



**World Bank Administrative Tribunal**

**2014**

**Decision No. 487**

**CG  
Applicant**

**v.**

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

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

**CG,  
Applicant**

**v.**

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani and Marielle Cohen-Branche.

2. The Application was received on 19 April 2013. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. On 29 August 2013, pursuant to Rule 25(2) of the Tribunal's Rules, the World Bank Staff Association filed an *amicus curiae* brief in support of the Applicant's claims. The Applicant's request for anonymity was granted on 18 February 2014.

3. The Applicant challenges: (i) the decision of the Vice President, Human Resources ("HRVP") barring him from all future employment with the Bank and from access to its premises based on the findings of the Bank's Integrity Vice Presidency ("INT") and (ii) the length of the misconduct investigation and the decision-making process.

**FACTUAL BACKGROUND**

4. The Applicant worked for years as a translator and as a Long-Term consultant at the Bank between 1995 and 1999. From 2002 until mid-2012, he worked as a Short-Term Consultant ("STC") on a series of short-term contracts and was responsible for the maintenance of the "Bank's Russian language website" at the Europe and Central Asia ("ECA") Information Technology Team at the Information Management Unit

("ECAIT/IM"). He was authorized to work up to 150 days a year. From 2001-2005, he worked as a Bank Group vendor providing Russian translation services, while also continuing to work as an STC. In 2005, the Bank's General Services Department ("GSD"), Procurement Unit ("GSDPR"), decided that STCs would no longer be permitted to work simultaneously as Bank vendors. At that time, upon resigning as a vendor, the Applicant recommended Mr. K, a friend of his, to Ms. L (who was responsible for selecting translation vendors for work assignments) to replace him as a Russian translation vendor. Mr. K resided in Moscow with his family, was a green card holder, and when in the U.S. he stayed at the Applicant's home as a guest for several months at a time and did translation-related work. The Applicant allowed Mr. K to use his home address as business address as well as his phones and computers and assisted him with his translation work at the Bank.

5. On 3 October 2008, Ms. B, a Senior Manager in GSDPR, contacted INT and made allegations that the Applicant, an STC, was operating as a Bank vendor under the assumed name of Mr. K.

6. On 16 December 2009, over a year after the initial allegation, and in the process of conducting a preliminary inquiry to determine whether there was sufficient basis to merit a formal investigation, INT interviewed its first witness, Ms. L. During the course of the preliminary inquiry, INT established that Mr. K was a real person and that he received assistance from the Applicant with his Bank Group vendor work.

7. On 16 February 2011, INT provided the Applicant with written Notice of Alleged Misconduct dated 15 February 2011 ("Notice") and interviewed him.

8. The Notice stated in pertinent part:

This memorandum is to advise you that under the authority of Staff Rule 8.01 (Disciplinary Proceedings), the Integrity Vice Presidency (INT) is conducting an investigation into alleged abuse of position, willful misrepresentations, and other serious misconduct on your part. Specifically, it is alleged that:

a) On or about August 2005, you recommended that the Bank hire a translation vendor, a sole proprietorship allegedly owned and operated by [Mr. K]. Subsequently, starting on or about August 2005, and while working as a Short Term Consultant for the Bank, you performed translation services under multiple Bank contracts under the vendor registration of [Mr. K];

b) Beginning on or about March 2006 until at least June 2008, you made unauthorized use of Bank Group offices, equipment and/or computers, specifically by using your Bank Group Lotus notes account to conduct your own personal translation services business; and

c) Based on the alleged conduct described in paragraph 1a. above, INT infers that beginning in August 2005 until May 2008, you received payments for services you performed under the vendor registration of [Mr. K].

9. On 26 April 2011, after several extensions granted by INT, the Applicant submitted his written response to the allegations in the Notice.

10. In June 2011, INT interviewed three more witnesses, in addition to the Applicant and Ms. L, and after receiving proper authorization under Administrative Manual Statement (“AMS”) 6.20(A), it reviewed (i) the Applicant’s personnel and vendor files; (ii) Mr. K’s vendor files; and (iii) the Applicant’s Lotus Notes account for the applicable period and his Bank Group computer hard drive data.

11. Based on both the Applicant’s admissions and the written evidence, INT made the following findings.

*Unauthorized use of Bank Group resources for the Applicant’s personal business*

12. INT found that over the period from 2005-2008 (and as late as 2011), the Applicant made unauthorized use of Bank Group systems, including his Bank computer and his Lotus Notes account, to conduct personal translation services for himself, without his supervisor’s permission, often during days when he claimed in his Requests for Payment to be working on Bank Group matters. Evidence included non-Bank Group

personal business e-mail messages that were sent from or received on the Applicant's Lotus Notes account and non-Bank Group business documents that were opened, worked on, and stored on his Bank Group computer or sent to his non-Bank Group business clients. INT considered as an aggravating factor that the Applicant's official electronic Bank signature was appended to e-mail messages he sent from his Bank e-mail to his non-Bank Group business clients, as this was improper and misleading, created a reputational risk for the institution and violated the Bank Group's Administrative Manual Statements.

*Unauthorized use of Bank Group resources for the Applicant's friend's business*

13. INT found that, during working hours and with the use of Bank Group resources, the Applicant performed vendor work on behalf of Mr. K. INT noted the Applicant's admission in this respect that when Mr. K was working as Bank Group vendor from 2005 to 2008, the Applicant, often using Bank Group resources to do so, assisted him by, *inter alia*, (i) editing, proofreading and formatting Mr. K's work products, (ii) sending Mr. K's finished work product and/or invoices on his behalf to the appropriate contacts in the Bank Group, (iii) storing and keeping track of Mr. K's work products created for the Bank Group and of Mr. K's invoices and payments for his Bank Group work on the Applicant's Bank Group computer, and (iv) using his own translation subcontractor, AUM Translation Services, to assist with Mr. K's Bank Group vendor work. He also sent e-mail messages directly from Mr. K's yahoo e-mail account on Mr. K's behalf. INT noted that the Applicant consistently maintained that he never received any remuneration from Mr. K or shared in the payments made by the Bank Group to Mr. K. Evidence showed that the Applicant used Bank Group resources to assist Mr. K with his Bank Group vendor work on at least 18 occasions for which work Mr. K received payments totaling \$10,809.72; Mr. K's total earnings while a Bank Group vendor from 2005-2008 were \$60,158.49.

14. INT noted a number of aggravating factors: First, despite the Applicant's denying that he received any payments for Mr. K, he admitted that he had access to his bank account; therefore he could have made withdrawals for such payments from that account. The Applicant refused to give investigators access to his own Credit Union account for the

relevant periods, thereby denying the investigators the opportunity to confirm or disprove that deposits related to payments made for Mr. K's Bank Group vendor translation work were shared with the Applicant. Second, despite INT's repeated efforts to contact Mr. K, it was unable to reach him and, even when the Applicant allegedly tried to contact him about INT's request to speak to him, Mr. K declined to speak to INT. Accordingly, he did not provide exculpatory evidence regarding the Applicant. Third, while users of Bank Group's finite computer and e-mail resources are expected to use them in a reasonable manner, the Applicant's use of Bank Group e-mail and computer was extensive.

#### *Willful Misrepresentations*

15. INT noted that, at first, the Applicant had stated that he only reported those days on his Requests for Payment on which he actually did Bank Group work on Bank Group premises (and that it was likely that he worked on additional days that were not reflected on his Requests for Payment). However, INT presented him with evidence showing that during the days he had certified that he worked for the Bank Group, he had also often undertaken personal non-Bank Group translation work for himself and Mr. K, in contravention to the rule that staff may not conduct outside business while requesting payment for Bank Group work at the same time. The Applicant then recanted his original statement and stated that he was at liberty to invoice days randomly. He further admitted that he undertook his personal non-Bank Group work while at the office. INT considered that the inconsistencies and contradictions in the Applicant's statements raised issues about his credibility.

16. INT considered as a mitigating factor the evidence that Mr. V, who led the ECAIT team for ten years and approved the Applicant's time sheets from 2002 to 2010, gave the Applicant permission to submit less than accurate Requests for Payment as long as the Applicant worked for at least the required numbers of days under his STC contracts. INT, however, noted that the Applicant had also admitted that he did not want to "overburden himself" and keep records of the days he actually worked on Bank Group

matters, but that he simply thought that he worked on more days than he was allowed under his STC contract.

17. In addition, INT noted that, notwithstanding the Applicant's testimony to the contrary, both Mr. J (who led the ECAIT team after Mr. V's departure) and Ms. R (the transaction processor in the office) stated that they neither knew nor approved of the Applicant's practice of submitting Requests for Payment without concern for their accuracy.

18. INT noted that the inconsistencies and contradictions between the Applicant's statements and those of Mr. J and Ms. R also raised issues about his credibility. Moreover, INT noted that each Request for Payment at the bottom of the page preceding the Applicant's signature states in part that "I certify that I worked on the assignment with the World Bank Group during the stated period(s)." INT concluded that knowing that he picked the days he reported on the Requests for Payment at random, the Applicant intentionally and repeatedly violated this certification requirement.

19. INT also noted that when submitting his requests for payment the Applicant intentionally, or at the very minimum with reckless disregard, chose not to follow the Bank's rules, policies and procedures.

#### *Abuse of Position*

20. INT noted in its Final Report ("INT Report") that the initial predicate for investigating whether the Applicant abused his position for personal gain was the accusation of the Senior Manager, GSDPR, that the Applicant, while working as an STC, also performed work as a vendor under an assumed name of a fictitious person, Mr. K, receiving payment for such services from 2005 to 2008. This was not proven. INT explained, however, that, considering the substantial amount of assistance the Applicant provided to Mr. K with his Bank Group vendor work, it was not unreasonable to consider that there may have been a shared payment arrangement between them, especially since the

Applicant had complete access to Mr. K's bank account and had used it to pay for translation work by subcontractors engaged by the Applicant on Mr. K's behalf.

21. INT noted the inconsistencies and contradictions in the Applicant's statements regarding his use of Mr. K's account which raised issues about his credibility. It also noted again the Applicant's refusal to grant the investigators access to his Credit Union account statements for the applicable period (2005-2008), and Mr. K's refusal to speak to the investigators and provide exculpatory information on behalf of the Applicant as well as the Applicant's repeated denial to provide Mr. K's current contact information so that investigators might contact him independently.

22. INT found applicable Staff Rule 8.01, paragraph 2.01(d), which includes in the definition of misconduct, the abuse of position in the Bank for personal gain of oneself or another and the sanction of mandatory termination pursuant to Staff Rule 8.01, paragraph 3.01. INT found that in the Applicant's case, while an inference might be drawn that the Applicant may have received some form of remuneration from Mr. K for assisting him with his Bank Group vendor work, on the basis of the evidence before it, it could not prove the allegation of abuse of position for personal gain by clear and convincing evidence. INT therefore concluded that the allegation was unsubstantiated.

*The Applicant's comments on the Draft Report*

23. On 12 January 2012, INT provided the Applicant with a copy of the Draft Report of the Investigation for review and comment. The Applicant submitted his comments on 17 February 2012.

24. The Applicant admitted that he made unauthorized use of Bank Group resources on a number of occasions, but not on the scale suggested in the Report. He pointed out that he had also used his own personal computer and personal time to conduct Bank business or to do Bank work. He also stated that the placement of the automatic official



signature in his e-mail messages was pure negligence and should not be regarded as a willful action.

25. The Applicant also apologized for the use of Bank Group resources for Mr. K's business, but denied that he performed the whole Bank Group vendor translation job on behalf of Mr. K. He further stated that his refusal to disclose to a third party any personal or financial information that belongs to someone who did not authorize such disclosure cannot be considered inappropriate. The Applicant also denied the inference that since he had complete access to Mr. K's bank account, he could have easily made withdrawals for such payments from that account.

26. The Applicant denied making willful misrepresentations on his Requests of Payments and insisted that any discrepancies were not "intentionally incorrect" but rather "inaccurate," and that he had never claimed payments for more work than he actually did.

27. Regarding the final allegation of "Abuse of Position" that had not been substantiated, the Applicant expressed confusion about what he had abused and why this was specified as a single issue.

*The HRVP's decision*

28. After incorporating the Applicant's comments, INT sent its Final Report to the HRVP on 23 February 2012.

29. While the INT Report was under review by the HRVP, the Applicant's STC contract expired on 30 June 2012 and the Applicant was informed that the Bank was not permitted under HR practice to renew or extend it pending the outcome of the investigation. By letter dated 23 January 2013, the HRVP notified the Applicant of his decision with regard to the allegations of misconduct.

30. The HRVP stated that after an independent review of INT's findings inclusive of all supporting exhibits and the Applicant's response and comments, he had determined that there was "substantial evidence" to support a finding that the Applicant had engaged in misconduct as defined under Staff Rule 8.01 and that according to the investigative record there was "clear and convincing evidence" that the Applicant in his capacity as a Bank Group Short-Term Consultant Translator:

(a) made unauthorized use of Bank Group offices, equipment and computers, specifically by using [his] Bank Group computer, and Lotus Notes account to conduct personal translation business activities for [himself] and a friend, a former Bank vendor;

(b) made willful misrepresentations and violated Bank Group rules, policies and procedures by submitting fraudulent "Requests for Payments of Short Term Consultants (STC) & Short Term Temporaries (STT), Form 2370" ("Requests for Payment"). Specifically, on dates claimed under the Requests for Payment, [he] often undertook personal non-Bank Group work for [himself] and/or [his] friend. As a consequence, and through [his] own admission, [his] Requests for Payment could not be relied upon as an accurate record to establish whether [the Applicant] did Bank Group work on the days claimed.

31. The HRVP, however, determined that the allegation that the Applicant abused his position for personal gain or that of another by recommending that the Bank Group hire Mr. K, as translation vendor, in order for him to perform translation services under Mr. K's vendor registration for which he received payment had not been substantiated.

32. The HRVP determined that the established facts legally constituted misconduct under Staff Rule, 8.01, namely:

(a) Paragraph 2.01(a) -- failure to observe the Principles of Staff Employment, Staff Rules, and other duties of employment, including procurement rules and the unauthorized use of Bank Group offices, equipment, or computer resources;

(b) Paragraph 2.01(b) -- failure to know, and observe the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group;

(c) Paragraph 2.01(b) -- reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct;

(d) Paragraph 2.01(b) -- willful misrepresentations of facts intended to be relied upon; and

(e) Paragraph 2.01(c) -- acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment and Staff Rule 3.01 (*i.e.* 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).

33. In deciding on the appropriate sanction, the HRVP took into account that the Applicant had no prior adverse disciplinary findings and the Applicant's explanations for his conduct, which he did not find exculpatory. The HRVP decided that the appropriate sanction was:

a) Loss of future employment and contractual opportunities with the Bank Group, as a staff member, contractor, or employee of a contractor.

b) [The Applicant's] access to any of the Bank Group's buildings is restricted to entry for business needs relevant to the Bank Group, at the determination and discretion of the Vice President, HR or his delegate.

c) This letter will remain on [the Applicant's] record with indefinite duration.

34. The Applicant filed an Application with the Tribunal on 19 April 2013. The Applicant requests the Tribunal to order: (i) removal of all records of the INT investigation and of the HRVP's letter from the Applicant's personnel file; (ii) removal of the bar to the Applicant's re-employment by the Bank and of the ban on the Applicant's access to the Bank's premises; (iii) payment of \$4,000, the approximate value of the contract extension he was denied because of the INT investigation; (iv) such additional amount as the Tribunal deems fair and appropriate to compensate the Applicant for lost employment opportunities at the Bank, his pain and suffering, and the damage to his professional reputation resulting from the lengthy INT investigation and the decision of the HRVP; (v) and attorneys' fees and costs in the amount of \$8,213.03.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

*The Applicant's main contentions*

35. The Applicant mainly contends that the discipline imposed was grossly disproportionate to his misconduct and that the HRVP failed to take into account a number of mitigating factors. The Applicant also asserts that the length of the investigation and the decision-making process which lasted over four years violated the Applicant's due process rights.

*The Staff Association's main contentions*

36. In its *amicus curiae* brief of 29 August 2013, the World Bank Group Staff Association supported the Applicant's claim that the disciplinary measures were disproportionate to the misconduct. The Staff Association argued that the HRVP did not adequately consider either the nature of the misconduct or the mitigating circumstances and should have imposed a lesser penalty.

*The Bank's main contentions*

37. The Bank contends that the sanction imposed upon the Applicant was proportionate to his misconduct and that his excuses and explanations are aggravating factors. The Bank alleges that even though the investigation and decision-making process took longer than usual, this length of time was justified by a number of factors and did not constitute abuse of process.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

38. The scope of review by the Tribunal in disciplinary cases is well-established. 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.”

39. Furthermore, in addressing the degree of proof needed to support findings of misconduct the Tribunal held in *Dambita*, Decision No. 243 [2001], para. 21:

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.

*Existence of the facts and whether they legally amount to misconduct*

40. The parties agree for the most part on the existence of the facts regarding the types of actions in which the Applicant engaged and that these actions legally amount to misconduct.

41. The HRVP found that the Applicant, in his capacity as a Bank Group STC Translator had made (i) unauthorized use of Bank Group offices, equipment and computers to conduct personal translation business activities for himself and a friend, a former Bank vendor, and (ii) willful misrepresentations and violated Bank Group rules policies and procedures by submitting fraudulent “Requests for Payment of ... STC” while undertaking personal non-Bank Group work for himself and his friend on dates claimed under such Requests.

42. Furthermore, the HRVP determined that the established facts legally constituted misconduct under Staff Rule 8.01, paragraphs 2.01(a), (b) and (c) as applicable during the Applicant’s misconduct.

43. Regarding the first instance of misconduct, i.e. “unauthorized use of Bank Group resources” by the Applicant for his personal business and for Mr. K, the main applicable provision is Staff Rule 8.01, paragraph 2.01(a) which includes in the instances of misconduct the unauthorized use of Bank Group offices, equipment, or computer resources.

44. Additional applicable provisions are, *inter alia*, Staff Rule 3.02, paragraph 3.03, which provides:

Any activity allowable under this Staff Rule, or preparation for such activity, undertaken in a private capacity must take place outside Bank Group office hours or while the staff member is on leave, must not make use of Bank Group services, supplies or facilities, or of information not publicly available and must not interfere with the performance of the staff member’s Bank Group duties.

45. Also applicable is AMS 1.00 which establishes certain practices in the use of the Bank’s names and symbols and shows that they are to be used in relation to the Bank’s official business and AMS 12.10 “Electronic Messaging Services” which provides in pertinent part that

the Electronic Messaging (Email) service is ... provided to staff globally by the Bank to conduct official business;

The Bank Group’s Email is to be used for business purposes. While personal electronic mail is permitted, it is to be kept to a minimum;

Staff will be provided access to an Electronic Messaging account as part of a series of standard operational tools defined as baseline necessities to carry out the Bank Group’s core business; and

[n]o one may solicit, promote or advertise any organization, product or service through the use of the Bank Group Email at any time.

46. Moreover AMS 12.10 underscores that “Violations of any of these provisions may result in discipline up to and including termination as described in Staff Rule 8.01, “Disciplinary Measures.” Furthermore Staff Rule 3.01, para. 12.01 provides that “Staff

members shall not use Bank Group services, supplies or facilities for private gain or permit other persons to do so.” The record before the Tribunal demonstrates the Applicant’s failure to comply with the above-mentioned provisions.

47. The INT Report and its attachments show that from March 2006 to June 2008, the Applicant had sent at least 70 e-mail messages to his non-Bank Group clients and subcontractors from his Bank e-mail account. Some of these e-mail exchanges included voluminous attachments of translated documents.

48. In addition, INT found stored on the Applicant’s Bank Group computer hard drive folders and work products of about 737 Megabytes, equaling approximately 20,000 pages or two CD-ROMs relating to the Applicant’s non-Bank Group clients and associates. INT also discovered that the Applicant made unauthorized use of his Bank Group computer as late as 2011 and not only between 2005-2008 (the period during which Mr. K was a Bank Group vendor).

49. The record also contains e-mail messages from the Applicant’s Lotus Notes account, with attachments of translated documents and invoices showing that the Applicant used Bank Group resources to assist Mr. K with his Bank Group vendor work on at least 18 occasions.

50. The Applicant has admitted that he sent non-Bank Group personal business e-mail messages. He also admitted that, without his supervisor’s permission he worked on non-Bank business documents from his Bank computer for his own personal business and to assist Mr. K with his Bank Group translation work, using Bank resources.

51. In view of the evidence in the record, the Tribunal is satisfied that this instance of misconduct and the non-observance of the relevant provisions have been proven.

52. In relation to this instance of misconduct, the Applicant has requested that any references and charges involving Mr. K be ignored because the Applicant was not found

guilty of the charge of abuse of position and because this charge was irrelevant to the outcome of the INT investigation. While the charge of the more serious instance of misconduct, i.e., abuse of position for personal gain of oneself or another, was not proven, the charge of unauthorized use of Bank resources by the Applicant to assist Mr. K with his Bank-related work is relevant and proven even if INT did not prove that the Applicant received a financial benefit from Mr. K. The Tribunal has reviewed the references to Mr. K as part of its examination of this specific instance of misconduct of the unauthorized use of Bank resources.

53. Regarding the second instance of misconduct, i.e. “willful misrepresentations and [violation] of Bank Group rules, policies and procedures by submitting fraudulent ‘Requests for Payment’,” the main rule applicable is Staff Rule 8.01, paragraph 2.01(b) which includes in the definition of misconduct the “willful misrepresentation of facts intended to be relied upon” and the “failure to know, and observe the legal, policy, budgetary and administrative standards and restrictions imposed by the Bank Group” and “the reckless failure to identify or failure to observe, generally applicable norms of prudent professional conduct.”

54. INT explained the elements of willful misrepresentation as:

a staff member: (1) made a statement or omission of fact; (2) intended to be relied upon for the action of another; (3) such statement or omission was false, incorrect, or misleading; and (4) such statement or omission was made willfully.

55. INT has noted that the legal definition of willful act is one which is intentional, conscious and directed towards achieving a purpose.

56. In addition, INT stated that when submitting false Requests for Payment, the Applicant intentionally or at the very minimum with reckless disregard chose not to follow the Bank’s rules, policies and procedures.



57. Also applicable is Staff Rule 3.02, paragraph 3.03, mentioned above in para. 44 of this judgment. Other applicable provisions are:

(i) Staff Rule 3.01 “Standards of Professional Conduct” which states in paragraph 3.01:

Staff members must comply with the obligations embodied in the Principles of Staff Employment, the Staff Rules and all other policies and procedures of the Bank Group, as applicable; and

(ii) Principle 3 of the Principles of Staff Employment which states:

3.1 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.

58. The Applicant admitted that he invoiced random dates on the Requests for Payment for his work not exceeding 10 or 15 days per month. By his own admission, therefore, his Requests for Payment could not be relied upon to establish whether he did Bank Group work on the days claimed. More importantly, at the end of these Requests for Payment and preceding the Applicant’s signature the following statement appears: “I certify that I worked on the assignment with the World Bank Group during the stated period(s).”

59. The Applicant mainly takes issue with the fact that the Requests for Payment are characterized by the Bank as fraudulent, arguing that there was no intent to defraud. However, the Bank has not claimed that there was intent to defraud. Taking into account his testimony that the total number of hours spent working for the Bank equaled or exceeded the amount of time for which he claimed payment, neither INT nor the HRVP found that fraud was proven.

60. However, notwithstanding the Applicant’s explanations that any discrepancies in his Requests for Payment were not “intentionally incorrect” but rather “inaccurate,” and his assurances that he had never claimed more than he actually did, it is clear that he made

misrepresentations in such Requests intended to be relied upon by the Bank. Even if he did not intend to deceive the Bank by receiving more payments than he was entitled to, he voluntarily made statements he knew to be false with the purpose of receiving payments on the basis of those statements.

61. In addition, in so doing, the Applicant intentionally or at the very minimum with reckless disregard chose not to follow the Bank's rules, policies and procedures.

62. While the Tribunal is satisfied that the misrepresentations were willful for the reasons described above it also recalls its ruling in *O' Humay*, Decision No. 140 [1994], para. 32, that

a misrepresentation undoubtedly took place. Any discussion about whether or not the misrepresentation was willful becomes unnecessary. Regardless of whether there was a malicious intention, a given result was sought and obtained by means of this representation.

63. The Tribunal finds that the existence of the facts and the non-observance of the relevant provisions with regard to this second instance of misconduct have also been proven.

64. Finally, the Tribunal notes that INT states that it was not able to show that clear and convincing evidence existed regarding the initial allegation against the Applicant (namely "abuse of position for personal gain of himself or another" by recommending that the Bank Group hire Mr. K as a translation vendor in order for the Applicant to perform translation services under the vendor registration of Mr. K and in turn receive payment for such services).

65. Paragraph 2.01(d) on abuse of position in the Bank for personal gain of oneself or another governs this type of misconduct. For this type of misconduct, Staff Rule 8.01, paragraph 3.01, prescribes the sanction of mandatory termination. Without arriving at any conclusion on this matter as it is not under review, the Tribunal notes that the Applicant did not give INT access to his Credit Union account or Mr. K's bank account. Mr. K never

came forward to support the Applicant during the misconduct investigation, despite Mr. K's close friendship with the Applicant and the substantial assistance the Applicant gave Mr. K. According to the Applicant, Mr. K did not want to be contacted and on this ground the Applicant never gave INT the more recent address of Mr. K so that INT could contact him. Under Staff Rule 8.01, paragraph 4.06

a staff member who is the subject of a preliminary inquiry or an investigation has a duty to cooperate with the person conducting the investigation. A staff member believed to have knowledge relevant to a preliminary inquiry or an investigation also has a duty to cooperate absent a showing by the staff member of reasons, determined by the person conducting the investigation, to be sufficient to justify failure to cooperate. Failure or refusal to cooperate may constitute misconduct under this Rule.

66. The record does not shed much light on this point. Presumably, INT found the reasons provided by the Applicant sufficient to justify his failure to give access to the bank accounts or further information in order to contact a key witness such as Mr. K and did not consider the Applicant's behavior in this respect tantamount to a failure to cooperate constituting misconduct. The Tribunal finds troublesome, however, the Applicant's reluctance to facilitate the investigation and provide relevant evidence to defend this third most serious allegation of misconduct against him, leaving no choice for INT but to draw an inference on that issue.

*Whether the sanction imposed is provided for in the law of the Bank*

67. The disciplinary measures imposed by the HRVP on the Applicant were provided for in Staff Rule 8.01, paragraph 3.03, as in effect at the time of the Applicant's misconduct. This paragraph prescribed in pertinent part:

Depending on the circumstances of the case, one or more of the following disciplinary measures may be taken by the Bank Group when misconduct is determined to have occurred:

- ...
- c. Restrictions on access to the Bank's premises; and
- ...

k. Loss of future employment and contractual opportunities with the Bank Group.

*Proportionality of sanctions*

68. The next main issue that the Tribunal has to address in this case is whether the sanction imposed was disproportionate to the Applicant's misconduct.

69. Regarding the imposition of disciplinary measures, Staff Rule 8.01 provides:

03. Disciplinary Measures

3.01 Upon a finding of misconduct, disciplinary measures, if any, imposed by the Bank Group on a staff member will be determined on a case-by-case basis. Any decision on disciplinary measures will take into account such factors as the seriousness of the matter, any extenuating circumstances, the situation of the staff member, the interests of the Bank Group, and the frequency of conduct for which disciplinary measures may be imposed. Subject to the provisions of paragraph 3.02 below, termination of service will be mandatory, however, where it is determined that any of the following misconduct has occurred:

(a) misuse of Bank Group funds or other public funds for the personal gain of oneself or another in connection with Bank Group activities or employment or abuse of position in the Bank Group for the personal gain of oneself or another.

70. The Tribunal finds that given the Applicant's employment status as an STC, the sanction of loss of future employment with the Bank and restriction of access to its premises imposed on him were tantamount to termination of employment. Since his appointment was one of definite duration without expectation of renewal or extension, the sanction of termination would not be applicable in his case particularly as his contract had already ended at the time of the imposition of the sanction. The sanction imposed was the most severe sanction available. At the same time, the sanction imposed was also the main if not the only option under the Staff Rule for an STC. Less severe sanctions would be a limitation in the number of years of his restriction of access to the Bank's premises or loss

of future employment and contractual opportunities with the Bank. (*See e.g. AB*, Decision No. 381 [2008] and *AC*, Decision No. 386 [2008].)

71. The Applicant's main claim is that because neither (i) the more serious instance of misconduct of abuse of position for personal gain, nor (ii) intent to defraud was proven, the HRVP should not have imposed the most severe of sanctions. In cases where intent to defraud was not established, the Tribunal notes that it overturned the termination decision and left it to the Bank to impose a less severe disciplinary measure of its choosing. (*See Z*, Decision No. 380 [2008]). Moreover, even in earlier cases where serious misconduct such as fraud was established, the Tribunal found the sanction disproportionate on the basis of a number of factors and overturned the termination decision. (*See Carew*, Decision No. 142 [1995], paras. 39, 43-46 and *Planthara*, Decision No. 143 [1995], paras. 37-42.)

72. While it is true that in the current case fraud was not established, the Applicant has been found to engage in other instances of misconduct. The question is whether there existed factors among the ones provided in Staff Rule 8.01, paragraph 3.01, mentioned above, which the HRVP failed to take into account and which justified the imposition of a less severe discipline for his misconduct.

73. One important mitigating factor in the Applicant's case is his long service as a consultant at the Bank and his good performance, evident by the fact that his contracts were consistently renewed. Length of good service is another relevant factor, among others, that has led the Tribunal to overturn the sanction of termination even in cases of fraud. (*See e.g. Carew*, Decision No. 142 [1995], para. 44 and *Planthara*, Decision No. 143 [1995], para. 40). Another mitigating factor which INT took into account with regard to the willful misrepresentations in the Applicant's Requests for Payment is that one of his supervisors, Mr. V, had allowed him to bill the Bank randomly as long as the Applicant worked at least the required number of days under his STC contracts.

74. However, Mr. V's permission may have been uninformed as he was not aware (nor had he authorized) the Applicant to use Bank resources to conduct his personal business

and the translation work for Mr. K. Moreover, the permission by Mr. V did not exempt the Applicant from his obligation to comply with the Staff Rules. Furthermore, while Mr. V may have given him the permission to bill randomly, he had not obtained such permission from Mr. V's successor, Mr. J, or the transaction processor, Ms. R, who testified that they neither knew nor approved of the Applicant's practice of knowingly submitting inaccurate Requests for Payment.

75. Additionally, the Tribunal finds that it was for the Applicant, who had served as an STC for many years, to familiarize himself with the rules which applied to him and to comply with them. Such rules were consistently referred to in and attached to the several contracts of employment that he signed over the years. The Applicant certified by signing such contracts that (i) he accepted his appointment "under the terms and conditions of employment set forth in [his] letter of appointment and the policies and procedures of the World Bank Group presently in effect and as may be amended from time to time"; (ii) he had received, reviewed and understood the World Bank Group's Staff Principle 3, General Obligations of Staff Members and Staff Rules 3.01-3.03 which were enclosed, along with other documents, in his contract; and (iii) his employment did not violate the provisions of this Principle and these Rules. Notably, even if the Applicant had no knowledge of the Bank's Staff Rules, his failure to observe them would not be justified, as ignorance of the law is no excuse. (*See e.g. Kwakwa*, Decision No. 300 [2003], para. 21, *Koudogbo*, Decision No. 246 [2001], para. 31.)

76. The Applicant also points to his admissions since his first interview with INT, his apologies and his assurances that he would not repeat his actions. However, the Tribunal recalls its observation that when staff are found to have engaged in misconduct they "are often eager to make restitution, but misconduct is not so easily expunged." (*K*, Decision No. 352 [2006], para. 41.) This is so especially where the misconduct continued for several years and was not a single isolated incident.

77. Regarding the Applicant's assertion that his computer use was insignificant in the context of overall use of computers in the Bank or compared to the use by a full-time Bank

employee, the Tribunal finds that INT and the voluminous record in the case have shown that the Applicant's improper and unauthorized use of the Bank's resources was substantial and did not fall under the exception in AMS 12.10 that "while personal electronic mail is permitted, it is to be kept to a minimum." It should be noted, first, that the AMS makes no allowance for a staff member's personal non-Bank business to be conducted using Bank Group's e-mail. More importantly, however, such substantial use was entirely unauthorized and in violation of Staff Rules 8.01 and 3.02 and AMS 12.10. Such use also took place during days in respect of which the Applicant had certified that he was doing the Bank's work.

78. The Tribunal finds implausible the Applicant's claim that it was difficult to remember that the official signature is at the bottom of every e-mail message. This assertion betrays reckless disregard for the Bank's Rules and Administrative Manual Statements which he had promised to observe under his contract of employment. The Tribunal is persuaded by the Bank's observation that such use of the Applicant's official Bank e-mail signature on his personal business correspondence would create confusion regarding whether the Applicant was performing this work in his official capacity as a Bank staff member, and doubtless created reputational risk for the Bank, as it lent the Applicant's personal non-Bank Group business communications the stature and reputation of the Bank Group.

79. The Applicant and the Staff Association have also argued that as his violations of the rules were minor and essentially harmless, the HRVP erroneously concluded that acts of misconduct should be punishable by the strictest of sanctions simply because they were repeated many times. The Tribunal finds, however, that the repetition of the Applicant's conduct virtually on a daily basis created a pattern of misconduct through various STC contracts over many years. The sum of his actions and the frequency of his conduct were an aggravating factor in his case, entitling the HRVP to take a serious view of his misconduct. (*See Planthara*, Decision No 143 [1995], para. 39; *Carew*, Decision No. 142 [1995], para. 43; and *Z*, Decision No. 380 [2008], para. 34.)

80. The Applicant and the Staff Association have stated that the Applicant's regular presence at the office and the irregular flow of work made his method of timekeeping understandable if not excusable. In addition, the Applicant insists, no tangible harm was caused to the Bank from the way he conducted his business but, in fact, the Bank benefitted from his daily presence which enabled him to update the website promptly and meant that he was always available when needed for Bank work. Noting that the Applicant has also admitted that one of the reasons he did not keep accurate timesheets was that he did not want to overburden himself, the Tribunal finds that the Applicant was not entitled to disregard rules on account of his perception of his conduct as efficient, convenient, or beneficial to the Bank. Rationalizations similar to the Applicant's were rejected by the Tribunal in *K*, Decision No. 352 [2006], paras. 38-41 where the Tribunal found disturbing that the applicant in that case felt himself exempted from the inconvenience of obeying applicable rules.

81. The Tribunal finds also unpersuasive the Staff Association's suggestions that the Applicant's behavior was perhaps excusable since the Bank did not make it possible for him to perform Bank work from home, and thus he needed to be at work regularly with the responsibilities of a virtually full-time employee but without equivalent pay and benefits. The Bank's business needs with respect to the Russian website did not justify employing the Applicant on a full-time, term or open-ended contract. The Applicant voluntarily accepted the terms of his employment as an STC, in his numerous contracts including that he was authorized to work a total of 150 days (or less) per year and that such hours would be variable. He was further allowed under the Staff Rules to seek outside employment to supplement his Bank income. It was his decision to come into the Bank nearly every day even though he was not required to do so and to use Bank resources to perform unauthorized work.

82. The Tribunal concludes that the sanction imposed on the Applicant was not disproportionate to his misconduct.



## DUE PROCESS

83. The next issue for the Tribunal to address in its examination of this case is whether the requirements of due process were observed. In *Kwakwa*, Decision No. 300 [2003], para. 29, the Tribunal held that while the Bank was not to be held to the full panoply of due process requirements applicable in the administration of criminal law, due process needed to be observed:

However, the due process requirements for framing investigations of misconduct in the context of the World Bank Group's relations with its staff members are specific and may be summarized as follows: affected staff members must be apprised of the charges being investigated with reasonable clarity; they must be given a reasonably full account of the allegations and evidence brought against them; and they must be given a reasonable opportunity to respond and explain. (*See King*, Decision No. 131 [1993], paras. 35-37.) Staff Rule 8.01, para. 5.06, does not give an automatic right to depose, confront or cross-examine persons who have been asked to contribute to the investigation.

84. The Applicant complains that the process took an inordinate amount of time, lasting as it did over four years, from October 2008 to January 2013. Indeed, it took over one year after the first complaint was filed by the Senior Manager of GSDPR in October 2008 for INT to conduct its first interview of Ms. L in December 2009, as part of its preliminary inquiry. After the interview, INT postponed the investigation due to competing priorities. Only after having gathered additional evidence did INT start the formal investigation on 15 February 2011, over a year after the interview of Ms. L by giving the Applicant a Notice of Alleged Misconduct and interviewing him. Eleven months after the Notice, on 12 January 2012, INT provided the Draft Report of the Investigation to the Applicant. Over a month later, on 17 February 2012 the Applicant provided comments on the Draft Report of the Investigation. On 23 February 2012, INT issued its Final Report and delivered it to the HRVP. Eleven months later, on 23 January 2013, the HRVP issued his final decision in the Applicant's case.

85. In February 2007, the Bank's President, after consultation with its Board of Executive Directors, established an independent panel of experts ("the Volcker Panel") to

carry out comprehensive review of INT. Its report (“Volcker Report”) recommended a maximum period of nine months from the moment INT receives an allegation of misconduct until the time it submits its investigation report to the HRVP. The Tribunal notes that INT received the allegation by the Chief of GSDPR in October 2008 but submitted the Final Report of the Investigation to the HRVP on 23 February 2012 (almost three and a half years later). The Applicant states that INT did not comply with the Volcker Report recommendation. The Bank points out that this recommendation in the Volcker Report was never intended to be rigid and absolute and that the Volcker Report anticipates the possibility of justified delays. Indeed, the Tribunal notes that the Report allows complexities of a case to justify departures from recommended deadlines. The Bank has stated that after the initial allegation, INT had to suspend the inquiry due to competing investigative priorities, including highly publicized cases. It has further presented a number of reasons justifying the complexities of the case:

First, ... the initial investigation focused not only on Applicant but also on another staff member who was alleged to have been complicit in the misconduct. Second, the initial investigation sought to establish whether [Mr. K] was an actual person or an alias of Applicant’s – a task complicated by the fact that [Mr. K], a Russian national, resided in Moscow and was unable to be reached by investigators despite numerous attempts. Third, investigators faced the time-intensive task of identifying and reviewing each applicable document saved to Applicant’s Bank computer, as well as numerous applicable e-mails saved to his Lotus Notes e-mail account (many of which needed to be translated from Russian). INT investigators needed to review each of these documents [to] ascertain whether it related to Applicant’s legitimate Bank work, or to his personal translation business activities, or to [Mr. K’s] Bank Group vendor work. ... Fourth, INT investigators faced the equally time-intensive process of reviewing not only the substance of each applicable document and e-mail, but also the date and time each applicable document was created, saved or edited by Applicant.... Such review was required to painstakingly compare each of these dates and times specified in each of Applicant’s Requests for Payment. It was also necessary to determine the extent of Applicant’s involvement in [Mr. K’s] World Bank vendor assignments.

86. The Tribunal finds that while the Bank’s explanation regarding the complexities of the case is convincing, similar challenges are presented in other investigations where the written record is voluminous and where INT interviews a much larger number of

witnesses. Even though the argument about the competing priorities is to be taken seriously, it is to be expected, as noted in the Volcker Report, that INT should have enough resources to carry out its work in a timely manner. Furthermore, effective 1 July 2009, Staff Rule 3.00 transferred authority, prospectively, for review of allegations involving, *inter alia*, unauthorized use of Bank Group resources and willful misrepresentation of facts intended to be relied upon to the Office of Ethics and Business Conduct (“EBC”). Nonetheless, INT retained jurisdiction of these matters in the Applicant’s case “in the interests of efficiency,” as it also had jurisdiction over the initial more serious charge of abuse of position for personal gain. The length of time for the conduct of this investigation, however, cannot be viewed as serving the interests of efficiency. The Tribunal finds that since INT had decided to retain jurisdiction over matters where EBC was authorized and available to conduct the investigation, it had an additional obligation to conduct such investigation in a timely manner.

87. Adding to the significant delay in the process was the total of eleven months that the HRVP took since INT forwarded to him its Final Report until his decision. The HRVP explained that he had undertaken an independent review of INT’s findings in the Final Report inclusive of all supporting exhibits, necessary to ensure that his decision was made with the due diligence and care required to assess properly the extent of the Applicant’s misconduct and that any sanction imposed was reasonable and proportionate. While this may be true, the Tribunal finds that the interest of due diligence in the decision-making process should be balanced with the interest of efficiency and timeliness of such process. The HRVP has available staff and resources to assist him with his review and decision; therefore taking almost a full year to assess a case that INT has already thoroughly examined and to which the Applicant had also effectively responded is not justifiable.

#### *Temporary bar to hire*

88. The Applicant states that he suffered harm from the delay, because he was prevented from continuing his Bank employment during the course of the process. However, the Tribunal notes that during the conduct of the preliminary inquiry and the

investigation the Applicant was offered two STC contracts. The first was issued on 28 September 2010 and was effective through at least 30 June 2011. The Bank did not suspend such contract after giving him the Notice of Alleged Misconduct on 16 February 2011. On the contrary, after the expiration of this contract, and while the investigation was ongoing, the Bank issued the Applicant a new STC contract on 4 November 2011 which was effective through 30 June 2012. By February 2012, before the end of such contract, INT had issued its Draft Report and the Applicant had submitted his comments to it and then INT delivered its Final Report to the HRVP. It was only a month before the expiration of the Applicant's contract at the end of May 2012 that a Senior HR Specialist from the Human Resources Corporate Operations Unit ("HRSCO") notified the Applicant that the Lead HR Specialist of the unit had placed a temporary bar on new contracts pending the outcome of the review by the HRVP. Therefore the record shows that the Applicant's employment was not in any way affected by the delay in the investigation but that he was only prevented from having a new contract with the Bank during seven of the eleven months that the HRVP's review of his case took place due to the temporary bar-to-hire flag that HRSCO placed in his personnel file.

89. The Tribunal has recognized in its jurisprudence the Bank's discretionary power to place staff members on open-ended and term appointments on administrative leave pending an investigation under Staff Rule 8.01 or for other reasons as well as its wide discretion to impose "no-hire" and "no-access" flags in the personnel files of its staff members. (*See e.g. G*, Decision No. 340 [2005], paras. 67-68; *R (No. 2)*, Decision No. 396 [2009], paras. 43-44; *Yoon (No. 13, No. 14, No. 16, No. 17, No. 18)*, Decision No. 447 [2011], paras. 72, 77, 80, 81, 118; *AE*, Decision No. 392 [2009], para. 28.) However the Tribunal has repeatedly emphasized that the placement of any flags, for whatever purpose, must follow the basic elements of due process, including, specifically, written notification and the right to reply. (*Dambita*, Decision No. 243 [2001], para. 26).

90. In the Applicant's case, the Lead HR Specialist of HRSCO took the decision to place a temporary bar-to-hire flag in the Applicant's file in accordance with Bank policy concerning ongoing investigations involving misuse of corporate resources and in order to

mitigate the Bank's risks in light of the nature of the alleged misconduct. He informed the Applicant of the temporary bar. He confirmed that the Applicant had been given an opportunity to respond to the allegations against him through his responses to the Notice of Alleged Misconduct and his comments to the Draft INT Report. The Applicant was also allowed to respond to the notification of the placement of the temporary bar. The Tribunal finds that the Bank complied with all procedural safeguards established to ensure due process.

91. Moreover, as the Tribunal held in *AB*, Decision No. 381 [2008], para. 76, where the applicant had made a similar claim as in the current case that his contract was not renewed after the investigation began, the Bank is under no obligation to renew a Short-Term consulting appointment.

92. Finally, it should also be noted that as an STC the Applicant was not prevented from pursuing outside gainful employment at all times even when he was temporarily barred from hiring at the Bank. The Tribunal finds that the Applicant has not shown that the Bank has breached any obligation in this respect.

*Preliminary Inquiry and resulting damage to reputation*

93. The Applicant further alleges that he suffered great emotional and reputational harm by the extraordinarily lengthy investigation because even before he knew anything about the allegations, other Bank staff members with whom he had to interact as part of his work were aware of charges against him, referring particularly to the interview of Ms. L during the preliminary inquiry. The Tribunal notes that while Ms. L admitted that she had initially asked a colleague to accompany her to her interview, she confirmed to INT her understanding that she was bound by confidentiality rules regarding her testimony to INT.

94. The Tribunal has noted previously (*see e.g. D*, Decision No. 304 [2003], para. 61) that INT Standards and Procedures set forth factors to be considered in deciding whether early notification to the subject of the investigation should be given including whether

“one or more witnesses have already been interviewed and as a result there is a risk of the spread of rumors or gossip concerning the allegations,” in which situation “it may be prudent to formally notify the subject of the allegations.” ... “On balance, the following two factors should also be considered on whether notification should be held in abeyance until the mandated threshold has been reached: 1. If there is a reasonable risk that material witnesses may be intimidated by the subject. 2. If there is a reasonable risk that physical or documentary evidence may be tampered or destroyed by the subject.” (*Id.*)

95. Taking into account the above factors, in *D*, Decision No. 304 [2003], para. 65 the Tribunal noted that

a staff member who is the subject of a preliminary inquiry should be informed of that fact at the earliest reasonable moment, taking into account when justified the aforementioned concerns regarding tampering, collusion, and the like. Early notice – short of a formal Notification of Misconduct – can provide an opportunity to the subject to respond to the charges, to explain his suspect behavior, to inform the investigators, and so better to focus and expedite (and perhaps conclude) the preliminary inquiry.

*See also BB*, Decision No. 426 [2009], paras. 80-83.

96. In this case, however, while it took over one year between Ms. L’s interview and the Notice of Alleged Misconduct, the record shows that the Applicant was unaware of the preliminary inquiry. Moreover, the record does not show that the Applicant’s case was discussed by his colleagues before he was given the Notice of Alleged Misconduct.

97. When explaining the reason for the delay in the investigation, the Bank, in addition to invoking other priorities, stated that the initial investigation focused not only on the Applicant but also on another staff member who was alleged to have been complicit in the misconduct. The Bank has stated that neither this fact nor the identity of the other staff member was provided to the Applicant for confidentiality reasons. The Applicant calls this revelation “startling” pointing out that, if this is true, it would be a gross violation of due process because the Applicant would not have had a chance to review the interview transcripts of this staff member for exculpatory evidence or refute any inculpatory

evidence. In its Rejoinder, the Bank states that it did not withhold witness interviews or relevant evidence from the Applicant. The only information withheld from the Applicant is the identity of the staff member who was alleged to have been complicit in his misconduct.

98. The Tribunal notes that this point has not been argued in detail by the parties. The Bank seems to be making inconsistent statements when it alleges first that both the fact of the investigation of the other person and his name were withheld from the Applicant and then that only the name was withheld from the Applicant. In any event, it appears that the investigation regarding that person later ceased as the Bank confirms that it did not conceal from the Applicant any of the witness interviews or any other relevant evidence. No relevant evidence appears in the INT Report or anywhere in the record before the Tribunal nor was such evidence or information used in relation to INT's findings or the HRVP's decision. The Applicant's right to due process has not been affected in this respect.

99. The Tribunal, however, would like to reiterate the importance of transparency in the conduct of the investigation and the need to provide all material information and access to witnesses and transcripts to the subjects of the investigation, as also required by INT's "Guide to the Staff Rule 8.01 Investigative Process," in order to afford them a fair opportunity to prepare a defense in their case.

100. In conclusion, while the Tribunal held in *L*, Decision No. 353 [2006], para. 31 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," it observes that the total of almost four and a half years for the entire process in this case is long particularly because it took almost one year from the moment the HRVP received the INT Report until he issued his decision on disciplinary measures. While the Tribunal has accepted the Bank's contention that there was no impact on the Applicant's career as he was offered two additional STC contracts during the investigation, it notes that INT and HRVP handled the time limits of the process in the Applicant's case in a relaxed manner. As noted above, however, neither the Applicant nor any of his colleagues, other than Ms. L and the person

who was to accompany her to the interview, was aware of the preliminary inquiry until February 2011 when he was given the Notice. The Tribunal also observes that there is no evidence that Ms. L violated the oath of confidentiality. The Tribunal is of the view that there was a failure on the part of INT to conduct an expeditious investigation, as required by its jurisprudence, and as also recommended by the Volcker Report. However, it is not persuaded that, as a consequence, the Applicant suffered emotional or reputational harm during the preliminary inquiry. The question then is whether the time lapse, first, between the Notice on 16 February 2011 and the submission of the INT Report to the HRVP on 23 February 2012 and, then, the time lapse between such submission and the issuance of the HRVP's decision on 23 January 2013, a total period of almost two years, was excessive.

101. The Tribunal finds that, considering the particularities of the case, taking one year from the issuance of the Notice of Alleged Misconduct to the time of the completion of the INT Report is not excessive. Be that as it may, the Tribunal is of the view that matters involving misconduct and disciplinary measures should always be dealt with expeditiously. The Tribunal finds, however, that the Bank has not provided a proper justification as to why the HRVP took almost one year to make a decision. Unjustifiable delay in making a disciplinary decision after an investigation can be considered inconsistent with a staff member's due process rights.

### *Conclusion*

102. On the basis of the above analysis, the Tribunal does not find that the sanctions imposed on the Applicant were disproportionate to the offence.

103. In the circumstances of the case, taking almost one year for the HRVP to issue his decision on the disciplinary measures after receiving the INT Report is excessive and for this reason the Tribunal determines that the Bank shall pay the Applicant's attorneys' fees and costs in the amount \$8,213.03.



DECISION

- (1) The Bank shall pay the Applicant's attorneys' fees and costs in the amount of \$8,213.03.
- (2) All other pleas are dismissed.

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

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Washington, D.C., 28 February 2014