



World Bank Administrative Tribunal

2011

No. 451

**BN,
Applicant**

v.

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

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

**BN,
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 Stephen M. Schwebel (President of the Tribunal) as President, Florentino P. Feliciano (a Vice-President of the Tribunal) and Ahmed El-Kosheri, Judges.
2. The Application was received on 23 July 2010. The Applicant was not represented by counsel. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 20 October 2010.
3. The Applicant claims that the Bank violated his rights in investigating him for misconduct.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in 1982 as a Technical Assistant, and was promoted steadily. In 2000 he was appointed as the Chief Technology Officer ("CTO"), level GH, by the Bank's Chief Information Officer and Vice President of the Information Solutions Group ("ISGVP"). He held that position until his separation from the Bank in January 2001 pursuant to a Mutually Agreed Separation ("MAS").
5. Following his separation, ISGVP offered the Applicant a position as a Short-Term Consultant ("STC") for the period of 16 January to 30 June 2001. The parties dispute

whether the Applicant actually signed his appointment letter and served as an STC during this period.

6. It is not in dispute that he subsequently held an STC appointment from 21 January 2003 through 30 June 2003. He again received another STC appointment effective 1 July 2004, which was extended several times until it was terminated effective 30 September 2005. During his STC appointments with the Bank, he reported to ISGVP.

7. In September 2005 the Bank's Department of Institutional Integrity ("INT") commenced a formal investigation of the Applicant as well as his direct supervisor, ISGVP. On 16 September 2005 INT served the Applicant with a Notice of Alleged Misconduct pursuant to Staff Rule 8.01. The Notice of Alleged Misconduct charged the Applicant with the following:

- a. That while employed as a short-term consultant for the Information Solutions Group (ISG) at the World Bank Group (WBG), you engaged in an apparent conflict of interest in that you concurrently served on the Board of Directors for [Company X (India)], a company that received from ISG, the unit in which you were employed, multiple sole-source contracts/purchase orders for information technology (IT) consulting services totaling several million dollars;
- b. That when hired as a short-term consultant for the WBG, and continuing throughout your appointment, you failed to disclose to the WBG the fact that you concurrently served on the Board of Directors for [Company X (India)], a company actively engaged in business and business negotiations with ISG, the unit in which you were employed; and
- c. That when you accepted one of your appointments as a short-term consultant with the WBG in July 2004, you willfully misrepresented facts intended to be relied upon when you certified that your employment with the WBG did not violate any Bank Group policy, when you were in fact concurrently serving on the Board of Directors for [Company X (India)], a company actively engaged in business and business negotiations with ISG, the unit in which you were employed.

8. During the course of its investigation of the Applicant, INT determined that evidence existed to indicate that the Applicant may have been involved in procurement fraud, bribery or other illegal activities. In March 2006 INT referred the Applicant's case to the U.S. Department of Justice ("DOJ") for review and possible prosecution. The DOJ ultimately declined prosecution.

9. INT's investigation of the Applicant continued for some two years. In its Final Report of Investigation dated 8 August 2007, INT concluded as follows:

The investigation disclosed reasonably sufficient evidence to show that [the Applicant] abused his position for personal gain, engaged in conflicts of interest, and failed to make necessary disclosures, in violation of his duties to the Bank and applicable Staff Rules and Principles of Staff Employment.

Specifically, the evidence substantiated that:

- a. [The Applicant] violated Staff Rule 8.01 by abusing his position in the Bank for financial and personal gain to: (i) establish and fund a joint venture in China with a Bank vendor, and (ii) make contacts with other Bank vendors to solicit business for this joint venture;
- b. [The Applicant] violated Staff Rule 8.01 by engaging in conflicts of interest when he: (i) formed a joint venture with a Bank vendor while working at the Bank as its Chief Technology Officer (CTO) and a STC; (ii) served as a Director on the Board of a Bank vendor doing business with the unit by which he was employed; and (iii) provided advice and counsel on projects awarded to a Bank vendor as a STC while concurrently serving on the vendor's Board of Directors;
- c. [The Applicant] violated Staff Rule 8.01 by willfully misrepresenting facts when he: (i) certified full disclosure while failing to disclose that he was engaged in a joint venture with a Bank vendor and was on the Board of Directors for [Company X (India)]; and (ii) submitted a Curriculum Vitae (CV), upon the Bank's specific request, that did not indicate his involvement with a Bank vendor; and
- d. [The Applicant] violated Staff Rule 8.01 by: (i) failing to disclose a financial interest or business relationship that might reasonably be considered to reflect unfavorably on or cause embarrassment to the

Bank; (ii) failing to disclose a financial interest or business relationship that might be in actual or apparent conflict of interest with his duties as a staff member; and (iii) failing to report a potential conflict of interest to the Office of Ethics and Business Conduct (EBC) and/or to the Outside Interests Committee (OIC).

10. After reviewing the Final Report of Investigation, the Vice President of Human Resources (“HRSVP”) determined, in a more limited form than INT, that the Applicant had engaged in misconduct. In his letter to the Applicant dated 17 October 2008 HRSVP informed the Applicant that:

The Final Report of investigation concluded that there was sufficient evidence to indicate that you committed staff misconduct in that you abused your position for financial and personal gain, that you engaged in conflicts of interest, and that you failed to make necessary disclosures, in violation of your duties to the Bank and applicable Staff Rules, in violation of Staff Principle 3 and in violation of Staff Rule 8.01.

After carefully reviewing the Final Report, including your testimony and written comments, I have concluded that your not disclosing your Board membership with [Company X (India)] to your manager, [ISGVP], constituted misconduct as it violated your obligation to avoid an actual conflict of interest or appearance of a conflict of interest in accordance with Staff Rule 3.01 Standards of Professional Conduct. I found that the evidence was not sufficient to substantiate the other allegations.

11. However, HRSVP did not impose any disciplinary measures, stating in his letter that “Staff Rule 8.01 prevents me from imposing any disciplinary action on you since more than three years have elapsed since you were given the notice of misconduct. Hence, there will be no disciplinary action taken in your case and a copy of this letter will not be placed in your Staff File.”

12. A few months later, in January 2009, the Bank announced in a press release the names of three companies it had debarred from receiving direct contracts with the Bank Group. Included among them was Company X (US). The announcement stated that the

Bank debarred Company X (US) for “participating in a joint venture with Bank staff while also conducting business with the Bank.”

13. Also in January 2009, FoxNews.com published an article about the debarment. The article mentioned the Applicant by name as a facilitator of the Bank’s relationship with Company X (US), quoting as a source a “former World Bank anti-corruption investigator.”

14. On 14 January 2009 the Applicant wrote to HRSVP informing the latter of the FoxNews.com story and explaining that the reporter had contacted the Applicant for more information. The Applicant stated that: “Unfortunately, there seems [to be] a lot of inaccurate information out there even within the Bank, and the Bank seems to be doing nothing as it should.”

15. Following up on this message, on 21 January 2009, the Applicant wrote to HRSVP:

In the meantime, there were press reports that my case or the case somehow related was even officially sent to the DOJ by the Bank, which was never disclosed to me during the period of three years [of] investigation and after the investigation is completed. I am shocked and very puzzled.

16. On 20 February 2009 the Applicant filed an appeal with the Appeals Committee challenging the following:

- (i) INT’s decision to initiate an investigation into allegations of misconduct;
- (ii) the manner in which the Bank conducted its investigation, including the length of time it took INT to complete the investigation and [HRSVP] to make a final decision;
- (iii) the decision by [HRSVP] that the Applicant committed misconduct;

- (iv) the Bank's decision to refer [the Applicant's] case to the [DOJ] and delaying giving notice to [the Applicant] of the fact and content of the referral; and
- (v) the Bank's alleged leak to the media regarding confidential information about INT's investigation of [the Applicant] or INT's referral to DOJ of criminal allegations concerning [the Applicant].

17. After conducting a hearing, the Peer Review Services ("PRS"), which replaced the Appeals Committee effective July 2009, concluded that the Bank had violated the Applicant's rights in certain respects. In its report of 11 December 2009, PRS concluded that

the Respondent abused its discretion by not providing [the Applicant] a Supplemental Notice of Alleged Misconduct for the allegation of abuse of position for personal gain, and by not promptly providing [the Applicant] with notice of the fact and content of the referral of allegations to DOJ in or after December 2006. The Panel finds that the Respondent lacked an observable and reasonable basis for these decisions and failed to follow proper process.

18. PRS recommended that the Bank compensate the Applicant in the amount of \$30,000 and pay attorney's fees in the amount of \$5,000. The Bank accepted this recommendation.

19. On 23 July 2010 the Applicant filed his Application with the Tribunal essentially raising the same claims that he had put forward before PRS. As remedies he seeks the following from the Tribunal: (i) public correction of the leaked information published by FoxNews.com; (ii) compensation in the amount of three years' salary; and (iii) attorney's fees.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

20. The scope of review by the Tribunal in disciplinary cases is now well-established. In *Cissé*, Decision No. 242 [2001], para. 26, the Tribunal held that "in disciplinary matters, its review is not limited to determining whether there has been an abuse of

discretion but encompasses a fuller examination of the issues and circumstances.” In *Koudogbo*, Decision No. 246 [2001], para. 18, the Tribunal stated that

its scope of review in disciplinary cases is not limited to determining whether there has been an abuse of discretion. When the Tribunal reviews disciplinary cases, it “examines (i) the existence of the facts, (ii) whether they legally amount to misconduct, (iii) whether the sanction imposed is provided for in the law of the Bank, (iv) whether the sanction is not significantly disproportionate to the offence, and (v) whether the requirements of due process were observed.”

It is also well-established, as stated in *Dambita*, Decision No. 243 [2001], para. 21, that:

In disciplinary matters, strict adherence to the Staff Rules is imperative and a conclusion of misconduct has to be proven. The burden of proof of misconduct is on the Respondent. The standard of evidence in disciplinary decisions leading, as here, to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.

Preliminary inquiry

21. *The basis for the inquiry.* The Applicant claims that INT lacked a proper basis to initiate a preliminary inquiry in his case whereas the Bank contends that such an inquiry had a proper foundation.

22. The Tribunal notes that Staff Rule 8.01, paragraph 4.02 (effective at the relevant time), states that:

Where an incident of possible misconduct is reported, a preliminary inquiry may be undertaken if necessary to determine whether there is sufficient evidence to warrant further proceedings.

Moreover, INT’s Standards and Procedures for Inquiries and Investigations (effective at the relevant time) (“INT’s Standards”) states that:

In accordance with Staff Rule 8.01, investigators conduct preliminary inquiries to determine whether there is credible information (some *prima facie*-valid-evidence to support the allegation) to merit an investigation. The outcome of a preliminary inquiry is a determination of whether further investigation is warranted, not whether an allegation is substantiated.

23. Regarding the initiation of a preliminary inquiry, the Tribunal in *G*, Decision No. 340 [2005], para. 78, stated that:

The first matter to be considered is whether there must be a defined evidentiary basis for initiating a preliminary inquiry. It is difficult to articulate a positive standard. Neither Staff Rule 8.01, paragraph 4.02, nor INT's Standards and Procedures for Inquiries and Investigations define any threshold in this regard; it appears to be a matter of discretion. A meaningful negative answer, on the other hand, was given by the Tribunal in *Koudogbo*, Decision No. 246 [2001], at para. 43, to the effect that a preliminary inquiry cannot be launched on the basis of rumors or allegations from questionable sources. An inquiry may be disruptive. It should not be triggered merely because there have been isolated, anonymous, indirect, word-of-mouth tips. Such indications may be very valuable in law enforcement everywhere, but they must be considered critically. The line to be drawn may be difficult to define in the abstract, but the need to do so does not arise in this case. The facts upon which the preliminary investigation was launched were objective.

24. Therefore a determination as to whether the initiation of the preliminary inquiry in this case was justified depends on whether the "facts upon which the preliminary investigation was launched were objective." The Tribunal finds that there was indeed an objective basis for initiating a preliminary inquiry regarding the Applicant. The circumstances leading to the initiation of the preliminary inquiry were as follows. On 7 December 2004, a Senior Manager and a Senior Contracts Officer of the Corporate Procurement Unit of the General Services Department ("GSD") approached INT raising concerns about the Applicant and his relationship with Company X generally. They expressed concerns regarding the fact that the Applicant was on the Board of Directors of Company X (India) and the perception it created that the Applicant was too close to Company X. They also expressed concerns about Company X (US) receiving a number of sole-source contracts that should have been the subject of a competitive bidding process.

25. These concerns were raised by two senior staff members whom INT viewed as credible. INT gave considerable weight to the statements of the Senior Manager of GSD because she had direct knowledge of the Bank's procurement activities. In explaining the initiation of the preliminary inquiry, a manager of INT testified before PRS to the effect that given the "particular status" of the Senior Manager of GSD, "who has over the years brought a number of matters" to INT, the fact that she took the first step in coming to INT to say "I have concerns," "would be more than adequate ... as a predicate to undertake a preliminary review."

26. In addition, the same INT manager testified before PRS that when the Senior Manager of GSD and the Senior Contracts Officer came to INT to express their concerns, they described the following "scenario":

The scenario that they described ... what [they] brought to our attention would easily fit within the category of red-flag indicators of both possible fraudulent practices as well as corruption – even if it was soft corruption, a type of quid pro quo, in terms of – the description of [Company X] getting contracts, the red-flag of a Vice President in this institution being the project manager designated on the second of the string of approximately 30 contracts; and [the Applicant] at that time, his alleged affiliation with [Company X], and [the Applicant's] relationships with [the Vice President]. Here we had at least on the surface, a trio of the vendor, the Vice President, and a person who not only worked for the Vice President but now was affiliated with the company that was the beneficiary of ... approximately 29 or 30 sole-source contracts – originally aggregated approximately \$8 million.

So here again, we had had a responsibility ... to see, if, indeed there – I mean, this had the trappings of misconduct.

27. The Tribunal finds that given these circumstances, INT reasonably exercised its discretion in initiating a preliminary inquiry with respect to the Applicant. The Tribunal does not find that INT launched a preliminary inquiry here "on the basis of rumors or allegations from questionable sources."

28. *Failure to notify the Applicant of the preliminary inquiry.* The Applicant claims that INT violated his rights by failing to notify him of the preliminary inquiry. The Applicant cites the Tribunal's judgment in *D*, Decision No. 304 [2003], in support of his claim.

29. The Bank urges that INT was not obligated to notify the Applicant of the preliminary inquiry under the Staff Rules or INT's Standards. In *G*, Decision No. 340 [2005], para. 80, the Tribunal held that

since a preliminary inquiry is not an adjudicatory process, it is not open to challenge on as broad a range of grounds as those which may invalidate judicial proceedings, and in particular lack of notice. (*See Rendall-Speranza*, Decision No. 197 [1998], para. 57.) It is clear from Section 2.2 of the INT's Standards and Procedures for Inquiries and Investigations that the subject, or his or her managers, are generally not given notice at the initial stages of an inquiry. The Tribunal has nevertheless expressed its expectation that the subject of a preliminary inquiry should be informed of that fact at the earliest reasonable moment, taking into account concerns regarding tampering, collusion, and the like. (*D*, Decision No. 304 [2003], para. 65.) Yet in *D*, the Tribunal did not require notification of a preliminary inquiry in each and every circumstance. There, the Tribunal was troubled for two reasons by the Bank's late notification to the applicant with respect to the allegations of misconduct: (i) INT investigators had questioned at least three IFC clients during the preliminary inquiry without taking into account whether the questioning of such outside individuals would spread rumors or gossip concerning the allegations; and (ii) INT, after concluding the preliminary inquiry phase and determining that a formal investigation was necessary, sent a mission to Tanzania to interview IFC clients there, and only after those interviews were conducted was the subject given notice of the allegations of misconduct.

30. In the instant case, INT determined that, unlike the concerns expressed in *D* about the spread of rumors or gossip by the interviewed witnesses during the preliminary inquiry, there were no such concerns here. The only individuals interviewed during the preliminary inquiry were the two GSD staff members who initially brought their concerns to INT, and select members of staff in the procurement unit of GSD and ISG who,

according to the Bank, “were closely involved in supervising contracts with [Company X] and who had expressed concerns [to the two senior GSD staff members] regarding the significant number of sole-source contracts that [Company X] was receiving.” The Bank adds that “there was no likelihood that the INT interviews would inform them of something that had not already [been] known.”

31. Moreover, according to the Bank, INT was concerned that “the Applicant, along with [ISGVP] would tamper with evidence that had not yet been secured by INT. This risk was evidenced by [ISGVP’s] reported attempts to interfere with the INT investigation during his interactions with [the Senior Manager of GSD].”

32. In light of the above, the Tribunal finds that INT’s decision not to notify the Applicant of the preliminary inquiry was a sustainable exercise of discretion.

Access to e-mail records

33. The Applicant complains that INT improperly accessed his e-mail records during the preliminary inquiry based on a “wildly speculative scenario.” The Bank responds that INT had a proper basis and it followed the applicable rules and procedures.

34. The Tribunal notes that access to a staff member’s e-mail records is regulated by the Bank’s Detailed Information Security Policy (effective at the relevant time). The

Policy states as follows:

The Bank will not monitor or examine the content of computer files, electronic mail messages, voice mail messages, telephone records, or similar stored electronic activities, or the record of usage of such electronic activities of staff members or Bank contractors with access to such facilities unless there is a genuine business justification or there is a reasonable basis to suspect a violation of Bank policy ..., a criminal act, or other misconduct.

...

In the event that there is a reasonable basis to suspect a violation of Bank policy, a criminal act, or other misconduct, then all instances of staff activity monitoring must be pre-approved by (1) the senior manager responsible for the investigation, (2) a Managing Director, and (3) the Vice President and General Counsel. Such staff activity monitoring must be stopped as soon as the investigation is complete. The senior manager responsible for the investigation must ensure that monitoring facilities are not abused and that only necessary information has been captured.

35. In *D*, Decision No. 304 [2003], para. 59, the Tribunal held that a determination by the Bank that there is “a reasonable basis to suspect a violation of Bank policy” would ordinarily require some objective corroboration. The Tribunal added that it “acknowledges that the judgment of the several individuals who must pre-approve the ‘content monitoring’ is not casually to be overturned, and that their very collaboration is a significant safeguard against abuse.” *Id.*

36. In the instant case, on 28 February 2005, INT sent a detailed memorandum to the Bank’s General Counsel and the Bank’s Managing Director seeking their approval for INT to search the Applicant’s e-mail records. The memorandum in relevant part states that:

Currently, INT is conducting a preliminary inquiry into allegations of possible staff misconduct that include collusion and conflict of interest. INT has received allegations from a manager in the Bank that [the Applicant] (hereinafter “subject”) is on the Board of Directors of a vendor company which received numerous sole-source contracts from one unit within the Bank. This company has been paid over \$2 million dollars within a short time-period, during which the subject worked as a consultant for the unit receiving services under the contracts. If the allegations are true, the subject’s activity may constitute staff misconduct (e.g., engaging in a conflict of interest, collusion, and possibly the abuse of position for financial gain).

Following the receipt of the complaint, INT investigators interviewed several witnesses, including the complainants, and obtained numerous documents related to the allegations. Based on the evidence presented thus far to INT, the investigators learned the following:

- The subject, a current consultant with the Bank, was a former staff member who separated from the Bank under the terms of a mutually agreed upon separation (MAS). The subject negotiated the MAS with the same Bank official who had requested the services of the vendor company in question;
- The vendor company was originally rejected by the Bank under certain policies concerning the company's financial viability but was authorized as a vendor and provided a vendor number upon direct request by the official in the Bank that requested the company's services specifically;
- The subject is on the Board of Directors for the vendor company and did not disclose this information to the Bank at any time, nor did the subject approach the Outside Interests Committee concerning the relationship with vendor company;
- The vendor company did not disclose to the Bank its affiliation with a current and/or former Bank staff member;
- Staff members in the unit receiving the services of the vendor company may have received encouragement and/or direct orders to request specifically the services of the vendor company on several projects; and
- The vendor company has received numerous sole-source contracts, and one (1) competitively bid contract, over a short time-period totaling over \$2 million dollars.

It is reasonable to assume that the subject communicated with the vendor company and/or the Bank official(s), and/or staff members requesting the sole-source contracts, via e-mail on matters directly related to the allegations under investigation.

Based on the following information, the consultant/former staff member's e-mail database (stored on backup media) and hard disk may contain relevant information and evidence, or may provide further investigative information leading to the discovery of relevant evidence of misconduct by the consultant. A review into the consultant's e-mail database and hard disk may also contain information concerning the reason(s) for the subject's voluntary separation from the Bank, and whether that separation was connected to the vendor company receiving sole-source contracts from the Bank in the year following the subject's separation.

37. In view of the above memorandum, the General Counsel and the Managing Director approved INT's request for access. The Tribunal accepts that the request for access to the Applicant's e-mail records was justified and the access was effected in accordance with the Bank's policies.

Formal investigation

38. *The basis for the investigation.* The Applicant complains that INT lacked a proper basis to proceed to the formal investigation in this case. The Bank responds that a formal investigation was reasonable and necessary.

39. The Tribunal notes that under Staff Rule 8.01, paragraph 4.03 (effective at the relevant time), a formal investigation can be initiated "[w]here it is determined that there is sufficient basis to merit an investigation." The Tribunal has held that "the threshold that INT must cross during the preliminary inquiry in order to justify the initiation of a formal investigation is low. All that it needs to find is that the allegation is sufficiently credible to merit a formal investigation." *BB*, Decision No. 426 [2009], para. 73. In *G*, Decision No. 340 [2005], para. 66, the Tribunal stated that:

To be under investigation for possible misconduct of an unethical nature is likely to be a disturbing experience. But equally, it would be absurd if investigators could proceed only if there was certain evidence of guilt. The circumstances of this case are such that the investigators would have exposed themselves to justified criticism if they had not conducted a thorough investigation. The Applicant put herself in this position by mixing personal and professional relations in a manner which seems to reflect a clear lapse of judgment on the part of a seasoned staff member, who should be more than familiar with the Bank's longstanding and firm policy to avoid promoting individual suppliers to its clients. It ultimately turned out that the financial advantages to her friend were modest, and that her expressions of "love" and "dearest" relations bespoke nothing more than wholly respectable affection. But on the face of it the circumstances were troubling, and required investigation. It is not enough to say that the amounts involved were small; the investigators could not know at the outset whether they were glimpsing the tip of an iceberg.

40. The record demonstrates that INT decided to initiate a formal investigation in view of the following circumstances:

- (i) on 7 December 2004 the Senior Manager of GSD and the Senior Contracts Officer of GSD brought specific concerns to INT, which in the view of INT “would easily fit within the category of red-flag indicators of ... possible” misconduct by the Applicant;
- (ii) INT initiated a preliminary inquiry and, on 20 December 2004, interviewed the Senior Manager who provided information suggestive of possible misconduct by the Applicant;
- (iii) on the same day INT interviewed the Senior Contracts Officer, who provided confirmatory information suggesting possible misconduct by the Applicant;
- (iv) in addition, documents reviewed during the preliminary inquiry also suggested possible misconduct by the Applicant; and
- (v) after conducting a few other interviews of staff members familiar with Company X [US]’s sole-source contract history, and reviewing various HR, SAP, travel and electronic records, and after consulting the Legal Department, INT determined that the evidence it had assembled was sufficient to move the preliminary inquiry into a formal investigation.

41. Considering the above, the Tribunal finds that INT exercised its discretion reasonably in deciding to launch a formal investigation.

42. *Supplemental notice.* The Applicant claims that INT violated his rights by failing to give him notice of its allegation of abuse of position for personal gain. The Applicant

explains that while INT's Notice of Alleged Misconduct did not contain any such allegation, it investigated the Applicant for such alleged misconduct and in its Final Report of Investigation concluded that the Applicant "abused his position for personal gain." The Applicant thus argues that he should have been given a supplemental notice about this allegation. The Bank contends that a supplemental notice was not necessary because the allegation at issue here "is not a separate and independent allegation which would necessitate issuance of a new Notice of Alleged Misconduct. Rather, it is based on and is consistent with the allegation of conflicts of interest, arising out of the same set of facts."

43. The Tribunal notes that Staff Rule 8.01, paragraph 4.03 (effective at the relevant time), states that:

Where it is determined that there is a sufficient basis to merit an investigation, the staff member will be notified in writing of the alleged misconduct at the onset of the investigation. The notice will include a description of the allegations made against the staff member, and a summary of the staff member's rights and obligations.

44. In *King*, Decision No. 131 [1993], para. 35, the Tribunal held that the notice of alleged misconduct

must be expressed in such terms that the accused staff member is made aware from the outset of the scope of the possible default alleged against him. The notification must be reasonably exact in the specification of the wrong alleged. If it is not so expressed, and is not set out in sufficient detail, then the staff member cannot know of what he is being accused, may remain unaware of considerations material to the allegation as it affects him and can thus be left unable to make a properly directed or considered response.

45. Moreover INT's Standards (effective at the relevant time) states:

A subject of an investigation should be provided a supplemental Notice of Alleged Misconduct if the original notice did not include other acts or aspects of misconduct that subsequently discovered during the investigation.

46. Considering the requirement of specificity in *King* and INT's Standards, the Tribunal finds that INT failed to give the Applicant adequate notice of the allegation of abuse of position for personal gain. This form of misconduct is a separate and specific one. Abuse of position for personal gain is considered serious misconduct in the Bank and Staff Rule 8.01 (effective at the relevant time) required mandatory termination if such misconduct was found. Thus a Supplemental Notice of Alleged Misconduct specifying this allegation should have been provided to the Applicant. This failure on the part of INT was inconsistent with the Applicant's due process rights.

47. The Tribunal, however, notes that mitigating factors reduced any harm caused to the Applicant by this due process violation. INT included an allegation about abuse of position for personal gain and its findings specified this allegation in its Draft Report of Investigation. Thus the Applicant had an opportunity to comment on this allegation before the INT report was finalized. HRSVP, who reviewed the INT Final Report of Investigation, thus had an opportunity to review the Applicant's position on this allegation. Moreover, HRSVP did not find misconduct with respect to this matter.

48. *Length of investigation.* The Applicant complains that INT unreasonably delayed the completion of its investigation. The Applicant complains that INT commenced a formal investigation in September 2005 and completed its Final Report of Investigation two years later in August 2007. The Applicant complains that this delay was unreasonable. The Bank responds that the Applicant's case "was an example of an investigation where complex facts and extensive documents warranted the length of the investigation."

49. The Tribunal has held that a lengthy investigation is not “*per se* an interference with due process if the investigation is reasonably proportionate to the complexity of the facts of the case.” *L*, Decision No. 353 [2006], para. 31. The Tribunal notes that the record demonstrates that the completion of the investigation took longer because INT (i) was simultaneously conducting an investigation into activities and possible misconduct by ISGVP; (ii) interviewed over three dozen witnesses; (iii) collected a huge column of documents from the U.S., India, and China, some of which required translation; (iv) reviewed numerous Bank contracts to determine what role, if any, the Applicant had played in award of those contracts; and (v) reviewed numerous electronic records. Given these circumstances, the Tribunal is not persuaded that the delay was unreasonable. Perhaps the delay was not “a perfect model of efficiency,” but the Tribunal does not consider that it rises to the level of an abuse of process.

Finding of misconduct

50. In his decision of 17 October 2008 HRSVP determined that the Applicant had engaged in misconduct in only one form:

After carefully reviewing the Final Report, including your testimony and written comments, I have concluded that your not disclosing your Board membership with [Company X (India)] to your manager, [ISGVP], constituted misconduct as it violated your obligation to avoid an actual conflict of interest or appearance of a conflict of interest in accordance with Staff Rule 3.01 Standards of Professional Conduct.

51. As part of its review, the Tribunal will now examine “the existence of the facts” relating to the above determination and will also examine “whether they legally amount to misconduct.”

52. *Findings of fact.* Company X (India) is a publicly-traded company incorporated in India. It was founded by Mr. R in 1999. Company X (US) is a U.S. company based in

Virginia, which was co-founded in 1994 by the same individual, Mr. R. Company X (India) acquired Company X (US) as a wholly-owned subsidiary on 1 January 2003. Company X (Shanghai) was formed in 2001 under the laws of China and was founded as a joint venture between Company X (US) and another company, Company Y, which was principally owned by the Applicant. All these companies provide IT services.

53. In June 2000 the Applicant signed an MAS by which he would leave the Bank effective January 2001. Before leaving the Bank, he began considering his future employment options. He planned to start a software joint venture in China. As ISGVP was his friend in addition to being his supervisor, he sought ISGVP's assistance in identifying potential business partners and business opportunities.

54. In July and August 2000 the Applicant and ISGVP traveled to China and India on Bank business. The purpose of the trip was Bank business with vendors and IT companies. During their travels, ISGVP introduced the Applicant to the representative of Company X (India). Following their travels, the Applicant and Mr. R, the founder of Company X (India) and Company X (US), explored the establishment of a joint venture.

55. On 28 November 2001 the Applicant, through his Company Y, formed a joint venture with Company X (US). The joint venture was called Company X (Shanghai). The Applicant became the President, Director, and Legal Representative of Company X (Shanghai).

56. About two months later, on 5 February 2002, Company X (US) applied to become the Bank's vendor. On 4 April 2002 ISGVP contacted the Senior Manager of GSD to inquire about the status of Company X (US)'s vendor application. The following day,

GSD informed him that the application was denied because Company X (US)'s financial condition did not meet the Bank's standards for becoming a Bank vendor.

57. In response, on 7 April 2002, ISGVP wrote to the Senior Manager of GSD asking for reconsideration of GSD's decision, stating that he "came to know of a capability that the company has." Because the request came from ISGVP himself, GSD deferred to him and approved Company X (US) as a vendor on 8 April 2002.

58. On 30 April 2002 Company X (US) received its first direct sole-source contract from the Bank, totaling \$39,000 for "knowledge consulting" to ISG. On 15 May 2002 Company X (US) received another direct sole-source contract for \$150,000 for "advisory services" to ISG. As part of this contract, Company X (US) produced a report, and the Applicant and his staff at Company X (Shanghai) contributed to some part of the report. The Applicant was compensated by Company X (US) for his work on the report "by way of [Company X (US)] paying [Company X (Shanghai)] between US\$10,000 to US\$20,000 as the last installment of the start-up capital for the joint venture."

59. On 1 January 2003 Company X (India), which until then had been an affiliate of Company X (US), formally acquired Company X (US), making it its wholly-owned subsidiary.

60. On 29 August 2003 the Applicant was appointed to the Board of Directors of Company X (India).

61. Company X (US) became a considerable contractor with the Bank. From 2002 through 2005, Company X (US) received over thirty sole-source contracts for consulting services provided to ISG, for a total approximate amount of \$4 million.

62. The Applicant served as an STC in ISG from 2003 to 2005 while maintaining his relationship with Company X (India), Company X (US) and Company X (Shanghai).

63. *Whether the Applicant's actions amount to misconduct.* HRSVP found that the Applicant's actions were inconsistent with his obligations under the Bank's rules relating to conflicts of interest.

64. Principle 3.1 of the Principles of Staff Employment (effective at the relevant time) prescribes the general obligations of Bank staff members as follows:

The sensitive and confidential nature of much of their work requires of staff a high degree of integrity and concern for the interests of the Organizations. Moreover, as employees of international organizations, staff members have a special responsibility to avoid situations and activities that might reflect adversely on the Organizations, compromise their operations, or lead to real or apparent conflicts of interest.

65. Staff Rule 3.01 (effective 12 April 1999) accordingly states:

Disclosure of Financial and Business Interests

8.01 A staff member shall disclose any financial or business interest of himself or of a member of his immediate family that might reasonably reflect unfavorably on or cause embarrassment to the Bank Group, or be in actual or apparent conflict with the staff member's Bank Group duties, and shall abstain from exercising any related responsibility, except as otherwise instructed. Disclosure shall be made promptly and in writing to the staff member's manager. Instruction by the manager to proceed with, modify or abstain from the exercise of responsibility shall be in writing, and copies shall be furnished to the department director and the Committee. If the staff member disagrees with such instruction, the staff member may appeal to the Committee.

The Staff Rule relating to the above disclosure requirement was revised in 2004. Staff Rule 3.03, paragraph 5.01 (effective 6 April 2004) states:

A staff member shall disclose any financial interest or business relationship of his/her own or of an immediate family member that might reasonably be considered to reflect unfavorably on or cause embarrassment to the Bank Group, or be in actual or apparent conflict with the staff member's Bank Group duties, and shall abstain from exercising any related responsibility, except as otherwise instructed by

her/his senior manager or Office of Ethics and Business Conduct. Disclosure shall be made promptly and in writing to the staff member's senior manager and the Office of Ethics and Business Conduct.

66. The Bank Code of Professional Ethics (effective at the relevant time), in the section entitled "Financial Interests" states:

It is vital that the World Bank Group's business activities and its relationships with other organizations, businesses, suppliers, contractors, and the like remain beyond reproach. As a result, we shall disclose any personal business or financial interests – as well as those of our immediate family members – that might reflect unfavorably on, or cause embarrassment to, the World Bank Group or be in actual or apparent conflict with our duties to the World Bank Group. Staff must disclose information when they are an officer, or owner, or when they have a financial interest in any organization doing business with the World Bank Group. If in doubt about disclosing information, consult the Professional Ethics Office.

67. Staff Rule 8.01 (effective at the relevant time) states in relevant part:

Disciplinary measures may be imposed whenever there is a finding of misconduct. Misconduct does not require malice or guilty purpose. Misconduct includes, but is not limited to, the following acts and omissions:

Failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment

68. In *AJ*, Decision No. 389 [2009], para. 46, the Tribunal held that:

Principle 3 of the Principles of Staff Employment requires staff members to serve the Bank with a high degree of integrity and loyalty. Every staff member has a special obligation to avoid situations and activities that might (i) reflect adversely on the Bank; (ii) compromise operations of the Bank; and (iii) lead to real or apparent conflicts of interest. The obligation is broad; its objectives are prohibitive as well as preventive. The Applicant had an obligation not to engage in real or apparent conflicts; he also had an obligation to avoid situations and activities that might "lead to real or apparent conflicts of interest." Principle 3 obligates staff members to "discharge their duties solely with the interest and objectives of the [Bank] in view." This singleness of purpose should not be compromised by other considerations, such as a staff member's personal interest in a business relationship of the Bank. This is why the scope of Principle 3 is very broad. It prohibits not only conduct that is clearly wrongful but also conduct that leads to a possible appearance of impropriety.

69. Setting aside the disputed issue of whether the Applicant served as an STC from 16 January to 30 June 2001, the undisputed fact is that from 2003 to 2005 he served as an STC. The Applicant's STC contract of January 2003 stated: "During this assignment you will be considered a World Bank Group staff member and will be subject to the Staff Rules currently in effect and as they may be amended from time to time." He signed this contract acknowledging: "I have received, reviewed, and understand the World Bank Group's Staff Principle ... and Staff Rule 3.01." The Applicant's STC contract of July 2004 contains similar language and similar confirmation by the Applicant that "I have received, reviewed, and understand the World Bank Group's Staff Principle ... and Staff Rules 3.01-3.05."

70. It is also undisputed that, while accepting these STC contracts and serving as a Bank staff member, he entered into a business relationship with a Bank vendor, Company X (US), which had been receiving contracts from the same unit for which the Applicant worked as a Regular staff member and subsequently as an STC. In November 2001, Company X (US), and the Applicant's company, Company Y, formed a joint venture – Company X (Shanghai). Four months after forming the joint venture, Company X (US) became a vendor of the Bank. After Company X (US) received a number of sole-source contracts from ISG, Company X (India), the parent of Company X (US), made the Applicant a member of its Board of Directors in August 2003.

71. Moreover, the Applicant knew that all these companies were closely related. Company X (US) and Company X (India) were founded by the same individual. Company X (Shanghai) was founded by Company X (US) and a company principally owned by the Applicant. Company X (India) acquired Company X (US) as a wholly-

owned subsidiary approximately six months after Company X (US) became a Bank vendor. The Applicant was the Director and President of Company X (Shanghai), and as of August 2003, a Director of Company X (India). Also, Company X (Shanghai) performed work for Company X (US), for which it was paid.

72. In light of these undisputed facts, the Applicant was under an obligation to disclose his “financial or business interest” in the above companies under Principle 3 of the Principles of Staff Employment, Staff Rules 3.01 and 3.03. He was under an obligation to disclose them in writing to his manager and also to the Office of Ethics and Business Conduct. At a minimum, in July 2004 when he accepted another STC contract and certified that he had read and understood “the World Bank Group’s Staff Principle ... and Staff Rules 3.01-3.05,” he should have disclosed his relationship with Company X (US) and his Board membership in its parent company, Company X (India). At least by this time, he was involved in “situations and activities” that might “lead to real or apparent conflicts of interest.”

73. In making this determination, HRSVP concluded that the Applicant’s failure to disclose his “Board membership with [Company X (India)]” to his manager “constituted misconduct as it violated your obligation to avoid an actual conflict of interest or appearance of a conflict of interest in accordance with Staff Rule 3.01 Standards of Professional Conduct.” Given the broad obligations contained in Principle 3, Staff Rules 3.01 and 3.03, and considering the undisputed facts as set out above, the Tribunal finds this single failure, i.e, failure to disclose his directorship of Company X (India), is sufficient to sustain HRSVP’s finding of misconduct.

74. The Applicant claims that as an STC employee “I do not have to get permission for being a Director with [Company X (India)]. And if I didn’t need permission, why would I need to report? I believe therefore that I did not have any obligation under the Staff Rule to report that I was a Director.” The Tribunal is not persuaded. His STC contracts stated that he would be considered to be a Bank staff member and would be bound by the Bank’s rules including disclosure rules. He certified that he had read the Bank’s rules and had understood them. The Tribunal concludes that by failing to disclose in writing his directorship of Company X (India) to his manager and to the Office of Ethics and Business Conduct, the Applicant had run afoul of the Bank’s rules relating to conflicts of interest and disclosures. In so concluding, the Tribunal accepts that the Applicant may well have acted without conscious intent to transgress those rules, that he acted thoughtlessly rather than maliciously. His failure to disclose nevertheless gave rise to real or apparent conflicts of interest.

75. *The delay in making a determination.* The Applicant complains that the Final Report of Investigation was transmitted to HR on 8 August 2007 but HRSVP only made a determination in his case more than one year later in October 2008. The Applicant claims that this delay caused him additional stress. The Bank responds that, during that time, HR was operating under an Acting Vice President, and considering the complexity of the case, HR waited until a permanent Vice President was appointed to dispose of it.

76. The Tribunal is not persuaded by the Bank’s position. The Bank does not provide a cogent explanation why the Acting Vice President could not carry out this official business of HR. The Tribunal notes, however, that the Applicant benefitted from the delay because by the time the new HRSVP made his decision, three years had passed

since the Applicant had received the Notice of Alleged Misconduct. Thus, even though HRSVP found that the Applicant had engaged in misconduct, he did not impose any disciplinary measures, because of the three-year time limit on the imposition of disciplinary measures stated in Staff Rule 8.01 (*see* paragraph 11 of the judgment). Thus the Tribunal does not find that the delay was prejudicial to the Applicant.

Referral to the DOJ

77. *Alleged impropriety of the referral.* The Applicant claims that INT's referral to the DOJ failed to comply with the Bank's rules and policies. The Applicant states that under the Bank's rules and policies "it seems the allegations would still need to be substantiated and findings still need to be demonstrated before INT could disclose and refer the case to the DOJ." The Applicant adds that:

I am arguing based on the fact that the allegations were not substantiated, and the findings did not even exist at the time of the referral, i.e., in March 2006, otherwise my case would have been closed by then, or soon after. But it was not.

78. The Bank states that "it is the Bank's policy that if INT's findings of alleged wrongdoing demonstrate that a staff member may have violated the laws of a member country, the Bank refers the findings to the appropriate national authorities."

79. The Tribunal notes that the Bank's Staff Guide to INT states that:

If INT's findings demonstrate that a firm or individual may have violated the laws of a member country, the Bank submits the findings to the appropriate national authorities.

80. The Tribunal also notes that in the Notice of Alleged Misconduct of September 2005, INT told the Applicant that:

In the event the allegations are substantiated, this document serves as notice that your response(s) to the allegations, both oral and written, may be disclosed to persons or entities outside the World Bank Group in connection with any related administrative or legal proceedings.

81. The Tribunal finds that, if the Bank's policy as reflected in the Staff Guide to INT and the Notice of Alleged Misconduct is interpreted reasonably, then INT was not in a position to make a determination as to the referral before it had concluded its investigation of the Applicant. "INT's findings" come into existence after INT completes its investigation, and certainly "the allegations are substantiated" only when an investigation is complete. In fact, the record indicates that it has been the Bank's practice to refer appropriate cases to national authorities only after INT completes its investigation. In this case, however, INT commenced its investigation of the Applicant in September 2005 and completed its investigation in August 2007. Yet, INT referred the Applicant's case in March 2006. The Tribunal finds that this was premature and prejudicial to the Applicant, and was inconsistent with the Bank's policy. In this regard, in *C*, Decision No. 272 [2002], para. 26, the Tribunal observed that:

Observance of due process within the Bank does not necessarily prejudice national criminal investigations. To the contrary, the accused might be better able to address the questions put to him or her by national authorities if he or she has all relevant information concerning him or her, and does not thereby have to engage in guesswork – as has largely happened in this case. Strict enforcement of due process will also likely avoid accusations of a general nature unsupported by specific evidence that could mislead the national authorities. The Tribunal has reservations with respect to unnecessarily secretive procedures, which tend to result in unfair accusations and investigations.

82. *Notice of referral.* The Applicant claims that INT's repeated refusal to notify him of the DOJ referral was an abuse of discretion. The Bank responds that INT's decision to delay informing the Applicant about the criminal referral was reasonable under the circumstances.

83. The Tribunal notes that Staff Rule 2.01, paragraph 5.01 (effective at the relevant time), stated that, when personnel information is released to a third party for law

enforcement purposes, the staff member is to be notified “as soon as reasonably possible of what information is released and to whom.” In *C*, Decision No. 272 [2002], the Tribunal identified circumstances in which the Bank need not inform a staff member about the fact and content of a referral immediately. The Tribunal stated that where there is a “danger that the accused might attempt to destroy evidence, flee the jurisdiction, or harass and intimidate witnesses,” it might be justifiable to delay notice to the staff member. The Bank states that following the Tribunal’s decision in *C*, the Legal Department issued the following guidelines:

Prospectively, following *C v. IBRD*, (1) when INT contacts the appropriate authorities, INT should advise the authorities at the outset of INT’s duty to Bank staff under *C v. IBRD/Staff Rule 2.01*; and (2) if, as and when information concerning a staff member may be provided to the authorities to decide whether to proceed with a criminal investigation, INT should reiterate to the authorities in the transmittal letter ... INT’s duty to Bank staff, and further advise that a member government may always request, in writing, that the Bank consider withholding the fact and content of a referral from a staff member, given whatever exigent circumstances they believe may be applicable – if any. Otherwise, INT must and will advise the Bank staff member(s) of the fact and the content of the referral.

INT has suggested that the Bank provide member governments 30 days within which to respond in writing, advising us whether exigent circumstances exist warranting not informing the staff member. Otherwise, the staff member would be informed as soon as the government says no need to keep things secret or the government does not reply within 30 days.

84. The Tribunal will now examine whether the Bank’s actions were consistent with the Tribunal’s jurisprudence in *C* and the Bank’s own guidelines. The Tribunal finds that the facts relating to the notification of the referral to the DOJ in this case are as follows. On 14 March 2006, representatives of INT and the DOJ met to discuss the Applicant’s case. On 31 March 2006 the DOJ contacted INT requesting documents pertaining to the Applicant’s misconduct case. The DOJ requested that the Bank delay notifying the

Applicant of the referral for six months. The DOJ stated that a delay was necessary “to protect the integrity of the ongoing investigation and to permit law enforcement authorities to investigate the full scope of alleged misconduct and identify all culpable parties.” On 25 April 2006 INT agreed to delay notifying the Applicant until 30 September 2006 because, according to INT, “there was a risk that informing any one of the parties to the referral might compromise the DOJ investigation through the destruction of evidence or influence of witnesses.” In September and October 2006, the Bank’s Legal Department contacted the DOJ to inquire whether it was necessary to continue delaying notice. On 18 and 20 October 2006, the DOJ requested the Bank to delay notifying the Applicant for another 45 days. The DOJ explained the basis of its request as follows:

We are considering specific steps involving persons located here in the United States and overseas that could be compromised if they become aware of this Office’s investigation before we are in a position to act. This includes the real risk records will be destroyed where our ability to affect legal process is limited, and witnesses will make themselves unavailable.

85. On 25 October 2006 INT agreed to the DOJ’s request. On 18 December 2006 the Legal Department contacted the DOJ Trial Attorney to inquire whether the DOJ needed the Bank to continue delaying notice to the Applicant. The DOJ Trial Attorney informed the Bank’s Legal Department orally that the DOJ did not have an objection to the Bank informing the Applicant of the referral.

86. On the next day, 19 December 2006, the Bank’s Legal Department drafted a notification letter to the Applicant for the signature of one of the managers at INT. The manager presented the draft letter to the Director of INT at that time. But the Director decided not to notify the Applicant and decided instead to revert to the DOJ for further investigation. Some five months later, on 7 May 2007, the INT Director asked her

Deputy Director to follow up with the DOJ. On 6 June 2007 the Deputy Director met with the DOJ officials. Apparently, the DOJ officials requested that the Bank delay notifying the Applicant, though this request was not made in writing. INT then decided not to notify the Applicant.

87. Six months later, in January 2008, the Director and her Deputy left the Bank. The Legal Department then followed up with the DOJ in February. On 12 February 2008 the DOJ informed the Bank in writing that it “decided to decline prosecution,” and thus “it [was] no longer necessary to continue to withhold disclosure of the fact of the referral to the subjects or any related materials required by Bank policies and procedures.”

88. The notification to the Applicant, however, did not happen immediately. INT only sent a letter to the Applicant on 3 April 2008. But the letter was sent to an obsolete address. Only in February 2009 did the Applicant receive the notification of the referral and the related documents.

89. The Tribunal finds that that the Bank’s decision to delay giving notice to the Applicant until December 2006 was reasonable. Up to December 2006, the Bank pursued the matter diligently and delayed notifying the Applicant in response to the express written request from the DOJ. The Tribunal, however, is not convinced that a long delay from December 2006 until February 2009 was reasonable and consistent with the Bank’s internal procedures. In this respect the Tribunal endorses the following findings by PRS:

[T]he evidence in the record does not support a finding that there were exigent circumstances after December 2006 to continue to delay the notification. Also, the record indicates the Respondent did not follow its internal procedures and analyze or “consider” whether exigent circumstances justified such a delay. First, the delay from December 2006 to June 2007 was unsupported by any analysis or decision on the existence

of exigent circumstances. Second, DOJ's alleged June 6, 2007 request to delay notice was not in writing, and there is no evidence that INT performed an independent, contemporaneous analysis of the basis for complying with that request. Accordingly, whether there were exigent circumstances for not providing notice and the duration of the delay were unclear. Third, the period of delay from [the Deputy Director's] communication with DOJ on December 5, 2007 until INT's receipt of DOJ's February 12, 2008 letter is similarly unsupported by any evidence of an analysis of exigent circumstances by INT. Finally, the Respondent delayed from February 12, 2008 to April 3, 2008 to distribute the notification letter. Accordingly, based on the evidence in the record and the testimony during the hearing, the Panel found the Respondent abused its discretion by delaying giving [the Applicant] notice of the fact and content of the referral to DOJ past December 2006. Furthermore, the Panel found that INT's ... errors committed after April 3, 2008 ... compounded the harm caused to [the Applicant] by the Respondent's failure to inform [the Applicant] promptly of the referral.

Leak to the media

90. The Applicant claims that the Bank failed to protect his confidential personnel information. He asserts that INT leaked information about him to the media and in support of his assertion refers to an article published by FoxNews.com in January 2009. He states that the article mentions "a former World Bank anti-corruption investigator" as a source, and the wording used in the article suggests that the information came from INT.

91. The Bank responds as follows: "If the source of the leak was a former INT staff member, as the Fox News article itself suggests, Respondent had little, if any, ability to control actions, conduct investigation, or discipline a former staff member for acts perpetrated after leaving the Bank." The Bank adds that it retained an outside law firm to conduct a preliminary inquiry. It adds that that the report of the preliminary inquiry "did not uncover any specific direct evidence implicating any specific Bank staff member, either former or current. In the absence of evidence of a link between any staff member and the Fox News reporter, or the Fox News website, [the Vice President of INT]

concluded that the outcome from any further investigation would likely be inconclusive.” Accordingly, the Bank states that the Vice President closed the matter.

92. The Tribunal has held that, under the Staff Rules, information pertaining to a staff member’s investigation is confidential. In the related case of *AJ*, Decision No. 389, [2009], para. 155, involving the supervisor of the Applicant in the instant case, the Tribunal found that “the Bank’s response to the leaks of the confidential information about the Applicant’s investigations to the press was inadequate and inconsistent with his due process rights.” In so finding and awarding compensation to that applicant, the Tribunal emphasized that:

If the Bank is not held to some duty of active prevention of leaks, the potential for abuse is evident. Senior officials who want to get credit for taking decisive action may thus find it tempting to allow individuals to be singled out prematurely on the intolerable basis that it creates useful examples. (Para. 150.)

93. The Tribunal holds that the Bank cannot avoid liability by simply asserting that, if former staff members are involved in leaking confidential information, it bears no responsibility. In the instant case, the Bank asserts that: “After Applicant alleged that information about INT’s investigation into Applicant was leaked to Fox News, Respondent decided that a preliminary inquiry should be undertaken to determine whether there was sufficient evidence to warrant a formal investigation under Staff Rule 8.01.” At the Tribunal’s order, the Bank produced the report of the preliminary inquiry conducted by the outside law firm for its *in camera* review. Upon examination, the Tribunal found that this report focused on the leaking of information relating to the case of ISGVP, not that of the Applicant.

94. Nevertheless, the Bank might be justified in relying on this report because the two cases are related and the FoxNews.com article mentioned both names. The Tribunal,

however, does not agree with the Bank's characterization of the conclusion of the report.

The report concluded as follows:

We were charged with determining whether there is sufficient credible evidence of misconduct by one or more present or former Bank staff members relating to the unauthorized disclosure of confidential information to merit further investigation pursuant to Staff Rule 8.01.

At this stage of the investigative process, there is sufficient *prima facie* evidence that the confidential information in question derived from the unauthorized disclosure of confidential material by unknown current or former Bank staff members. There is also credible circumstantial evidence in the investigative record relating to the possible culpability by one or more of four identified former Bank staff members ... that is sufficient to warrant further investigation. Although the evidence at this time may not be sufficient to substantiate the allegations against any of the former Bank staff members, the "outcome of a preliminary inquiry is a determination of whether further investigation is warranted, not whether an investigation is substantiated."

Accordingly, in light of the sufficient evidence in the record and the serious nature of the underlying allegations, additional investigation is warranted. At a minimum, the investigative leads identified above should be pursued in a formal Staff Rule 8.01 investigation.

95. The report additionally stated that "the preliminary inquiry identified numerous items of evidence that tend to show that one or more ... former Bank staff members disclosed confidential information in violation of Bank rules." The Vice President of INT, nevertheless, determined that no further action was necessary.

96. In view of the record as a whole, the Tribunal is not convinced that the Bank's action with respect to the leak was adequate and consistent with the Applicant's due process rights.

CONCLUSIONS

97. In sum, the Tribunal finds that: (i) the Bank failed to give the Applicant a notice regarding the allegation of abuse of position for financial gain and also failed to give a supplementary notice respecting this allegation; (ii) the Bank, specifically HR,

unjustifiably delayed making a determination with respect to the Applicant's misconduct; (iii) the referral of the Applicant's case to the DOJ was premature and inconsistent with the Bank's policy; (iv) the Bank unjustifiably delayed giving the Applicant notice of the referral; and (v) the Bank's action in response to the leak of confidential information about the Applicant was inadequate and the Bank is responsible for the leak.

98. The Tribunal notes that PRS has already awarded the Applicant \$30,000 as compensation with respect to the Supplemental Notice of Alleged Misconduct and the delay regarding the notice of referral. However, the Applicant has not been compensated for the leak to the press nor for the Bank's handling of that matter.

99. Balancing the Applicant having acted in clear conflicts of interest with the five failures on the part of the Bank summarized in paragraph 97 of this judgment, the Tribunal decides that additional compensation is warranted for the leak to the press, which remains attributable to the Bank. The Tribunal determines that the Bank must pay the Applicant additional compensation in the amount of \$25,000 (*see AJ*, Decision No. 389 [2009]).

DECISION

The Tribunal decides that:

- (i) the Bank shall pay compensation to the Applicant in the amount of \$25,000; and
- (ii) all other pleas are dismissed.

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

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, DC, 25 May 2011