



World Bank Administrative Tribunal

2014

Decision No. 489

**CH,
Applicant**

v.

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

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

**CH,
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 26 July 2013. The Applicant was represented by Marie Chopra of James & Hoffman, PC. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 18 February 2014.

3. The Applicant challenges the Bank's decision to terminate his employment for misconduct.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in 1995 as a Long Term Consultant. He became a Public Sector Management Specialist in 1998 and was promoted to Senior Public Sector Management Specialist in 2003. During his tenure he worked on Bank projects as a Task Team Leader ("TTL") in a number of countries including Yemen and Zimbabwe. His employment was terminated in 2013 for misconduct during his work on Bank projects in Yemen and Zimbabwe.

5. In July 2009, the Bank's Integrity Vice Presidency ("INT") initiated a preliminary inquiry into certain allegations against the Applicant under Staff Rule 8.01. In March 2011, INT launched a formal investigation into the allegations against the Applicant by serving

him a Notice of Alleged Misconduct. The Notice dated 31 March 2011 contained the following allegations against the Applicant:

- a. While task team leader of the Yemen Civil Service Modernization Project (“CSMP”) ... [the Applicant] knowingly provided multiple no-objections to Bank-financed contracts under the project to an individual contractor, [Mr. S], whom [the Applicant] had also hired several times as a short-term consultant for the same project. This created multiple conflicts of interest with regard to [Mr. S’s] employment under the project;
 - b. While task team leader of the CSMP, [the Applicant] repeatedly circumvented the Bank’s operational procurement rules by providing no-objections to numerous contracts, including [Mr. S’s], without clearance from a procurement accredited staff member;
 - c. While task team leader of the CSMP, [the Applicant] abused [his] position for the personal gain of another by facilitating and/or directing the steering of contracts to [Mr. S] and his partners under CSMP;
 - d. While task team leader of the Zimbabwe Governance Assessment for Reconstruction Project ... [the Applicant] knowingly facilitated a fraudulent procurement for a consultancy contract for the development and deployment of a Data Capture and Reporting System in Support of the Payroll and Skills Audit.
6. As part of its investigation, INT interviewed the Applicant on 31 March 2011. On the same day he was also placed on paid administrative leave.
7. On 18 April 2011, the Bank offered the Applicant the option of resigning or having the INT investigation continue. The Applicant opted to have the investigation proceed.
8. The investigation continued and the Applicant provided his comments on the Notice of Alleged Misconduct on 7 July 2011. He denied all allegations against him.
9. After completing its investigation, on 20 March 2012, INT provided the Applicant with a draft INT Final Report for his review and comments. The Applicant submitted his comments through an attorney on 11 June 2012.

10. On 26 June 2012, INT sent its Final Report to the Vice President, Human Resources (“HRVP”) for his decision. In the Final Report, INT concluded that:

The investigation disclosed clear and convincing evidence that [the Applicant] engaged in misconduct while serving as TTL for projects in Yemen and Zimbabwe.

Specifically, [the Applicant] in his capacity as TTL of the CSMP: (i) created multiple conflicts of interest, misused Bank funds and abused his position by providing no-objection letters to three Bank-financed contracts for [Mr. S], whom [the Applicant] hired concurrently as [a Short Term Consultant (“STC”)] on the same project; and (ii) acting in concert with [Mr. S], willfully steered contracts totaling US \$632,615 to [Mr. S] and his business associates.

In addition, while TTL of the Zimbabwe Governance Assessment for Institutional Recovery Project, [the Applicant] knowingly facilitated a fraudulent procurement leading to the award of a trust fund-financed contract worth US \$149,650 to a firm, [Firm A]. [Firm A] acted as a shell company for [Firm B], which executed and received payments on the contract. [Firm B] is a firm controlled by [Mr. S], who [the Applicant] also hired as an STC on the same project, and who recommended to [the Applicant] that [Firm A] be hired for this contract.

Above all, the evidence shows that [the Applicant] engaged in activities that were personally gainful for others to the detriment of the Bank and the Borrower, and in direct contravention to Principle 3 of the Principles of Staff Employment (“General Obligations of Staff Members”), whereby staff have a special responsibility to avoid situations and activities that might lead to real or apparent conflicts of interest, and shall avoid any action or personal gainful activity that would adversely or unfavorably reflect on their status or on the integrity, independence and impartiality that are required by that status.

11. In his letter to the Applicant dated 1 March 2013, the HRVP informed the Applicant that he agreed with INT’s findings quoted above and concluded that the Applicant had committed misconduct by creating multiple conflicts of interest, by abusing his position, by misusing Bank funds and by knowingly facilitating a fraudulent procurement. Consequently, he informed the Applicant that he had decided to terminate the Applicant’s employment. In his letter the HRVP stated:

Based on my independent review of INT's findings in the Final Report inclusive of all supporting exhibits, I have determined that there is substantial evidence to support a finding that you have engaged in misconduct as defined under Staff Rule 8.01.

12. Regarding the appropriate disciplinary measures, the HRVP stated in his letter that:

In deciding on the appropriate sanction, I note you have had no prior adverse disciplinary findings.

I also note that you have offered explanations for your conduct, but I do not find them exculpatory. Particularly, your rationales for hiring the consultant through both the Bank and the Borrower on the same project, including that the Project Implementation Unit (PIU) specifically requested the consultant, that no other candidates were available, and that a waiver had been obtained and signed, and that the conflict of interest had been discussed with the Bank's procurement advisor for the project are simply not verifiable or credible. Moreover, I note that you requested that the consultant be hired on a single-source basis and that it was your judgment that the consultant's dual employment would not interfere with his role as the Borrower's consultant. Although your primary interest may have been, as you asserted, was to ensure that qualified individuals conducted the work, your actions did not comply with the Bank's rules.

I note that you admit mistakes, or errors in judgment, but intended "no ill will." I further note that you maintain that neither the Bank nor the Borrower were harmed by these activities, and caused no damage to either party. However, under the Staff Rule, misconduct does not require malice or guilty purpose, and it includes failure to observe the Principles of Staff Employment, Staff Rules, Administrative Manual, Code of Conduct, other Bank policies, and other duties of employment. Also, the World Bank Administrative Tribunal has repeatedly held that "ignorance of law is no excuse" and thus you were at all times responsible for knowing and following all applicable Bank rules, policies and procedures.

...

In view of the foregoing and in consideration of the decision-making criteria set out in Staff Rule 8.01, I have decided that the appropriate sanction is:

- (a) termination of employment, with effect from March 9, 2013, with last day of service being March 8, 2013;

- (b) loss of future employment and contractual opportunities with the Bank Group, as a staff member, contractor, or employee of a contractor;
- (c) your 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; and
- (d) this letter will remain on your record with indefinite duration.

13. On 26 July 2013, the Applicant filed his Application with the Tribunal challenging the HRVP's decision. He seeks the following remedies: (i) reversal of the termination decision and reinstatement; (ii) removal of all records relating to the investigation from his personnel files and the Bank's electronic records; (iii) compensation; and (iv) attorneys' fees in the amount of \$29,619.

14. The Staff Association filed an *amicus* brief on 26 December 2013 in support of the Applicant.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

THE APPLICANT'S MAIN CONTENTIONS

15. The Applicant contends that INT's findings about misconduct are unsupportable. He states that INT's conclusions that he had fraudulently steered contracts on Bank projects in Yemen and Zimbabwe to Mr. S and his "business associates" are not supported by the evidence and are illogical because the Applicant had no possible motivation for the alleged misconduct since he had nothing to gain. He adds that INT found that the Applicant acted fraudulently even though there is absolutely no proof of any fraudulent intent on his part.

16. The Applicant also claims that termination was disproportionate. He adds that, at most, all that INT was able to prove was that his decision to permit the Yemeni Ministry of the Civil Service to hire Mr. S at the same time he was working on the Ministry of Finance

side of the project was an apparent conflict of interest contrary to the Bank's rules. Moreover, he adds that the HRVP ignored mitigating circumstances.

17. The Applicant also contends that he was deprived of numerous due process rights, including the right to be told at the earliest possible time of the investigation; the right to a presumption of innocence; and the right to a reasonably prompt decision.

THE STAFF ASSOCIATION'S MAIN CONTENTIONS

18. The Staff Association agrees that the Applicant's due process rights were seriously violated. It adds: "This litany of abuses of process was capped by the Respondent's failure to provide the Applicant's full rebuttal to the HRVP at the time he was considering appropriate disciplinary action - and its apparent attempt to doctor the record by including it later."

19. The Staff Association states that INT and the HRVP found "knowledge" and "intent" with respect to the charges without proper foundation. It adds that nothing in the record suggests that the Applicant had any motive for his actions other than to get the Bank's work done as well as expeditiously possible. It adds that

in the end, after brushing aside all of the mitigating factors raised by the Applicant, the HRVP bases his decision to terminate the Applicant on a simple finding that the Applicant is guilty of failure to "comply with the Bank's rules." While we by no means condone any such failure, we submit that this, by itself, is insufficient to support a decision to terminate an employee, and certainly not one with an unblemished, eighteen-year career with the Bank.

THE BANK'S MAIN CONTENTIONS

20. The Bank contends that the Applicant has not demonstrated it abused its discretion or acted arbitrarily in terminating his employment. The Bank asserts that the allegations made against the Applicant were investigated carefully and thoroughly, and that the Applicant was given a full opportunity to respond to the complaint and provide his account

of the relevant events. The Bank states that, based on information gathered by INT, the Bank reasonably concluded the Applicant engaged in serious misconduct, repeatedly, and concealed such actions, instead of attempting to resolve such conflicts of interest. The Bank adds that the Applicant's actions resulted in the creation of multiple conflicts of interest and misuse of Bank funds when he abused his position in approving contracts at issue. It adds that such conduct by an employee entrusted with ensuring the integrity of Bank projects is unacceptable and thus termination was justifiable considering the record as a whole.

21. The Bank claims that it complied with all due process rights of the Applicant.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

22. The scope of review by the Tribunal in disciplinary cases is now 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."

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.

THE EXISTENCE OF THE FACTS

Yemen Civil Service Modernization Project (“CSMP”)

23. *The Applicant’s approval of contracts for Mr. S to work on the CSMP concurrently as a Short Term Consultant for the Bank and a Bank-financed contractor. The following facts are undisputed.*

24. The objective of the CSMP was to assist the Government of Yemen in creating capacity, institutions and systems for improved and sustained utilization of the human and financial resources of the Yemeni civil service. The Applicant began working for the CSMP during the project preparation phase in 1999. He continued working on the project intermittently in various roles and responsibilities and, in 2006, he was officially made TTL. He remained TTL until October 2008.

25. As TTL, the Applicant’s responsibilities included ensuring that procurement was carried out according to Bank policies and procedures, including the hiring of consultants for the CSMP; managing and coordinating all procurement work during the whole project life cycle; keeping line managers informed of progress or issues adversely affecting procurement in projects under his responsibility; and signing no objection letters, on behalf of the Bank, in response to Borrowers’ procurement recommendations. As TTL for the CSMP, the Applicant participated in the hiring of consultants, including Mr. S.

26. Mr. S, an information technology expert from Ottawa, Canada, is the founder and president of an IT consulting firm, Firm B, a company incorporated in 1988. Mr. S was first hired by the Bank in January 1998 as an STC. He became a member of the appraisal team for the CSMP, supervised by the then TTL, Ms. G, a Bank staff member. Mr. S received two subsequent STC appointments for work on the CSMP in December 1998 and in June 1999, both under the supervision of Ms. G. For the earlier appointment, Ms. G was the TTL; for the latter appointment, Ms. G and the Applicant served as co-TTLs. On 1 July 2001, Mr. S received a single-sourced Bank-financed contract for work on the CSMP (i.e., as a consultant for the Government of Yemen, the borrower, rather than the Bank). The

CSMP TTL at this time was Mr. K, a staff member. But these contracts were not the subject-matter of the investigation.

27. The investigation focused on the contracts that were awarded to Mr. S between 2006 and 2007 while the Applicant was the CSMP TTL. During this period, the Applicant approved three short-term consultancies for Mr. S (as a consultant for the Bank) and three Bank-financed contracts for him (as consultant for the Government of Yemen, the borrower), all for work on the CSMP.

28. In January 2006, shortly after the Applicant became CSMP TTL, he approved an STC contract for Mr. S to work on the CSMP for the period 18 January–30 June 2006. In November 2006, he approved another STC contract for Mr. S to work on the CSMP for the period 10 November 2006–30 June 2007. In July 2007, he approved another STC contract for Mr. S on the CSMP for the period of 24 July 2007 to 31 December 2007.

29. While Mr. S was a Bank STC under the CSMP, the Applicant approved three Bank-financed contracts for Mr. S to work as consultant for the Government of Yemen, the borrower, also under the CSMP. In June 2006 (while the Applicant was an STC for the Bank working on the CSMP), the Applicant provided a no-objection letter to the award of a Bank-financed contract to Mr. S to work on the CSMP as consultant for the Government of Yemen. In March 2007 and in October 2007, the Applicant approved two more Bank-financed contracts for Mr. S to work as a consultant to the Government of Yemen on the CSMP, while Mr. S was working as a Bank STC on the CSMP.

30. The INT Final Report concluded that:

Between 2006 and 2007, while TTL of the CSMP, [the Applicant] approved three short-term consultancies and three Bank-financed contracts for [Mr. S], all under the CSMP, which essentially overlapped with one another. The total value of the three Bank consultancies was US \$88,900.31. The three Bank-financed contracts together were valued at US \$231,380.32. In sum, [Mr. S] received payments totaling US \$320,280 while working on the CSMP concurrently as an STC and a Bank-financed contractor.

31. *The approval of other contracts by the Applicant for other individuals associated with Mr. S.* The following facts are not in dispute.

32. While serving as TTL for the CSMP between 2006–2008, the Applicant also approved Bank-financed contracts for Mr. S’s business associates to act as consultants for the Government of Yemen. During this period, the Applicant approved four Bank-financed contracts totaling \$304,455 to Mr. L, a shareholder and partner in Firm B, an IT consulting firm which Mr. S founded and controlled in his capacity as its President.

33. During the same period, the Applicant also approved a Bank-financed contract for Mr. J totaling \$35,645 and another contract for Mr. D for \$60,135. Both Mr. J and Mr. D are based in Ottawa and were business associates of Mr. S.

Zimbabwe Governance Assessment for Institutional Recovery Project (“GAIR”)

34. The following facts are not in dispute.

35. The Applicant moved to the Bank’s Africa Region in July 2009 and served as TTL for a project known as the GAIR. The Applicant hired Mr. S as a Bank STC to work on this project. In 2010, at Mr. S’s recommendation, the Applicant approved a vendor contract (the “GAIR Contract”) to Firm A, valued at \$149,650, and financed by a trust fund. Firm A was a shell company controlled by Firm B, of which Mr. S was the founder and principal. Firm B conducted the actual work under the GAIR Contract, and invoiced Firm A for that work. Firm A thus was a vehicle through which Mr. S’s firm, Firm B, was able to undertake work and receive payments under the GAIR Contract. Firm B was not itself eligible for the GAIR Contract because Mr. S, Firm B’s founder and President, had been hired as an STC to work on the GAIR.

WHETHER THE FACTS LEGALLY AMOUNT TO MISCONDUCT

36. The HRVP in his decision letter stated that:

I have determined that the established facts legally constitute misconduct under Staff Rule, 8.01, namely:

- (a) Paragraph 2.01(a) - failure to observe Principles of Staff Employment, Staff Rules and other duties of employment;
- (b) Paragraph 2.01(b) - gross negligence in the performance of assigned duties, and performance of assigned duties in an improper and reckless manner;
- (c) Paragraph 2.01(b) - willful misrepresentation of facts intended to be relied upon; and
- (d) Paragraph 2.01(d) - abuse of position in the Bank for personal gain of oneself or another.

Misconduct with respect to the CSMP

37. *Multiple conflicts of interest.* The HRVP concluded that the Applicant in his capacity as TTL for the CSMP created multiple conflicts of interest by approving several Bank-financed contracts for Mr. S while Mr. S was also acting as an STC for the Bank on the project.

38. Staff Rule 3.02 (Employment Outside the Bank Group), paragraph 3.05, states that:

Staff members holding a Short-Term Consultant or Short-Term Temporary (“STC/STT”) appointment may hold concurrent assignments from other public and private employers, subject [in part] to the following:

- (a) they may not be employed by member governments or other entities to work on Bank Group-financed projects during their period of Bank Group employment if the Bank Group-financed project and the concurrent work involved the same country.

39. This Staff Rule precludes Mr. S from working on the CSMP concurrently as a Bank STC and a Bank-financed contractor. The Applicant acknowledges that he created multiple conflicts of interest when he hired Mr. S as an STC on a Bank project while concurrently providing no-objections for Mr. S to be awarded several Bank-financed contracts from the borrower on the same project. The Applicant's conduct is inconsistent with his general obligations as a staff member contained in Principle 3 of the Principles of Staff Employment.

40. In explaining the scope of obligations under Principle 3, in *AJ*, Decision No. 389 [2009], para. 46, the Tribunal observed 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.

41. The Applicant admits that his actions constituted misconduct but attempts to justify it by stating that the apparent conflict did not cross his mind and that another staff member approved the appointments made by him. But the record is clear that the Applicant approved Mr. S for appointments as an STC while simultaneously providing no-objection letters for Mr. S's contracts to work as a consultant for the Bank's borrower. The Applicant, who served as TTL or team leader on many projects prior to the CSMP, should have known that Mr. S's dual employment on the project presented a clear conflict of interest. No proper authority in the Bank approved his issuance of no-objection letters in these clear cases of conflict of interest. The finding of misconduct that the Applicant

created multiple conflicts of interest—by approving contracts for Mr. S to work on the CSMP concurrently as an STC and a Bank-financed contractor—is upheld by the Tribunal.

42. *Abuse of position and misuse of Bank funds.* The HRVP concluded that the Applicant in his capacity as TTL for the CSMP abused his position for personal gain of another and misused Bank funds by providing several Bank-financed contracts for Mr. S and also by approving several other contracts for Mr. S's associates.

43. The Tribunal will first examine the misconduct with respect to the three Bank-financed contracts the Applicant authorized for Mr. S to work on the CSMP as consultant for the Government of Yemen, the borrower. These contracts were authorized in June 2006, March 2007 and October 2007 for a total value of \$231,380.32.

44. The record shows that the Applicant approved these Bank-financed contracts disregarding the Bank's rules and guidelines.

45. The Bank explains that in order to select a consultant for the June 2006 contract, the Bank

was to use a competitive process pursuant to Bank Guidelines, called the QCBS [Quality and Cost-Based Selection Process] using both the quality of the proposals received and the cost of the services to arrive at the selection of the consultant. This bidding process purportedly included four bidders who competitively bid on the contract, including [Mr. S], who was ultimately selected for the contract because he allegedly had the longest experience working on the CSMP.

46. Upon investigation, INT found no proposals with the bid evaluation report from those who were alleged to have bid on the contract. INT also found other irregularities with respect to the contract:

A review of the relevant bid documents and correspondence related to [June 2006 contract] also indicated that the contract itself was signed on June 1, 2006, 19 days before the date of the no-objection letter signed by Applicant. [Mr. S] even submitted his first invoice for his work under [the

June 2006 contract] before issuance of the no-objection. According to the Special Conditions of the Contract, the date for the commencement of services for this contract was June 15, 2006 (still five days before the date of the no-objection).

47. INT also contacted the three purported losing bidders. They all denied participating in the bidding process for the June 2006 contract. The INT Final Report concluded that: “All three confirmed that they had no knowledge of having participated in this particular procurement, none had received any letters of invitation, and none had provided any CVs to the committee for consideration.” INT interviewed relevant government officials in charge of the CSMP and they stated that they had actually received the purportedly competing CVs from Mr. S.

48. Evidence shows that the Applicant was involved in the manipulation of the bidding process. The INT Final Report notes that:

When INT showed [the Applicant] the names of [Mr. S’s] competitors, [the Applicant], stated, “ ... what I did ask [Mr. S] to do is to help [the Government of Yemen] expand their list of names with people who could potentially be qualified to undertake the work,” essentially acknowledging that [Mr. S] provided names for the CSMP’s standing long-list, names against which [Mr. S] was purportedly “competing.”

49. INT also noted that:

[Mr. AS (one of the procurement managers for the Yemeni Government)] explained that with regard to [Mr. S’s] Contracts [of March 2007 and October 2007], also purportedly procured using QCBS, the same modus operandi as Contract [of June 2006] was used: the PIU was directed by [Mr. S] and [the Applicant] to award the contracts to [Mr. S], and then added the CVs of [Mr. R], [Mr. TR], and [Mr. JD] for Contract [of March 2007], and [Mr. R] and [Mr. TR] for Contract [of October 2007], to create the appearance of competitive selection processes.

50. INT also found additional evidence that the Applicant knew about or was involved in the manipulation of the bidding process, noting:

INT observed several other instances where [the Applicant] participated in and/or had knowledge of the inclusion of extra CVs during a procurement process for the sole purpose of creating the appearance of a competitive process. In an e-mail dated July 9, 2009 from ... Program Assistant (AFTPR) to [the Applicant], she stated, “[a]s discussed, I will need 2 other comparator CVs for [Mr. S], ... and ... in order to avoid sending the contracts as single-source selection.”

[The Applicant] forwarded the e-mail to [Mr. S] the same day, asking, “[c]an you send me two comparator [CVs] that i ... can attach to yours?” While the e-mail is unclear as to whether this Consultancy was for a project in Liberia or Zimbabwe ([Mr. S] was hired for both almost concurrently) the strategy of blindly including CVs to merely provide an appearance of competition was by now common practice.

In another instance, where [the Applicant] wanted to hire a consultant by the name of [Mr. LE], [the Applicant] e-mailed [Mr. S] (who forwarded [Mr. LE’s] CV to [the Applicant]), stating: “ ... also ask [Mr. LE] to see if he has two more [CVs] ... of people with similar backgrounds so that i ... don’t have to request a sole source contracting.”

51. The Applicant was required to be neutral when the borrowers evaluate which consultants to hire. The Applicant’s duty was to make sure that the borrowers’ decisions are in line with Bank guidelines and, only once satisfied they are, to issue no-objection letters. INT cites the following Bank rules in this regard:

According to the Bank’s Operations Manual, chapter 11:00-“Procurement,” paragraph 8: “In working with Borrowers on procurement matters, Bank staff maintain strict neutrality and impartiality. Staff do not (a) recommend to Borrowers that they use particular consulting firms, suppliers or contractors; (b) undertake activities that are the responsibility of Borrowers; or (c) participate in evaluating bids or proposals.”

52. INT spoke with some government officials involved in the project and they expressed concern that they felt pressured by the Applicant to hire Mr. S. INT concluded that:

[The Applicant] repeatedly informed INT that his interest was in making sure that individuals with the right skill-set could complete the work. To that end, [the Applicant] flagrantly ignored the Bank’s procurement rules, overlooked what should have been obvious red flags, and - as based on statements by several PIU staff - even went so far as to direct contract

awards to the same individuals over and over, with the knowledge that any names included as “competition” were a sham. PIU officials described an environment of intimidation by [the Applicant] and [Mr. S], and repeated their concerns that if they did not follow the Bank’s directives, they would lose funding for the second part of the project.

53. The Applicant does not specifically deny or offer any specific evidence to refute the evidence presented by INT. In his Application, he states: “Nor is there any evidence that [the Applicant] abused his position in signing the no-objection letters. His role was simply to review the selection made by the CSMP PIU. This he did, any evidence that the PIU did not voluntarily select [Mr. S] is simply not credible.”

54. The record shows that the Applicant approved the three Bank-financed contracts to Mr. S by providing no-objection letters to the contracts even though he knew they were not competitively procured. He admits that he did not want these contracts to appear to be single-sourced. Thus he used phantom bidders to create the appearance of a competitive selection process. This is surely an abuse of his position as TTL.

55. The Applicant attempts to shift the blame to the government officials of Yemen or other Bank staff members. But as a TTL, the Applicant had the primary overall responsibility to ensure that contracts were awarded in compliance with Bank policies and procedures. He was not supposed to dictate who should be hired as consultants. But he disregarded the Bank’s rules. The motive does not appear to be personal enrichment. At least no evidence suggests this. He states that he wanted the project to begin without delay, that he thought Mr. S was the best person and that he did what he thought was in the best interest of the projects. But the Bank’s rules cannot be ignored simply because staff members find them inconvenient or have a rationale for ignoring them. In *K*, Decision No. 352 [2006], para. 40, the Tribunal observed that:

Any staff member may have ideas for refashioning the Bank’s rules in a multitude of ways that might make life less bureaucratic. One example is the Applicant’s suggestion that someone who does not take home leave should be allowed to take advantage of “personal” stopovers to collect per diem and reimbursements contrary to the rules – as long as he can subsequently show that the net effect was not detrimental to the Bank. He

makes a similar argument with respect to recalculating aggregate transportation costs. Yet the Bank would be ungovernable if staff members were allowed to construct *post facto* rationalizations for their disregard of the rules, and thereby be excused if the Bank – totally unaware of these mental rewritings of the rules, and therefore not organized to monitor each individual’s way of complying with his or her “conscience” – cannot disprove the rationalization.

56. The present case is comparable to *Ismail*, Decision No. 305 [2003] in which the Tribunal upheld the finding of “abuse of authority” because evidence showed that Mr. Ismail awarded contracts in disregard of the Bank’s procurement rules. In that case, the Tribunal concluded, at paras. 36–37 that

the Applicant was aware of the GSD Guidelines for procurement, which required independent bids for jobs over \$200; that he failed to apply these GSD Guidelines in all cases or to ensure that they were complied with; that in at least one case he directed that Sunlit be invited to submit fabricated quotes from other firms; and that he favored Sunlit and its associated firm Rakib Engineering in the award of repair and maintenance work in expatriate residences in the period from 1995 onwards. These activities led to a deception of the Bank in approving the contracts.

The Tribunal went on to conclude that

the VPHR was correct in finding that the Applicant participated in a fraudulent scheme to contravene established institutional procurement policies in order to favor Sunlit Electrical Works in procurements for maintenance services performed at the Dhaka Country Office and in expatriate residences, in violation of paragraph 3.01(a) of Staff Rule 8.01.

57. Based on the evidence in the present case, the Tribunal also concludes that the Applicant abused his position in providing no-objection letters to the Bank-financed contracts for Mr. S that resulted in the financial gain of Mr. S. As for the charge of misuse of Bank funds, the Applicant states that this should be dismissed for the following reasons:

Bank and project funds were used to pay [Mr. S], but [Mr. S] did both the tasks for which he was contracted - and did them well. If someone other than [Mr. S] had done all or part of the work in question, they too would have had to have been paid. There is simply not a shred of evidence that a penny of the Bank’s or the government’s money was misused - and INT’s

bald statement that [the Applicant] actions “allowed [Mr. S] to collect double payments for concurrent work on the same project” is without any foundation.

58. The Tribunal views the Applicant’s interpretation of the term “misuse of Bank funds” as too narrow. The Tribunal accepts that one way of looking into whether there was misuse of Bank funds is to examine whether Mr. S was “double-dipping,” that is, being paid twice for doing the same task. But this cannot be the only definition of misuse of Bank funds. Misuse of Bank funds also occurs when Bank-financed contracts are awarded improperly or when such contracts by Bank rules are required to be awarded competitively but in actuality are awarded through a phantom bidding process. Accordingly, the Tribunal also upholds the finding of misuse of Bank funds by the Applicant.

59. The Tribunal also finds that the Applicant abused his position or misused Bank funds in approving four Bank-financed contracts totaling \$304,455 for Mr. L; one Bank-financed contract totaling \$35,645 for Mr. J; and another Bank-financed contract for \$60,135 for Mr. D. The record shows that, as with the contracts awarded to Mr. S, these contracts were awarded without competition and CVs from phantom bidders were introduced to give the appearance of competition. The Applicant issued no-objection letters in respect of these contracts knowing that they were not awarded following a competitive process. Again the Applicant’s general defense seems to be that his primary interest was to ensure that qualified individuals were selected for the contracts. But this interest does not absolve him of his responsibility to follow Bank rules and policies.

Misconduct with respect to GAIR

60. The HRVP found that while he served as GAIR TTL, the Applicant knowingly facilitated a fraudulent procurement leading to the award of a trust-fund financed contract. As stated before, while serving as GAIR TTL, the Applicant hired Mr. S as a Bank STC to work on the GAIR. In 2010, at Mr. S’s recommendation, the Applicant approved a vendor contract to Firm A, valued at \$149,650, and financed by a trust fund. Firm A was in fact a shell company for Firm B, of which Mr. S was the founder and principal. Firm B

conducted the actual work under the contract, and invoiced Firm A in return. The record is clear that Mr. S orchestrated the fraudulent procurement. The question is whether the Applicant knew of this fraudulent scheme.

61. The Tribunal notes that in respect of this charge, INT relied mostly on the testimony of the project manager of Firm A and copies of e-mail messages provided by him. He told INT that he “couldn’t be sure” that the Applicant knew of the relationship between Firm A and Firm B. INT refers to some other e-mail messages that INT views as indicating that the Applicant knew about the fraudulent scheme.

62. The Tribunal is not convinced that the record is sufficient to uphold the charge that the Applicant knowingly facilitated this fraudulent procurement. This said, the Tribunal does not find that the Applicant’s conduct in relation to this procurement was compliant with Bank rules and policies. The record convincingly shows that he allowed Firm A to start working on the project, including undertaking travel related to the contract, before the contract was actually signed. This was a violation of the applicable rules and policies.

WHETHER THE SANCTION IS NOT SIGNIFICANTLY DISPROPORTIONATE TO THE OFFENCE

63. The applicable version of Staff Rule 8.01, paragraph 3.03, provides for the following disciplinary measures:

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

- (a) Oral or written censure;
- (b) Suspension from duty with pay, with reduced pay, or without pay;
- (c) Restrictions on access to the Bank’s premises;
- (d) Restitution ...;

- (e) Removal of privileges or benefits, whether permanently or for a specified period of time;
- (f) Reassignment;
- (g) Assignment to a lower level position;
- (h) Demotion without assignment to a lower level position;
- (i) Reduction in future pay, including the withholding of future pay increases;
- (j) Termination of appointment;
- (k) Loss of future employment and contractual opportunities with the Bank Group; and
- (l) When the financial disclosure form that is submitted pursuant to the requirements set forth in Staff Rule 3.03 is not timely, complete or accurate, in addition to the disciplines described above, a fine to the staff member in accordance with Staff Rule 3.03, paragraph 3.06.

64. The termination of a staff member's appointment is the most serious disciplinary measure provided for in this Staff Rule. Whether the termination was significantly disproportionate in this case has to be determined in line with the guidelines provided in paragraph 3.01 of Staff Rule 8.01, which states:

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 the 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; or
- (b) conviction of a felonious criminal offense.

- (c) refusal by the staff member to file a timely, complete and accurate financial disclosure form without reasonable justification acceptable to the Office of Ethics and Business Conduct.

65. The Tribunal stated in *S*, Decision No. 373 [2007], para. 50, that the factors stated above “were intended to guide the HRSVP in the exercise of his discretion concerning what disciplinary measure to impose” and added that “in considering whether the HRSVP properly exercised his discretion ... or whether the termination was disproportionate in this case, the factors stated in paragraph 3.01 must be taken into account.” *Id.*, para. 52.

66. The Tribunal recognizes that the decision as to the disciplinary measure to be imposed in a given case is within the discretion of the HRVP. The Tribunal will not disturb the exercise of this discretion unless it can be shown that the penalty imposed is so disproportionate that the Tribunal must conclude that the discretion was abused. The Tribunal will now examine whether the discretion was abused in this case considering the factors set out in Staff Rule 8.01, paragraph 3.01.

67. The Tribunal finds that the acts of misconduct at issue are substantial. The Tribunal upholds the HRVP’s findings that the Applicant created multiple conflicts of interest, misused Bank funds and abused his position. These are serious matters involving significant amounts of money. The Tribunal finds that the Applicant’s actions do not constitute a single act of isolated misconduct, but, having continued for many years, amount to a pattern of misconduct. It is true that the Applicant was a good performer who had served the Bank for 28 years. But, as an experienced TTL he knew or should have known that the Bank’s funds must be deployed in compliance with Bank rules, even if he believed that compliance with the rules would delay the completion of projects. The Applicant was required to ensure his dealings with outside entities on behalf of the Bank was beyond reproach. *AJ*, Decision No. 389 [2009], para. 118. In *S*, Decision No. 373 [2007], para. 63, the Tribunal observed that

the good ratings of a staff member's performance by his or her immediate supervisors and colleagues "cannot of course bind the judgment and discretion of those higher managers within the Bank Group who are responsible for upholding ethical standards on a Bank-wide basis and considering the imposition of disciplinary measures." ... Similarly, in *Kwakwa*, Decision No. 300 [2003], the applicant's able performance was not sufficient to overcome the consequences even of an isolated instance of financial impropriety.

68. Considering all the circumstances, the Tribunal finds that the sanctions imposed by the HRVP were provided for in the Staff Rules and not significantly disproportionate.

DUE PROCESS

69. The Applicant has raised a number of due process claims. In *AJ*, Decision No. 389 [2009], para. 120, the Tribunal stated that claims related to an alleged lack of due process "must be examined bearing in mind that the Bank's disciplinary proceedings are administrative rather than criminal in nature." In *Kwakwa*, Decision No. 300 [2003], para. 29, the Tribunal observed that the Bank is not required to accord a staff member accused of misconduct "the full panoply of due process requirements that are applicable in the administration of criminal law." The Tribunal in *Rendall-Speranza*, Decision No. 197 [1998], para. 57, explained the nature of disciplinary proceedings in the Bank as follows:

In order to assess whether the investigation was carried out fairly, it is necessary to appreciate the nature of the investigation and its role within the context of disciplinary proceedings. After a complaint of misconduct is filed, an investigation is to be undertaken in order to develop a factual record on which the Bank might choose to implement disciplinary measures. The investigation is of an administrative, and not an adjudicatory, nature. It is part of the grievance system internal to the Bank. The purpose is to gather information, and to establish and find facts, so that the Bank can decide whether to impose disciplinary measures or to take any other action pursuant to the Staff Rules. The concerns for due process in such a context relate to the development of a fair and full record of facts, and to the conduct of the investigation in a fair and impartial manner. They do not necessarily require conformity to all the technicalities of judicial proceedings.

Timely notice of the allegations against the Applicant

70. The Applicant claims that he was not given timely notice of allegations against him. He adds that the entire investigation was complete before he was given any notice at all of the charges against him. He states that INT had conducted a thorough investigation over a two-year period, interviewing every witness it considered necessary, frequently informing them that the Applicant was a subject of their investigation, reviewing countless documents, accessing the Applicant's e-mails, and conducting several missions to interview foreign nationals in Canada and Yemen. He complains that by the time he was finally given notice of the allegations against him—on 31 March 2011—the investigation was done. He contends that this was an egregious violation of due process and prevented him from being able to defend himself against the charges in a timely manner. On this basis, he claims, the Tribunal should find the investigation so tainted as to have no value.

71. The Tribunal notes that the applicable version of Staff Rule 8.01 states:

4.02 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.

4.03 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.

...

4.05 The person conducting a preliminary inquiry or an investigation may:

- (a) Call upon any staff member for the production of documents believed to have probative value;
- (b) Interview any staff member who is believed to have knowledge of the events in question; and
- (c) Consult persons believed to have, or materials believed to contain, information of probative value to the investigation.

72. It is plain from this that during the preliminary inquiry, INT can conduct interviews, review documents and engage in other investigative tools to determine whether

there is sufficient basis to warrant an investigation. It is prudent for INT to take preparatory steps before launching a full-fledged investigation. As the Tribunal stated in *N*, Decision No. 362 [2007], paras. 25 and 28:

The fact that the Notice of Alleged Misconduct given to the Applicant states that the information “appear[s] to indicate a pattern of abuse,” and that this is an “allegation, not proven facts,” does not diminish the seriousness of such allegations, which ought to be supported by evidence. It is intolerable for such allegations to be based instead on unverified inference or suppositions. Indeed, as the Tribunal has concluded in another case, “[t]he initiation of investigations, preliminary or otherwise, on the basis of rumors and allegations by questionable sources, clearly does not comport with the basic elements of due process.” (*Koudogbo*, Decision No. 246 [2001], para. 43.).

...

A Notice of Alleged Misconduct cannot be based on allegations alone. This much is stated by the standard Notice letter, and the Bank itself correctly accepts this point. A Notice is to be issued only when there is sufficient evidence to warrant an investigation. In the present case, the Notice issued did not rely on such evidence, but instead on excessively broad, computer-generated “red flags” that were objectively wrong. The available evidence was not properly sought or even requested from the appropriate Bank departments, the Applicant or the Country Office.

73. The Tribunal accepts that INT enjoys a discretion to determine when “there is sufficient basis to merit an investigation.” Here, however, INT initiated a preliminary inquiry in July 2009 and commenced a formal investigation almost two years later in March 2011 by serving the Applicant a Notice of Alleged Misconduct. The Tribunal understands that Staff Rule 8.01 did not oblige INT to notify the Applicant during the preliminary inquiry. However, in *D*, Decision No. 304 [2003], paras. 64-65, the Tribunal held that

The point at which evidence of misconduct becomes “sufficient” can obviously be elusive and uncertain in some cases, but that should not be regarded as an invitation to the Respondent to delay the closing of the preliminary inquiry, along with the notifying of the subject staff member that a disciplinary investigation is under way and the formulation of specific allegations.

These observations suggest 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. Had the Applicant been informed of what had been seen in his e-mails covering the period 2000-01, even though these were to an extent inculpatory, he might very well have been able to shorten or eliminate much of the time devoted by the investigators to the interviewing of witnesses in Tanzania, much to the benefit of the Bank, of INT, of the interviewees, and of the Applicant.

74. In the present case, the Applicant asserts that during the almost two-year duration of the preliminary inquiry, INT engaged in the following activities: (i) interviewed at least twenty witnesses including Bank staff, government officials and vendor officials; (ii) conducted four missions to Canada and Yemen; (iii) gathered “innumerable documents”; and (iv) accessed and reviewed the Applicant’s electronic records including his e-mails. The Applicant also asserts that by the time that he was finally given notice of the allegations against him “all the evidence had been gathered” and “the investigation was done.” These contentions have not been specifically refuted by the Bank.

75. Taking into account the Applicant’s contentions and the circumstances of the case, the Tribunal finds that INT violated the Applicant’s due process rights by failing to give him timely notice of the allegations of misconduct. The Tribunal has observed that notification to the subject of preliminary inquiry may be delayed if “there is a reasonable risk that material witnesses may be intimidated by the subject” or “there is a reasonable risk that physical or documentary evidence may be tampered with or destroyed by the subject.” *See D*, Decision No. 304 [2003], paras. 65-66; *BB*, Decision No. 426 [2009], paras. 81-83. The Tribunal notes that the Bank has not invoked these justifications in the Applicant’s case. At the same time, the Tribunal rejects the Applicant’s contention that this delay in notification deprived the entire investigation of any value.

Denial of presumption of innocence and bias against the Applicant

76. The Applicant claims that contrary to the requirements of Staff Rule 8.01 and the assurance included in the Notice of Allegations in March 2011, INT had clearly decided early in its investigation—or at least long before the Applicant had been given the Notice—that he was guilty and that the investigators were only looking to confirm a conclusion they had already reached. The Applicant adds that the INT investigators revealed serious biases when interviewing witnesses. He adds that INT investigators relied on the testimony of one witness, Mr. AH, even though it was inconsistent and clearly included statements about facts about which Mr. AH would have had no knowledge. The Applicant also states that INT informed another witness, Mr. M, that they were not investigating Mr. M at all, even though Mr. M was just as likely as the Applicant to be guilty of procurement violations.

77. The Tribunal rejects the Applicant's claims that he was denied the presumption of innocence and that INT was biased against him. The Applicant refers to certain pages from the interview transcripts of the Applicant and Mr. M. The Tribunal has reviewed the transcripts and finds no evidence of that the presumption of innocence was denied or that INT was biased against the Applicant. The Applicant notes that on 31 March 2011, INT investigators interviewed him for over seven hours. But the transcript does not show that the investigators arrived with a pre-determination of guilt or that the interview was just a formality. Perhaps the Applicant and certain witnesses were not pleased with all the questions and statements from the investigators. As the Tribunal has previously stated: "It is understandable that 'to be under investigation for possible misconduct of an unethical nature is likely to be a disturbing experience.'" *G*, Decision No. 340 [2005], para. 66.

78. However, there is no evidence in the record that the investigators acted improperly. In fact, on 11 June 2012 when the Applicant provided his comments to INT, he wrote through his attorney to one of the INT investigators that: "Let me first reiterate what I have stated before that we have been grateful for the cooperation and professionalism you have personally displayed throughout this investigative process, particularly with respect to

extensions of time.” As to why Mr. M was not himself investigated, the record does not show the circumstances of the Applicant and Mr. M to be so similar that the only or likely explanation for focusing the investigation on the Applicant was bias. The Senior Public Sector Specialist who contacted INT in July 2009 to suggest they look into issues relating to the CSMP, prompting INT to initiate a preliminary inquiry, made specific allegations against the Applicant and not against Mr. M. The Tribunal notes that INT investigated Mr. S under Staff Rule 8.01 and the Bank also initiated other proceedings against him.

Defective investigation

79. The Applicant claims that the investigation was defective for the following reasons: (i) INT relied on the testimony of witnesses who were not credible; (ii) INT ignored exculpatory evidence; (iii) INT relied on evidence that the Applicant had never seen before INT showed it to him; (iv) the records of interview for one third of the witnesses do not comport with due process; and (v) conducting an interview in the presence of others unconnected to the investigation was a “terrible” violation of confidentiality.

80. There is no question that a staff member has due process rights requiring that an investigation against him or her be carried out in a fair and impartial manner. But due process does not mean that the investigation must meet a perfect and unassailable standard. The Tribunal has stated before that it “has no authority to micromanage the activity of INT. What is required of INT is not that every inquiry be a perfect model of efficiency, but that it operates in good faith without infringing individual rights.” *G*, Decision No. 340 [2005], para. 73. When examining the quality of investigation, the Tribunal has to take into account the fact that INT’s investigative powers are limited by comparison with those typically available to a law enforcement agency. For example, INT does not have subpoena power; a witness who is not a Bank staff member cannot be compelled by INT to cooperate with an INT investigation. The test is not whether the investigation was a “perfect model”; rather, the question is whether INT conducted a reasonable investigation without infringing the staff member’s due process rights.

81. The Tribunal rejects the contention that that the Applicant's due process rights could have been violated because INT allegedly relied on the testimony of witnesses who were not credible. The Applicant had the opportunity to challenge the credibility of those witnesses and to give his view of the facts. The Tribunal also notes that INT reached its conclusions on the basis of considerable documentary evidence. Furthermore, INT's report incorporated both inculpatory and exculpatory evidence. The Applicant was also given the opportunity to comment on INT's report and to identify any additional exculpatory evidence. The Applicant had multiple opportunities to identify potential witnesses in support of his position and INT interviewed all of the witnesses suggested by the Applicant. The Applicant complains that INT did not produce verbatim transcripts of testimony of some witnesses and that the Records of Interview ("ROI") prepared by INT after the completion of certain interviews violated due process. It is apparent from the record, however, that the majority of those ROIs prepared by INT were necessary because the individuals interviewed, mostly Yemeni government officials, refused to have their interview audio recorded, thus preventing the creation of a transcript. Considering the circumstances and the record as a whole, the Tribunal does not find violation of the Applicant's due process rights.

82. Finally the Applicant complains that INT conducted an interview in the presence of others unconnected to the investigation and that this was a "terrible" violation of confidentiality. The Bank provides the following explanation:

INT did not breach Applicant's confidentiality when INT conducted a witness interview of a Yemeni official, [Mr. IA], at the request of the Applicant, in a large office space in Yemen. While in Yemen, INT was provided limited resources and opportunities to conduct this interview. Yemeni officials including [Mr. IA], were preoccupied with addressing the collapse of Yemen's currency at that time. As noted by the Applicant, INT conducted a very brief interview of [Mr. IA] in the large office space while a few individuals were seated at a separate table across the room conducting business unrelated to the investigation. Applicant has not argued how this interview caused irreparable harm to his reputation, especially considering those individuals present were not privy to the interview questions raised by INT or the responses to those questions.

83. The Tribunal finds that this method of conducting an interview was not ideal, but given the exigent circumstances, it did not amount to a violation of the due process rights of the Applicant.

Delay in investigation and in decision-making

84. The Applicant claims that both the investigation and the decision-making process were unduly and unfairly lengthy. The Applicant explains that the initial allegations were made in July 2009 and INT conducted its preliminary inquiry for over two years, until 31 March 2011, when it finally interviewed the Applicant. He adds that by that time, the investigation was essentially complete, yet INT took another full year before the draft report was prepared and shown to the Applicant in March 2012. He states that on 26 June 2012, the Final Report was sent to the HRVP who then “sat on” the Report for over nine months before finally issuing his decision on 1 March 2013. The Applicant concludes that nearly four years elapsed from the time the allegations were made until a decision was finally reached. During that time, he claims that he was left “hanging,” not knowing what would happen to him, and suffered reputational damage. He asserts that the four-year investigation was a serious violation of his right to a speedy investigation and resolution.

85. The Bank explains that: “Considering the complex nature of this case, the extensive documents and data analyzed, several missions to Canada and Yemen, numerous interviews of Bank staff members, project officials, unsuccessful project bidders, Bank-financed contractors and independent procurement experts, the length of the investigation, as well as the preliminary inquiry was reasonable.”

86. The Tribunal adheres to the view that misconduct investigations should be completed without unreasonable delay. In this regard, the Independent Panel Review of The World Bank Group’s Department of Institutional Integrity (2007) (the so-called “Volcker Panel”) recommended that “no more than nine months should normally elapse from the date that INT receives an allegation to the date that INT submits its report to the [HRVP].” In *L*, Decision No. 353 [2006], para. 31, the Tribunal stated 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.” The Applicant acknowledges that “this case might classify as a complex one involving the investigation of several different people over a long period of time and in different countries.” The Tribunal finds that the time taken by INT to complete the investigation in the Applicant’s case was not unreasonable given the complexity of the case. (*See, e.g., BN*, Decision No. 451 [2011], paras. 48-49).

87. The Tribunal finds, however, that the Bank has not provided a proper justification as to why the HRVP took nine months to make a decision. Unjustifiable delay in making disciplinary decisions after an investigation can be considered inconsistent with a staff member’s due process rights. At the same time, the Tribunal notes that the Applicant was on paid administrative leave during the period of investigation.

88. Finally, the Applicant complains that INT failed to include his 31-page detailed comments on the draft INT report when it forwarded the INT Final Report to the HRVP. The Tribunal rejects this complaint. The record shows that INT sent his comments to the HRVP. In a declaration filed with the Tribunal, the HRVP confirmed that he received and reviewed the Applicant’s comments as indicated by the fact that the HRVP’s decision letter made reference to the Applicant’s comments.

89. In sum, the Tribunal affirms the disciplinary measures imposed by the Bank against the Applicant. The Tribunal finds, however, that the Bank failed to comply with the Applicant’s due process rights in two respects. First, the Bank unreasonably delayed giving him notice of the allegations of misconduct. Second, the HRVP without explanation took nine months to make his disciplinary decision. In considering the appropriate remedy for the violation of his due process rights, the Tribunal is mindful that the Applicant engaged in several acts of misconduct and that he was on paid administrative leave during the investigation. The Tribunal determines that the Bank shall meet the Applicant’s attorneys’ fees.

DECISION

- (i) The Bank shall pay the Applicant's attorneys' fees in the amount of \$29,619.
- (ii) 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