



World Bank Administrative Tribunal

2009

No. 411

**AN,
Applicant**

v.

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

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

**AN,
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. The Applicants included as evidence a statement made by the applicant in *AL*, Decision No.409 [2009], which contains a record of a conversation between that 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 1998. At the relevant time, she was a level GF Institutional Integrity Officer with INT. She has since been promoted to the GG level. She filed her statement with the Grievance Panel on 20 March 2008, alleging a hostile work environment, unfair treatment, abuse of discretion, and violations of due process. On 28 July 2008, the Grievance Panel issued its recommendation in which it found that

[the Applicant] was subjected to a hostile work environment which caused her 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 (a) “where the Applicant’s SRI(s) in 2006 and/or 2007 fall below the midpoint of the approved SRI increase range for SRI Performance Category 3 in 2006 and/or 2007,” SRI(s) should be adjusted to the midpoint of the range for SRI Performance Category 3 retroactive to 1 July of the relevant year, and “subsequent salary increases, if any, should be adjusted to reflect the revised 2006 and/or 2007 SRI increases, with no change in the percentages used to calculate any such increases”; and (b) the Applicant be paid \$75,000 net of taxes.

37. By letter of 26 August 2008, the Vice President of INT informed the Applicant that, while action had already been taken with respect to the SRI adjustments recommended by the Grievance Panel, he had decided not to accept the Grievance Panel’s recommendation of payment in the amount of \$75,000. 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 seize the Tribunal directly to contest the denial of compensatory damages.

38. The Applicant seeks the following relief from the Tribunal: (i) payment of the \$75,000 net of taxes for violations that occurred prior to 20 March 2008 (i.e. the date the Applicant filed a statement with the Grievance Panel); and (ii) the equivalent of twelve months’ salary, net of taxes, for violations that occurred subsequent to 20 March 2008. The Applicant also seeks attorneys’ costs in the amount of \$34,739.02.

THE PARTIES’ CONTENTIONS

39. The Applicant contends that she was subjected to retaliation by INT management for raising concerns about INT's management practices. The Applicant claims that INT management arbitrarily recalled her from a Staff Exchange Program ("SEP") prematurely, improperly lowered her SRIs, and falsely maligned her in an anonymous e-mail message that the Applicant alleges was sent by Ms. X.

40. In response, the Bank argues that the actions taken were reasonable managerial decisions, and that its ameliorative actions have ensured that the Applicant has not suffered any lasting harm. It argues that the Applicant 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 further relief, 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.

Retaliation

41. The Applicant claims that INT management lowered her SRI for having raised concerns about INT management. While she was rated "Superior" for one element and "Fully Successful" in four other elements of her 2007 OPE, she claims that she only received a 2.52% salary increase. She contends that she was informed by Ms. X and INT's Chief Investigative Counselor that her SRI was low because she had not conducted a "Staff Rule 8.01 investigative interview", but such interviews were not required elements of her job responsibilities and were not listed under the Results Agreement of her OPE; she had never been told that SRIs would be based on that criterion.

42. The Bank contends that the Applicant's SRI and salary were not unfairly lowered. The Bank claims that, at all times, the Applicant was given SRIs that were consistent with fully satisfactory performance. It points out that the determination of the SRI is within the discretion of the Bank, and Staff Rule 6.01, paragraph 3.02, only guarantees staff members with satisfactory performance the "minimum increase" each year. It contends that even if the Applicant's SRIs had been improperly determined, they have since been retroactively adjusted by the Bank on the recommendation of the Grievance Panel. In addition, the Applicant received a promotion in July 2008 to a level GG position, coupled with a significant salary increase.

43. Paragraph 2.03 of Staff Rule 8.01, in force at the relevant time, provides as follows:

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 under this Rule.

44. The Tribunal notes that Mr. Nardolillo, who was also the Applicant's supervisor, confirmed to the Grievance Panel the Applicant's allegations of retaliation by INT management.

He stated:

The notion of tying one's performance or productivity to the conduct of 8.01 interviews is not only not a benchmark of one's performance nor has it been, but to suggest that it demonstrates a level of ignorance concerning the framework for addressing allegations of staff misconduct. [The Applicant's] case completion rate combined with the quality and thoroughness of her preliminary inquiries ... well-documented case files, comprehensive chronologies, and meticulous record-keeping were all factors weighing in her favor regarding her performance evaluation.

During the Performance Management process when the Senior Management Team ... and our HR Team Manager ... met to discuss SRI ratings, I rated [the Applicant] a 3.3, which made her eligible for a salary increase of up to 5.8%. The management team agreed. However, [Ms. X] later downgraded the SRI rating by having given [the Applicant] a 2.523% salary increase when she privately finalized SRI ratings and allocated salary increases across the department. The downgrade in [the Applicant's] SRI was not a consequence of judiciously managing allocations of salary increases within a finite SRI budget envelope. *Rather it was an act of retaliation against [the Applicant] - - [Ms. X] disclosed to*

me that “I dropped [the Applicant] and ... on their SRI because I was told they raised concerns about INT management, but you cannot tell this to either one of them.” (Emphasis added.)

45. Considering that Mr. Nardolillo was the designated INT management representative before the Grievance Panel and thus *de facto* representative of the Bank, the Tribunal is bound to accept his account of the events which in effect supports the Applicant’s allegations of retaliation. The Tribunal decides, therefore, that the Applicant is entitled to be awarded compensation for the injury suffered as a result of the actions taken against her by INT management.

46. A finding that the Bank’s management has been guilty of retaliation is a matter of gravity and would ordinarily lead to severe sanctions. However, while Mr. Nardolillo concedes that the Applicant’s SRIs were lowered out of a retaliatory motive born by Ms. X, the Tribunal notes that the Bank has since instituted corrective actions to the Applicant’s SRIs, on the recommendation of the Grievance Panel, and has subsequently promoted the Applicant to a level GG position. The actions which Mr. Nardolillo concedes were taken in retaliation have therefore been corrected, and this will be reflected in the damages awarded to the Applicant by the Tribunal for retaliation.

Salary level

47. The Applicant’s claims that her salary was not commensurate with her qualifications contributions and experience. She contends that her annual salary of \$81,260 is far below the average of salaries of all staff in INT, IAD and the Legal Department, and that her salary barely moved from the GF minimum salary level, notwithstanding her high level of performance and educational background, experience, and length of tenure. Mr. Nardolillo stated to the Grievance Panel that: “Despite 8.5 years inside the Bank, and having been promoted to Level F on July 1, 2002, [the Applicant] is in fact currently the second lowest in terms of Level F compensation

within the department.” However, the Applicant has not adduced enough evidence to substantiate this claim. It appears that this claim is separate from the allegations of mistreatment at the hands of INT management during Ms. X’s tenure as Director. The Applicant submits a record of her salary history since she joined the Bank in 1999, but the Tribunal cannot identify a trend that can be attributed to decisions made by INT management under Ms. X. It may then be presumed that the claim relates to the Applicant’s employment history since she joined the Bank in 1999; but that would require an examination of her OPEs and SRIs for each of those years in order to identify possible abuses of discretion. Aside from the absence of evidence regarding those OPEs and SRIs, a claim to have them reviewed now would need to comply with the time limits for filing applications as set out in the Tribunal’s Statute. In this regard, the Tribunal recalls its decision in *Moussavi*, Decision 360 [2006], para. 16, in which the applicant considered that his salary was lower than that of his peers and sought to have it reviewed. The Tribunal sustained a preliminary objection regarding the review applicant’s OPEs and SRIs for previous years in the following terms:

a re-examination of [the Applicant’s] OPEs and SRIs from the period 1999 to 2004 ... must indeed be declared beyond the jurisdiction of the Tribunal by virtue of Article II(2)(i) of its Statute and the Applicant’s failure to timely exhaust internal remedies through contemporaneous resort to the Appeals Committee.

48. The Tribunal rejects the Applicant’s claims relating to her salary level for want of substantiation.

Premature termination of the Applicant’s SEP assignment

49. The Applicant was on a two-year SEP assignment and was due to return to INT in November 2006. She states that in April 2006, while on maternity leave, she received a telephone call from the Administrator of the SEP informing her that Ms. X expected her to return to INT by the end of June or early July 2006. She claims that, when she spoke with Ms. X to

inquire whether she could delay her return date until late September so as to enable her family to return to the US together, Ms. X replied that INT was in the process of hiring a number of new staff, and suggested that the Applicant's job might be in jeopardy if she did not return immediately. According to the Applicant, Ms. X stated: "I need you in July – I wouldn't know what to do with you in September." The Applicant agreed to return to INT at the earlier date. She claims that the abrupt move required her husband to resign from his position in Rome and caused their family financial and emotional distress. She claims that Ms. X was "suspicious" of her SEP assignment and repeatedly requested evidence to support prior management's decision to approve her SEP assignment. She also claims that, in spite of the rushed return, she only received her first significant assignment months after her return to INT. The Applicant submits that, had there actually been a legitimate business reason or observable reasonable basis for INT management's decision to require her premature return from the SEP, she would have been assigned to significant work immediately upon her return.

50. The Bank contends that the Applicant's return from her SEP was properly conducted and was a legitimate personnel decision with a valid business rationale; Ms. X reasonably assessed that INT was no longer able to afford to have one of its investigators on external assignment, both in terms of financial cost to the Department and the loss of manpower. Furthermore, the Bank submits that Ms. X gave the Applicant the opportunity to choose whether she would be willing to return to INT a few months early. It submits that the fact that Ms. X presented the Applicant with this choice is indicative of her fairness and willingness to accommodate the Applicant's personal circumstances. The Bank contends that, as documented in the Applicant's OPE, INT management expressed its appreciation of the Applicant's early return noting the hardship it caused her family. The Bank also argues that there is no proof that the Applicant's

job security was ever threatened, since the Applicant's SEP offer guaranteed that she would "return to a suitable position in the [INT] or its successor at a grade not lower than [her] current grade."

51. The Applicant has submitted an attestation by a colleague in INT who testifies that, in February or March 2006, Ms. X told him that

she considered the assignment a 'waste of time' and would use her authority as Director to force [the Applicant] to return early; she indicated she would not even consider any valid reasoning from either [the Applicant] or the WFP itself, which obviously had a vested interest in keeping [the Applicant] for the whole period of the assignment.

52. Mr. Nardolillo, who was also the Applicant's supervisor, stated before the Grievance Panel that:

I knew of no compelling reason for [Ms. X] to require [the Applicant] to abruptly cut short her SEP assignment and return to INT, notwithstanding the prevailing shortage of resources INT was experiencing. [Ms. X's] statement that [the Applicant's] reentry guarantee to INT and position at the Bank might be in jeopardy if she did not return immediately was inconsistent with the facts: (i) the ongoing recruitment process was moving exceptionally slow; and (ii) even in a best case scenario, INT would not have had sufficient resources on board by November 2006, to place [the Applicant's] reentry in jeopardy.

53. Staff Rule 5.01, paragraph 2.03, authorizes the Bank to reassign a staff member "when the interests of the Bank Group require it"; decisions to bring an SEP assignment to an end can be taken without asking the staff member's permission. The Tribunal agrees with the Bank's argument that the difference of opinion between the supervisor and Ms. X regarding the staffing requirements of INT at the relevant time does not render Ms. X's view an abuse of discretion. On the basis of the evidence before it, the Tribunal is unable to conclude that there were no business reasons underlying Ms. X's decision to recall the Applicant from her SEP assignment. Accordingly, the Tribunal finds that the Applicant's claim in this regard has not been sufficiently substantiated to warrant compensation.

E-mail messages in which the Applicant was maligned and the Bank's response thereto

54. The Applicant was one of five INT staff members who were named and maligned in the anonymous e-mail message of 16 December 2007, described at paragraph 15 above. Specifically, the anonymous e-mail message asserted that the Applicant performed her job poorly, was not qualified and was the beneficiary of favoritism.

55. The Applicant claims that this message was sent by Ms. X in response to the previous anonymous e-mail message of 15 December 2007, which was sent to the Bank's senior management reporting concerns with Ms. X's management of INT. In support of this allegation, the Applicant relies on the following statement from Mr. Nardolillo:

The accusations against [the Applicant] were false and malicious and involve issues that I knew to be fixations of [Ms. X], which were unsupported by the facts. These were claims [Ms. X] raised and circulated about [the Applicant] and which I told her quite pointedly were untrue.

56. The Applicant contends that the Bank abused its discretion by allowing Ms. X to send these e-mail messages. Alternatively, the Applicant contends that the Bank abused its discretion by failing to investigate the source of these e-mail messages. Moreover, she argues that the Bank's response to these messages amounted to an abuse of discretion, as it decided to investigate the allegations against her in the e-mail messages of 16 and 17 December 2007, but chose not to investigate the allegations against Ms. X contained in the message of 15 December 2007. The Applicant claims that she became extremely concerned about the long-term impact these allegations could have on her career.

57. In response, the Bank argues that it should not be held liable for the anonymous e-mail messages; any action that the Bank may have taken would have been based on circumstantial evidence alone, as it has no authority to compel authorship information from Internet service providers. It points out that it conducted a preliminary assessment of the allegations so that it

could confirm that these anonymous allegations against the Applicant were without merit, and that the Applicant accepted its offer to inform the recipients of the original e-mail message of its finding that the allegations were baseless. It contends that there is no evidence to support the claim that the Applicant's professional reputation was damaged.

58. The Tribunal notes that the e-mail message containing the allegations against the Applicant was sent on 16 December 2007. In January 2008, the Bank undertook a review of those allegations. In March 2008, the Bank concluded that the allegations had no basis, and circulated its findings to the Applicant and the recipients of the e-mail message in which she was maligned. That same month, it established the Grievance Panel to address the concerns of INT staff regarding INT management. The Tribunal does not consider that these actions by the Bank were unreasonable. Furthermore, the Applicant has not adduced evidence to demonstrate that the e-mail message damaged her professional reputation.

Further allegations of mistreatment

59. The Applicant claims that INT management subjected her to a hostile work environment, which represented an abuse of discretion and a violation of Bank Rules. In particular, the Applicant claims that Ms. X discriminated against her and harassed her by complaining about her work schedule; she was asked by her supervisor to pay for a local training course, as he was concerned about Ms. X's reaction to the Applicant attending a course at INT's expense; and Ms. X spread malicious gossip about her throughout the Department.

60. The Bank contends that the Applicant has not demonstrated that she was harassed or humiliated, or that there was damage to her professional reputation. The Bank argues that the Applicant's claims of mistreatment have not been substantiated by witnesses; but even if they are considered to be true, her allegations do not entitle her to compensation, as her descriptions

reflect no more than “irritation and impatience between a supervisor dissatisfied with the job performance of a staff member.” (*Suntharalingham*, Decision No. 6 [1981], para. 29).

61. Mr. Nardolillo recounted to the Grievance Panel:

Based on my regular observations, [the Applicant] was indeed among a group of staff who remained professionally isolated from [Ms. X]. [Ms. X] gave [the Applicant] the “cold shoulder” from the day [the Applicant] returned from her SEP until [Ms. X’s] departure.

...

[The Applicant’s] claim of disparate treatment by [Ms. X] is consistent with the facts as I know them to be: [Ms. X] complained to me multiple times about [the Applicant’s] hours despite the fact that I informed [Ms. X] that I approved a work schedule for [the Applicant] that ensured a full eight-hour workday while accommodating her child care needs in the short term. It was entirely unreasonable in my judgment for [Ms. X] to make this an issue particularly given the flexibility, liberal hours, and modified work schedule at full pay she afforded [another colleague].... ... I did assure [the Applicant] that [Ms. X’s] claim that she received complaints about [the Applicant], was not credible. Indeed, [Ms. X’s] habit of claiming “staff have told me” evolved into a department-wide punch line.

62. 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. As the Applicant has not adduced any additional specific evidence, 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;
- (ii) the Bank shall pay the Applicant six months' salary, net of taxes, as additional compensation for the established claims of retaliation;
- (iii) the Bank shall pay a contribution of \$25,000 towards the Applicant's attorneys' fees; and
- (iv) all other claims are dismissed.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, DC, 9 December 2009