

Decision No. 244

Shamsul Arefeen,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on November 6, 2000, by Shamsul Arefeen against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Robert A. Gorman (President of the Tribunal) as President, Elizabeth Evatt and Jan Paulsson, Judges. The usual exchange of pleadings took place. The case was listed on April 5, 2001.

2. The Applicant claims that the decision to terminate his employment because, inter alia, he was found to have sexually harassed Ms. X, to have retaliated against her and to have violated her privacy, was unfair and an abuse of discretion. He seeks withdrawal of the charges against him, a formal written apology, action against those who initiated the proceedings against him, and monetary compensation for wrongful termination and for mental and psychological anguish suffered by him.

Background

3. The Applicant was employed by the Bank from May 21, 1995 as Manager of Administration at the Resident Mission in Dhaka, Bangladesh, the South Asia Regional Office of the Bank.

4. Ms. X was recruited by the Applicant as a Temporary Team Assistant. She joined the Bank on November 2, 1997 on a six-month contract, later renewed. The Applicant was her supervisor during her employment, which ended on November 30, 1998. On that date, Ms. X made a complaint to the Bank's Harassment Officer about alleged sexual harassment and improper conduct by the Applicant over the period of her employment.

5. The Applicant was notified by a letter from the Country Director, dated December 21, 1998, that the Office of Professional Ethics (OPE) would conduct an investigation into allegations of sexual harassment made by Ms. X. Her statement was attached. The Applicant was asked to respond to ten specific allegations, including that he had initiated a sexual relationship with Ms. X. The Applicant was put on administrative leave that day, pending the outcome of the investigation under Staff Rule 8.01, paragraph 5.05.

6. On January 4, 1999, the Applicant replied in writing, denying the allegations, and specifically denying that he had initiated a sexual relationship with Ms. X. He added that "no question arises because I have a very happy family and social life," which can only be reasonably interpreted as a denial of a sexual relationship irrespective of who initiated it.

7. Later that month, an Ethics Officer and a Human Resources Officer interviewed the Applicant, Ms. X and other staff about the allegations. The Applicant was informed orally that certain aspects of Ms. X's allegations had been supported by other information. He repeated his denials.

8. By a letter dated January 15, 1999, the Applicant was asked to respond to several additional allegations. Later on the same day, the Applicant sent an e-mail to the Country Director to state that he did not have the mental strength to continue with the process and to respond to the charges. He tendered his resignation. The Country Director informed the Applicant that he did not accept the resignation, and that he would refer the matter to Headquarters for a decision. The Applicant did not contact the OPE again about the investigation. Its findings were later sent to a Managing Director of the Bank for decision.

9. On March 16, 1999, the Applicant was informed by a memorandum from the Manager of OPE, dated March 8, 1999, that the responsible Managing Director had reviewed the findings of the OPE and had concluded that the Applicant was guilty of misconduct, consisting of quid pro quo sexual harassment; creation of a hostile working environment; and retaliation against Ms. X for her complaint. He was also found to have lied during the investigation, to have failed to conduct himself in a fitting manner, to have violated the privacy of Ms. X and to have been absent from the office without justification. The Applicant's resignation was not accepted. His employment was terminated with immediate effect.

10. The Applicant filed an Appeal with the Appeals Committee on July 12, 1999. His statement conceded, for the first time, that there had been a sexual relationship between himself and Ms. X, but he claimed it was consensual. The Applicant chose to have his case dealt with by the Appeals Committee on the basis of written documents, although he was offered a choice of an oral hearing in Washington or a videoconference hearing. The Appeals Committee denied him relief on July 7, 2000. The Applicant was notified by a letter dated July 12, 2000 enclosing the decision that the recommendation of the Appeals Committee had been accepted.

11. The Applicant now challenges the decision of the Respondent to terminate his employment. The grounds of his application include that the decision was not supported by the evidence and that there were procedural flaws and bias in the investigation process and in the ultimate decision.

12. The Tribunal's function in disciplinary cases is not limited to determining whether there has been an abuse of discretion. When reviewing disciplinary cases, the Tribunal "examines (i) the existence of the facts, (ii) whether they legally amount to misconduct, (iii) whether the sanction imposed is provided for in the law of the Bank, (iv) whether the sanction is not significantly disproportionate to the offence, and (v) whether the requirements of due process were observed." (*Carew*, Decision No. 142 [1995], para. 32.)

The finding of sexual harassment

13. The most significant issues in this case relate to the finding of sexual harassment. The questions for the Tribunal are whether the investigators properly arrived at the conclusion that sexual harassment had taken place and whether the Managing Director had properly determined that the Applicant's behavior amounted to misconduct.

14. The Bank's policy on sexual harassment is set out in its publication "Preventing and Stopping Sexual Harassment in the Workplace" (revised May 1997). The Bank has determined that sexual harassment is a serious violation of the standards of conduct that staff are expected to follow. Under Staff Rule 8.01, "Disciplinary Measures," para. 3.01: "Misconduct includes, but is not limited to, the following acts and omissions: ... (f) Harassment, including harassment on the basis of age, race, color, sex, sexual orientation, or national origin."

15. Under the Bank's policy, sexual harassment occurs if the following elements are established: verbal, non-verbal or physical conduct of a sexual nature; an indication that the sexual conduct either 1) interfered with work, 2) was made a condition of employment (quid pro quo), or 3) created an intimidating, hostile or offensive environment; and an indication that such conduct was unwelcome. Quid pro quo sexual harassment occurs when "submission to sexual advances or requests for sexual favors is made a condition of employment, or submission or rejection of such unwelcome conduct is explicitly or implicitly used as a basis for employment decisions. ... Occurrences under this category involve persons who have authority or power over, or the ability to influence, a staff member's job status or working conditions." The category of sexual harassment described as Hostile Working Environment arises when "the sexual conduct interferes with a staff member's work or is sufficiently serious or pervasive as to create an intimidating, hostile, or offensive working environment." The Bank's policy states that: "Formal judgment on whether conduct constitutes sexual harassment will be based on a determination of the impact of the behavior on a reasonable person of the same gender as the victim in the multicultural environment of the Bank Group."

16. The Bank found that the Applicant had committed quid pro quo sexual harassment of Ms. X by: (i) using his position to assist her to obtain employment in the Dhaka office by using credentials that he knew were false; (ii) threatening Ms. X with termination for having submitted a false statement and with exposing her false

credentials to others in the Dhaka office; (iii) making unwanted sexual advances to her throughout her employment at the Dhaka office; and (iv) forcing her to resign from the Bank by exposing the falsified credentials. The Bank found also that the Applicant created a hostile working environment through sexual harassment and intimidation of Ms. X and harassment and intimidation of other subordinate staff.

17. The evidence of the Applicant's misconduct consists of the statement of Ms. X, some corroborative material, and certain admissions by the Applicant. The basis of the disciplinary action necessarily depended on considerations of the credibility of Ms. X and the Applicant.

18. According to Ms. X's statement of November 30, 1998, she returned from New York to her parents' home in Dhaka in September 1997 with her infant son, after leaving her husband. She was then 20. She says that she faced financial difficulties. She had known the Applicant previously when she had been an intern in the Bank, and through other contacts. She met with him to seek employment. She says that he advised her to submit her curriculum vitae (CV) with a false statement that she had a BA degree from Cambridge, although she had not in fact completed the degree course. He said that this would increase her chances of employment. She did so, and was appointed on a six-month contract to the Administrative Team, under his supervision.

19. Ms. X alleged that soon after she joined the Bank, the Applicant told her that other staff planned to inform the Country Director of her false statement. He would protect her, but she should write a back-dated letter of resignation. She says that he used the false CV as a lever to force her to accept his sexual advances, described as hugs and kisses at first. She enjoyed the work and accepted a few kisses. But the Applicant extended his sexual abuse, threatening that she would lose her job and that he could prevent her from getting a job elsewhere. She says that when she did not agree to his increasing sexual demands he would become more physically and verbally abusive. He stayed late in the office, drank alcohol and abused her.

20. Her six-month contract was extended for another six months. She alleged that she agreed to most of his increasing sexual demands during that time. She related various incidents, including a day that she spent alone with the Applicant at the Sonargaon Hotel. She said that she felt increasingly sick and demoralized. Although he had proposed that she go to Delhi for training, she missed out on this after rejecting some of his advances. He sent e-mails to her which, she alleges, show that there was a level of familiarity between them.

21. The Applicant's written response of January 4, 1999 to the allegations of Ms. X effectively denied any sexual relationship with Ms. X. He wrote that "no question arose" because he had a happy family life and he queried why she had not raised her complaints long before. Even when confronted with evidence corroborating her story of the visit to the Sonargaon Hotel, he maintained his denial of sexual activity with Ms. X. As mentioned, he withdrew from the investigation process on January 15, 1999 and tendered his resignation.

22. Later, in his case to the Appeals Committee and to the Tribunal, the Applicant acknowledged for the first time that he had had a sexual relationship with Ms. X, but claimed that it had been initiated by her and that she had been a willing participant. He denied suggesting that Ms. X submit a false CV, saying that he had no reason to do so. The Applicant submitted his own detailed account of events, suggesting that Ms. X enjoyed the relationship, that she brought food to him at the office and at his home and that he had visited her own home. They exchanged personal e-mails, showing that their relationship was consensual.

23. Additional documentary evidence corroborated Ms. X's allegations concerning their visit to the Sonargaon Hotel on July 19, 1998. According to Ms. X, they spent eight or so hours in a hotel room where they engaged in sexual activity and ordered and consumed alcohol and food. She says that the Applicant left the office early that day after arranging the room and then called her to join him there. While she was there, she says that he was physically and verbally abusive to her. She described the incident as sexual molestation, manipulation and harassment. She says that he was drunk and that when she resisted his further advances, he became very angry. She wanted to go back to the office and persuaded him to let her go around 7.00 p.m. She said the incident haunts her as a nightmare.

24. The Applicant denied on January 4, 1999 that he ever invited or took Ms. X to that or any other hotel. He said that the allegations were absolutely false and absurd. When the Applicant was informed later that month that the Bank's investigators had verified Ms. X's story about being in the hotel on July 19, he maintained his

denial.

25. Later, in his statements to the Appeals Committee and to the Tribunal, the Applicant admitted for the first time that he and Ms. X did spend a day together at the hotel. He claimed that Ms. X came to join him there willingly, that she enjoyed the entire day and that she was “caring and loving.” He says he had often discussed with her the possibility of going to the hotel. She drank a lot, ordered room service and made phone calls. He says that he did not force her to stay.

26. In regard to the finding that the Applicant forced Ms. X to resign by exposing her falsified credentials, Ms. X says, in her complaint of November 30, 1998 to the Bank’s Harassment Officer, that she discovered that she did not need a BA degree for the job she held. Following a general memorandum of November 12, 1998 about the conversion of non-regular staff, she applied to be considered by a Clearance Panel for absorption into the Bank system. Her account is that she asked the Applicant to replace her false CV with the true one before sending on her file. He agreed to do so, but soon after, he told her that he had forgotten to do it and that she should write a back-dated resignation letter so that her application could be withdrawn. This would ensure that she would not be blacklisted. In fact, she wrote a letter of November 18 addressed to the Applicant stating that she was unwilling to renew her contract. She says that after she saw the Clearance Panel (which included the Applicant, Ms. B and Mr. C) on November 23, the Applicant told her that they had decided to blacklist her. She asked to see the other two members alone, to clear herself.

27. The Respondent claims that when Ms. X was called to the Clearance Panel, she told them about the inaccuracy in her CV, said that she wanted to tell the truth and that she would resign. When Ms. X saw the two members alone, she told them about the situation of her family and apologized. She did not mention to them her relationship with the Applicant as she feared being blacklisted.

28. The Respondent states that one Panel member, Ms. B, had revealed to the investigators that the Applicant had told her about Ms. X’s false CV before the November 12 memorandum announcing the Clearance Panel and before Ms. X had submitted her application for conversion to a regular appointment. Mr. C, the other Panel member, told the investigators that the Applicant had insisted on Ms. X’s application being reviewed, even though she had agreed to resign and to withdraw. The Panel had not discovered the misrepresentation in the CV until the Applicant drew it to their attention. Mr. C also said that the Applicant wanted Ms. X blacklisted but that the Panel did not agree. The minutes, in fact, show only that her application was withdrawn.

29. The Applicant denies that he had any involvement in falsifying Ms. X’s CV. In his January 1999 response to the allegations of Ms. X, he said that if her story about it were true, he would have had no reason to disclose the false information. He says that he first discovered the falsity in Ms. X’s CV after Ms. X applied for clearance, and was shocked. Although she asked him to conceal the information, he considered it was his responsibility to tell the Panel (of which he was a member). Ms. X then submitted a back-dated letter of resignation. He refused to conceal the matter, and sent all the documents to Ms. B. He says that the Panel was satisfied with Ms. X’s withdrawal, and he denied that he had insisted on the Panel reviewing her application. He later acknowledged, however, that the matter was in fact discussed by the Panel.

30. Ms. X’s contract expired on October 30, 1999. The Applicant told her to continue until November 30, and he went on leave the week before that date.

Assessing credibility

31. If Ms. X’s story were accepted, then the requirements for quid pro quo and hostile working environment would be established. The Applicant was in a position to exercise authority over her and to influence her continuing appointment and thus to make sexual activity a condition of appointment. In addition, if her version is accepted, it is clear under the relevant test of sexual harassment set out in paragraph 15 above that a reasonable female in the multicultural environment of the Bank Group would have viewed the Applicant’s behavior as offensive and intimidating.

32. In view of the irreconcilable stories of Ms. X and the Applicant, their credibility and the availability of corroborative evidence are of major importance. In regard to the Applicant, the Tribunal takes note that he lied at first by totally denying any sexual relationship with Ms. X. He also denied their visit to the Sonargaon Hotel.

The Tribunal also notes that the Applicant withdrew from the investigation and tendered his resignation when he was informed of evidence which corroborated Ms. X's story in part. He later acknowledged the sexual relationship, but claimed it was consensual. He continues to deny that he knew of her false CV before the submission of her application to the Clearance Panel for conversion.

33. The Applicant submitted that his early denials should be seen in their proper context. He was in shock and feared he would lose his family and possibly his job by exposure of the story. As an exemplary family man, he should have been given the benefit of any doubt. He had feared to disclose it before. In a non-threatening environment he would have revealed the full details. He argued that he had not acted improperly. The Applicant also submitted that he lied in the investigation because he had no support from the Bank and no professional advice. However, he was in fact offered the opportunity to seek advice, and did so to some extent.

34. In the view of the Tribunal, the Applicant has seriously undermined his credibility by his untruths. His failure to co-operate with the inquiry, and his admissions about other allegations, give little support to his claim of exemplary behavior and further damage his credibility.

35. The Applicant's poor credibility does not, however, lead to the conclusion that Ms. X's story should be accepted in all respects. The Applicant asserts that she never indicated to him that his advances were unwelcome, and that she appeared to be receptive to his advances. He also stresses that she delayed making any complaint of sexual harassment for a year. He submits that she could have complained much earlier if she found his behavior unwelcome.

36. Delay in making a complaint of sexual harassment is a relevant factor, though it does not necessarily negate credibility. As the Tribunal held in *Rendall-Speranza* (Decision No. 197 [1998], para. 75):

delay in reporting instances of harassment may be explainable for reasons other than that the victim has welcomed the sexual advances. There may be strong pressures not to make even a well-based complaint, such as fear that one will be branded as a troublemaker, a fear that one's image for ethical probity may become tarnished, uncertainty about the definitions in the employer's policy or the commitment to its implementation, a wishful belief that the victim can handle the matter herself without creating undue inconvenience or embarrassment to others, and ultimately perhaps by a fear of retaliation by the harassing party.

Ms. X's delay may be partly explained by the fact that she was fearful of losing her position if the Applicant were to reveal her false CV.

37. As to whether Ms. X made the Applicant aware that his advances were unwelcome, she says that she enjoyed her work and that up to a certain time "a few kisses were alright." When he became more abusive, she still acceded to his demands on the basis of "[a]nything to keep the job going." She also says that when she did not agree or was not responsive to his demands he became physically and verbally abusive. Her statement implies that she did convey to him the message that his attentions were unwelcome. His story is quite different, as set out above.

38. There is an unexplained part of Ms. X's story. She says that the Applicant had asked her to go to the Hotel "plenty of times" but she had managed to excuse herself. This time, she says "he knew he had his nephew and I was really his victim." This is the only, quite vague, explanation she offers of why she considered that she was compelled to go on that occasion on July 19, 1998; she does not state clearly that he prevented her from leaving. This casts some doubt on her allegations that his conduct was unwelcome.

39. Ms. X's allegations rest largely on her claim that the Applicant threatened her because of the false CV which, she says, he had asked her to prepare. The Applicant denies that he had any role in preparing the false CV, that he knew of it before the Clearance Panel, or that he made use of it to force her to accept his sexual advances. In the final analysis, there is nothing to support Ms. X's allegations concerning the Applicant's role in the preparation of the CV.

40. The Respondent has alleged that the Applicant knew about the false CV before the review process, as he had told a member of the Clearance Panel before the date of the memorandum of November 12 initiating the

conversion process. However, neither the Applicant nor the Tribunal has seen the report in which the statements of the other Panel members are included. Even if the Applicant had known of the false CV before that date, it does not necessarily follow that he had any role in the original falsification. The Tribunal notes further that Ms. X's statement makes it clear that part of her motivation in making her complaint of sexual harassment was to clear her name, so that she could get her job back. Her story about the Applicant's role in relation to the false CV supports her claim, but it is not entirely convincing. The Tribunal also notes that Ms. X was prepared to falsify her CV.

41. The Applicant made many allegations against Ms. X involving her personal and financial affairs; he has also made allegations against her family. He has accused her of fabricating allegations of violence by her husband. He now submits that she was rewarded for her immoral activities by getting a job at Headquarters. Most of his allegations either have little relevance to the issues or have not been tested by seeking any response from Ms. X. The Tribunal need not reach any conclusions on these allegations.

42. The standard of evidence in disciplinary decisions leading, as here, to dismissal must be higher than a mere balance of probabilities. In several decisions, the Tribunal has emphasized that there must be substantial evidence to support the finding of facts which amount to misconduct. (See, e.g., *Carew*, Decision No. 142 [1995], para. 32; *Planthara*, Decision No. 143 [1995], para. 25; and *Mustafa*, Decision No. 207 [1999], para. 17.)

43. The determination of the central issues relating to the allegations of sexual harassment depends on an assessment of the credibility of the Applicant and Ms. X. On the material available to the Tribunal, the Applicant's story is seriously flawed and he has blatantly lied. There are also some doubts about Ms. X's story. However, the Ethics Officer, who interviewed both the Applicant and Ms. X, appears to have accepted her story as the basis for the report. In making assessments of credibility, the Tribunal would usually give weight to the findings of such an investigator who had interviewed the relevant parties. But procedural flaws in the way the report was prepared and used render it of little value to the Tribunal.

Procedural issues

44. The Applicant submits that the proper procedures for dealing with sexual harassment allegations were not followed, that the allegations were made against him without any preliminary inquiry and that he was improperly placed on administrative leave. The Applicant also contends that there was bias in the investigation. He complains that he was not given full information about the witnesses nor copies of their statements, that he had no opportunity to cross-examine witnesses, and that they had not been identified to him. He also complains that he was not asked for his list of witnesses, although he wanted certain people to be interviewed. Moreover, he asserts that, contrary to proper procedures, all staff were informed about his termination.

45. The Tribunal has pointed out that an investigation into a disciplinary matter is administrative and not adjudicatory, and compliance with all technicalities of judicial proceedings is not necessary, if it is conducted fairly and impartially. (*Rendall-Speranza*, Decision No. 197 [1998], para. 57.) The investigation in this case was conducted by the OPE under Staff Rule 8.01, "Disciplinary Measures," paragraph 5.03. The Applicant was given notice of the investigation and was provided with Ms. X's written complaint. He was invited to respond to specific written allegations which formed the basis of the ultimate findings against him. The Applicant was placed on administrative leave at the beginning of the investigation process, after consideration of the allegations, in accordance with paragraph 5.05 of Staff Rule 8.01. The Applicant, Ms. X and a number of other persons were interviewed during the investigation.

46. A staff member whose conduct is being investigated is not entitled to be present when witnesses are interviewed and is not allowed to cross-examine them. (*Rendall-Speranza*, Decision No. 197 [1998], para. 62.) The fact that such a staff member is not provided with the transcripts of the testimonies of all witnesses does not deprive that person of the opportunity to put forward evidence and arguments. (*Id.* at para. 61.) Nonetheless, the basic rules of fair procedure must be followed. In particular, the person against whom allegations are made must be given an adequate opportunity to respond to those allegations and to put forward his evidence.

47. The Applicant's objection that he had no opportunity to suggest that certain witnesses be interviewed

cannot be sustained in view of the fact that he withdrew from the process and offered his resignation on January 15, 1999.

48. The Applicant's other complaints raise more significant issues. He submits that he was not provided with a copy of the investigators' report at any time nor with a summary of the report. He claims that on January 15, 1999, he requested a document relating to room service charges at the Sonargaon Hotel on July 19, 1998, but that the investigators refused to show it to him.

49. The Bank contends that after the Applicant submitted his letter of resignation in January 1999, he did not contact the Bank again until July 1999, when he filed an appeal with the Appeals Committee. It argues that since he did not ask for the Ethics Office report he cannot complain that the Bank improperly withheld it. The Appeals Committee determined that his rights were not violated because he had never asked for a copy of the report (neither during the investigation nor during the Appeals Committee proceedings) and had withdrawn from the investigation process.

50. The Tribunal observes that the Applicant did in fact complain to the Appeals Committee of not knowing who had been interviewed and of not having access to the documentary evidence. The Applicant now asserts that he learned he was entitled to receive the investigators' report only from reading the report of the Appeals Committee. He claims that in the interest of fairness he should have received it.

51. The Tribunal found in the *Mustafa* case that "not providing the Applicant with the report of the investigator as soon as it was completed was a violation of due process, especially in light of the seriousness of the case and of the gravity of the disciplinary measure imposed on him," namely termination. (Decision No. 207 [1999], para. 34.) The Applicant in that case had asked for the report repeatedly. The Tribunal is, however, of the view that the obligation to ensure due process is not dependent on such a request. As the Tribunal pointed out in *Mustafa*, it is particularly important that the proper procedures be followed in the case of field staff who do not have ready access to the services and facilities available at Headquarters to protect their interests.

52. The present case involves issues of equal seriousness and also involves field staff. As in *Mustafa*, without the detailed analysis of the investigation provided in the investigators' report, the Applicant was not afforded the opportunity to defend his rights properly, prior to a decision being taken in his case. The fact that he withdrew from the investigation and submitted his resignation does not mean that he gave up his right to fair treatment. As his resignation was not accepted, he remained entitled to the protections provided to staff, including the right to see a copy of the report before disciplinary action was taken.

53. The defect in procedure in failing to provide the Applicant with the investigators' report is the more serious in this case in that the report has *never* been provided to him. This has hampered him in the preparation of his case before the Appeals Committee and before this Tribunal. It has also denied this Tribunal a full opportunity to assess the material which was the basis of the Bank's decision in this case. The Bank has argued that the conflict between the evidence of the Applicant and that of Ms. X should be resolved in her favor largely because there is corroboration of her story. But in the absence of any opportunity for the Applicant to determine the extent of that corroboration or to submit other evidence which may cast doubt on it, and in the absence of an opportunity for this Tribunal to assess the evidence in full, the Tribunal cannot confidently reach the conclusion that the allegations of sexual harassment have been fully substantiated.

54. The Tribunal finds that the Bank failed to ensure fully the Applicant's procedural right to due process. It considers that the findings of sexual harassment are flawed because of this failure, and should be set aside.

Other issues

55. The other findings made by the Bank against the Applicant are not affected by the procedural defects in the same way as the finding of sexual harassment, since the Applicant has made a number of concessions about them. The findings are set out in the letter from the OPE to the Applicant dated March 8, 1999.

56. The Bank found on March 8, 1999 that the Applicant retaliated against Ms. X through threats and intimidation for bringing a formal complaint against him. In her statement, Ms. X said that the Applicant phoned her the day after she left the Bank's service on November 30, 1998, but hung up before she got to the phone.

She said that he called nearly every day, in the early morning and in the evening, but she did not talk to him.

57. The Bank seeks to support the finding of retaliation by stating that Ms. X got anonymous threats, that persons followed her, and that she received two unsigned threatening notes. However, there is nothing to link these incidents to the Applicant and they, therefore, cannot be relied on by the Bank.

58. The Applicant denied on January 4, 1999 that he had ever made phone calls to Ms. X after she left the Bank. Later in his filings with the Appeals Committee, he said that he had called her twice and that he had explained the circumstances.

59. The Tribunal is unable to find that the Applicant retaliated with threats and intimidation, though it concludes that he did make annoying phone calls to Ms. X.

60. The Bank found on March 8, 1999 that the Applicant lied during the investigation about having spent July 19, 1998 at the Sonargaon Hotel. The Applicant does not dispute this.

61. The Bank found on March 8, 1999 that the Applicant failed to observe Principle 3.1 of the Principles of Staff Employment, whereby staff members are expected to conduct themselves at all times in a manner befitting their status as employees of an international organization, by

[t]aking advantage of [his] position as Manager, Administration to abuse the preferential business relationship between the World Bank and the Sonargaon Hotel, by obtaining a complimentary room in the Bank's name for personal purposes;

[d]rinking alcohol frequently during office hours in [his] office, and on one occasion [was] observed to be drunk...

The Bank also found that on July 19, 1998, the Applicant was absent from the office without justifiable cause and without having submitted a leave slip in advance.

62. The Applicant did not respond to these allegations until the Appeals Committee proceedings. He does not dispute that he was absent without leave during the greater part of July 19 at the Sonargaon Hotel. He claims that this was a minor breach. He does not admit that he used his position to obtain a benefit, saying that he had not specifically requested a complimentary room and was not aware that it had been provided on that basis until later. It is clear, however, that the room he asked for was provided on a complimentary basis and that he did not make any payment for the room on leaving. He concedes that he initially lied about this to the investigators.

63. The Tribunal concludes that the Applicant failed to observe Principle 3.1 of the Principles of Staff Employment, by taking advantage of his position as Manager, Administration, to obtain a complimentary room in the Bank's name for personal purposes; and that he was absent from the office without justifiable cause on July 19, 1998. The absence was well outside the rules providing for short absences.

64. As to his drinking alcohol, the Applicant said that an occasional drink in the office was a minor breach. The Tribunal notes that Ms. X claimed that the Applicant would drink alcohol in the Bank during late hours at times when he abused her. The allegation that he had been seen drunk appears to have arisen from statements obtained by the investigators. Neither the Applicant nor the Tribunal has been provided with the report or statements. The Applicant has had no opportunity to answer the specific allegation that he was seen drunk on one occasion. In these circumstances, the Tribunal concludes only that the Applicant consumed alcohol from time to time in the office.

65. The Bank found on March 8, 1999 that the Applicant abused his authority and violated Ms. X's privacy by discussing her health condition with her medical doctor without her permission.

66. In her statement of November 30, 1998, Ms. X said that she had consulted a physician at the UN clinic about sore breasts which she blamed on the Applicant and about an infection which she says she probably got from him. She said that he phoned the clinic to ask why she was going there and told her that he could not offer her a staff position if she was sick. She claims that this was a violation of her privacy and that he teased

her about it.

67. In response to these allegations, the Applicant, on January 4, 1999, admitted that he had contacted the clinic, but maintained that he had to make such checks frequently as a manager and that he was authorized to do so. He said that Ms. X took frequent breaks on the plea of going to the clinic and that this was disruptive. He called the clinic as a manager to check. He submits that if it was wrong to do so, the doctor would not have disclosed the information to him, and that the medical officer should also be considered liable for a breach of the rules. The Bank, on the other hand, submits that the Applicant's actions in this regard were highly improper and that unauthorized review of medical information by a staff member is misconduct per se under Staff Rule 2.02.

68. Under the relevant Staff Rules, a supervisor is entitled to obtain medical information about a staff member in two situations: (a) when a staff member is being considered for a Bank appointment (Staff Rule 4.01, "Appointment," para. 4.07); and (b) when a staff member is incapacitated by ill-health and is unable to perform usual job responsibilities (Staff Rule 2.02, "Confidentiality of Medical Information and Records," para. 4.02). Staff Rule 2.02, paragraph 4.01, provides that "[m]edical information made available pursuant to this Section shall be conveyed on a confidential basis and shall be limited to the particular medical information needed." Under paragraph 4.02 of Staff Rule 2.02, the medical service may convey conclusions regarding fitness for duty, but without disclosing individual clinical findings. The same Staff Rule provides in paragraph 2.02 ("Disciplinary Action") that "[u]nauthorized review or disclosure of medical information in a manner not permitted by this Rule is subject to action under the provisions of Rule 8.01, 'Disciplinary Measures.'"

69. Although the Applicant has claimed that it was his custom to make such inquiries, he does not assert that Ms. X was being considered for a Bank appointment at the time or that there was an issue as to whether incapacity affected her ability to perform her work. Consequently, his actions do not fall within the permitted limits set by the Staff Rules.

70. The Tribunal concludes that the Applicant committed serious misconduct by discussing Ms. X's health condition with her doctor without her permission and without authority, thus violating her privacy.

Applicant's claim of retaliation

71. The Applicant claimed in the Appeals Committee proceedings and before this Tribunal that the case against him was part of a campaign of personal spite, vendetta and retaliation by some Headquarters staff because of his attempts to expose improper practices and to improve management control. He claimed that he had to contend with a hostile working environment for three years and that the expatriate unit managers did not accept him as an equal, but rather saw him as a threat. He made numerous allegations against individuals in the Bank, which, he said, showed a conspiracy against him.

72. The Applicant has failed to substantiate his claim that Ms. X's complaint was part of a conspiracy against him or to show any connection between her complaint and any such campaign or conspiracy.

Conclusions on misconduct

73. For the reasons outlined above, the Tribunal is unable to conclude that the allegations of sexual harassment have been sufficiently substantiated or that the Applicant retaliated with threats and intimidation towards Ms. X. The Bank's findings of sexual harassment should be set aside.

74. The question of what remedy the Applicant is entitled to is affected by the Tribunal's conclusion that the Applicant committed a number of acts of misconduct, some of which are serious:

- (a) the Applicant lied during the investigation about having spent July 19, 1998 at the Sonargaon Hotel;
- (b) the Applicant failed to observe Principle 3.1 of the Principles of Staff Employment, by taking advantage of his position as Manager, Administration, to obtain a complimentary room in the Bank's name for personal purposes;
- (c) the Applicant was absent from the office without justifiable cause on July 19, 1998; and

(d) the Applicant discussed Ms. X's health condition with her medical doctor without her permission and without authority, thus violating her privacy.

75. Having regard to these conclusions, the Tribunal does not recommend reinstatement.

76. Nevertheless, the Applicant is entitled to compensation for the failure of the Respondent to ensure fully his procedural right to due process.

Decision

For the above reasons, the Tribunal unanimously decides that:

- (i) the finding of sexual harassment should be set aside;
- (ii) the Respondent shall pay the Applicant compensation for dismissal in the amount of three months' salary;
- (iii) the Respondent shall pay costs in the amount of \$1,000; and
- (iv) all other pleas are dismissed.

/S/ Robert A. Gorman

Robert A. Gorman
President

/S/ Nassib G. Ziadé

Nassib G. Ziadé
Executive Secretary

At Washington, D.C., April 26, 2001