unfairly with regard to performance reviews, salary increases and other matters affecting their careers. INT's Acting Director is establishing a panel to review and provide advice about these claims. The Panel will consist of three members and be supported by an HR liaison officer.

The panel will review statements submitted by INT staff members challenging the fairness of decisions made during CY 2006 and CY 2007 regarding [OPEs, SRIs, PIPs], grade level classifications and compensation, and other actions affecting their careers. The panel's responsibility is to make judgments whether the decisions being challenged were fair, in accord with the Bank's Staff Rules and relevant policies and procedures, and to recommend restitutive actions, if appropriate.

INT staff members should submit three copies of statements of their claims to INT's Acting Director. The statement is not to exceed three pages. The staff member may attach up to ten relevant documents to the statement. ...

INT's Acting Director will designate an INT manager or other INT staff member to prepare a written response to the statement within ten working days The written response is not to exceed three pages.

The panel will schedule a meeting to review the statement and the written response. The meeting will be attended by the panel, the HR liaison officer, the staff member, and the management designee; the staff member may request the presence of a Staff Association Staff Relations Officer or an Ombudsman. If the staff member requests, the panel will arrange to meet him or her without the management designee present There will be no transcript of the meeting. ...

The panel will endeavor to issue its findings and recommendations to INT's Acting Director for review and decision within ten working days of the meeting. The Acting Director has the discretion to accept the panel's findings and recommendations in whole or in part or to reject them.

18. The Acting Director further informed staff that participation in this process "will ... not prejudice your right to pursue another remedy under the Bank Group's Conflict Resolution System."

19. Twenty-one staff members, including the Applicant, filed statements with the Grievance Panel. As provided by the Grievance Panel's Terms of Reference, INT's Acting Director designated a Lead Institutional Integrity Officer, Wayne Nardolillo, who served as the Manager of INT's Internal Unit and was one of Ms. X's former deputies, to prepare a written response to the statements filed with the Grievance Panel. As part of the responses from management, Mr. Nardolillo submitted an "Affirmation" which records in the first sentence that he had been asked,

and agreed, “to act as management’s representative in connection with the INT Staff Grievance Review Panel.” The Affirmation included the following remarkable passages:

At the outset, I enjoyed a close working relationship with [Ms. X]. During her tenure, I became concerned about her management style, decision-making, and work ethic, and in early 2006, with her behavior and in her actions. As these concerns arose with increasing frequency and intensity, I felt that I had three options: (i) resign; (ii) directly confront her as a member of the INT management team; or (iii) endeavor with best efforts to serve as a buffer between her and INT staff to help mitigate the effects of her behavior in the spirit of fulfilling INT’s mandate. As long as [Ms. X] enjoyed or at least appeared to have enjoyed the full support and protection of the former President through June 2007, I concluded that confronting her directly on decisions or seeking an intervention through the Conflict Resolution System (CRS), the President, or the Board, would be futile. I chose to serve as a buffer to seek to mitigate her actions that were creating increasing anxiety and tension within and outside the department. However, beginning in the summer of 2007, I began to challenge [Ms. X] on certain decisions she had taken and certain behavior I felt she has engaged in, which was in my judgment indicative of disparate treatment of staff, favoritism and/or retaliation. My working relationship with [Ms. X] then began to deteriorate. ...

[Ms. X] displayed behavior that was unethical, including: being manipulative; engaging in acts of deception; and habitually making willful material misrepresentations of fact to her staff ...; being verbally abusive; ... engaging in tactics of intimidation; retaliating against staff

Having led the Internal Investigations function within the Bank Group for the last nine years, I have received and reviewed hundreds of allegations of staff misconduct. Among the cases have been scores of complaints from staff who allege abusive, hostile, harassing, and/or retaliatory conduct on the part of their supervisors or managers. To help put [Ms. X’s] apparent behavior and actions in perspective ... in my professional judgment, none of these workplace misconduct cases *as alleged* compared to the level of egregiousness, intensity, and frequency of the apparent abusive, hostile, harassing, and retaliatory behavior [Ms. X] subjected INT staff during her tenure as INT Director.

20. The record before the Tribunal contains no response from Ms. X to the foregoing statement, or indeed to other criticisms of her conduct in office. It is unclear whether Ms. X was afforded an opportunity to respond. The Bank contends that the Grievance Panel formulated its recommendation “on a limited record, in a non-adversarial and highly truncated proceeding without the benefit of having heard directly from [Ms. X] and the former Chief Investigative

Officer.” The Tribunal indeed regrets that it does not have the benefit of their testimony, but cannot in light of the Bank’s actions simply assume that their statements would have been exculpatory. If the Bank believed such would have been the case, it should have either secured this evidence or explained why it was not possible to do so. In the end, the Bank explicitly states that what it “presented before the [Grievance Panel] were Mr. Nardolillo’s affirmations.” Having so confirmed, and having nowhere disavowed Mr. Nardolillo’s self-description as “management’s representative,” the Bank cannot resile from Mr. Nardolillo’s declarations. They were “presented” on behalf of the Bank and are to be treated as such, without any assumptions as to whether they were either irresistible or rebuttable.

21. The Grievance Panel concluded that there was no basis to disagree with the accounts of mistreatment reported to it, and found in favor of the aggrieved staff members. In a memorandum to INT management, the Grievance Panel described the guidelines it followed in making its recommendations:

The Panel researched Bank Principles of Staff Employment and Staff Rules, as well as past deliberations and decisions of the Bank’s Administrative Tribunal concerning allegations of retaliation, hostile work environment, emotional distress, personal and professional injury and related issues. The following were particularly relevant:

- a. *“The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members ... They shall respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal.”* (Principle of Employment 2, Para. 2.1)
- b. *“Supervisors shall at all times treat staff in a fair and unbiased manner. Treatment of staff shall not be influenced by personal ties between the supervisor and the staff member, nor shall it be influenced by race, nationality, sex, religion, political opinions, or sexual orientation of the supervisor or staff member.”* (Staff Rule 3.01, Para. 4.01)

- c. *“Retaliation by a staff member against any person who in good faith provides information about suspected misconduct, or who uses the Conflict Resolution System, is expressly prohibited and can subject a staff member to disciplinary action...”* (Staff Rule 8.01, Para. 2.03)

...

In determining recommended compensation, the Panel grouped together several grievance categories under the heading “hostile work environment.” For each case, the Panel assessed the duration of the hostile work environment experienced by the grievant, and in some cases differentiated between differing levels of hostility.

In addition, the Panel considered that some individuals were targeted by INT management and subject to abuse, threats of retaliation, and/or threats of PIPs. With targeting too, the Panel assessed the length of time during which the grievant was targeted.

The Panel was cognizant of the personal and professional impact of unfair and unwarranted Performance Improvement Plans, all of which were applied to staff with G-4 visa status. The Panel also took note of significant procedural delays in completing HR actions in a number of cases. While delays occur in many Bank units, the Panel concludes that INT Management used delays selectively as retaliatory action in these cases.

Beyond the facts of individual grievances, the amounts of compensation recommended are intended to ensure, in the interests of all staff members and the Bank, that managerial behavior at least meets minimum standards. (See Administrative Tribunal “N” decision no. 362.) (Emphasis in original.)

22. The Grievance Panel noted that the overall scope and nature of the grievances reviewed and their concentration in the Bank’s own investigative unit was highly unusual because there was (i) a pervasive abuse of authority by former INT management; (ii) a prolonged period during which this abuse continued; (iii) no effective action to prevent the abuse; (iv) a significant number of INT staff who suffered personal and professional harm; (v) corroboration of the events reported by INT staff in the written submissions of INT management and by other well-informed Bank officials; and (vi) the particular vulnerability of INT staff as members of the Bank’s investigative unit.

COMMON GRIEVANCES

23. All Applicants have advanced two identical grievances which the Tribunal finds appropriate to dispose of *en bloc* since they are generic to all of them.

The Bank's refusal to implement the Grievance Panel recommendation in full

24. All the sixteen Applicants complain that they had been led by the Bank to believe that the Grievance Panel would have full authority to recommend unqualified relief, including monetary compensation, and that it was wrongful of the Bank to refuse to adopt the recommendations in full. This alleged unfairness is said to have compounded their injury and to warrant additional compensation.

25. With respect to this common grievance, the Tribunal disagrees. The Terms of Reference of the Grievance Panel contain the following statements regarding its mandate:

- (i) "INT's Acting Director is establishing a panel to review and provide *advice* about these claims" of unfair treatment by INT staff;
- (ii) "The panel's responsibility is to make judgments regarding whether the decisions being challenged were fair, in accord with the Bank's Staff Rules and relevant policies and procedures, and to *recommend* restitutive actions, if appropriate"; and
- (iii) INT management "has the discretion to accept the panel's findings and recommendations in whole or in part or to reject them." (Emphasis added.)

26. The Tribunal finds that the Terms of Reference establish beyond any doubt that the Grievance Panel's role was to provide recommendations and advice. Recommendations and advice are clearly not binding decisions. The Bank was under no obligation to implement the Grievance Panel's recommendations as such whatever those recommendations might have been.

27. The sixteen Applicants allege that, regardless of the Grievance Panel's Terms of Reference, representations were made to them that the findings and recommendations of the Grievance Panel would be binding on INT management. The Tribunal finds that the record does

not establish that management agreed in advance that it was bound to implement all the recommendations of the Panel. It therefore concludes that the Bank did not abuse its discretion by refusing to implement the recommendations in full. The Tribunal does not consider the Grievance Panel to have been a judicial body, nor its recommendations to be entitled to any presumption that they were based on evidence that could withstand the rigours of a formal adversarial process. Such was not its purpose, or the tenor of its Terms of Reference.

28. The Tribunal notes in particular that the Bank considers that the Grievance Panel exceeded its mandate in recommending lump-sum awards “beyond restitution for specific administrative actions” such as recoupment of salary grade, and that it made “profound missteps” in recommending lump sums “so that management would be deterred from repeating the acts in question.” There is merit in the Bank’s contention. Even the Tribunal has no mandate to make punitive awards. Its judgments may have an exemplary effect, not so much by way of making restitution to the particular applicant as seeking to ensure that the Bank takes remedial action in the interest of all staff members. But the cases considered by the Grievance Panel clearly had the full attention of the Bank, which constituted the Grievance Panel precisely in order to achieve remediation. The Tribunal notes that, of the sixteen Applicants, one was an Extended Term Consultant who has since left the Bank’s employment; the remaining Applicants continue to be employed by the Bank. The generic issues raised by this group of sixteen cases pertain to a particular period of time and a particular environment which, it is perfectly evident, the Bank does not seek to perpetuate. The Tribunal proceeds on the basis that remedies beyond the significant measures adopted in implementation of the Grievance Panel’s recommendations should be evaluated on an individual basis except as indicated below.

The stifling of access to the Bank’s internal grievance mechanisms

29. All the Applicants also assert that they were intimidated from bringing their claims into the ordinary Conflict Resolution System (“CRS”), which at that time included this Tribunal, during Ms. X’s tenure. In response, the Bank argues that the Applicants have failed to adequately demonstrate that they were prevented from making complaints about INT management using the CRS or experienced retaliation as a result.

30. Principle 2.1 of the Principles of Staff Employment provides in relevant part as follows:

The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members. ... They shall respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal.

31. The Tribunal recalls that in its first decision (*de Merode*, Decision No. 1 [1981], para. 25), it ruled that the availability to staff members of an impartial adjudicator of claims of non-observance of contracts of employment and terms of appointment constitutes an essential condition of employment for all Bank staff, and that the right of recourse to the Tribunal “forms an integral part of the relationship between the Bank and its staff members.”

32. All Applicants included as evidence a statement made by the Applicant in the present case, which contains a record of a conversation between the Applicant and Ms. X regarding a colleague who was on a PIP, and reads as follows:

I proceeded to recount [the colleague’s] pleasing performance. However, instead of expressing satisfaction at [his] performance, [Ms. X] appeared to be angered by the fact that [he] was doing well. She became frustrated and agitated. She said to me, “I know he has been to HR and the Staff Association about this ... He must be a fool if he doesn’t know that I have my spies in those places...” It was apparent to me from this conversation, that despite [the colleague’s] pleasing performance, [Ms. X] would continue his PIP in retaliation for him exercising his staff rights.

This conversation confirmed to me what I had suspected for a long time. I could not exercise my rights as a staff member to complain or lodge a grievance against [Ms. X’s] harassment or abusive behavior. I had no confidential avenue within the Bank workplace to address my complaints without fear of retaliation.

33. The Tribunal notes this disturbing allegation, but is disinclined, in the absence of adversarial testing, to consider it fully reliable in isolation. The Tribunal gives greater weight to the fact that Mr. Nardolillo, as “management’s representative,” confirmed that intimidation was generalized but real. Mr. Nardolillo further affirmed to the Grievance Panel that:

As long as [Ms. X] enjoyed or at least appeared to have enjoyed the full support of the former President through 2007, I concluded that confronting her directly on decisions or seeking an intervention through the Conflict Resolution System (CRS), the President, or the Board, would be futile.

34. The Tribunal finds that the management practices in INT at the relevant time justified the conclusion of INT staff members that they would be at some risk if they exercised their rights of access to the Bank’s internal grievance mechanisms protected by Principle 2.1 of the Principles of Staff Employment and the Tribunal’s judgment in *de Merode*. That all of them to some extent had valid claims seems amply confirmed by the restitutionary recommendations of the Grievance Panel that were accepted by the Bank. That their claims to relief beyond the restitutionary measures accepted by the Bank are not well-founded in all cases does not detract from the seriousness of this grievance as a matter of fundamental principle. Each Applicant will therefore be given an identical lump sum on this account, irrespective of pay grade.

THE PRESENT APPLICATION

35. The Applicant joined the Bank in February 2001. At the relevant time, she was a level GG Senior Institutional Integrity Officer and Regional Team Leader in INT. She filed her statement with the Grievance Panel on 1 April 2008, alleging a hostile work environment, unfair treatment, abuse of discretion, and violations of due process. On 28 July 2008 the Grievance Panel concluded that

[the Applicant] was subjected to a hostile work environment which caused her severe professional and personal harm. This constituted a failure by INT Management “to act with fairness and impartiality and to follow a proper process

in their relations with staff” with respect to [the Applicant], as required by Principle 2 of the Bank’s Principles of Staff Employment.

36. The Grievance Panel accordingly recommended that the Applicant should receive a payment of \$180,000, net of taxes.

37. By letter dated 26 August 2008, the Vice President of INT informed the Applicant that he had decided not to accept the Grievance Panel’s recommendation. He explained that he did not believe “that it is appropriate for management to determine whether compensatory damages are warranted” and that “the Panel may have misconstrued its mandate with respect to restitutive actions.” By the same letter, the Applicant was permitted to seise the Tribunal directly to contest the denial of compensatory damages.

38. The Applicant seeks the following relief before the Tribunal: (i) \$180,000, net of taxes, for violations that occurred prior to 1 April 2008 (i.e. the date on which the Applicant filed a statement with the Grievance Panel); (ii) the equivalent of twelve months’ salary, net of taxes, for violations that occurred subsequent to 1 April 2008. In her Reply, she includes a request for the following relief: (i) review and correction of her last two SRIs to adequately reflect her performance, and a corresponding adjustment of salary, pension, mobility premium, and other benefits to be provided in a lump sum; and (ii) four weeks of compensatory leave as redress for the compensatory leave Ms. X had promised but refused to grant. She also requests attorneys’ costs in the amount of \$33,925.06.

THE PARTIES’ CONTENTIONS

39. The Applicant contends that INT management subjected her to a hostile work environment, awarded her unfairly low SRIs despite her exemplary OPEs, and threatened to place her on a PIP and to terminate her employment. She claims that Ms. X screamed at her without provocation on a regular basis and publicly berated her, forced her to work excessive

hours and on holidays while more favored employees were allowed normal work schedules and holidays, and spread rumors about her supposedly poor performance and imminent negative job actions within and outside the Department. The Applicant also submits that she was improperly denied a promotion to a level GH position.

40. In response, the Bank argues that its exercise of discretion with respect to the Applicant was reasonable and proportionate in the circumstances. It contends that the Applicant's allegations are speculative and non-specific; she has failed to introduce facts supporting a claim of individualized wrongdoing that amounts to a violation of her terms of employment (*Njovens*, Decision No. 294 [2003], para. 17). The Bank submits that the Applicant is not entitled to the relief she seeks, but if the Tribunal were to determine that she is entitled to monetary compensation, it should authorize an award that is reasonable and proportionate in light of the facts of the case, and consistent with the Tribunal's precedents.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

41. Decisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a staff member's contract of employment or terms of appointment. *See De Raet*, Decision No. 85 [1989], para. 67; *Marshall*, Decision No. 226 [2000], para. 21; *Desthuis-Francis*, Decision No. 315 [2004], para. 19. The Applicant's allegations will be examined according to this standard.

Irregularities regarding the Applicant's SRIs in 2006 and 2007

42. The Applicant contends that the Bank abused its discretion with respect to her SRIs in 2006 and 2007. She received positive OPEs in both years. For the period between 1 April 2005 and 31 March 2006, she was rated "Fully Successful" in all categories except one in which she

was rated “Superior”. For the period from 1 April 2006 to 31 March 2007, she received three “Fully Successful” ratings, four “Superior” ratings, and two “Outstanding/Best Practice” ratings. She claims that she received fairly mediocre SRIs of 4% in 2006 and 3.47% in 2007. She also claims that in 2007, she was advised by the Deputy Director of INT, who was a member of the SRI review panel for INT staff, that the panel had decided that, in light of her outstanding performance, she would receive a “big increase” in her SRI. She argues that Ms. X later overturned the panel’s decision and advised her that, although her performance had been outstanding, she would only receive a fairly low SRI because of budgetary constraints. The Applicant contends that this justification was false, and that Ms. X had provided several favored members of her staff with very high SRIs, some as high as 10%. In awarding the Applicant a low SRI, the Applicant claims that the Bank violated Principle 2, paragraph 2.1(e), of the Principles of Staff Employment.

43. The Bank submits that the Applicant’s SRIs were appropriate. It argues that, in 2006 and 2007, the Applicant received SRIs that were consistent with her fully satisfactory performance, above the midpoint of the range applicable for such performance. The Bank submits that a determination of the SRI level is within the discretion of Bank management and the Applicant has not demonstrated an abuse of that discretion.

44. The Applicant has not provided specific details regarding the applicable salary ranges at the relevant time, and where her SRIs fell in that range. She has not responded directly to the contention that the SRIs in question exceeded the midpoint of the ranges that were applicable at the relevant times. In the absence of such information, the Tribunal is unable to determine whether the SRI determined in her case, though perhaps short of her expectations, was outside the normal range for her performance, as evidenced in her OPE or the SRIs awarded to her peers.

Decision not to select the Applicant for a level GH position

45. In February 2007 the Applicant applied and was short-listed for a position as a level GH Lead Institutional Integrity Officer. She was not selected for the position. She was interviewed by a panel composed of five persons, including Ms. X. The Applicant argues that not only was she well-qualified, she was almost certainly the most qualified candidate for the position. She claims that the decision not to select her for the position was borne out of Ms. X's improper retaliatory motive against her, and that the fact that Ms. X was on her selection panel impermissibly "infected" the selection process. The Applicant claims that, during the interview, she was inappropriately asked by a panel member what she thought of Ms. X's performance as Director of INT. She replied: "I don't feel that [Ms. X] has occupied her position for long enough to enable me to evaluate her performance. Maybe if you ask me in a year's time?" The Applicant submits that this question was meant to test her loyalty to Ms. X; it was unfair and compromised her candidacy because she could not answer it truthfully for fear of further retaliation by Ms. X. She argues that the question amounted to disparate treatment and discrimination because external candidates would not have been asked the same question. The Applicant alleges that the Bank has not provided any explanation for its decision not to select her for the position, or mentioned any way in which her candidacy was lacking.

46. The Bank argues that the Applicant's claim that a single "improper" interview question was the reason she was denied a promotion is speculative and open to dispute, and is insufficient to demonstrate that the Bank's decision not to select her for the position was an abuse of discretion. It argues that the Applicant has not adduced evidence to establish that her response to the question adversely affected her candidacy. Even if the intent of the question was to test the Applicant's loyalty to Ms. X, the question does not support a claim of disparate treatment, since

many interview questions posed to existing Bank staff would differ from those asked of external candidates. The Bank maintains that the question could have been a misstep by a panelist who may have expected that her answer would be positive, or a deliberately difficult question designed to see if the Applicant had the temerity to articulate her true feelings in front of her boss, or the capacity to immediately recognize a situation of conflict of interest and alert the panelists to that.

47. In *Jassal*, Decision No. 100 [1991], para. 30, the Tribunal stated that “a decision by the Bank to select a staff member for a particular position rests within the Bank’s discretion, and may be overturned by the Tribunal only when it concludes that this discretion has been abused.” The Tribunal finds that the Applicant has not provided information regarding the position in question, or her qualifications for that position. With regard to the “improper” question that the Applicant claims confirms the abuse of discretion, the Tribunal notes the palpable awkwardness of the question, but the Applicant has not established that her answer to this question was the reason why she was not selected. No evidence has been adduced regarding the qualifications of the candidate who was ultimately selected. In addition, the Tribunal also does not find it inappropriate that Ms. X, as Director of INT, was on the interview panel for this position, which was one of the most senior positions in INT. As there is insufficient information on the selection process beyond the Applicant’s own assertions, the Tribunal finds that she has not substantiated her claim that the decision not to select her for the position was an abuse of discretion.

Further allegations of mistreatment

48. The Applicant contends that her treatment by Ms. X constituted a hostile work environment that violated Bank rules. She claims that she was subjected to impossible deadlines and, on multiple occasions, was threatened by Ms. X with termination of employment and

destruction of her professional reputation if she failed to meet such deadlines. Moreover, Ms. X humiliated her in front of her colleagues; screamed at her on a regular basis in public, at length and without provocation; spread rumors about the Applicant's supposedly poor performance and potentially imminent negative job actions within and outside the Department (including EXC); publicly questioned the Applicant's performance as Regional Team Leader; and told colleagues of her intention to terminate the Applicant's employment.

49. The Bank argues that the alleged "imperfect" management practices do not rise to the level of abuse of discretion. In support of its contention, it refers to the Tribunal's previous judgments holding that impatience or rudeness are insufficient grounds for a finding of harassment or discrimination.

50. The Tribunal notes that Applicant relies, in support of her claims, on the statement to the Grievance Panel by Mr. Nardolillo in which he stated:

To avoid what I believe would be unnecessary repetition of the specific statements, events and characterizations [the Applicant] makes in her [claims before the Grievance Panel], I can attest that (i) where I have direct knowledge of the events described by [the Applicant], [the Applicant's] account is accurate; and (ii) where I do not have direct knowledge the behaviors of [Ms. X] as described by [the Applicant] are consistent with the very type of behavior I observed [Ms. X] practice repeatedly during her tenure as INT Director. Should the panel believe it would be beneficial to its purpose, I am prepared to elaborate orally and on the record regarding each of these issues in support of my response.

51. The assertions as to the conduct of Ms. X have not been subjected to the rigours of a judicial process. Much of the weight given to Mr. Nardolillo's assertions is the consequence of the fact that he was presented by the Bank as the representative of management, and that his statements are therefore treated as blanket concessions. Mr. Nardolillo does offer a concession to the Applicant's claims, but the Tribunal finds that his concession is too imprecise and impressionistic. Recalling its observations in paragraph 27 above, the Tribunal finds that the evidence before it lacks sufficient probative value to sustain the Applicant's claims. It is the

Applicant's responsibility to provide specific and sufficient evidence to support her case. As she has not discharged this burden, the Tribunal decides not to award compensation in respect of these further allegations of individual mistreatment.

DECISION

The Tribunal decides that:

- (i) the Bank shall pay the Applicant \$30,000, net of taxes, as compensation for the reasons set out in paragraphs 29 to 34, and a contribution of \$10,000 towards the Applicant's attorneys' fees; and
- (ii) all other claims are dismissed.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, DC, 9 December 2009