



World Bank Administrative Tribunal

2014

Decision No. 492

**CI,
Applicant**

v.

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

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

**CI,
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 3 September 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 Bank hired the Applicant on 7 June 2010 as a Short Term Consultant. On 5 July 2010, the Bank rehired him on a two-year Extended Term Contract ("ETC") as a fisheries specialist based in Dakar, Senegal. The Applicant adds that he was hired competitively as a staff member at Grade Level GF in 2013.

5. The Applicant arrived in Dakar in July 2010 and joined the Bank's country office. In his role as a fisheries specialist, the Applicant worked with a Senior Natural Resources Management Specialist implementing three Bank-financed fisheries projects in Senegal. The Senior Natural Resources Management Specialist was based in Washington and was the Task Team Leader ("TTL") for these projects. Whether the Applicant worked as co-

TTL for these projects is in dispute, but it is undisputed that he worked closely with the TTL on supervising the projects. According to the Bank, the Applicant

was the [Bank's] day-to-day representative for supervision of the implementation of the fisheries projects in Senegal. He was also responsible for ensuring that the implementing agency followed the terms of the loan and grant agreements that funded the project, including all the relevant World Bank procedures and safeguards. He was the person on the ground to let [the TTL] know what was going on in the project.

6. The Applicant states that “[a]s part of his work, [he] kept [the TTL] informed of any and all implementation issues with the three Senegalese projects.” He adds that he was to be the “eyes and ears of the TTL” and to convey the decisions of the TTL to the Bank’s clients.

7. Upon the Applicant’s arrival in Dakar in July 2010, the TTL introduced the Applicant to the donor partners and government officials with whom the Applicant would be working in supervising the projects. One of these officials was Mr. D. The Bank states that:

[Mr. D] was the Coordinator of the Project Implementation Unit within the Ministry of Maritime Economy, the government agency in Senegal responsible for implementing the project. He was Applicant’s main counterpart within the Senegalese government with regard to the implementation of the fisheries projects.

8. In August 2010, a month after the TTL introduced the Applicant to Mr. D as the Bank’s contact on the implementation of the fisheries projects, the Applicant went to Mr. D’s office, and asked Mr. D to lend him the local currency equivalent of some \$1,200. The Applicant explains the circumstances of this loan as follows:

When he came from ... to join his duty station [in Dakar], he had to pay the airfare and the cost of daily living expenses. Accordingly, he had very little money when he first arrived and found that he was unable to fund the three months rent needed to be paid in advance for an apartment. He therefore took a loan of approximately US\$1,200 from one of the very few people he knew in Senegal - a [Mr. D] who coordinated the

implementation of the World Bank projects on which [the Applicant] would be working.

9. This personal loan was not documented. The Applicant did not disclose it to the Bank. The loan was interest-free and there was no agreement as to when it should be repaid. Mr. D states that the Applicant told him that he would repay “as soon as he received his first wages,” but the loan was not repaid at that time. According to Mr. D, the Applicant would simply acknowledge, from time to time, that he still had not “forgotten” about the loan. As to repayment, the Applicant states that:

On three subsequent occasions – in November 2010, February 2011, and June 2011 – [the Applicant] specifically offered to repay [Mr. D]. Each time, [Mr. D] told him he did not need the money, that he considered it a savings, and that he would ask for it when he needed it.

10. In late 2011, certain financial discrepancies regarding the fisheries projects came to light, which prompted the Bank to conduct a financial management review. The report summarizing the review identified financial irregularities involving Mr. D. The Bank shared the report with Mr. D on 26 March 2012.

11. The next day, 27 March 2012, Mr. D sent an e-mail message to the Applicant requesting repayment of the loan, and copied a number of individuals. Mr. D also blind-copied members of the Bank team, including the TTL, as well as members of the donor community working on the fisheries sector in Senegal including the European Union and the Japanese Agency for Aid and Development. Mr. D stated that he blind-copied his demand to others in order to embarrass and discredit the Applicant, as he had felt discredited and embarrassed by the financial management report, which he saw largely as a result of the Applicant’s efforts.

12. The Bank states that having received a blind copy of the e-mail from Mr. D, on 28 March 2012, the TTL directed the Applicant to repay the loan immediately. The Applicant followed the direction, repaying the loan the following day. The Bank adds that the TTL also directed the Applicant to contact the Bank’s Office of Ethics and Business Conduct

("EBC"). The Applicant attempted to contact EBC on 3 April 2012 and then sent an e-mail to EBC on 13 April 2012 explaining the circumstances of the loan. In the meantime, on 6 April 2012, the TTL contacted EBC.

13. EBC launched an investigation under Staff Rule 3.00 and on 18 July 2012 served the Applicant with a Notice of Alleged Misconduct. The Notice stated that EBC was investigating allegations that the Applicant had committed misconduct under the Bank rules and policies by:

Requesting and receiving, in August 2010, a personal loan in the amount of ... approx \$1,200 from [Mr. D]; who was at the time the PIU Coordinator on a WBG Project, and who was under your supervision in your capacity as the WBG official supervising that project locally; thereby failing to observe generally applicable norms of prudent professional conduct and creating the appearance of a conflict of interest.

14. EBC interviewed the Applicant on 24 July 2012 and Mr. D on 4 September 2012. On 15 October 2012, EBC provided the Applicant with a draft copy of the investigation report for his comments. The Applicant provided comments on 24 October 2012.

15. In November 2012, EBC submitted its Final Report of Findings to the Vice President, Human Resources ("HRVP"). In its Final Report, EBC concluded that it had found sufficient evidence to substantiate the allegations contained in the Notice of Alleged Misconduct and recommended the imposition of disciplinary measures against the Applicant.

16. On 22 July 2013, the HRVP informed the Applicant of his decision to terminate the Applicant's employment. In his letter the HRVP wrote to the Applicant that:

In accordance with Staff Rule 3.00, paragraph 10.12, this is to notify you of my decision, after consultation with your sector manager ... and based on my consideration of the review conducted by the Office of Ethics and Business Conduct (EBC), with regard to the allegations of misconduct against you.

...

The record shows that there is clear and convincing evidence, as presented in the Final Report, to support a finding that you solicited and received a personal loan from a government counterpart on three WBG projects while you were the co-TTL on the same projects. In that capacity, and because you were the Bank Group official supervising the implementation of that project locally, your actions failed to observe generally applicable norms of prudent professional conduct and created the appearance of a conflict of interest.

To decide on the proportionality of the disciplinary measures to be imposed, and in accordance with Staff Rule 3.00, paragraph 10.09, I considered such factors as the seriousness of the matter, the interests of the Bank Group, any extenuating circumstances, the situation of the staff member, and the frequency of the conduct for which disciplinary measures may be imposed.

I noted that you have had no prior adverse disciplinary findings, and that you have a record of satisfactory performance.

...

In view of the foregoing, I have decided that the appropriate disciplinary measures are:

- termination of your employment from the World Bank with effect from August 1, 2013;
- permanent bar to re-hire with ineligibility for any future employment at the World Bank Group as a staff member, contractor, or employee of a contractor; and
- this letter will remain on your record.

17. On 3 September 2013, the Applicant filed the present Application. He seeks the following remedies: (i) reinstatement with back pay; (ii) removal of all records of misconduct investigation and related documents from his files; (iii) compensation for pain and suffering; and (iv) attorneys' fees in the amount of \$8,933.64.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's main contentions

18. The Applicant admits that taking the loan was an error of judgment but asserts that the termination of his employment was unjustified. He states that he needed the loan because the Bank had left him in a new country without sufficient funds for a need as basic as renting an apartment. He contends that there is no evidence of any intentional wrongdoing; on the contrary, his actions in seeking the investigation of Mr. D's dealings illustrates clearly and without doubt that the loan in no way affected his professional conduct. The Applicant contends that the HRVP failed to take into account the many important mitigating factors, such as his self-disclosure to EBC; the fact that he was a very junior staff member who merely reported to the TTL and did not have the fiduciary or legal responsibilities of a co-TTL; and the fact that the loan had no impact at all on his impartiality and integrity. He argues that the decision to terminate his employment was out of all proportion to the offense.

The Staff Association's main contentions

19. In its *amicus curiae* brief of 3 January 2014, the World Bank Group Staff Association supports the Applicant's contention that termination was not appropriate in this case. The Staff Association argues that the HRVP failed to give due consideration to the mitigating factors and that he should have imposed a lesser disciplinary measure.

The Bank's main contentions

20. The Bank contends that the decision to terminate the Applicant's appointment was justified. The Bank states that the decision was based on EBC's findings and the HRVP's conclusion that the Applicant's actions resulted in the breach of at least three standards of staff conduct incorporated into the Staff Rules and Principles of Staff Employment, because they gave rise to an apparent conflict of interest. In making this decision, the HRVP consulted with the Applicant's managers and supervisors. He took into account all

relevant facts, including the fact that the Applicant was hired into a local position, the major function of which was interacting with government counterparts and the donor community. According to the Bank, these functions became untenable for the Applicant after his misconduct became public knowledge. Therefore, the Bank reasonably concluded that it had no alternative but to terminate the Applicant's employment.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

21. 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."

22. The essential facts are not in dispute. In finding that the Applicant had engaged in misconduct in receiving a loan from Mr. D, the HRVP stated that the Applicant's "actions failed to observe generally applicable norms of prudent professional conduct and created the appearance of a conflict of interest." The HRVP found that the Applicant acted contrary to the following Staff Rules:

Staff Rule 3.00, paragraph 6.01(b) – Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; failure to perform assigned duties; gross negligence in the performance of assigned duties; performance of assigned duties in an improper or reckless manner; failure to supervise a staff member; or failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group; undertaking an activity where authority to do so has been denied; or willful misrepresentation of facts intended to be relied upon.

Staff Rule 3.00, paragraph 6.01(c) in conjunction with Principle 3.1(c) of the Principles of Staff Employment - obligation of staff members to conduct themselves at all times in a manner befitting their status as employees of an international organization; avoidance of any action that

would adversely or unfavorably reflect on their status or on the integrity, independence or impartiality that are required by their status.

Staff Rule 3.01, paragraph 10.01 – official duties will bring Bank Group staff into contact with organizations and other officials or members of the public who may wish to offer gifts or hospitality. While such contact is a necessary part of conducting the Bank Group’s business, it is essential that Bank Group staff and their families be and be seen to be free from any form of bribery or corruption. The offering of gifts and/or other benefits may be seen as an attempt to influence a decision which a staff member is required to take and therefore must be avoided.

23. The Bank requires and expects high standard of professionalism and integrity from its staff members. The standards of professional conduct that a staff member must exhibit are detailed in various staff rules including Principle 3 of the Principles of Staff Employment, of which the misconduct rules contained in Staff Rule 3.00, paragraph 6.01 and Staff Rule 3.00, paragraph 6.01(c), and Staff Rule 3.01, paragraph 10.01(c) are elaborations. 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.

24. The Tribunal has no hesitation in endorsing the Bank’s requirement that its staff members must demonstrate high standards of professionalism and integrity. Such standards clearly preclude a staff member who supervises Bank projects from taking a personal loan from a government official who coordinates the very projects supervised by the staff member, irrespective of whether the staff member is a co-TTL of the projects. Accepting

the loan was inconsistent with the Applicant's obligation to observe generally applicable norms of prudent professional conduct. It created the appearance of a conflict of interest or at least a possible appearance of impropriety. It did not befit his status as a staff member of a public international organization.

25. The Applicant contends that his actions were borne purely of personal financial necessity, and that he did not have any improper motives. For his part, Mr. D considers the loan an act of "hospitality" as practiced in his culture. But in the Bank, there are clear rules regarding receipt by staff members of such expressions of hospitality from government officials. Staff Rule 3.01, paragraph 10.01 states: "The offering of gifts and/or other benefits may be seen as an attempt to influence a decision which a staff member is required to take and therefore must be avoided." It should be evident that acceptance of hospitality from government officials who are involved in Bank projects might raise questions of impropriety and in some cases lead to corruption. As the Bank has stated:

What could motivate a government official who had just recently met his new counterpart from the World Bank, who was responsible for supervising the projects which the government official is responsible for implementing, to loan the money, interest-free (and even borrowing himself, to come up with the necessary amount) to his new counterpart? What could have motivated that official to defer collection of the loan for twenty months? Could it be that in loaning the money, [Mr. D] reasonably thought that he was buying himself the goodwill of his new counterpart? Or could it be that [Mr. D] felt that he had no option but to find the money to lend to Applicant (even if it meant borrowing the funds himself), and after the fact, not to pursue Applicant for repayment of the loan, even if Applicant reneged on his promise to repay the loan with the first paycheck, because he reasonably felt that not making a loan, or insisting on repayments would result in Applicant's negative assessment of his agency's implementation of the project? Either way, Applicant's request for a loan was made after he was interacting with [Mr. D] in his official capacity, and there is no record to suggest that [Mr. D] made a loan to Applicant for personal reasons, rather than because of Applicant's position in the Bank Group.

26. EBC found no ulterior motive or corruption with respect to the loan. But an ulterior motive is not necessary to uphold the finding of misconduct under the Staff Rules invoked in this case. The Applicant was obligated under Staff Rules 3.00 and 3.01 not to put

himself in a situation that leads to questions of conflict of interest or impropriety. As a staff member of a public international organization, he was obliged to avoid conduct that raises doubt about his integrity. The Tribunal concludes that considering the undisputed facts of the case and given the very broad nature of the Staff Rules that oblige staff members to avoid conflict of interest as well as the possible appearance of impropriety, the HRVP rightly determined that the Applicant had engaged in misconduct violating the Staff Rules cited in the HRVP's letter of 22 July 2013.

27. The main issue between the parties is whether the sanction is significantly disproportionate to the offence. Staff Rule 3.00, paragraph 10.06, 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. Ineligibility for promotion, whether permanently or for a specified period;
- k. Termination of appointment;

- l. Loss of future employment and contractual opportunities with the Bank Group; and
- m. 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.

28. The termination of a staff member's appointment is the most serious disciplinary measure provided for in Staff Rule 3.00, paragraph 10.06. Whether the termination was significantly disproportionate in this case has to be determined in line with the guidelines provided in paragraph 10.09 of Staff Rule 3.00, 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 conduct for which disciplinary measures, as provided in paragraph 10.06 above may be imposed.

29. The Tribunal stated in *S*, Decision No. 373 [2007], para. 50, that the factors stated in paragraph 10.09 "were intended to guide the [HRVP] in the exercise of his discretion concerning what disciplinary measure to impose" in a case and added that "in considering whether the [HRVP] properly exercised his discretion ... or whether the termination was disproportionate in this case, the factors stated [in paragraph 10.09] must be taken into account." *Id.*, para. 52.

30. The Tribunal has also stated that the decision as to the disciplinary measure to be imposed in a given case is within the discretion of the HRVP. But it is not an absolute discretion. There cannot be significant disproportion between the offense and the disciplinary measure in view of the factors stated in paragraph 10.09 of Staff Rule 3.00. *See D*, Decision No. 304 [2003], paras. 49-54.

31. The Applicant contends that the factors stated in paragraph 10.09 support his contention that the sanction was disproportionate and advances a number of arguments.

32. First, the Applicant states that the HRVP did not give proper consideration to the circumstances of the loan. He states that he needed the loan from Mr. D because the Bank had left him in a new country without sufficient funds to even rent an apartment. He states that he received \$5,000 from the Bank two weeks after he arrived in Senegal to help him with his initial expenses, but he used this money to pay for the reimbursement of his airfare, for the cost of his hotel during his first two weeks in Senegal, and for living expenses. He needed the additional money to pay the required deposit for the rent.

33. Second, he argues that his actions reflect poor judgment on his part, not intentional misconduct. He acknowledges his misconduct but states that termination was disproportionate for this kind of offense. He submits that this single mistake does not warrant termination.

34. Third, he argues that his integrity and impartiality in performing his duties were proven by his excellent work and by the fact that it was he who sought an investigation into Mr. D's activities because he was concerned about possible wrongdoing. This fact should have been taken into account as a mitigating factor.

35. Fourth, he points out that he attempted to contact EBC immediately after Mr. D published information about the loan, but was unable to do so because the EBC officer he attempted to contact was not available. When he did provide EBC with the information, he expressed suitable contrition and stated that he had learned his lesson. These facts should also have been taken into account as mitigating factors.

36. Fifth, he argues that the Bank incorrectly concluded that he was co-TTL of the projects. He states the TTL's evidence about the Applicant's role in Senegal confirmed that the Applicant was not a co-TTL. He argues that he was far too junior, was new to the Bank, and lacked any appropriate experience to have the responsibility of a TTL.

37. Sixth, he points out that he continued to perform his duties effectively for over a year after Mr. D published information about the loan, including overseeing changes to the projects as a result of Mr. D's misconduct, thereby showing that the loan caused no damage to the Bank's reputation or affected his own credibility.

38. In its *amicus curiae* brief, the Staff Association states that it is troubled by two aspects of the HRVP's decision. First, the Staff Association states that "[w]hile it is clearly correct that the staff rules state that a finding of misconduct does not require malice or guilty purpose, the staff rules do not state that such concerns are irrelevant to the determination of an appropriate penalty once misconduct has been found." The Staff Association adds that by dismissing the matters as irrelevant to his decision, the HRVP has failed to meet the requirements of paragraph 10.09 of Staff Rule 3.00.

39. Second, the Staff Association argues that the HRVP's consideration of mitigating circumstances was deficient. The Staff Association adds that there were several compelling mitigating factors here, such as, "the inadequacy of the Applicant's relocation benefits, his voluntary attempts to reach out to EBC and immediate repayment of the loan as soon as the loan came to light, his integrity in carrying out his duties despite the existence of the loan, the size of the loan, the fact that it was a first offense, his successful performance in his position, etc." The Staff Association adds that the HRVP did not explain how these factors were considered and why they had no impact on his final decision.

40. The Bank advances the following arguments to support its contention that termination of the Applicant's employment was justified based on the factors stated in paragraph 10.09 of Staff Rule 3.00.

41. First, the Bank states that as an ETC, the Applicant was not entitled to a relocation grant. He was provided \$5,000 to assist him with the costs associated with his relocation at the discretion of the hiring manager. The Bank states that the Tribunal should reject the Applicant's suggestion that had the Bank provided him with a greater amount, he would

not have broken the Staff Rules. The Bank adds that the Applicant and staff members are expected to manage their personal and financial affairs within their means. They are not permitted to violate applicable rules if salary or benefits paid by the Bank are not sufficient to cover expenses incurred by them.

42. Second, the Bank states that although requesting and receiving the loan were the Applicant's only acts of misconduct, he committed them within the first month of taking up his appointment as an ETC. Rather than viewing it as a one-time mistake, the Bank views the misconduct as continuing over twenty months, with the Applicant repeatedly failing to repay the loan, despite his assurances to Mr. D that he "did not forget about it." The Bank adds that by the time he actually repaid the loan, it was too late as the loan had become public knowledge, and he had been specifically directed to repay by his manager. The damage had already been done.

43. Third, the Bank states that it also considered the misconduct committed by the Applicant to be one of the more egregious types of misconduct that the Applicant could have committed in his role supervising the implementation of Bank projects. In his role as the Bank's representative on the ground, the Applicant undermined the credibility and impartiality of the Bank's supervisory work, not just in the eyes of the government of Senegal, but also in the eyes of the donor community.

44. Fourth, the Bank adds that in considering the situation of the staff member, it should be noted that the Applicant did not have a long career with the Bank. He just finished his two-year ETC appointment, and was beginning a two-year term contract. According to the Bank, his short tenure is a factor favoring his termination. The Bank states that while the Applicant's good performance was a mitigating factor, it was not enough to outweigh the consequences of the Applicant's actions.

45. Fifth, the Bank asserts that because the Applicant was a local hire in the Dakar country office, the disciplinary measures that could be imposed were significantly limited. The Bank adds that because he was not an international hire (positions which are

internationally mobile, with staff being expected and being able to easily move from one country office to another), the Applicant could not be simply reassigned to a different country office. Neither, in the Bank's submission, could he remain in his position in Dakar, with some lesser disciplinary measure being taken against him. The Bank explains that after the loan from Mr. D became known to the government and the donor community working in the fisheries sector, the Bank could not credibly retain the Applicant in his position as a fisheries specialist supervising implementation of the projects.

46. Sixth, the Bank states that it was in the interest of the Bank to terminate the Applicant's employment. The Bank states that:

Corruption free implementation of Bank-funded projects and the Bank's supervision of such implementation is within Respondent's paramount interest. When a project gets mired in scandal, whether due to corruption of implementing officials, allegations of bribery, presence of ineligible expenditures, Respondent's reputation with its member countries and other international organizations suffers. It is imperative for Respondent be able to trust staff members who are on the ground, working with the governments who are beneficiaries of Respondent's lending operations, that staff will diligently represent Respondent's interests, will conduct themselves at a standard appropriate of an international civil servant, and not put themselves and Respondent in a position where Respondent's integrity is put into doubt by abusing their position for personal gain. Applicant's actions irrevocably broke that trust. Respondent could not rely on his judgment in any of its projects in the future.

47. The Tribunal accepts without question the Bank's position that its projects must be free from corruption and that its staff members must conduct themselves to a standard appropriate for an international civil servant. But that does not mean any violation by a staff member of the Bank's ethics rules, no matter how minor or under whatever circumstances, must result in termination. That is why Staff Rule 3.00, paragraph 10.06, provides for a series of disciplinary measures other than termination. Moreover, under Staff Rule 3.00, paragraph 10.09 and in line with the Tribunal's jurisprudence, any disciplinary measure must be proportionate and must take account of the required factors.

48. Staff Rule 3.00, paragraph 10.09, considers certain acts of misconduct as the most serious, for which the termination is mandatory. These acts include misuse of Bank Group funds or abuse of position in the Bank Group for personal gain; and conviction of a felonious criminal offense. The Applicant's conduct does not belong in this category. The Applicant has not been charged with these serious offences, nor did EBC find any corruption or bribery with respect to the loan. The HRVP found that by taking the loan in question, the Applicant "failed to observe generally applicable norms of prudent professional conduct and created the appearance of a conflict of interest."

49. The Tribunal's jurisprudence indicates that, ordinarily, termination is not the appropriate penalty for misconduct such as failure to observe prudent professional conduct and failure to avoid the appearance of a conflict of interest. For example, in *Z*, Decision No. 380 [2008], the Bank terminated the Applicant's employment after its internal investigation determined that she had improperly claimed reimbursement on two occasions in the total amount of \$333.08 with the intent to defraud the Bank. *Id.*, para. 2. She challenged the termination of her employment asserting that on these two occasions she made a mistake and had no intent to defraud. *Id.* The Tribunal ruled that the record did not contain sufficient evidence to conclude that the Applicant had the intent to defraud. *Id.*, para. 41. The Tribunal found that the Applicant's actions in *Z* constituted a reckless failure to observe norms of prudent professional conduct and set aside the termination decision and ordered reinstatement of the Applicant. *Id.*, para. 43. The Tribunal noted that upon reinstatement, the HRVP could consider imposing disciplinary measures short of termination for her reckless failure to observe prudent professional conduct. *Id.*, para. 43.

50. In *M*, Decision No. 369 [2007], para. 82, the Tribunal observed that "the only plausibly legitimate accusation [against the Applicant] was that of conduct which created the appearance of a conflict of interest. Termination is not the kind of sanction that normally follows conduct that is more related to bad judgment than to an actual offense."

51. In *D*, Decision No. 304 [2003], the Applicant was an investment officer of the International Finance Corporation ("IFC"). As an investment officer, his job was to

identify potential clients for IFC and make recommendations for IFC loans, negotiating the terms of those loans, and servicing them. *Id.*, para. 2. The Applicant was the Investment Officer for two IFC loans made to a company in which Mr. S was the Managing Director. *Id.*, para. 3. Around the same time as the IFC made these loans to Mr. S's company, the Applicant made a personal loan in the amount of \$50,000 to Mr. S who was also an IFC client. *Id.*, para. 4. Upon allegations of kickbacks against the Applicant, the Bank launched an investigation and ultimately terminated his employment for "abusing his official position in the IFC for financial gain in his relationship with Mr. S, from whom he had received money." *Id.*, para. 18. The Tribunal, however, set aside this finding concluding that "there has been no showing by the Respondent of an 'abuse of position for financial gain.'" *Id.*, para. 30. The Tribunal found that "the Applicant's loan, although imprudent and a form of misconduct under Staff Rule 8.01 [a failure to observe generally applicable norms of prudent professional conduct], did not amount to abuse of position for financial gain, or any of the most serious forms of misconduct, so that a disciplinary measure substantially less than termination would have been appropriate." *Id.*, para. 40.

52. Here, too, considering the provisions of Staff Rule 3.00 and the related jurisprudence, the Tribunal is not convinced that this single act of misconduct, which resulted in violation of rules relating to prudent professional conduct and the appearance of conflict of interest, is grave enough to justify termination. The Bank has not shown why termination is the only appropriate sanction given the misconduct at issue in this case should not ordinarily result in termination. Under the Bank's own rules, this type of misconduct is not considered serious enough to warrant mandatory termination. The Tribunal does not take the view that violation of the rules relating to prudent professional conduct and conflict of interest should never result in termination. However, to terminate a staff member's employment for violating these rules, the severity of the conduct must be demonstrated in line with the factors stated in paragraph 10.09. The record here, in particular the HRVP's decision letter, does not sufficiently explain why termination was the only appropriate remedy.

53. The Tribunal finds that there are a number of mitigating circumstances stated in the EBC Final Report that favor the Applicant. EBC concluded that:

[The Applicant] cooperated with the investigators during the review and investigative process, providing all requested information and explaining the circumstances of the personal loan.

The investigators did not find any evidence to indicate that [the Applicant's] personal debt obligation to [Mr. D] affected his work in respect of monitoring performance generally on the projects, and by extension, objectively monitoring performance by [Mr. D] as the Coordinator on the projects.

The investigators conclude that [the Applicant's] work and professional relationship with [Mr. D] was unaffected by the personal loan, and that he remained objective and did not attempt to protect poor performance by [Mr. D]. [The TTL ([the Applicant's supervisor]) supported this observation, and stated to the investigators that [the Applicant] brought to his attention the fact that performance on the projects was 'worrisome' and that [the Applicant] was concerned about ineligible expenditures, and suggested that "we should do a review." [The TTL] also gave positive feedback regarding [the Applicant's] general performance on the projects in question.

54. In the Tribunal's view, these are significant mitigating circumstances. Termination would have been justified here if the Applicant's work had been compromised or if he had covered up Mr. D's wrongdoing. But, to the contrary, he was the one who reported Mr. D's wrongdoing. The TTL told EBC that "the first person that started raising to me concerns about this coordinator [Mr. D] was the [Applicant]" and it is the Applicant who asked the TTL to conduct a review of the implementation of the projects. The Tribunal is not convinced that the HRVP gave sufficient weight to the mitigating factors in this case.

55. One factor that the HRVP took into account as aggravating against the Applicant was his status as co-TTL of the projects. The Bank holds TTLs to higher standards of conduct. But it has not been demonstrated that the Applicant was a co-TTL. The Bank seems to draw such a conclusion based on a misunderstanding of the Applicant's statements to EBC (that were in French.) The Applicant claims that he was far too junior, was new to the Bank, and lacked the experience required to be a TTL. The TTL's

statements also suggest that the Applicant was not a co-TTL nor has the Bank produced any document to show that he was co-TTL. The Bank states that “the standards of staff conduct do not differ based on whether Applicant was a co-TTL or simply a junior member of [the TTL’s] team, as Applicant now tries to recast himself.” The Tribunal agrees with this and has concluded that the finding of misconduct stands irrespective of whether the Applicant was the co-TTL or not. However, when it comes to imposing disciplinary measures, the status of the staff member is a relevant factor under paragraph 10.09 of Staff Rule 3.00; harsher measures are warranted against a staff member with higher management responsibilities. In the current case, based on the record, the HRVP incorrectly concluded that the Applicant was a co-TTL and appears to have given undue consideration to this factor as an aggravating circumstance.

56. Another reason for termination invoked by the Bank is that the Applicant was a local hire and could not simply be reassigned to a different country office. The Bank adds that after the revelation of the loan, it could not credibly retain him in his position as a fisheries specialist in the projects at issue or any subsequent fisheries projects. But the record does not support the Bank’s assertion. Before coming to Senegal, the Applicant in fact served in another country office. Furthermore, the record suggests that after the incident of loan was revealed, he continued working in his existing role for over a year. The Applicant points out that during this time, he continued to perform well, receiving a good OPE in July 2012 and a promotion in March 2013, neither of which would have been possible if there had been any negative fall-out from the loan. The Applicant adds that, before the HRVP decided to terminate his appointment, his supervisors never considered him a liability in Senegal or suggested in any way that his position had been compromised. The Applicant also adds that at no time did his supervisors attempt to limit his interactions with the Senegalese government regarding the fisheries projects.

57. The TTL of the projects, who worked closely with the Applicant, told EBC that he found the Applicant to be hard-working and always trying to learn about Bank operations. The TTL added that “getting to work on World Bank operations and learning the ropes of that, I mean, two years is really starting to scratch the surface” and that the Applicant was

coming along and trying his best. The TTL stated that he did not have any problems with the Applicant other than the loan incident. As for the loan incident, the TTL stated that “my impression would be that this was an [in]experienced lack of judgment or mistake made by a new ETC, newly coming to Dakar and joining the Bank rather than something more.” The TTL told EBC that there was a continuing business need for the Applicant’s work as the Bank was doing this sort of fisheries projects in a number of countries.

58. In conclusion, the Tribunal finds that there are significant mitigating factors in favor of the Applicant. The Tribunal, however, will not disturb the exercise of discretion of the HRVP to terminate the Applicant’s employment nor award him compensation considering the record as a whole, in particular, in view of the facts that 1) the Applicant obtained the loan from the very government official who was the very coordinator of the projects the Applicant was supervising and 2) he did not repay the loan for some twenty months. However, given that this is the only act of misconduct committed by an inexperienced staff member who has shown potential for professional growth, the Tribunal orders that the Bank shall not record or otherwise treat the Applicant’s departure from the Bank as termination for misconduct. Accordingly, the HRVP’s decision letter will be removed from the Applicant’s personnel file.

59. Furthermore, the Tribunal notes that the Bank contended that after the disclosure of the loan, it could not trust the Applicant and could not retain him as a staff. But, on the contrary, the record shows that he continued to serve in his position long after the loan became public knowledge and that he was even promoted to a higher level position. In these circumstances, as there is merit in the issues raised in the Application, the Tribunal directs the Bank to pay the Applicant’s attorneys’ fees in the amount of \$8,933.64.

DECISION

The Tribunal decides that:

- (1) The HRVP's decision letter including the record of investigation shall be removed from the Applicant's personnel file.
- (2) The Bank must not record or otherwise treat the Applicant's departure from the Bank as termination for misconduct or no such reference of misconduct shall be made.
- (3) The Bank shall remove from the Applicant's personnel file "permanent bar to re-hire with ineligibility for any future employment at the World Bank Group as a staff member, contractor, or employee of a contractor."
- (4) The Bank shall contribute to the Applicant's attorneys' fees in the amount of \$8,933.64.
- (5) 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