



World Bank Administrative Tribunal

2010

No. 428

**BD,
Applicant**

v.

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

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

**BD,
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 Francis M. Ssekandi and Mónica Pinto. The Application was received on 20 July 2009. The Applicant's request for anonymity was granted on 26 October 2009.

2. The Applicant claims that, in violation of a Memorandum of Understanding ("MOU") concluded between her and the Bank, the Bank has failed to provide her with a letter of reference covering her 28 years of service with the Bank to aid her in searching for jobs following her retirement from the Bank's service. She also contends that various supervisors in the course of her career at the Bank retaliated against her for reporting mismanagement and misuse of trust funds, for which she demands compensation.

FACTUAL BACKGROUND

3. The Applicant was employed by the Bank from 1970 to 1972 and, after a break of service, from 6 February 1976 until 31 December 2003 when she reached the Bank's mandatory retirement age of 62. Following her retirement, she continued to work for the Bank on a Short-Term Temporary appointment from January to April 2004. She resigned from this appointment on 24 April 2004.

4. The Applicant was employed at the GC level. From 1994 to November 2002, she worked as a Program Assistant dealing with trust funds in the Middle East and North

Africa Region Human Development Group (“MNSHD”) and its predecessor units. From November 2002 to April 2004, she worked in the same capacity in the Middle East and North Africa Region Rural Development, Water and Environment Group (“MNSRE”).

5. In January 2001, there was a misunderstanding between the Applicant and her supervisor, Mr. B, regarding her position in MNSHD. The Applicant claims that she was advised by Mr. B that her position would be made redundant with effect from 30 June 2001. The Applicant believes that this was in retaliation for her cooperation with auditors to whom she had provided information on the mismanagement of trust funds in MNSHD, as a result of which a negative comment on the management of those funds was included in the report on an audit of Bank-executed Trust Funds in the Middle East and North Africa Region in FY 2000. The Bank claims that Mr. B merely explored the possibility of the Applicant’s position being made redundant, in light of new procedures introduced for the trust fund administration work program.

6. The Applicant, fearing that such redundancy would preclude her from future employment with the Bank, met with Mr. B and a Personnel Officer, Ms. D, to discuss the possibility of arriving at a Mutually Agreed Separation (“MAS”). According to the Applicant, the draft MAS letter sent to her in July 2001 for her consideration did not contain all the terms that had been agreed upon in the prior discussions. She contends that the agreed amount of severance pay was reduced and that her demand that she be promoted prior to separation, as a condition for her acceptance of the MAS, was not included. She therefore did not agree to the MAS.

7. Thereafter, the Applicant sought the assistance of a number of Bank officials to mediate her case, including Mr. G, representing Human Resources (“HR”), the Mediator

and the Ombudsman. The Applicant states that she was informed by Mr. G that the Bank's rules did not permit the employment of staff members within two years of the mandatory retirement age to be declared redundant. The Applicant met again with Ms. D and Mr. G in July 2001 under the auspices of the Ombudsman's office and was advised that no steps were being taken to declare her redundant and confirmed that her position would not be made redundant.

8. In July and September 2001, the Applicant met again with Mr. B, Ms. D and the Mediator, this time to pursue her demand for upgrading her post, which she claims was agreed to during the MAS discussions. This request was rejected by her supervisor. The mediation process was concluded in November 2001, and no agreement was reached on the Applicant's demand that her position be upgraded.

9. The Applicant continued to work under the supervision of Mr. B. However, on 12 December 2001, she was informed that, pursuant to new requirements on the administration of trust funds, she would be assigned new duties and would no longer be involved in trust fund administration. Instead she would be limited to providing what she describes as "basic secretarial support" to a sector leader. Her request that she be able to maintain her existing functions relating to trust funds was rejected by Mr. B. She considered this change of assignment to be an act of retaliation for having provided information to the auditor. She took up her new functions in February 2002.

10. The Applicant states that she met with the Ombudsman again to seek his assistance regarding her discontent over what she considered to be the "downgrading" of her position. In November 2002, with the assistance of the Ombudsman, she was transferred from

MNSHD to MNSRE, where she returned to working on issues relating to trust fund administration.

11. The Applicant claims that, during the course of her work in MNSRE, she discovered irregularities with respect to the operation of grant programs in MNSRE, and reported them to her supervisor. According to the Applicant, she notified the Bank's Department of Institutional Integrity ("INT") of these irregularities in 2004 and 2006, but the record is not clear as to the dates these reports were submitted or their exact content. It appears that they expressed concern that the Applicant was being made redundant in retaliation for her discovery of possible misuse of trust funds.

12. Following her retirement, the Applicant secured a Short-Term Temporary contract with MNSRE, which was expected to end on 30 April 2004. A dispute arose, however, as to the terms of reference for the consultancy, including the rate of remuneration. She claims that, contrary to what had previously been discussed during negotiations for the consultancy, the Terms of Reference contained a reduced daily fee and different functions from what had been agreed with her new supervisor, Mr. A. She claims that when she later met with Mr. A to discuss these matters, he became abusive and berated her, insisting that she would not be paid the higher rate she claimed they had agreed. She claims that, after this encounter, she decided to resign from her new appointment prematurely on 24 April 2004.

13. The Applicant submitted a claim with the Bank relating to the dispute on the terms of her Short-Term Temporary employment. This claim was referred to the Office of Mediation at the request of the Bank. Following mediation, an MOU was concluded on 14 February 2005, pursuant to which the Applicant agreed to accept the terms offered by the

Bank as settlement of all outstanding claims concerning compensation during her Short-Term Temporary contract of employment, and to “drop all outstanding and pending actions including appeals.”

14. In the MOU, the Bank agreed to the following terms:

Counseling of [Mr. A] on the impact of his behavior on the development of a non-productive relationship with [the Applicant], and HR counseling on the provision of future references, if such are requested;

...

Referrals regarding [the Applicant’s] work for MNSRE (for future employment or otherwise) should be referred to [the Director of MNSRE, Ms. O], as she has knowledge of [the Applicant’s] positive performance and advanced training;

...

Distribution to interested parties by [Ms. O] of an updated CV to be provided by [the Applicant];

...

If management does not fulfill the promises made in this agreement and there is a breach, [the Applicant] may initiate a complaint with the Office of Mediation, Appeals Committee or any other conflict resolution resource.

15. The Applicant’s complaints to INT in 2004 and 2006 regarding the misuse of trust funds and retaliation were addressed by INT. After some delay, and after the Applicant’s prompting, on 1 November 2007, an INT official wrote to the Applicant as follows:

Due to the passage of time since your concerns first arose in 2001 ... [INT] will be unable to substantiate the allegation that you were made redundant in retaliation to your work on matters involving possible misuse of trust funds. In large part, any investigation into this matter would rely on the witness statements regarding their perceptions (after the passage of up to six years) on your performance and the prevailing work environment in your unit. Further, many of the potential witnesses are no longer with the Bank and INT is unable to compel their assistance in any investigation.

Accordingly, INT will be taking no further investigative action with respect to this matter.

As we discussed in May, [we] believe that the approach suggested by [the Ombudsman] provides the best avenue for achieving the employment reference you requested, although there is no guarantee that you will be offered a STC contract.

16. Following receipt of INT's determination, the Applicant pursued the matter through the Ombudsman. In particular, the Applicant requested compensation from the Bank for the retaliatory measures taken against her by management between January 2001 to April 2004 for reporting misuse of funds. On 29 May 2008, she met with the Ombudsman and a Lead Human Resources Specialist to discuss her request for compensation. On 13 June 2008, the Ombudsman communicated to her the Bank's decision not to pay her compensation.

17. Following her departure from the Bank, the Applicant was concerned that the Bank was failing to honor its obligations under the terms of the MOU (including its obligation to provide her "good references"), and that this was prejudicial to her efforts to secure a new job outside the Bank. As provided in the MOU, the Applicant met with Ms. T of the Office of Mediation to address her concerns. Ms. T proposed a "supplement to the MOU" which, however, was never endorsed by the Bank.

18. On 23 June 2008, as requested by Ms. T, the Applicant prepared a draft letter of reference, to be sent by Ms. O in response to individuals seeking references for the Applicant. On 4 August 2008, in transmitting this draft reference to Ms. O, Ms. T wrote:

[The Applicant] believed it necessary to address the reference provision in the MOU so that there is a mechanism for a reference despite your retirement. We have discussed this and the most practical way to provide the reference indicated in the MOU without calls to you at home seems to be to create a written reference from you that could be included in [the Applicant's] personnel file. This letter would then be available to prospective employers. I have discussed this matter with a representative from [HR] who is willing to be a point person so that inquiries about [the Applicant's] past employment could be referred to him. He could make the letter available, as needed.

In an attempt to make this as easy as possible for you, I asked [the Applicant] to draft a letter of reference that contained the information that she thought it would be important to convey about her work with the Bank. ...

If you can edit this letter so it accurately and fairly reflects [the Applicant's] contributions as an employee, I would suggest the following steps:

1. A final copy would be dated and signed;
2. [The Applicant], [Ms. O], and a representative from [HR] would meet either in person or by teleconference to work out an amended term to the MOU to reflect that your obligation under the MOU has been discharged by having the written reference placed in her personnel file; and
3. [HR] would agree to be responsible for making the letter available to prospective employers upon request.

19. On 11 August 2008, Ms. O expressed her reservations with the draft prepared by the Applicant as it went “beyond [her] personal knowledge of her work and performance,” and proposed an alternative draft. The alternative draft was limited to the few years Ms. O had known the Applicant when she worked in MNSRE, did not refer to her previous service, and did not reflect the evaluation of her performance in the Overall Performance Evaluations (“OPEs”) she had received over the period of her service with the Bank. The Applicant’s last meeting with Ms. T took place on 10 October 2008, without resolving this matter.

20. On 14 October 2008, the Applicant filed a Statement of Appeal with the Appeals Committee, alleging that the Bank had breached the terms of the 2005 MOU by failing to provide her “appropriate references.” She also challenged the decision made by the Bank, as conveyed by the Ombudsman on 13 June 2008, to deny her compensation and other relief for the retaliation she claims she endured.

21. On 25 March 2009, the Appeals Committee concluded that it did not have jurisdiction to review the Applicant's Statement of Appeal, and dismissed the Applicant's claims in their entirety. In particular, the Appeals Committee concluded that the Bank's decision to deny the Applicant's claim for compensation as communicated to her on 13 June 2008

did not constitute a reviewable administrative decision: it did not alter or breach any remaining relationship with the Bank arising from the terms of her appointment or the conditions of her employment. The grievance the [Applicant] discussed with the Ombudsman related to retaliation between 2001 and 2004, and the efforts by the Ombudsman to resolve this grievance did not give rise to a new, separate administrative decision.

22. The Appeals Committee also found that, with respect to the Applicant's claim that the Bank breached the 2005 MOU, the circumstances alleged by the Applicant between 2 November 2007 and 14 October 2008 did not warrant an examination of the merits of her Appeal.

23. The Applicant filed her Application with the Tribunal on 20 July 2009. She challenges the decision by the Appeals Committee to decline jurisdiction to "grant [her] relief based on [her] whistleblower claims," and seeks (i) \$375,000 as compensation for lost income from May 2004 to June 2009; (ii) "a current and appropriate letter of reference that [she] can use, generic for 2009 and forward"; (iii) correction of her official records so as to fully document her performance; and (iv) \$27,550 in attorneys' fees and costs.

24. The Bank filed a preliminary objection along with its Answer to the Application.

THE CONTENTIONS OF THE PARTIES ON THE PRELIMINARY OBJECTION

25. The Bank claims that the Applicant failed to file her claims in a timely manner and thus failed to exhaust prior remedies as required by Article II, paragraph 2, of the Tribunal's Statute. The Bank contends that the Applicant seeks to rely on the 25 March 2009 decision of the Appeals Committee as the basis for her Application, but that the decision was itself on the issue of time limits and cannot be the basis of an application before the Tribunal. The Bank argues that the Applicant's appeal before the Appeals Committee in October 2008 does not constitute an exhaustion of prior remedies because her appeal was already untimely and, for that reason, was dismissed by the Appeals Committee.

26. The Bank further argues that the Applicant attempted to challenge a decision by the Bank that was communicated to her by the Ombudsman on 13 June 2008. It argues that this challenge was misguided in that the Ombudsman was providing confidential advice in the normal course of duty, and not conveying a new administrative decision; that was not his role. Furthermore, the Bank contends that staff members should not be allowed to revive stale claims that would otherwise be time barred simply by initiating a belated discussion with the Ombudsman many years after the alleged events took place. Relying on *Malekpour*, Decision No. 320 [2004], *Jalali*, Decision No. 148 [1996] and *Mitra*, Decision No. 230 [2000], the Bank states that the Applicant should have raised her concerns at the time the alleged retaliatory actions occurred between 2001 and 2004, and should not have waited until after she retired. While the Applicant raised these concerns with INT in 2004 and 2006, the Bank argues that this was not timely, as INT's response to her clearly demonstrates.

27. In response, the Applicant argues that her claims relate to an on-going pattern of reprisal by her former managers. She bases her argument on the fact that her career in the Bank was effectively derailed by several actions taken by the Bank following her decision to report what she perceived to be deficiencies in the management of trust funds beginning in 2001. She also asserts that her claims were raised in a timely manner, and that she exhausted all of the Bank's informal dispute settlement procedures by reporting her concerns on the misuse of trust funds and the ensuing retaliation to INT in 2004 and 2006, but INT failed to act upon her report in a timely manner. Following receipt of a determination by INT on 1 November and 19 December 2007 that it would not proceed to investigate her claims, she reported the same concerns to the Ombudsman together with her claim for compensation for not protecting her from retaliation as a whistleblower. The Ombudsman communicated to her management's decision not to pay compensation on 13 June 2008. After obtaining an extension of time to file her claim with the Appeals Committee, she did so on 14 October 2008.

CONTENTIONS OF THE PARTIES ON THE MERITS

Failure to comply with the terms of the 2005 MOU

28. The Applicant contends that the Bank failed to meet its obligations under the 2005 MOU by failing to provide her with "appropriate references reflecting her actual performance" to assist her search for new employment. The Applicant attributes her continuing inability to obtain employment to the failure of Ms. O (who was designated in the MOU as her point of contact) in particular, and the Bank in general, to grant her appropriate references. The Applicant therefore seeks compensation for the loss of opportunity in her career caused by her difficulties in securing a letter of reference. The

Applicant also seeks to “reach an understanding concerning who will provide these references on behalf of the Bank.”

29. In response, the Bank claims that it adhered to the terms of the MOU. The Bank also argues that the Applicant never communicated with Ms. O to inform her that she was applying to any organization for a job and that she would be asked to provide a reference. Furthermore, the Bank argues that, while the Applicant cites instances in which she provided potential employers with Ms. O’s name as a reference, she does not provide evidence that the Bank or Ms. O failed to provide references in violation of the terms of the MOU. The Bank also argues that the MOU specifically identified Ms. O as the person to provide references but was silent as to any obligation on the part of the Bank to continue to provide references in the event that Ms. O ceased to work at the Bank. The Bank thus claims that the Applicant has failed to demonstrate that the Bank breached its obligations under the MOU.

Retaliation

30. The Applicant claims that her managers retaliated against her for making whistleblower disclosures about the possible mismanagement of trust funds. She claims that Mr. B expressed his unhappiness with her for sharing information with the auditor who conducted an audit of the trust funds in MNSHD between 1999 and 2000. She contends that because she complied with the auditor’s requests, Mr. B wrongfully undertook efforts in January 2001 to declare her redundant, sought to downgrade her responsibilities from “trust fund management” to a “basic clerical position,” and inappropriately provided negative references of her work to her future supervisors in

MNSRE. She claims that Mr. B's actions in this regard affected her colleagues' perceptions of her in MNSRE.

31. The Applicant contends that, presumably based on Mr. B's negative reports, management in MNSRE significantly amended the terms of reference for the Short-Term Temporary contract she was due to undertake in 2004 following her retirement, in disregard of the terms previously agreed. She claims that Mr. A refused her requests to have the contract amended to reflect the agreed terms and was abusive and belligerent, causing her to resign prematurely; she claims she was "blackballed and forced out of the Bank." While the rate of remuneration was settled through mediation, the Applicant claims that unilateral efforts to amend the terms of her contract constituted retaliation.

32. The Applicant also alleges that, as a form of retaliation, Mr. B deleted several lines of text from her 2000 and 2001 OPEs.

33. In response, the Bank contends that the Applicant's claims should be dismissed as she has failed to present credible evidence of retaliation. The Bank claims that it is difficult to reconstruct events that occurred so long ago, particularly since several of the persons who were said to be involved are no longer employed by the Bank. The Bank also argues that no alterations were in fact ever made to the Applicant's OPEs and denies any wrongdoing.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

34. The Applicant's primary contention relates to the Bank's failure to provide her with a reference acknowledging her 28 years of service with the Bank and reflecting her standard of performance as documented in her OPEs. Staff Rule 2.01, paragraph 5.05, provides that "when a current or former staff member names the Bank Group on an

employment or other application, a letter of verification may be released by the Bank Group without the authorization of the staff member or former staff member.” Such a letter would convey basic employment data, such as a staff member’s name, employment status, employment dates, job title and department.

35. Staff Rule 2.01, paragraph 5.06, also envisages that “individual staff members of the Bank group may provide letters of reference for current or former staff members if the letter states clearly that they are speaking on a personal basis and not on behalf of the institution.” In the present case, the Bank undertook under the MOU to provide references for the Applicant. The Applicant alleges that the Bank breached the terms of the MOU.

36. Under the terms of the MOU, the Bank agreed, *inter alia*, to:

Counseling of [Mr. A] on the impact on his behavior on the development of a non-productive relationship with [the Applicant], and *HR counseling on the provision of future references, if such are requested.* (Emphasis added.)

In addition, the Bank agreed that:

Referrals regarding [the Applicant’s] work for MNSRE (for future employment or otherwise) should be referred to [Ms. O], as she has knowledge of [the Applicant’s] positive performance and advanced training.

37. While the drafting of the terms of the MOU quoted here leaves much to be desired, it is clear that the parties contemplated the provision of references for the Applicant for future employment. The MOU was concluded between the Applicant and the Bank, represented by Ms. O. The MOU does not say who would provide the reference for the Applicant or act as a point of contact in the event Ms. O was absent. Notwithstanding those uncertainties, it is clear that the MOU imposes an obligation on the Bank – not Ms. O – to provide references. The Tribunal is not persuaded by the Bank’s argument that the silence of the MOU on how the obligation of the Bank to provide references would be

performed, especially in the event Ms. O separated from the Bank, served to relieve the Bank of its obligation.

38. The Office of Mediation had proposed the useful suggestion that a generic reference should be maintained in the Applicant's file, to be distributed as requested, in the absence of Ms. O. This advice was not heeded. Such a letter could have been prepared immediately following the mediation at which the Applicant's immediate supervisor and Human Resources were represented. This would have averted the problems that occurred when Ms. O retired and no one was available to attend to requests for references for the Applicant.

39. The Tribunal is perplexed by the fact that the Applicant had to pursue this rather simple matter to the apex of the Bank's internal justice system. The Tribunal will therefore require the Bank to provide the Applicant a generic reference in accordance with the terms of this judgment. This shall not affect the Applicant's ability to obtain a reference from any individual staff member who is willing to provide one.

40. The Applicant also contends that the Bank subjected her to a number of negative personnel actions in retaliation for her alleged whistleblower activities from 2001 to 2004. She says that her supervisors wrongfully: (i) explored means to declare her redundant in 2001; (ii) downgraded her responsibilities from the administration of trust funds to the provision of "basic secretarial support" in December 2001; (iii) provided negative references in respect of her work in October 2002 to her future supervisors in MNSRE, thus affecting her new colleagues' perceptions of her; (iv) deleted several lines of text from her 2000 and 2001 OPEs; and (v) made significant unilateral amendments to the terms of

reference and to the rate of remuneration for her Short-Term Temporary assignment from January to April 2004.

41. The Bank argues that the Applicant's claims of retaliation are barred for failure to exhaust internal remedies in a timely manner. On the issue of timeliness, the Applicant argues that her claim of retaliation relates to an ongoing pattern of reprisals, which the Bank refuses to remedy. In particular, the Applicant claims that she has exhausted all internal remedies in a timely manner.

42. Article II, paragraph 2, of the Tribunal's Statute provides in relevant part that:

"No ... application shall be admissible, except under exceptional circumstances, as decided by the Tribunal, unless:

- (i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and
- (ii) the application is filed within one hundred and twenty days after the latest of the following:
 - (a) the occurrence of the event giving rise to the application;
 - (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted

43. The Tribunal has repeatedly emphasized the requirement that all internal remedies be formally invoked and exhausted in a timely manner prior to bringing an application to the Tribunal. In *de Jong*, Decision No. 89 [1990], para. 33, the Tribunal held that "where an Applicant has failed to observe the time limits for the submission of an internal complaint or appeal, with the result that his complaint or appeal had to be rejected as untimely, he must be regarded as not having complied with the statutory requirement of exhaustion of internal remedies." (*See also Steinke*, Decision No. 79 [1989]; *Bredero*, Decision No. 129 [1993]; *Setia*, Decision No. 134 [1993]; *Romain*, Decision No. 136

[1994]; *Levin*, Decision No. 237 [2000].) Specifically, the Tribunal has noted that attempts to resolve a staff member's claims many years after the operative events "could be seriously complicated by the absence of important witnesses or documents, and would in any event result in instability and unpredictability in the ongoing employment relationships between staff members and the Bank." *Mitra*, Decision No. 230 [2000], para. 11.

44. The Applicant did not file a Statement of Appeal or obtain the Bank's agreement to bring her claim directly before the Tribunal in the period when the alleged retaliation occurred. Instead, the Applicant contented herself with resorting to the informal dispute resolution mechanisms, all of which resulted in measures aimed at addressing her concerns. Even though these measures may not always have been entirely to her satisfaction, the Applicant did not file an appeal against any of the resulting administrative actions. This was the case, in particular, when her supervisor, Mr. B, refused to upgrade her post in 2001 despite her understanding that he had agreed to do so in a meeting that included a Personnel Officer, Ms. D. The Tribunal finds that the Applicant's efforts to raise the issue of retaliation, using the channel of the Ombudsman, four years after the occurrence of the last retaliatory action in 2004, did not obviate the requirement of a timely appeal to the Appeals Committee. As the Tribunal has previously held in *Walden*, Decision No. 167 [1997], para. 20:

As a matter of principle, a staff member confronted with an adverse decision by the Bank should be careful to invoke administrative review within the prescribed time. If clarification of the Bank's decision is sought by the staff member, it should be done promptly, for the time limits on administrative review would be effectively negated if the ninety-day period could be indefinitely suspended by a staff member's requests for further clarification of a decision whose purport is already quite clear.

45. The Tribunal has consistently rejected attempts to establish a pattern of abusive treatment and retaliation as a litigation strategy to circumvent the requirement of

exhaustion of internal remedies. In *Jalali*, Decision No. 148 [1996], para. 35, the Tribunal stated:

Not having raised [the Bank's decisions] before and not having taken them through administrative review, the Applicant cannot now incorporate these earlier decisions by the Bank as part of a "pattern" that can be indefinitely subjected to review by the Tribunal. The Tribunal has explained in several cases that there are important reasons for the requirement that Bank decisions be reviewed in a timely manner and that internal remedies be exhausted, including timely recourse to administrative review and to the Appeals Committee.

46. The Applicant has not attempted to advance any "exceptional circumstances" which may justify relief from the requirement for timely appeals and the exhaustion of internal remedies under Article II, paragraph 2, of the Statute.

47. Even if the Tribunal were minded to consider the Applicant's claims admissible, there is insufficient evidence before the Tribunal to support her claims for compensation for retaliation. First, the Applicant claims that her supervisor in MNSHD attempted to declare her position redundant, but she concedes that she was advised by a personnel officer at the time that she would not be made redundant. Second, the Applicant argues that the Bank sought to downgrade her responsibilities. Yet the evidence shows that, while her job description was indeed changed, her grade level was not at any time lowered. Moreover, with the assistance of the Ombudsman and the Bank's management, the Applicant secured a transfer to MNSRE, within eleven months, where she was able to continue performing her preferred functions relating to trust fund administration. Third, the Applicant alleges that her previous supervisor spoke negatively of her work in MNSHD to her future supervisors, but she has not substantiated this claim. Fourth, the Applicant complained of mistreatment by her supervisor during her Short-Term

Temporary employment, but the Tribunal notes that matters pertaining to this issue were resolved through mediation, resulting in the 2005 MOU.

48. Retaliation is prohibited under the Staff Rules. Staff Rule 8.01, paragraph 2.03, in force at the relevant time provides: “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].” It is clear that the Bank takes retaliation seriously as indeed it must, since uncovering misconduct, in particular misuse of Bank funds, is critical for the proper administration of the organization. Staff members who report such misconduct are entitled to protection and this Rule is intended to provide such protection. Thus, a report of possible retaliation must be investigated promptly as part of the Bank’s procedures. In this case, the Applicant submitted her claim of retaliation to INT, but INT, for reasons outlined in the communications to the Applicant in November and December 2007, was not able to investigate her claims due to the passage of time. While INT’s findings would not prevent the Tribunal from making independent findings of fact of possible retaliation for the purposes of awarding damages to the Applicant, the Tribunal also finds it difficult, after such a long time has passed since the alleged events, to reconstruct the evidence and conclude that the events enumerated by the Applicant were motivated by a desire to retaliate against her for reporting the alleged misuse of funds.

49. The Applicant has raised additional claims complaining that her OPEs were altered after she had signed them. After examining the OPEs maintained in the Applicant’s personnel file, the Tribunal was unable to find that the Bank tampered with the Applicant’s OPEs. She also alleges that she was “forced out of the Bank.” Again, the evidence on

record is to the contrary. The Applicant remained in the employment of the Bank until 31 December 2003 when she retired upon reaching the mandatory age of retirement. In fact, after she retired she was offered a Short-Term Temporary contract for a period of four months, until 30 April 2004. She resigned from this appointment voluntarily six days prior to its expiration. Therefore, the Applicant's claim that she was "forced out of the Bank" is not well-founded.

DECISION

The Tribunal decides that:

- (i) the Bank shall provide the Applicant, no later than thirty days from receipt of this judgment, an open letter of reference that covers her entire career with the Bank from 1970 to 1972, and February 1976 to 24 April 2004;
- (ii) the letter shall be addressed "To whom it may concern";
- (iii) the letter shall accurately reflect her performance at the Bank as documented in her OPEs during her tenure at the Bank;
- (iv) the Bank shall designate a Human Resources Officer to work with the Applicant to prepare the letter of reference in accordance with the terms of this judgment;
- (v) the Bank shall pay the Applicant one year's salary as compensation for its treatment of the Applicant;
- (vi) the Bank shall pay the Applicant \$5,000 as attorneys' fees; and
- (vii) all other claims are dismissed.

/S/ Jan Paulsson

Jan Paulsson
President

/S/ Olufemi Elias

Olufemi Elias
Executive Secretary

At Washington, DC, 23 March 2010