

Decision No. 243

Rita Dambita,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on July 28, 2000, by Rita Dambita against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Francisco Orrego Vicuña (a Vice President of the Tribunal) as President, Thio Su Mien (a Vice President of the Tribunal), A. Kamal Abul-Magd and Bola A. Ajibola, Judges. The usual exchange of pleadings took place. The case was listed on February 14, 2001.

2. The Applicant filed her application with the Tribunal claiming that the disciplinary procedures set out in Staff Rule 8.01 were not followed and that, as a result, she suffered losses for which she claims compensation. In particular, she complains about the placing of flags in her personnel file by the Office of Professional Ethics (OPE) and requests their removal.

3. The Applicant is a financial economist who served as a short-term consultant for the Respondent for the periods: April 13-30, 1997; May 1-June 30, 1997; July 5-August 23, 1997 and February 16-March 17, 1998. Although no extension of the latter contract was documented in the Applicant's personnel file, the Respondent confirmed that the Applicant's contract was, in fact, extended to August 26, 1998.

4. On May 15, 1998, the Respondent received a request from the American Embassy, Lagos, Nigeria to confirm the authenticity of a "Verification of Employment" letter dated March 2, 1998 ("the Verification Letter"). The Verification Letter, which appeared to bear the signature of a "Mr. [X], Manager EDIDM" read as follows:

This is to verify that Ms. Rita Dambita is a staff of the UN System and she has been with the World Bank in Washington since 1991. She is a staff in good standing and we continue to enjoy her professionalism and dedication to service.

5. The matter was investigated by the Legal Department, Administration ("LEGAD"), which then consulted OPE. OPE accessed the Respondent's Peoplesoft electronic personnel profile, which showed that the Applicant's employment ceased on March 17, 1998 and that the Applicant was not employed by the Respondent at any time before April 13, 1997. Mr. X was consulted as to the Verification Letter purportedly signed by him. He responded that he knew nothing about this letter, that his name and section assignment were "approximated" in the letter, and that he had never signed such a document.

6. Based on the above information, LEGAD informed the US Embassy, Lagos, Nigeria, that the Verification Letter was a forgery, and that the Applicant was not then employed by the Respondent nor had she been employed by the Respondent at any time before April 13, 1997. It turned out subsequently that on the date when LEGAD had made its reply on May 20, 1998, the Applicant was employed by the Respondent. In fact, as earlier noted, it was later established that the Applicant's contract had been renewed for the period March 17, 1998 through August 26, 1998.

7. A copy of LEGAD's letter was sent to OPE, which, in the erroneous belief that the Applicant had ceased to be employed by the Respondent, placed a "Hiring Prohibited" flag in the Applicant's personnel record through Peoplesoft.

8. The Applicant only came to know of the “Hiring Prohibited” flag in her personnel record on April 7, 1999, when she was informed of it by a Bank Recruiting Officer in connection with her application for a Co-Financing Analyst position with the Respondent.

9. The Applicant met with an Ethics Officer on April 7, 1999 to inquire about the “Hiring Prohibited” flag and to request that it be removed. The Ethics Officer orally explained the reason for the flag and asked the Applicant to produce documents to show that she was employed by the Bank at the material time. The Ethics Officer also commented that the Applicant was not wearing her identification tag. The Applicant met with the same Ethics Officer the next day to give her various documents, including a letter of appointment by the Respondent for the period from February 16, 1998 through March 17, 1998 and a letter from the Applicant dated April 8, 1999 denying knowledge of or participation in any forgery. The letter explained the circumstances surrounding the Applicant’s efforts to obtain a visa for her mother, who lived in Nigeria, to visit the United States. It explained that the Applicant had traveled to Nigeria to assist her mother with the necessary paperwork, but that she had been unable to complete the paperwork as she had to attend to an assignment on behalf of the Respondent. The letter then went on to state:

I was then introduced to somebody who claimed to know the immigration requirements there and could help accompany my mother to present her documents to immigration. I left her file with them which contained my detailed personal information to show that my mother would not become a public charge when she comes to visit me. ... The only thing that I included in the documents concerning the World Bank was a letter from the Credit Union for my account balances and a copy of my contract.

I am not aware of any forged letter sent to the Embassy. There would be no reason for me to forge a letter as I could legitimately provide income information either from the Bank or any other place in the U.S.

The Applicant requested in her letter that she be given “the specific allegations” made against her and a copy of the Verification Letter. These were not provided. During the meeting of April 8, 1999, the Ethics Officer again commented that the Applicant was not wearing her identification tag. The Applicant’s response was evasive. This led to an investigation by OPE as to the Applicant’s status with the Respondent at that particular time.

10. Upon establishing that the Applicant was not then employed by the Bank, OPE entered, on April 28, 1999, no-access flags in the Applicant’s personnel record. The Respondent did not notify the Applicant. Instructions were given to Bank Security on the same day to escort the Applicant out of the Bank should the Applicant be found on Bank premises without proper authorization. On April 29, 1999, when the Applicant sought to enter the Bank, she was escorted from the building as she was unable to produce documentation that she was employed by the Bank.

11. On May 19, 1999, the Applicant met with two Ethics Officers, and was informed that the “Hiring Prohibited” and the restricted access flags would not be removed from her personnel record.

12. In a letter dated July 29, 1999 to the Manager of OPE, the Applicant requested reconsideration or administrative review of the decision of May 19, 1999 not to remove the hiring flag in her personnel record. The Applicant pointed out that she had still yet to be informed of the charges in writing and provided with a copy of the Verification Letter. She further pointed out that, notwithstanding the absence of specific charges in writing, she had sought to respond to the charges in her letter to OPE of April 8, 1999.

13. The Applicant also alleged in her letter of July 29, 1999 that OPE “dismissed the issue of the allegedly forged letter” and instead “recited ... allegations” relating to the Applicant’s allegedly unauthorized presence in Bank buildings as the basis for OPE’s decision not to remove the flags from her personnel file. The Applicant set out her responses to these allegations of unauthorized presence at the Bank.

14. In response to the Applicant’s request for reconsideration or administrative review, the Manager of OPE called for a fresh review of the matter by the Ethics Officer who had conducted the first investigation, and by a

second Ethics Officer from OPE. This review was conducted without the Applicant yet being notified of the specific charges in writing and provided with a copy of the Verification Letter. After reviewing the matter again, the Ethics Officer who had undertaken the first investigation concluded as follows in a report:

The facts developed during the original investigation established that the Employment Verification letter on Ms. Dambita was false in its particulars and bore the forged signature of a Bank manager.

The findings from the original investigation coupled with Ms. Dambita's statements concerning her efforts to secure a visa for her mother through the U.S. Embassy in Lagos would lead a reasonable person to believe that Ms. Dambita was responsible for the submission of the fraudulent document in question.

Subsequent to her contract termination in August 1998, Ms. Dambita repeatedly misrepresented herself as Bank staff resulting in her unauthorized access to Bank buildings and office facilities within the Bank.

15. The report of the second Ethics Officer acknowledged that the Respondent should have complied with the procedures set out in Staff Rule 8.01 in the original investigation. However, this report concluded that by April 1999, "for all intent and purposes," the Applicant had been informed of the allegations against her, had been afforded every opportunity to respond to the allegations, and had in fact given written replies in respect of these allegations. The Manager of OPE, based on these reports, decided that the flagging restrictions were appropriate.

16. The Applicant appealed to the Appeals Committee, which came to the conclusion that the Respondent had violated Staff Rule 8.01 by failing to notify the Applicant of the flags that were in her file between May 1998 and April 1999. This lack of notice, the Committee further concluded, caused the Applicant to concentrate her job search efforts in the Bank during that time, with the result that she could have missed out on external employment opportunities. For the procedural error, the Committee recommended that the Applicant be awarded compensation in the amount of \$10,000, but not that the flags be removed.

17. This recommendation was implemented by the Respondent. The Applicant now seeks a review of the Respondent's decision.

### ***Review of the Disciplinary Decision***

18. The Tribunal must now examine how the Respondent exercised its disciplinary power in this case. The Tribunal has on several occasions stated the scope of its review powers in respect of disciplinary cases. In *Mustafa*, Decision No. 207 [1999], para. 17, the Tribunal held:

The scope of the Tribunal's power in disciplinary cases as discussed in *Carew* (Decision No. 142 [1995], para. 32) is not limited to determining whether there has been an abuse of discretion. When reviewing disciplinary cases, the Tribunal examines (i) the existence of the facts, (ii) whether they legally amount to misconduct, (iii) whether the sanction imposed is provided in the law of the Bank, (iv) whether the sanction is not significantly disproportionate to the offense, and (v) whether the requirements of due process have been observed.

19. One important issue in this case is whether there is factual support for the decision that the Verification Letter was a forgery and that the Applicant participated in such forgery. The Applicant has stated that it was not necessary for her to submit the Verification Letter, let alone participate in its forgery, since her contract of employment was in force and enclosed with her mother's visa application.

20. The Tribunal notes that the date of the Verification Letter is March 2, 1998. At that time, the Applicant was in fact employed by the Bank. Therefore, the Respondent should have followed the procedure set out in Staff Rule 8.01, since the Respondent was aware or should have been aware that the Applicant was in its employ at the material time. Only after a full investigation carried out in accordance with Staff Rule 8.01 could the Respondent have come to the conclusion that there had been a forgery, and that the Applicant had participated in it and had conveyed incorrect information. Such a conclusion could not have been reached by just relying on

assumptions, as the Respondent did in this case.

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

22. In the present case, there is no direct evidence that the Applicant participated in the forgery of the Verification Letter. It was possible, as contended by the Applicant, that the Verification Letter was written by the person retained by her to assist her mother's visa application and that such person had access to the relevant information contained in the file left with him. In her reply, the Applicant suggested that this person had used her particulars for the application of another party, and she states that she subsequently lodged a police report with the Lagos authorities. In light of these facts, there was no basis for placing the no-hiring flag in the personnel record of the Applicant and such flag should, thus, be removed.

### ***Procedure Regarding the Placement of Flags***

23. The Respondent also breached Staff Rule 8.01 in its failure to frame specific charges against the Applicant in writing and to provide her in a timely manner with a copy of the Verification Letter, as she had requested several times. The Applicant was thus denied the opportunity to rebut the allegations and to be given a meaningful hearing prior to the placement of the no-hiring flag in her personnel record. These procedural defects have prejudiced the Applicant and have caused her to suffer loss for which she should be compensated.

24. The Tribunal also concludes that there were procedural defects with respect to the placement of the "no access" flags in the Applicant's personnel record.

25. In her attempt to seek clarification and redress in respect of the placement of the no-hiring flag in her personnel record, the Applicant had meetings with an Ethics Officer. The OPE, instead of immediately conducting an inquiry to determine whether the no-hiring flag should be removed, embarked on an investigation as to whether the Applicant had on a number of occasions entered Bank premises without authorization. What appears to have played a role in prompting this investigation was the Applicant's failure to wear a Bank ID during her meetings of April 7 and 8, 1999 with an Ethics Officer, and her evasive responses to questions about her ID. An investigation of the matter concluded that the Applicant had entered Bank premises without authorization on several occasions, resulting in the placement of the no-access flags in her personnel record – although the record shows that the Applicant was in possession of a pass valid through June 30, 1999.

26. The Tribunal is greatly concerned with the manner in which the flags were placed in the personnel records of the Applicant. It wishes to emphasize that the placement of any flags, for whatever purpose, must follow the basic elements of due process, including, specifically, written notification and the right to reply. This applies to present and former staff. The Respondent thus failed to comply with due process in placing the no-access flags without written notification to the Applicant, and without her having been given a right to reply.

27. Moreover, the Tribunal is of the view that the issue of unauthorized entry into the Bank is one that pertains to Bank security. With respect to the Applicant, it was not an issue of misconduct since the Applicant had ceased to be an employee of the Bank. Therefore, the decision of the Manager of OPE that the imposition of the "Hiring Prohibited" flag was appropriate should not have taken into account the issue of the Applicant's unauthorized entry into the Bank.

### **Remedies**

28. Having examined all the facts of the case, the Tribunal concludes that the misconduct of the Applicant has not been proven. The Tribunal, therefore, finds no grounds for the placement by the Respondent of the no-

hiring flag in the Applicant's personnel record, and shall award the Applicant compensation for the loss suffered by her as a result of the Respondent's failure to accord to the Applicant her procedural rights. As for the no-access flags, since they were placed in the personnel records of the Applicant without compliance with procedural due process, they shall be removed.

**Decision**

For the above reasons, the Tribunal unanimously decides that:

- (i) the Respondent shall remove the no-hiring and no-access flags from the records of the Bank;
- (ii) the Respondent shall pay the Applicant compensation in the amount of \$35,000 net of taxes, inclusive of the \$10,000 already paid to her;
- (iii) the Respondent shall pay the Applicant costs in the amount of \$2,600; and
- (iv) all other pleas are dismissed.

/S/ Francisco Orrego Vicuña  
Francisco Orrego Vicuña  
President

/S/ Nassib G. Ziadé  
Nassib G. Ziadé  
Executive Secretary

At Washington, D.C., April 26, 2001