



World Bank Administrative Tribunal

2010

No. 443

**BJ,
Applicant**

v.

**International Finance Corporation,
Respondent**

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

**BJ,
Applicant**

v.

**International Finance Corporation,
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 Stephen M. Schwebel, President, and Judges Florentino P. Feliciano and Ahmed El-Koshi.

2. The Application was received on 29 March 2010. The Applicant was not represented by counsel. The Bank was represented by David R. Rivero, Chief Counsel, (Institutional Administration), Legal Vice Presidency.

3. The Applicant's main claims are that the International Finance Corporation ("IFC") breached the Memorandum of Understanding ("MOU") concluded between him and IFC in 2005 and that it engaged in a series of inappropriate actions in relation to his personal life.

FACTUAL BACKGROUND

4. The Applicant joined IFC in 1986 as a Research Assistant in the Economics Department. In 1994 he was promoted to the position of Financial Information Analyst and subsequently became a Portfolio Analyst and, thereafter, an Investment Officer. In 2002 the Applicant filed an appeal with the Appeals Committee challenging his manager's alleged decision to withhold his promotion at that time and making claims of career mismanagement and discrimination. IFC and the Applicant entered into an MOU in November 2002 whereby the issues of the Applicant's promotion to level GG and of career development opportunities were resolved. Subsequently, the Applicant claimed that IFC

did not implement the agreement as undertaken with respect to his career advancement and that it continued to treat him in a discriminatory manner. After attempts at resolution of his claims through mediation in March 2004, the Applicant was placed on a six-month Performance Improvement Plan (“PIP”) starting 15 June 2004. In October and November 2004 the Applicant filed two appeals with the Appeals Committee. On 15 December 2004 the PIP was extended for six more months until 15 June 2005. The Applicant claims that the PIP was extended in retaliation for his filing of the two appeals. On 27 June 2005 the Applicant was notified that his employment would be terminated effective 30 August 2005 due to unsatisfactory performance.

5. In August 2005 the Applicant and IFC pursued mediation which resulted in the signing of another MOU on 31 August 2005 by the Applicant and Mr. X (Manager on behalf of the Respondent). According to the terms of this MOU, IFC agreed, *inter alia*, to: (a) place the Applicant on administrative leave with pay between 1 September 2005 and 31 March 2007; (b) support an assignment of the Applicant with a third party organization or firm mutually satisfactory to IFC and the Applicant and to verify his employment and his performance and to provide references and recommendations (verbal and written) if required; (c) adjust upward his salary; (d) “cancel [the Applicant’s] Notice of Termination issued on June 27 2005” and “cancel and remove the Performance Improvement Plans of June 15, 2004 and December 15, 2004 from [the Applicant’s] records.” In addition, IFC undertook to: (e) permit the Applicant to represent himself as an employee of IFC until the effective date of his resignation; (f) continue to list him as an employee in its directory; (g) provide him “with access to work space at IFC and with “laptop or other home computer equipment and Information Technology (“IT”) support,” as well as “e-mail access ... under

his current user name and “access to IFC intranet and HR [Human Resources] Kiosk”; and
(h) reserve the Applicant’s current IFC phone number for his use.

6. In exchange for IFC’s provision of the above benefits to him, the Applicant agreed
(i) to resign effective no later than either 31 March 2007 or 31 May 2007 depending on
whether he elected to take three months of leave without pay prior to his administrative
leave, and (ii) to provide a written letter of resignation no later than 6 September 2005.
The Applicant also agreed to “cancel, void and terminate all and every appeal he has filed
within the World Bank Group’s Conflict Resolution System [“CRS”]”; and not to “initiate
any complaint(s) or file any appeal(s) ... that arise out of or are related to his employment,
including but not limited to any performance and termination issues, with IFC or the World
Bank Group.”

7. On 23 September and 5 October 2005, the Applicant and Mr. X signed an
Addendum to the MOU which included two clarifications, one of which stated that

If IFC/WBG [World Bank Group] does not comply with the conditions of
the MOU, [the Applicant] is able to file an appeal claiming breach of
contract, where to the MOU will be attached. Filing an appeal for breach
does not constitute by its action a breach of the terms of the agreement.

8. The Applicant tendered his resignation in September 2005 effective 31 March 2007,
as required by the terms of the MOU. However, on 30 March 2007, the Applicant wrote a
letter to Mr. X, informing him that he was withdrawing his resignation and claiming that
IFC had breached the MOU deliberately. Among other things, the Applicant complained
that: (a) Mr. X had not supported an assignment for the Applicant with a third-party
organization during the period of his administrative leave; (b) IFC had failed to provide
access to work space despite repeated requests; (c) IFC had cut off his access to the internal

communications system of IFC and that his “private e-mails” were withheld; and (d) his requests for mediation to resolve MOU compliance issues were not addressed.

9. Despite the Applicant’s withdrawal of his resignation on 30 March 2007, IFC terminated the Applicant’s employment as contemplated under the terms of the MOU. The Applicant went through another round of mediation with IFC which started on 25 June 2007 and officially closed on 19 October 2007. The Applicant received notification of the closing of the mediation on 5 February 2008. Dissatisfied with the outcome, the Applicant filed, on 8 April 2008, a first appeal with the Appeals Committee (Appeal No. 1452) challenging the same decisions and actions by IFC as those now challenged before the Tribunal presented below at paragraph 12. The Respondent raised challenges to the jurisdiction *ratione temporis* and *ratione materiae* of the Appeals Committee. On 9 October 2008 the Appeals Committee, which had requested the Applicant to present a chart of the specific actions and inactions that he was challenging, issued its Decision on the Question of Jurisdiction in connection with the Applicant’s first appeal. The Committee declined jurisdiction over two of the Applicant’s eleven claims but assumed jurisdiction over the remaining nine.

10. On 27 October 2008, the Applicant filed a second appeal (Appeal No. 1472) challenging the same decisions of IFC as he now challenges before the Tribunal and as presented below at paragraph 13. The Respondent again raised jurisdictional challenges to the claims in this appeal. In its Decision on Jurisdiction issued on 16 March 2009, the Committee declined to take jurisdiction over the claims set out in the second appeal on the grounds that they were all untimely and that, in addition, one of those claims did not constitute an administrative decision within the scope of the Committee’s competence.

11. Thereafter, as a consolidated case, the Committee decided to proceed to address the merits of the Applicant's claims over which it had taken jurisdiction. A hearing of the Applicant's claims was set for 3 August 2009 but the Applicant declined to attend. In its Report of 30 September 2009, the Appeals Committee (which had been renamed Peer Review Services ("PRS")) found that IFC had not breached the terms of the MOU with respect to any of the nine claims raised in Appeal No. 1452 and recommended that the Applicant's claims be denied. On 25 November 2009 the Acting Vice President, Human Resources, informed the Applicant that he had accepted the Appeals Committee's/PRS recommendation.

12. The Applicant filed an Application with the Tribunal on 29 March 2010. In his Application, the Applicant states that the issues outlined in Appeals Nos. 1452 and 1472 provide a fairly accurate description of the decisions he is contesting before the Tribunal. The Applicant is contesting the Appeals Committee's decisions on jurisdiction dated 9 October 2008 and 16 March 2009, respectively, and the following decisions on the merits, which he had also contested in Appeal No. 1452:

- (i) IFC's continuing breach of the MOU of August 31 2005 and IFC's refusal to mediate in good faith to resolve problems;
- (ii) IFC's attempts to prevent the applicant from taking his claims to the Appeals Committee or the Tribunal;
- (iii) IFC's interference in the applicant's negotiations with his ex through (a) withholding evidence of fraud and corruption in the applicant's divorce case which was left on his voice mail and his e-mails, and denying the applicant access to this evidence; (b) retaliating against the applicant, in collusion with his ex's attorney, and fraudulently obtaining a contempt of court ruling against the applicant, in his absence ...; (c) IFC assisting his ex's attorney to file a frivolous, abusive and malicious motion to change the property distribution in the applicant's divorce decree entered in 1999, in order to justify substantial increase in the marital share of the applicant's pension...

(iv) ... IFC's decision to subject the applicant and his family to extreme living conditions in the United States – by deliberately refusing to meet the Applicant to rectify the situation – in order to deter and dissuade the applicant from pursuing just claims.

13. In addition, the Applicant is also contesting the following decisions on the merits which he had contested in Appeal No. 1472:

(i) IFC's attempts to block the applicant's efforts to take his complaints to the Appeals Committee or the Tribunal through: interception of his e-mail from his attorney; interception of his e-mails from the Office of Mediation and fabrication of case tracking system data of the Office of Mediation;

(ii) IFC's interception and removal of his e-mails from the Telecom Services about his voice-mail, without the applicant's knowledge, while denying the applicant access to his own e-mails and the Bank network; IFC's continuing to withhold the applicant's voice mails, and continuing to monitor all his voice mails, while refusing to provide him with the password to his own voice mail; and

(iii) ... [IFC's] urging the applicant's ex to appeal to the Pension Benefits Administration Committee to start drawing 50% of the applicant's pension, ... while both the IFC and the Pension Administration are fully aware that: the pension order was obtained improperly; that the order is unjust and erroneous; that the applicant's ex has been seeking a cash settlement – and her appeal to start drawing the applicant's pension is intended to dissuade the Applicant from exposing their fraud and corruption.

Relief sought

14. The Applicant requests (i) review of the “jurisdiction decisions” of the Appeals Committee by the Tribunal and remand of the case to the Appeals Committee for a proper hearing of the issues; (ii) review of the Appeals Committee's rules and procedures in this case which the Applicant believes to be highly prejudicial; (iii) rescission of all the decisions contested; (iv) reinstatement of his external leave with pay status, including medical health insurance and his G4 visa; (v) immediate financial and moral support; (vi) moral support to him and his family to complete transition to a new job and location; (vii)

payment of three years' salary as compensation for career and moral damages inflicted on him by IFC; (viii) payment of legal fees and costs; and (ix) an immediate advance of legal fees in the amount of \$50,000 to meet his current retainer costs.

15. On 14 May 2010 the Respondent submitted a Preliminary Objection claiming that a number of the Applicant's claims and in particular those over which the Appeals Committee had not assumed jurisdiction were inadmissible as untimely and because they did not constitute non-observance of the Applicant's contract of employment or terms of appointment. By order dated 21 June 2010, the President of the Tribunal decided to join the Respondent's preliminary objection to the merits.

THE PRINCIPAL CONTENTIONS OF THE PARTIES

The Applicant's contentions

16. The Applicant claims, among other things, that the MOU he signed with IFC in August 2005 was designed to make him whole for what he had suffered, i.e., denial of career development opportunities afforded others at IFC and to gain experience and develop professionally like his colleagues.

17. He explains that the MOU was tailored to facilitate his transition to a new job by providing him with a work station and IT support so that he could search for a job overseas, by supporting him with an "IFC reference person," and by enabling him to communicate with outside organizations that he was approaching in his search for an external assignment. In addition, he states, the agreement was carefully designed to meet his family's immediate financial requirements, to continue to pay for his daughters' college education, and to pay his former wife the cash settlement she was seeking.

18. The Applicant however states that the MOU was breached. Instead of serving its original purpose it ended up serving other purposes, namely providing a basis for “IFC jumping on the divorce bandwagon,” interfering in his private life, conspiring with others to conceal evidence of fraud, conspiring to set the Applicant up for contempt of court and sanctions, breaking into his “private e-mails,” and creating an impossible situation by helping his former wife obtain improperly an order for half of his pension, without his knowledge, simply to use as “a bargaining chip” against him. He claims that regardless of IFC’s actual motivation, the results have been “truly catastrophic” for him.

The Respondent’s contentions

19. The Respondent states that the Tribunal should decline to take jurisdiction over all claims asserted by the Applicant with the exception of the claim alleging “IFC’s continuing breach of the MOU” and “IFC’s refusal to mediate in good faith to resolve problems.” It claims that all the other claims were either presented in an untimely manner before the Appeals Committee or did not constitute non-observance of the Applicant’s contract of employment or terms of appointment.

20. The Respondent also requests that all the Applicant’s requests for review of the Appeals Committee’s jurisdictional decisions and rules and procedures be denied because the Tribunal conducts a *de novo* review of contested matters and does not act as an appellate body with respect to the decisions of other entities comprising the Bank Group’s CRS.

21. The Respondent urges that the Applicant’s allegations are without merit because the record is clear that no breaches of the MOU had occurred throughout the Applicant’s administrative leave without pay, IFC was attentive to his concerns, IFC did not try to

prevent the Applicant from pursuing his claims before the Appeals Committee or the Tribunal by limiting access to his e-mail or voice mail, and IFC did not interfere in his domestic relations proceedings or subject the Applicant and his family to “extreme living conditions” in the U.S. for any purpose whatsoever.

22. In the view of the Respondent, the Applicant himself has been responsible for the troubles he ascribes to IFC by his failure to act in a timely manner to: set up his computer access from his home; read and respond to mail from the local courts and elsewhere; apply for various benefits for himself and his dependents such as the medical insurance plan during the period allowed for making such application; draw down the pension payments to which he has been entitled since his termination from service in April 2007; and adjust his and his dependents’ visa status.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

23. The Tribunal will begin by addressing a number of preliminary matters.

Production of documents and hearing of witnesses

24. The Applicant requests the production of documents and hearing of witnesses. The Tribunal notes that the Applicant had also requested a hearing of witnesses before the Appeals Committee. The Appeals Committee granted this request and made the arrangements necessary for such hearing to take place. In the end, the Applicant refused to participate in the hearing, because he Appeals Committee had failed to request the production of certain documents and because the issues addressed in Appeal No. 1472 would not be addressed at the hearing. The Applicant refused to participate in the hearing even by telephone, which mode of participation was also offered to him by the Appeals Committee/PRS on the day of the hearing. The Applicant’s behavior before the Appeals

Committee/PRS showed disregard for expenditures of time and resources by IFC and the Appeals Committee. The Tribunal sees no reason why the Applicant should be given another opportunity to waste resources of IFC and the Tribunal. The record before the Tribunal is quite adequate to permit resolution of the Applicant's multiple claims which have been pending before IFC. For these reasons the Tribunal has denied the Applicant's requests in this respect.

Identification of the Applicant's claims before the Tribunal

25. The Tribunal notes that much of the Applicant's Application consists of a simple reiteration of the allegations he presented to the Appeals Committee. The Applicant refers to his Statement of Appeal, which he attaches to his Application, without providing any new material. Furthermore, the Applicant describes his claims in a general manner without identifying the specific actions or omissions that he asks the Tribunal to review and reverse.

26. Nevertheless, the Tribunal has ruled in *McNeill*, Decision No. 157 [1997], para. 26, that "it is its duty, as it is the duty of every international tribunal, 'to isolate the real issue in the case and to identify the object of the claim ...; this is one of the attributes of its judicial functions' (*Nuclear Tests (Australia v. France)*, *Judgment of December 20, 1974, I.C.J. Reports 1974*, p. 262)." The Tribunal has also held that "the Appeals Committee is a body whose mission is to assist management – and, in the last resort, the Tribunal – in reaching proper solutions." (*Lewin*, Decision No. 152 [1996], para. 43.)

27. The Tribunal notes that, when filing his first appeal before the Appeals Committee (Appeal No. 1452), the Applicant was asked to compile a chart identifying the specific actions or inactions that he was challenging. The claims presented in his second appeal

(Appeal No. 1472) were also specified in the course of the Appeals Committee proceedings. Considering that the Applicant seeks review of the exact same claims before the Tribunal, the Applicant's specific identification before the Appeals Committee of the alleged actions and inactions of IFC will be useful to the Tribunal's examination of whether such actions, if admissible, constitute continuous breach by IFC of the MOU and/or violation of the Applicant's contract of employment and terms of appointment.

Review of Appeals Committee procedural decisions

28. The Tribunal will examine next the Applicant's request that it review the decisions on jurisdiction by the Appeals Committee, remand the case to the Appeals Committee for a proper hearing of the issues and review the Appeals Committee's rules and procedures which the Applicant believes to be highly prejudicial to him. The Tribunal has held in *Lewin*, Decision No. 152 [1996], para. 44, regarding its role and its relationship with the Appeals Committee, that

The Tribunal is not an appellate body reviewing the proceedings, findings and recommendations of the Appeals Committee. Its task is to review the decisions of the Bank; it is not to review the Report of the Appeals Committee. In a previous judgment the Tribunal has stated as follows:

.... the relationship of the Appeals Committee to the Tribunal is not that of an inferior to a superior court. The Tribunal is not a court of appeal from the Appeals Committee and does not review the manner in which the Appeals Committee has dealt with a case before it. The proceedings before the Tribunal are entirely separate and independent despite the fact that recourse to the Appeals Committee is a condition precedent to the commencement of proceedings before the Tribunal. The function of the Appeals Committee is to assist the management of the Bank to determine for itself whether there has been a failure on the part of the Bank. The function of the Appeals Committee ends with its recommendation, which the Bank may or may not accept. ... The Tribunal is the only body within the Bank that deals with complaints judicially and it

does so only on the basis of the evidence before it. (*de Raet*, Decision No. 85 [1989], para. 54.)

29. Accordingly, the Tribunal will not entertain those pleas in which the Applicant requests review of procedural decisions and remand of the case to the Appeals Committee for a proper hearing of the issues. Nor will the Tribunal review the Committee's rules and procedures, as this is not the Tribunal's role. The Tribunal will review, however, the jurisdictional findings of the Appeals Committee, in the course of examining its own jurisdiction over the Applicant's claims. Such review follows below.

PRELIMINARY OBJECTION TO
JURISDICTION OF THE TRIBUNAL

30. The Respondent claims that the Applicant did not exhaust internal remedies in a timely manner with regard to a number of his claims. The Respondent has also objected to the admissibility of some of the Applicant's claims on the ground of lack of jurisdiction *ratione materiae*.

31. Referring to Article II of its Statute, the Tribunal held in *Sharpston*, Decision No. 251 [2001], paras. 25 and 26, that:

... the Administrative Tribunal cannot admit applications "except under exceptional circumstances as decided by the Tribunal, unless ... the applicant has exhausted all other remedies available within the Bank Group."

To the extent such remedies are subject to time requirements, failure to seek them in a timely fashion is equivalent to failure to use them, and thus a jurisdictionally fatal failure of exhaustion.

32. The Tribunal also found in this judgment at paras. 28 and 29:

It is beyond doubt that the Tribunal has the authority, and indeed the duty, to review jurisdictional findings of the Appeals Committee. As Staff Rule 9.03, paragraph 4.03, provides:

The Appeals Committee itself shall decide an objection to its competence, subject to review by the Administrative Tribunal.

The “review” in question relates perforce to the jurisdiction of the Appeals Committee. If the Appeals Committee incorrectly accepts an untimely appeal, the Administrative Tribunal may and must conclude that there was a failure of timely exhaustion of internal remedies.

33. Under a provision in the Addendum to the MOU, the Applicant was allowed recourse to the Appeals Committee on breach by IFC of the conditions of the MOU. The MOU also provided that “the parties agree to access Mediation Services (either separately or jointly) if there are questions regarding compliance with this agreement.”

34. Under the applicable versions of Staff Rules 9.01 (Office of Mediation), and 9.03 (Appeals Committee), staff members can pursue mediation before filing an appeal within 90 days from the notification of an administrative decision. During mediation, the 90-day time limit to file an appeal is temporarily stayed. At the end of an unsuccessful mediation, the parties have at least 30 days to file an appeal.

35. With regard to the nine allegations of breach of the MOU over which the Appeals Committee had accepted jurisdiction, the record shows that the Applicant pursued timely mediation of such claims twice: once between July 2006 and April 2007 during the period of his administrative leave, and a second time between late June and mid-October 2007. As the dates of the closing of the first mediation and the opening of the second are unclear and as there is no evidence that the parties were notified of the closing of the first mediation, the Applicant has argued that mediation had been continuous between July 2006 and October 2007. It also appears that the Applicant kept challenging additional alleged breaches of the MOU during the course of the mediation. The record also shows that on 5 February 2008 the Applicant received notice that the Office of Mediation had closed mediation and, after filing for an extension of time to file his appeal, he filed his appeal within the time limit indicated to him by the Appeals Committee Secretariat. The Tribunal

finds that the Applicant timely pursued mediation and recourse to the Appeals Committee in respect of the nine alleged breaches of the MOU identified in Appeal No. 1452. The Appeals Committee had properly assumed jurisdiction over such claims and the Applicant had timely exhausted internal remedies in respect of these claims. The Tribunal will address the merits of each of these claims below.

36. In Appeal No. 1452, the Appeals Committee refused to assume jurisdiction over a number of claims, described by the Applicant as interference by IFC in his divorce proceedings in the local courts, on the basis that these claims did not challenge IFC administrative decisions. The Respondent submits that it is outside the Tribunal's competence as set out in Article II (1) of its Statute to adjudicate matters which are before local courts and that these claims are inadmissible on the ground of lack of jurisdiction *ratione materiae*. The Tribunal notes that in his Application the Applicant tenably alleges that IFC interfered in his divorce proceedings with his former wife in a number of ways and thus violated his contract of employment and terms of appointment. As the Tribunal noted in *N*, Decision No. 356 [2006], para. 20:

[f]or jurisdictional purposes, as the Tribunal held in *McKinney*, Decision No. 183 [1997], paras. 13, 16-17, it is enough that the Applicant has "alleged" a plausible claim of contract violation and that it is tenable that "there are circumstances that warrant an examination of the merits of his allegations." It was there held by the Tribunal that "[i]t would be premature and improper for the Tribunal, by declaring this application inadmissible on the ground [of lack] of jurisdiction *ratione materiae*, to deprive the Applicant of an opportunity to make his case.

37. The Tribunal noted most recently in *Pal (No. 2)*, Decision No. 406 [2009], para. 29:

As the Tribunal also held in *Naab*, Decision No. 160 [1997], para. 26, all that Article II requires is that the Applicant be a staff member of the Bank Group and that he present "any application" alleging non-observance of "his contract of employment or terms of appointment." The question whether the Bank had an obligation under the Applicant's contract of employment and terms of appointment which it did not observe can be

disposed of only after consideration of the substantive issues. (*See also Lysy*, Decision No. 211 [1999], para. 44 and *G (No. 2)*, Decision No. 355 [2006], paras. 31-33.)

38. As the record also shows that these claims were timely raised, the Tribunal will assume jurisdiction over these claims and will address the merits of each below.

39. Another claim presented in Appeal No. 1452 which the Appeals Committee refused to review is IFC's decision to terminate the Applicant's employment despite the withdrawal of his resignation. This claim is addressed later in this judgment.

40. None of the claims that the Applicant raised with regard to Appeal No. 1472 had been brought before the Appeals Committee in a timely manner. In Appeal No. 1472 these claims were identified as follows: (i) IFC had intercepted and deleted an e-mail message sent to his personal account by his attorney; (ii) IFC intercepted an e-mail message sent to the Applicant on 4 April 2007 from the Manager of the Bank's Mediation Office, which informed the Applicant that mediation would not be successful and that he should consider other avenues of redress; (iii) IFC had fabricated information in the Mediation Tracking System, resulting in the challenge to jurisdiction in Appeal No. 1452 against which the Applicant was forced to defend; (iv) IFC had "confiscated" e-mail messages relating to password information necessary to enable the Applicant to access his voicemail that he needed in his divorce proceedings; and (v) IFC had encouraged his former wife's attorney to pursue her rights with respect to the Applicant's retirement benefits.

41. Since the Applicant's appeal was filed on 24 October 2008, the Committee found that for the Applicant's claims to be admissible, the Applicant should have been on notice with regard to each one of these from 26 July 2008 onwards the date on which the 90-day time limit for filing an appeal with the Appeals Committee had started running. The Committee determined, however, that the Applicant must have been reasonably aware prior

to 26 July 2008 that each of the incidents in question had occurred and that therefore the Applicant had failed to file his claims seasonably.

42. With regard to the first claim, the record shows that the Applicant was aware that a document supposed to be on file regarding the closing of mediation was missing. As the Applicant waited longer than the 90-day time limit prescribed under Staff Rule 9.03 to file an appeal regarding a claim concerning the circumstances of the disappearance of such document, his claim was properly rejected by the Appeals Committee as untimely. Because the Applicant has not exhausted internal remedies in a timely manner with regard to this claim, his claim before the Tribunal is inadmissible.

43. The Appeals Committee also refused to assume jurisdiction over the Applicant's claims listed in para. 40 above in (ii)–(iv) on the ground that they had been filed in an untimely manner. The Appeals Committee stated that by 17 July 2008 at the latest, the date of filing of the Respondent's Response to Applicant's Appeal No. 1472, the Applicant knew about: (a) the alleged missing e-mail message of 4 April 2007 from the Manager of the Office of Mediation to him; (b) the problems he perceived in the Mediation Case Tracking data; and (c) the loss of e-mail messages regarding his telephone PIN or password. The Tribunal notes that, as the Applicant failed to file an appeal within 90 days from receiving notice of such alleged actions or failures to act on the part of IFC, his claims are inadmissible for failure to exhaust internal remedies in a timely manner. The Tribunal notes, however, that such claims appear to form part of, and to overlap in some respects with, the Applicant's claims of interference by IFC with his e-mail and voice mail which the Applicant had timely challenged before the Appeals Committee as part of Appeal No.

1452. To the extent that such claims overlap with or are repetitive of those filed in Appeal No. 1452, the Tribunal will address them on the merits.

44. Lastly, the Applicant's claim that IFC had encouraged the attorney of his former wife to pursue her rights with respect to the Applicant's retirement benefits has also been challenged as having been filed in an untimely manner. The record shows that the Applicant had been sent a letter by the Pension Administration providing information about his former wife's pension claim on 18 June 2008. The Applicant apparently received this letter in timely fashion but did not read it for a number of weeks. The Tribunal finds that the Applicant failed to bring his claim in this respect within 90 days after receipt of such letter and therefore the Appeals Committee has properly refused jurisdiction to review this claim. The Applicant's apparent failure to read the notification letter for weeks after receiving it does not excuse his delay in filing this claim; this disregard of time limits would permit the Applicant to circumvent the requirement of timely exhaustion of internal remedies and would make a mockery of time limits established in the rules. (*See e.g. Agerschou*, Decision No. 114 [1992], paras. 42, 45 and 48; and *Kehyaian (No. 3)*, Decision No. 204 [1998], para. 23.) As the Applicant did not exhaust internal remedies in a timely manner, this claim is inadmissible and will not be reviewed by the Tribunal. However, this claim partly overlaps with the Applicant's claims raised in Appeal No. 1452, over which the Tribunal has decided to exercise jurisdiction regarding IFC's alleged interference in the Applicant's divorce proceedings. The Tribunal will therefore address this claim on the merits but only to the extent of such overlap with these other admissible claims.

MERITS

IFC's alleged interference with the Applicant's e-mail or voice mail

45. The Applicant has specifically claimed in this respect that: (i) his private voice mails were “confiscated”; (ii) his access to the Respondent’s computer network was interrupted and his account was disabled; (iii) e-mail messages sent to him were deleted from his private e-mail account; and (iv) IFC refused to give him access to his e-mail, private files, documents, and personal belongings even after the termination of his employment in April of 2007.

46. Under paragraph 8 of the MOU, IFC had undertaken the obligation to

continue listing [the Applicant] as an employee in its directory ... provide him with access to workspace at IFC and ... provide laptop or other home computer equipment and IT support ... provide e-mail access for [the Applicant] ... under his current user name ... provide for access to IFC intranet and HR Kiosk; and ... reserve [the Applicant’s] current IFC phone number for his use.

47. The Tribunal notes that, on the one hand, IFC largely met its obligations under the MOU as there is no dispute that the Applicant was listed as an employee in its directory, was provided with a laptop and other equipment and IT support, had e-mail access under his user name, had access to the WBG information technology systems and had a phone number for his use. On the other hand, the record also shows that there had indeed been technical problems regarding the Applicant’s access to IFC’s technology resources. Notwithstanding the Applicant’s claims to the contrary, however, the Tribunal notes that the Applicant was in notable degree himself responsible for these problems that resulted in his lack of access to such resources.

48. The evidence given by an IFC technology expert, and which has not been refuted by the Applicant, shows that the Applicant placed a request for a “Secure ID” card by which

he could gain access to IFC's technology resources in September 2005, shortly after signing his MOU. He was notified soon thereafter that it was available for pick-up, but did not collect it until early March 2007, right before the termination of his employment. Yet he had been repeatedly advised that he could not access IFC systems remotely without such Secure ID card. It appears also that the Applicant failed to present his laptop to IFC technology staff for reconfiguration and assistance with remote access, despite a number of reminders, until early March 2007. Furthermore, the record shows that promptly upon his raising of complaints in this respect, the Applicant was issued a new "Secure ID" card. The Tribunal notes that while, under the MOU, IFC had an obligation to provide the Applicant with use of its technical facilities in order to represent himself as an IFC employee during his administrative leave and to facilitate identification of employment opportunities outside the organization, the Applicant also had an obligation to take the appropriate steps to maintain such access to computer systems, to bring to IFC's attention promptly any related obstacles in this respect, and to seek their resolution in a timely manner. The evidence shows that, while IFC made good faith efforts to meet its obligations under the MOU, the Applicant did not do his part.

49. The Applicant's allegations with regard to the above-mentioned breaches of the MOU are further compromised by the fact that the majority of the Applicant's complaints refer to e-mail or voice messages of a private nature. The Applicant particularly complains about the loss of voice messages which related to his divorce proceedings some of which dated back to 2002. The Respondent explained that it is not WBG policy to retain or archive voice mail messages whether business-related or private and that no special obligation was undertaken to do so in the Applicant's case. Furthermore, under the WBG's

Administrative Manual, use of WBG resources and facilities is given to WBG staff for official business and emergencies, and not for personal use. Such personal use is to be incidental only. The Applicant would have been better advised not to use IFC's resources for his private communications and to use instead a personal e-mail account and telephone services, in order also to safeguard, if he so wished, their existence after a long period of time. Accordingly, the Tribunal finds that IFC's failure to retain such communications did not constitute a breach of the MOU.

50. The Applicant does not simply claim that such private e-mail and voice messages were deleted or "confiscated" by IFC. He also insists that IFC's alleged actions were based on improper motives such as retaliation for filing his appeal concerning alleged discriminatory treatment. As the Tribunal held in *Lysy*, Decision No. 211 [1999], para. 71, "[a] finding of improper motivation cannot be made without clear evidence." The Applicant has not proven that such improper motivation existed. The Respondent, on the other hand, has provided evidence to show that objective reasons existed for IFC's actions and inactions. The Applicant has not adduced any reasons for not addressing these problems earlier himself. Therefore, his claim of retaliation on the part of IFC with regard to interference with his e-mail and voice messages lacks evidentiary support and is unsustainable.

Work space issues

51. The Applicant further claims that IFC never provided him with a work station as promised under the MOU. As a result, the Applicant claims, the mail room was unable to deliver mail to him because no mail station had been assigned to him. He claims that

during his entire period of administrative leave he only received about five pieces of mail from the Bank and IFC while the rest of his mail is unaccounted for.

52. The record shows that the Applicant was assigned a work station in November 2005, about three months after the MOU was signed. A number of problems, however, appear to have been associated with the provision of such work station. First, it was initially under construction and, subsequently, it was assigned to another staff member. In January 2007 the Applicant was moved to another work station but construction followed and that work station ended up being also used as a fax station.

53. The Tribunal notes that all IFC had undertaken to provide him with under the MOU was “access to work space at IFC.” IFC had not undertaken to provide the Applicant with a private office or with a space only for his use or that could not also be used as a fax station, as happened in the Applicant’s case. The Tribunal finds that a promise of a permanent work station was not made to him under the MOU. The Tribunal also notes that the Applicant had been provided with a home computer and a laptop so that he could have very well been able to conduct his employment search and to exchange communications with minimal interruptions and with a minimum requirement of access to workspace in IFC. The Tribunal concludes that the Applicant has not demonstrated a failure of IFC to meet its obligation to provide the Applicant “access to work space.”

Disclosure of information and breach of confidentiality

54. The Applicant claims that IFC breached the MOU’s terms because it had disclosed the terms of the MOU (i) to the Superior Court presiding over the Applicant’s divorce proceedings and (ii) to the lawyer of the Applicant’s former wife. This complaint arose following the Applicant’s alleged failure to comply with a subpoena to produce various

records in the context of litigation concerning spousal and child support. In an e-mail message to him sent on 26 July 2006, a Senior Ethics Programs Officer reminded the Applicant of the World Bank's Information Policy "Policy on Staff Compliance With Legal Obligations to Provide Salary and Benefits Information and Spousal and Child Support ("1998 Policy")." According to the Ethics Officer's e-mail message

With regard to the provision of information, the Bank Group will continue to encourage staff to consent to making benefits information available to their spouses (by completing Form 2298 which may be obtained from the HR Service Center). Additionally, in the absence of consent, and where there is a final court order or request from a judicial or civil authority in the context of divorce or child support requiring the staff member to provide salary and/or benefits information, the procedures described in the following paragraph will apply.

In cases where such a final court order or request is submitted to the Bank Group, the matter will be brought to the attention of the Office of Professional Ethics, which will remind the staff member of the obligations imposed upon all staff to meet their personal legal obligations and counsel the concerned staff member to provide the requested information directly to the spouse or other family member. *If the staff member does not provide the Bank Group with evidence of having responded to the court order or request within 30 calendar days thereafter, the Bank Group may provide the spouse, former spouse or child (or a legal representative of any of them) all or some of the following information, as requested by the Court:*

- (i) the staff member's net salary, gross compensation (if applicable) and accrued separation grant (if applicable);
- (ii) the staff member's accrued [Staff Retirement Plan ("SRP")] benefit as of the date of the request; and
- (iii) the identity of the staff member's designated beneficiaries, if any, for purposes of SRP death benefits and life insurance benefits.

The Bank would provide this information voluntarily, without waiving the organization's privileges and immunities. (Emphasis added.)

55. The Senior Ethics Officer further informed the Applicant that he would have 30 days from the date of receipt of this e-mail message to comply with the subpoena and

supply the information requested, and, if he failed to do so, the Bank would proceed to supply the information in accordance with that subpoena.

56. On 5 September 2006 the Senior Program Ethics Officer sent an e-mail message to the Applicant indicating that, as he had not responded, HR would release the information requested to the attorney of his former wife. Eventually, HR presented to the attorney of the Applicant's former wife information concerning the Applicant's salary and gross compensation, amount of separation grant, amount paid representing accrued annual leave, and the projected amount of pension benefits.

57. The Tribunal first notes that the 1998 Policy described in the Ethics Officer's e-mail message forms part of the WBG's Staff Rules. Paragraph 5.01(h) of the applicable version of Staff Rule 2.01 "Confidentiality of Personnel Information" provided that the following information may be released to persons outside the Bank Group without the authorization of the staff member concerned:

information on a staff member's salary and benefits (including pension and insurance) released consistent with a final court order or request from a judicial or civil authority in cases of divorce or family maintenance to which a staff member has not responded within 30 days of the Bank Group bringing the request or order to the staff member's attention.

58. As the Respondent has explained, the policy of disclosure of confidential information under certain conditions was adopted in response to concerns raised about the impact of the WBG's immunities on the rights of spouses and dependents to alimony and child support and in order to protect those rights. The Tribunal has ruled on the legitimacy of such a policy in its decision in *E*, Decision No. 325 [2004], para. 25, where it found that

The Tribunal, which has the power to review Bank policies in the context of their application to applicants' individual cases, endorses the view that the 1998 Bank Policy is lawful to the extent that it manifests a concern for the enforcement of spousal and child support orders directed against staff members, and seeks to establish a procedure for implementing that goal.

59. On the other hand, the Tribunal also notes that the MOU states that “this agreement and all conversations related to this agreement are to be kept on a strictly confidential basis.” This provision in the MOU could be seen as being in conflict with the 1998 Policy as incorporated in the Staff Rules.

60. However, in view of the undisputed legitimacy of the 1998 Policy, the Tribunal considers that it would be against public order and public policy principles if the legitimate objective that the disclosure of information was intended to achieve in the contexts of child support and spousal alimony were circumvented through a private agreement to which the individuals whose interests the policy was intended to protect were not parties.

61. In addition, the Tribunal notes that, in this case, there is ambiguity as to the extent to which the confidentiality of the terms of the MOU was compromised because HR appears to have disclosed only certain information regarding the Applicant’s salary, annual leave benefits and pension estimate benefit, as these resulted from the MOU, while the exact terms of the MOU remained undisclosed. In addition, the Applicant has not proven that disclosures of the terms of the MOU were made to anyone else other than to the Court and his former wife’s attorney in relation to their divorce proceedings and pursuant to the request made by the Legal Department and the Ethics Office. The Respondent complied with its obligation under the Staff Rule and the 1998 Policy to provide notice to the Applicant and allow him an opportunity to present this information on his own within the 30 days provided under the Staff Rule. It actually appears that the Respondent waited longer than 30 days but the Applicant failed to respond in a timely manner. The Tribunal finds that it has not been proven that the disclosure of confidential information in the manner, to the extent and for the reason that it was provided pursuant to the 1998 Policy

and Staff Rule 2.01 constituted violation of the MOU. The Applicant's claim in this respect has not been substantiated.

Alleged interference with proceedings in local courts

62. The Applicant claims that IFC interfered with his divorce proceedings. In Appeal No. 1452, the Applicant claims more generally that IFC interfered in the Applicant's negotiations with his former wife by (a) concealing evidence of fraud and corruption; and (b) retaliating against him in collusion with his former wife's attorney and fraudulently obtaining a contempt of court ruling against the Applicant in his absence. With regard to this claim the Applicant specified before the Appeals Committee that IFC was pressing the presiding judge in the Superior Court for a speedy contempt ruling during the Applicant's brief absence from Washington in August 2006, in retaliation for his attempts to expose the fraud upon the court. The Applicant also challenges IFC's assistance to his former wife's attorney to file a frivolous, abusive and malicious motion to change the property distribution in the Applicant's divorce decree entered in 1999. In Appeal No. 1472, the Applicant repeated his claim that IFC was urging his former wife to appeal to the Pension Benefits Administration Committee to allow her to start drawing 50% of the Applicant's pension.

63. An examination of the substance of these claims shows that they are unsustainable. First, as seen above, the Tribunal found that IFC had no obligation to guard the Applicant's personal e-mail or voice messages (including the ones left by his former spouse regarding matters of their divorce) and its failure to guard them could not be attributed to any improper motive. Second, there is no evidence in the record regarding any contempt of court ruling against the Applicant nor IFC's involvement in obtaining it. Moreover, the

Applicant's claim that IFC assisted his former's wife's attorney to file a motion to change the property distribution in the Applicant's divorce decree and the attribution of improper motives and bad faith to such actions are totally unfounded.

64. With regard to this last claim, the Respondent acknowledges that the Bank's Pension Administration office, through its own counsel, had provided information about the Pension Plan in the context of the court order obtained by the Applicant's former wife with respect to the allocation of the Applicant's pension. However, the Tribunal has ruled that such provision of information to the former spouses of staff members in relation to their pension entitlement is lawful and in accordance with paragraph 5.1(c) of the 1995 amendment to the SRP. (*Homayoun*, Decision No. 403 [2009], para. 7; and *E*, Decision No. 325 [2004], para. 49.) That provision reads in pertinent part:

A participant or a retired participant, pursuant to a legal obligation, as evidenced by a final order of a court, arising from a marital relationship to support one or more former spouses, or a spouse from whom there is a decree of legal separation, may direct that a specified amount or part of a pension payable under Section 3.1, 3.2 or 3.3 or of a lump sum payment commuted from such a pension under Section 4.4(a), or of a withdrawal benefit payable under Section 4.3, shall be paid to one or more such former spouses or the spouse. *If the participant or retired participant is obligated by a final order of a court to direct that such a payment be made, the Benefits Administrator shall pay the pension or lump sum payment accordingly after receipt of the order; provided, however, that neither the participant, retired participant, nor the Benefits Administrator may convey an interest on the Retirement Trust Fund of the Plan or in the pension or other benefits of a participant or retired participant to any person. No payment hereunder pursuant to a final order of court will be payable sooner than the end of the month which is at least 60 days after the Benefits Administrator has received an authenticated copy of the order.* (Emphasis added.)

65. In *Homayoun*, Decision No. 403 [2009], para. 23, the Tribunal upheld the award of a direct payment from the Pension Administration to former spouses of staff members pursuant to final court orders and observed that:

In order to keep its staff members from evading legitimate court orders relating to spousal support (by improperly insulating their pension entitlements behind the Bank's own privileges and immunities), the Bank has, by virtue of the 1995 reforms, made it possible, by agreement or under final court orders, for spouses of staff members to obtain direct payments from Pension Administration.

66. In addition, the Tribunal upheld in *Mills*, Decision No. 383 [2008], para. 60, the direct provision of information by the Bank to the former spouses of retired staff members regarding their pension entitlements pursuant to a court order of spousal support, provided certain notice requirements to the staff member were met. It held that

Yet the very purpose of the amendment to the SRP in respect of spousal support was precisely to allow for the former spouse to communicate directly with the Bank for implementation of the court order. If the former spouse does so directly there is every reason for the Bank to answer also directly and not through the Applicant. The only requirement is that the Applicant be informed of such communication, as indeed he was in the present case.

67. The Applicant has not complained here that he was not properly notified with respect to the information given to the attorney of his former spouse. In fact, it can be inferred from evidence in the record that the Applicant was so informed by the Pension Administration. The Applicant simply alleges that IFC's attorney should not have provided that information at all and, by doing so, had inappropriately interfered with proceedings in local courts. The Tribunal rejected a similar argument in *Mills*, para. 61, as follows:

The information provided by the Bank was to explain what was possible under the terms of the Plan and what was not. All such information is available to the participants in the Plan through various internal communications. It must be equally accessible to former spouses who are entitled to draw support from the participants' pensions as ordered by a court. The record further shows that what the Bank did was to send Mrs. Mills' counsel the Plan Guidelines on divorce decrees.

68. Therefore, in accordance with the Bank's amendment to the SRP in 1995 and its above-mentioned jurisprudence, the Tribunal finds the Applicant's claims of IFC's

interference in his court proceedings unsupported by evidence. The suggestions of improper motivation on the part of IFC in this respect are equally not sustained.

IFC's failure to meet to resolve issues under the MOU

69. The Applicant has also claimed that IFC has breached the MOU by (i) refusing to meet with him or talk on the telephone regarding his voice mails and other obligations under the MOU; and (ii) neglecting to resolve issues prior to the effective date of his resignation, and refusing to provide additional time to resolve them afterwards. Regarding the first alleged breach of the MOU, the Tribunal notes that there was no specific obligation under the terms of the MOU for IFC representatives to meet with him in person or on the telephone and discuss issues of non-compliance with the MOU. The Tribunal notes that there was a provision in the MOU that stated that “the parties agree to access Mediation Services (either separately or jointly) if there are questions regarding compliance with this agreement.” This could be reasonably interpreted to mean that the parties would first attempt to resolve any dispute through mediation before the Applicant filed an appeal. Indeed, the record shows that the Applicant resorted to mediation at least twice after signing the agreement. IFC participated in such mediation. Therefore the Applicant’s other claim – that IFC neglected to resolve issues prior to the effective date of his resignation, and refused to provide additional time to resolve issues afterwards – is not supported by the record. The Applicant, as seen above, bore significant responsibility for the unsatisfactory outcome of such efforts. His claim of breach of the MOU in this respect also fails.

70. Furthermore, the Applicant seems to suggest that, throughout his administrative leave, Mr. X never met with him, much less supported him, in securing an assignment with

a third-party organization, nor has he served as the IFC point of contact for the verification of the Applicant's employment and provision of references and recommendations to such organization. The Tribunal notes that IFC had not undertaken an obligation under the MOU to find the Applicant an external assignment during his administrative leave but only to support him in his efforts at securing such assignment. Mr. X was not required to initiate communications with other organizations to discuss the Applicant's eligibility for such an assignment; on the contrary, the Applicant was primarily responsible for identifying opportunities for an external assignment after which he would request IFC's support in pursuing them. Other than mere assertions, the Applicant has not provided any evidence of approaching Mr. X with specific communications with other organizations and of requesting a recommendation or other support as described in the MOU. Nor is there any evidence that, when asked, IFC denied its support. On the contrary, the Applicant has admitted that Mr. X's assistant had offered to help him but he insisted that Mr. X was his point of contact. Therefore any claim of IFC's failure in this respect would also be unsustainable.

IFC's efforts to block the Applicant's access to the Appeals Committee and the Tribunal

71. The Applicant states that after he discovered that IFC had withheld his voice messages and that Mr. X was unwilling to talk to him, he relied on the Office of Mediation to resolve his disputes and to communicate with IFC. However, on 24 August 2007 the Manager of the Office of Mediation sent the Applicant an e-mail message discussing the date when the first mediation had been closed. The Applicant states that he had never asked the Office of Mediation to interrupt or close the mediation. The Applicant interpreted the e-mail message from the Manager of the Office of Mediation to mean that

the Office of Mediation was under great pressure to communicate to him that mediation would be closed. The Tribunal notes that the Applicant has not shown any association between the closing of mediation and any bad faith on the part of IFC in this respect. As shown above, IFC participated in efforts to mediate the Applicant's problems over a prolonged period of time. It appears rather that as the Applicant continued to be unsatisfied, the Manager of the Office of Mediation reached the reasonable conclusion in the fall of 2008 that mediation should be closed. At no point thereafter was the Applicant precluded from filing his Appeals with the Appeals Committee or from bringing his Application to the Tribunal.

72. The Applicant states that IFC had been subjecting him to "life threatening" conditions with the aim of imposing its will and of deterring him from pursuing just claims. The Applicant asserts that IFC left him and his family without income, health insurance or valid visa status in the U.S. in order to force him to agree to unjust terms and demands. He claims that IFC had even blocked his attempts to purchase "continuation" of Medical Insurance coverage for his family. Furthermore, he claims that IFC had been pressing him to retire and begin drawing his pension when its influence on the outcome of his divorce case has made it impossible for him to begin drawing his pension.

73. The Tribunal finds that contrary to the Applicant's assertions, the record shows that, as with the pursuit of his other complaints, the Applicant neglected to take the required actions to secure his visa status and that of his family and to make timely applications in order to qualify for Retiree Medical Insurance for himself and his family despite repeated reminders by the WBG representatives. The Applicant's decision not to claim his pension under the provisions of the SRP has been his own. Moreover, the Tribunal notes that the

Applicant, by his own admission, carefully negotiated and signed an MOU in releasing his claims against IFC. This MOU provided him with significant benefits in exchange for such release. The Applicant knew when his administrative leave would end according to the MOU and when necessary actions would need to be taken in order to support himself and his family after the termination of his employment with IFC. Because he failed to take such appropriate actions, he cannot now attribute to IFC responsibility for those failures.

Retaliation and improper motivation

74. The Applicant has alleged repeatedly that IFC's actions and breaches of the MOU were motivated by a desire to retaliate against him because he had exposed misconduct by IFC and because he used the CRS.

75. There is no evidence, however, that the Applicant reported suspected misconduct or that he was retaliated against because he used the CRS which, notably, IFC also used when participating in mediation efforts with him. On the contrary, the record shows that IFC acted on the basis of legitimate business reasons in its dealings with the Applicant. The Applicant, by offering nothing more than suspicions to support his claims, has not sustained his burden of proof in this regard.

Withdrawal of resignation

76. Finally, the Tribunal will examine the Applicant's claim that he was wrongfully terminated despite the withdrawal of his resignation, a claim over which the Committee refused to assume jurisdiction on the basis that the issue of the Applicant's termination had been fully and finally resolved by the MOU which was a fully enforceable contract.

77. The Tribunal has upheld the validity of release agreements except in cases where they were concluded under duress. In *Y*, Decision No. 25 [1985], paras. 26 and 32, the Tribunal held that:

It would unduly interfere with the constructive and efficient resolution of these claims if the Bank could not negotiate – in exchange for concessions on its part – for a return promise from the staff member not to press his or her claim further. If such an agreed settlement were not binding upon the affected staff member, there would be little incentive for the Bank to enter into compromise arrangements, and there might instead be an inducement to be unyielding and to defend each claim through the process of administrative and judicial review. It is therefore in the interest not only of the Bank but also of the staff that effect should be given to such settlements.

...

The Tribunal agrees with the Applicant's contention that no release or settlement of claims should be given effect if concluded under duress.

78. Also in *Kehyaian (No. 2)*, Decision No. 130 [1993], para. 26, the Tribunal found that

[i]n all cases of release agreements the staff member is assumed to have balanced the benefits resulting from the different options he or she has, and finally to have decided to consent to the proposed agreement. In each case the staff member must have been under certain pressures leading him to opt for what appeared to him to be the more advantageous alternative. This kind of pressure is inherent in the process and cannot be treated as by itself constituting duress.

79. The Tribunal notes that under the MOU the Applicant had agreed to resign by a certain date and not to file any appeal or initiate complaints arising out of or relating to his past employment issues including termination. In exchange for this release of claims, IFC agreed to provide him a number of generous benefits. The Tribunal finds that such an agreement was valid and binding upon the parties. The Applicant has not shown that there was any reason to invalidate it on grounds of duress. The only indication that the Applicant was under pressure to sign it is his claim that he “signed the MOU literally at the last hour,

because [he] could not afford the consequences of termination.” It is obvious, however, that at the time of his signing of the MOU he was “balancing priorities” and chose to sign the MOU knowing full well its terms. As the Applicant had negotiated and signed other similar MOUs in the past, he would have been reasonably expected to be aware of the necessity for choice and compromise that comes with a settlement. Furthermore, while the Addendum to the MOU gave him the right to file an appeal if he believed that the terms of the MOU had been breached, neither the MOU nor the Addendum gave him the option to withdraw his resignation in case IFC breached the MOU. In this case, it is clear that the only resort was the filing of an appeal against such breach. The Tribunal finds therefore that IFC properly terminated his employment under the MOU. Additionally, as the Applicant has failed in any event to show that IFC breached the terms of the MOU, his claim that his employment should not have been terminated because he withdrew his resignation due to an alleged breach is even less tenable.

80. While the Applicant did not request anonymity in this case, the Tribunal is of the view that anonymity should be awarded in the interests of his family.

DECISION

For the reasons given above, the Tribunal dismisses the Application.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Paris, France, 29 October 2010