Decision No. 325

E,
Applicant

v.

International Bank for Reconstruction
and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of Bola A. Ajibola, President, Elizabeth Evatt and Jan Paulsson, Vice Presidents, Robert A. Gorman, Francisco Orrego Vicuña, Sarah Christie and Florentino P. Feliciano, Judges, has been seized of an application, received on April 19, 2004, by E against the International Bank for Reconstruction and Development. The Applicant's request for anonymity was granted on April 27, 2004. The usual exchange of pleadings took place. The case was listed on September 14, 2004.

2. Although this case arises from a post-marital dispute over the repayment of a rather modest amount each month on a housing loan granted by the World Bank jointly to a staff member and his former wife, the dispute raises significant questions with respect to the authority of the Bank to give effect to the decrees of national courts and the proper procedures to be utilized by the Bank in assuring that the family-support obligations of its staff are properly paid.

3. The Applicant, a level H Manager, challenges the decision of the Manager, Human Resources Service Center (HRSSC) and Senior Advisor, Human Resources Vice Presidency, to deduct $699.65 from the Applicant’s net annual salary of $141,326, and to forward the amounts so deducted to his former spouse as semi-monthly court-ordered spousal and child support payments. Although the Applicant does not challenge the accuracy of the calculation of most of the deduction, he contends that these semi-monthly payments should be reduced by $193.40 by virtue of what he regards as a straightforward interpretation of his Divorce Decree, and that the Bank has erred by declining to do so. By virtue of what the Respondent regards as an equally straightforward interpretation of the Divorce Decree, it contends that the decision of the Manager, HRSSC, was proper and should not be overturned by the Tribunal.

Factual Background: The Applicant’s Divorce Decree

4. Having joined the Bank in 1983, the Applicant was married in 1985, and his wife later gave birth to a son. Their principal place of residence was in Virginia. The Applicant and his wife obtained a mortgage on their Virginia house through the Bank-Fund Staff Federal Credit Union (“BFSFCU” or “Credit Union”), and the Applicant made regular monthly mortgage payments to the Credit Union, by automatic deduction from his Credit Union checking account, in the amount of approximately $1,759 until the date of their divorce. As will be seen below, the couple’s Divorce Decree stated that continued mortgage payments were to be chargeable to Mrs. E, who was awarded the Virginia property in the divorce.

5. In May 1992, the Applicant and Mrs. E (as co-signer) also entered into a loan agreement with the Bank pursuant to the Bank’s program for housing assistance (the “World Bank Housing Loan”). The agreement called for monthly payments of approximately $387 for a period of twenty years. The Bank took no formal security interest, including in the Virginia property, for this Housing Loan. The Applicant has been repaying the loan over time through deductions from his regular Bank salary.

6. After more than fifteen years of marriage, the Applicant and Mrs. E divorced in December 2001. The Divorce Decree, entered by a Circuit Court in Virginia on December 28, 2001, provided *inter alia*:

> . . . [T]he Court hereby makes the awards of custody, equitable distribution, spousal support and child support specified herein, for the reasons set forth in the transcript of the Court's ruling, which is attached hereto as Exhibit 1, and which is incorporated herein by reference, as if fully set forth herein. Accordingly, it is ADJUDGED, ORDERED and DECREED as follows:
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> 2. Support:
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> (a) Child Support: [The Applicant] shall pay to [Mrs. E] as child support, the sum of Eight Hundred Twenty Six Dollars ($826) per month, beginning January 1, 2002. Support is to be paid in two equal installments of Four Hundred Thirteen Dollars ($413) on the first and fifteenth days of each month thereafter until the child's emancipation, until the child reaches age eighteen (18), or until further order of this Court; . . .
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> (b) Spousal Support: [The Applicant] shall pay to Defendant [Mrs. E] as spousal support, the sum of Two Thousand Three Hundred Thirty-Three Dollars ($2,333) per month beginning January 1, 2002. Said spousal support is to be paid in two equal installments of One Thousand, One Hundred Sixty Six Dollars and Fifty Cents ($1,166.50) on the first and fifteenth days of each month thereafter until the death of either party, the remarriage or statutory cohabitation of the recipient party, or further order of this Court. At this time, [the Applicant] pays the *mortgage* on the [Virginia] property by automatic withdrawal from his account. To the extent that any payments for said obligation are withdrawn from [the Applicant's] account on December 20, 2001 or thereafter, [the Applicant] shall be and hereby is entitled to a *dollar for dollar credit for such withdrawal against his spousal support obligation.* [The Applicant] shall provide Defendant [Mrs. E] with written documentation of such payment upon request.
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> [Virginia Residence]. The Court finds that the residence [in] Virginia (the former marital residence) is entirely marital property. The Court finds that the equity in the property is Thirty Five Thousand, Five Hundred Forty Five Dollars. This property, titled solely in the name of Defendant [Mrs. E], is awarded to Defendant, subject to the terms set forth in this Order. [The Applicant] is awarded a monetary judgment as set forth in this Order. Defendant [Mrs. E] *shall be solely responsible for all mortgages and expenses on said property*, *and shall indemnify [the Applicant] and hold him harmless from same*. Defendant [Mrs. E] is further ordered to refinance all mortgages associated with said property or otherwise remove [the Applicant's] name from all obligations associated with the property within ninety (90) days of December 7, 2001, i.e., not later than March 7, 2002. (Emphasis added by the Tribunal.)

7. The Divorce Decree issued by the Virginia court also provided that the Applicant was to be solely responsible for payment of the couple's "marital debt" in the amount of $68,011 (as more specifically identified in the transcript of the Court's ruling that was attached to the Decree), and that Mrs. E was to be liable to pay the Applicant the amount of $30,857, enforceable against the real property.

The Proceedings before the Department of Institutional Integrity (INT)

8. The Divorce Decree did not bring an end to the family quarrels. The Applicant and Mrs. E continued to disagree with respect to the exact scope and compliance aspects of the Divorce Decree. On April 21, 2003, Mrs. E wrote a lengthy letter, addressed to the Vice President, Human Resources (VPHR) "and/or members of the Professional Ethics Committee," complaining that the Applicant was not making full and timely spousal and child support payments as required by the December 2001 Divorce Decree.

9. In that letter, which focused mainly on modest discrepancies in amount and timing of the twice-monthly payments, Mrs. E stated that the Applicant in September 2002 had reduced his support payments by approximately $387 per month. (This amount corresponded to the monthly payments made by the Applicant (through payroll deduction) on the World Bank Housing Loan that the Applicant and his former wife had obtained in 1992.) She also claimed that the Applicant was in arrears on his support payments in the total amount of $9,528.42. She asserted in the letter that the $387 was the Applicant's responsibility under the Divorce Decree – which allows for "a dollar for dollar credit" against her support payments for the Applicant's

payment of "the mortgage on the [Virginia] property by automatic withdrawal" – because it was not a mortgage payment on the house that had been awarded to her. She noted that the Applicant had not been deducting the $387 housing loan payment for nine months after the issuance of the Divorce Decree, i.e., until September 2002, and that his action followed shortly upon a quarrel between the two. Mrs. E stated, in a passage of her letter of April 21, 2003 to the VPHR "and/or members of the Professional Ethics Committee":

> Last September [the Applicant] got angry when I reminded him for the third time not to come uninvited to our house/neighborhood as we find his presence there disturbing. In retaliation, [the Applicant] lowered the spousal/child support payments, and has since been deducting $193.40 twice a month. These deductions are the payments for the financial assistance house loan … we obtained from the Bank back in 1992, abruptly coming to light 9 months after our divorce and now reinterpreted to his own convenience. Legally, these payments are his responsibility as ordered in our Divorce Decree . . . . Repeated requests to stop that financial retaliation have gone ignored by [the Applicant]. He replies that the debt corresponds to us because it is "the same as a mortgage."

This letter was forwarded to the Department of Institutional Integrity (INT). INT was the successor department within the Bank to the Office of Professional Ethics (OPE), to which Mrs. E had initially written.

10. In 1998, the Bank had adopted a policy – known as the Bank Policy on Spousal and Child Support ("the 1998 Bank Policy") – to deduct from the wages of staff members court-ordered spousal and child support payments, when such staff did not provide evidence showing that they had satisfied their support obligations. This 1998 Policy was designed to ensure that staff did not seek to hide behind the Bank's immunity from garnishment orders (to be discussed below). The Policy gave to the OPE the authority to hear from a staff member accused of delinquency in support payments and, upon finding a "clear legal obligation" to make payments "of a readily ascertainable amount," to "accordingly commence deductions from a staff member's salary" of such amount. "The amounts deducted will then be directed to the spouse, former spouse or child, in accordance with the order." In 2001, as a result of an expansion and reorganization of the OPE, the task of conducting support proceedings and investigations, and instituting salary deductions, was shifted to INT, which was and is presently charged with investigating allegations of staff misconduct more generally and allegations of fraud and corruption in Bank Group operations. The distinct tasks of educating and advising staff members on ethical matters were given to the renamed department, the Office of Ethics and Business Conduct (EBC).

11. When INT was given Mrs. E's letter of April 21, 2003, it sent a memorandum to the Applicant dated May 27, 2003, and entitled "Compliance With Personal Legal Obligations (Child and Spousal Support)." The memorandum notified the Applicant that INT had received a copy of the Divorce Decree, with its orders for support payments, and of the letter of Mrs. E charging the Applicant with non-compliance. INT gave copies of that Decree and letter to the Applicant. Pursuant to the 1998 Bank Policy, INT advised the Applicant that he was requested to provide evidence of compliance with the Divorce Decree within 30 days or risk the Bank's making salary deductions in an amount required by that Decree.

12. On July 6, 2003, the Applicant responded in a memorandum to INT, in which he asserted that he had fully provided the support ordered in the Divorce Decree, as well as a substantial additional amount. He buttressed this assertion by attaching his Credit Union checking-account statements for the months of April, May and June 2003, and by explaining his calculations:

> As shown in paragraphs 2(a) and 2(b) of the [Divorce Decree], I am required to provide $3,159 per month. The Credit Union transfers equal $1,194. In accordance with paragraph 2(b), I deduct from the spousal support each month the amount of mortgage payments that I make through automatic deduction . . . . The automatic transfers are in two parts. The first is an automatic deduction by the World Bank from my pay check (attached) for $387.44 per month. The second is an automatic transfer by the Credit Union from my checking account . . . for $1,759.70 per month.
> The transfers to my former spouse of $1,194 and the automatic deductions of $387.44 per month and

> $1,759.70 per month equal $3,341.14 – more than the amount I am required [to] pay by the [Divorce Decree].

In other words, according to the Applicant, in addition to the monthly mortgage payment of $1,759.70 to the Credit Union as mortgagee, the monthly $387.44 World Bank Housing Loan payment was also a "mortgage payment" that he was entitled by the Divorce Decree to credit against, or deduct from, the monthly support payments. The Applicant did not refer to, or attach to his response to INT, the transcript of the divorce proceedings that was incorporated by reference in the Divorce Decree. The Applicant now relies upon that transcript to support his contentions before this Tribunal concerning the meaning of the word "mortgage" in that Decree.

13. INT reviewed Mrs. E's letter, the Applicant's response, and the other documents they had submitted. It also consulted with the then Benefits Manager, HRSSC, who explained to INT that the World Bank Housing Loan was based simply upon a promissory note and was not secured by an interest in the Virginia house; it was thus no different from other financial-assistance benefits made available by the Bank under Staff Rule 6.18 in return simply for a promissory note, such as emergency loans and educational loans. According to the Benefits Manager, therefore, the Housing Loan could not properly be characterized as part of the "mortgage" referred to in the Divorce Decree.

14. The Director, INT, on July 31, 2003, sent a memorandum on the outcome of INT's review to the Manager, HRSSC, the person designated by Human Resources to make wage deductions in court-ordered spousal and child-support cases. In the memorandum, INT reviewed the various documents it had received, analyzed them, and set forth its conclusions. The procedures followed by INT were those that had been provided for in the 1998 Bank Policy authorizing salary deduction (and re-direction to the spouse) of support payments "if the documentation evidences the clear legal obligation of the staff member to make monthly payments of a readily ascertainable amount." One of the principal conclusions in the INT memorandum to the Manager, HRSSC, was the following:

> [The Applicant] attributed $387.44 per month as part of the mortgage payment he is entitled to deduct from spousal support each month. The Bank Group [Housing] Loan statement reflects a semi-monthly deduction from [the Applicant's] salary of $193.40 ($386.80 monthly). . . .
> The court order specifically delineated the separate debts of each party, and expressly stated that [the Applicant] would be solely responsible for the payment of all marital debt. The repayment for the "Housing Loan," which is deducted from [the Applicant's] World Bank salary every month in the amount of $386.80 ($193.40 semi-monthly) is not a debt the court attributed to [Mrs. E] and is not a mortgage payment. Accordingly, it appears that [the Applicant] has attributed this debt to his former spouse in violation of the court order.
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> . . . . [The Applicant's] submission confirms that he has repeatedly failed to provide spousal and child support in the full amount due on the first and fifteenth days of each month. The court order evidences a clear legal obligation for [the Applicant] to make payments of a readily ascertainable amount. Accordingly, INT is submitting this information to Human Resources to decide whether to commence deductions from [the Applicant's] salary, consistent with the Bank Group's Policy regarding compliance with spousal and child support obligations. Any deductions from [the Applicant's] salary should be directed to [Mrs. E] in accordance with the court order.

This INT memorandum of July 31, 2003 to the Manager, HRSSC, was not furnished to the Applicant beforehand, or at the same time. He appears to have received a copy from INT, upon his request, only on August 12.

15. On August 5, the Manager, HRSSC, on the basis of the memorandum from INT, informed the Applicant in a brief e-mail that automatic payroll deductions would commence on August 15, 2003 in the amount of $699.65 per semi-monthly pay period. He continued:

> The amount deducted represents the amount of the court-ordered child and spousal support payments of $1,579.50 per semi-monthly pay period less the allowable credit for mortgage payments in the amount of $879.85 per semi-monthly pay period. The amount deducted will be forwarded to [Mrs. E].

The semi-monthly amount of $879.85 was the amount payable only with respect to the Credit Union mortgage issued on the Virginia property, and did not include the salary deductions in repayment of the unsecured Bank Group Housing Loan.

16. On October 30, 2003, the Applicant sent a memorandum to the Vice President, Human Resources (VPHR), asking for an "administrative review" of the decision of the Manager, HRSSC. Among other things, the Applicant claimed, by relying upon the transcript of the divorce proceedings, that "the court included the Housing Loan in its own interpretation of the mortgage obligations." He also claimed that INT and HR had "made errors in the administrative process that are highly prejudicial," including the denial of a fair opportunity to respond to the actions of INT and HR.

17. In a response dated November 17, 2003, the VPHR stated that the transcript and other documents did not provide sufficient clarity to allow the Bank to adopt the Applicant's position, which she regarded as contrary to the clear language of the Divorce Decree. She continued:

> While I understand your frustration with the situation, the Bank is not in the position of becoming a go-between between the staff member and the court order regarding personal legal obligations. . . . In your case, the amount being garnished from your salary is based on the readily ascertainable amount from the court order which stipulates the amount for your child support payments and the amount for your spousal support payments with a dollar for dollar reduction of your mortgage payments to the Bank Fund Staff Credit Union on the [Virginia] property.
> We are not in a position to re-interpret or revise the court order. If you believe that your spousal support payments should also include a dollar for dollar reduction for your payments to the IBRD on a housing loan or reduced for any other reason, you need to return to court. Once a change in the court order has been legally made, you can then seek reconsideration by the Bank on the amount of garnishment and we will make the necessary changes.

18. The Applicant filed his Statement of Appeal with the Appeals Committee on November 21, 2003, but the appeal was stayed pending an attempt to mediate the case, which proved unsuccessful. The Applicant and the Respondent agreed that the Applicant could proceed directly to the Tribunal. In an effort to settle the case, the Bank indicated to the Applicant its willingness to suspend the portion of the wage deduction in dispute, pending clarification from the County Court of Virginia of its Divorce Decree. The Applicant refused the offer.

19. On April 19, 2004, the Applicant filed his application with the Tribunal. He asserts that the Respondent misconstrued the terms of the Divorce Decree and in particular that it has improperly disallowed his taking into account his payments of the World Bank Housing Loan as a credit against his spousal support obligations. The Applicant also contends that the procedures adopted by INT and HR in processing the claim of his former spouse are in violation of the Staff Rules and of due process. As relief, he asks principally for cancellation of the garnishment and repayment of the portion of the past garnished wages for the Housing Loan that have been withheld from him, as well as costs and "the maximum financial award allowable under the Bank's grievance process." The Respondent, however, contends that the Divorce Decree was unambiguous in not allowing a credit for his repayment of the Housing Loan, as it was not a "mortgage," and that the procedures utilized here were proper and fair. It asks the Tribunal to deny the application.

The Evolution of Bank Policy Regarding Support Claims

20. The Bank's treatment of spousal-support claims directed against staff members is a consequence of its

institutional immunity from garnishment orders issued by national courts. The Articles of Agreement of the World Bank provide in Article VII, Section 3, that "[t]he property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank." This immunity from court orders garnishing the wages of Bank staff was upheld by the United States courts in 1988. *Atkinson v. Inter-American Development Bank*, 156 F.3d 1335 (D.C. Cir. 1988). Concerned that staff members of the Bank not unfairly invoke this immunity as a means of circumventing their private legal obligations, the Bank included the following provision in Principle 3.3 of its Principles of Staff Employment:

> Staff members shall enjoy, in the interests of their Organizations, privileges, immunities, and facilities to which the Organizations, their officers and employees are entitled under their respective Articles of Agreement or other applicable treaties or international agreements or other laws. Such privileges, immunities, and facilities *shall not excuse staff members from the performance of their private obligations or from the due observance of the law*. (Emphasis added.)

21. One persistent matter of concern to the Bank were the obligations of its staff in connection with the support of their divorced or legally separated spouses, and of their children. Until 1995, the Bank had no elaborated procedure specifically designed to implement the terms of divorce settlements and decrees. Rather, when the Bank received a garnishment order or a claim that a staff member had not satisfied a court order, the matter was referred to the Ethics Officer, who had the authority to conduct investigations of "misconduct" claims and ultimately to impose disciplinary measures. (These powers were transferred in 2001 to INT.)

22. Considering that such measures might be inappropriate for handling such matters, the Bank in 1995 revised the terms of its Staff Retirement Plan (SRP) to permit the payment of amounts due as a result of a divorce settlement or court decree directly from the SRP. A memorandum from the Bank's President concerning the amended SRP contemplated a request by a person to give effect to a final decree of a court ordering support payments, and a possible objection from the retired staff member within 60 days before payments would be made by the Bank to the claiming spouse. The memorandum continued: "Where the Bank has genuine doubt about the meaning of an agreement or direction to pay . . . , it will retain payments to the extent of the sum in dispute pending its resolution by the action of the principals, the retained sum to be paid without interest when the dispute is resolved." The United Nations and the International Monetary Fund adopted similar policies thereafter. The record in this case does not indicate how these SRP provisions have been implemented generally; they do not, in any event, technically apply here in light of the Applicant's continuing employment status.

23. Three years later, in October 1998, the Bank adopted the policy that has been invoked in this case. If the Bank finds that there is a "clear legal obligation" on the part of a staff member to make court-ordered support payments, deductions will be made from salary and paid to the claiming spouse or child. The pertinent language in the Bank Policy is as follows:

> [W]here a final court order requiring a staff member to make payments of spousal or child support (or one evidencing the failure to make such payments) is brought to the attention of the Bank Group, the matter will be brought to the attention of the Office of Professional Ethics, which will advise the staff member of the need to comply with personal legal obligations. If, within 30 calendar days thereafter, the staff member has not furnished the Office of Professional Ethics with evidence establishing that the *required payments were made in whole or in part*, and if the documentation evidences the *clear legal obligation* of the staff member to make monthly payments of a *readily ascertainable amount* or percentage of salary, the Bank Group will accordingly commence deductions from a staff member's salary of such percentage or amount. The amounts deducted will then be directed to the spouse, former spouse or child, in accordance with the order. This policy will be consistently applied wherever the legal requirements are fulfilled, without waiving the organizations' immunities. (Emphasis added.)

As the emphasized language makes clear, before salary payments can be deducted and paid to a former spouse, the evidence must show that there is a "clear legal obligation" to make payments of a "readily ascertainable amount."

24. Implementation of the 1998 Bank Policy was assigned to the OPE, and was taken over by INT after a reorganization in 2001. Although INT usually handles charges of "misconduct" by utilizing the detailed procedures spelled out in Staff Rule 8.01, the procedures under the 1998 Bank Policy were more streamlined. In its pleadings, the Respondent asserts that this was so in order to avoid delays in resolving spousal and child support disputes, and because the deduction of court-ordered support payments "is not punitive in nature, but rather facilitates the fulfillment of a staff member's pre-existing personal legal obligation." By another change effective January 1, 2004 – not applicable in the instant case, addressed by INT in 2003 – "misconduct" as defined in Staff Rule 8.01 now includes "[f]ailure to meet personal legal obligations as required by Bank Group policies, including but not limited to payment of court-ordered spousal and child support."

The 1998 Bank Policy and the Authority of the Tribunal

25. The parties are in agreement on two general, but highly significant, propositions. First, they do not challenge the general principles, or the policy and social concerns, that underlie the 1998 Bank Policy. Even the Applicant acknowledges that it is within the authority of the Bank to establish a procedure for enforcing the private legal obligations of staff members, and in particular their obligation to abide by court-ordered decrees of divorce and support. The Tribunal, which has the power to review Bank policies in the context of their application to applicants' individual cases, endorses the view that the 1998 Bank Policy is lawful to the extent that it manifests a concern for the enforcement of spousal and child support orders directed against staff members, and seeks to establish a procedure for implementing that goal.

26. The second general principle upon which the parties agree is that the Bank must avoid interpreting or construing the ambiguous or unclear provisions of a decree of a national court. This is to be done by the judicial authorities so charged by national law, and not by an official within an international organization such as the World Bank. *O'Humay*, Decision No. 140 [1994], para. 27. ("[D]isputes relating to [the] settlement [of personal debts] will be within the jurisdiction of ordinary courts of law.") This principle of abstention applies as well to the Tribunal itself. *Verdier*, WBAT Order [May 15, 1998], para. 6. ("This Tribunal manifestly has no jurisdiction to pass judgment upon the application of the provisions of the French 'Code Civil' by the French judiciary.") In a judgment involving the deduction and direction of support payments under the Staff Retirement Plan of the International Monetary Fund, our sister Tribunal has stated: "Under its Statute, the Administrative Tribunal has no competence to pass upon the validity of municipal law as interpreted and applied by the legal authorities of either Maryland or Egypt. Hence, whether the Maryland Court correctly applied Maryland law may be regarded as a question that only the Maryland courts are competent to answer." *Mr. "P" (No. 2)*, IMF Administrative Tribunal, Judgment No. 2001-2 (Nov. 20, 2001), para. 146.

27. With those fundamental principles established, it becomes necessary for the Tribunal to determine whether the decision of the Manager, HRSSC, taken with the concurrence of the VPHR, violated the Applicant's contract of employment or terms of appointment. The Tribunal concludes that there are two central issues for decision. The first is whether the Bank exceeded its powers when it decided that the Divorce Decree clearly excluded the Applicant's payments on his World Bank Housing Loan from the "mortgage" payments that he was permitted to credit against his support payments. The second is whether the procedures used by the Bank in implementing the 1998 Bank Policy were fair and consistent with due process as applied to the Applicant.

The Divorce Decree and the Meaning of the Term "Mortgage"

28. The 1998 Bank Policy provides that INT (as the successor to the OPE) will inform and advise a staff member when a court order requiring support payments is brought to the attention of the Bank:

> If, within 30 calendar days thereafter, the staff member has not furnished [INT] with evidence establishing

> that the required payments were made in whole or in part, and if the documentation evidences the clear legal obligation of the staff member to make monthly payments of a readily ascertainable amount or percentage of salary, the Bank Group will accordingly commence deductions from a staff member's salary of such percentage or amount.

29. The Tribunal notes only in passing – because the issue has not been raised by the parties and particularly by the Applicant – that it does not appear that the first of these two prerequisites for deducting support payments was satisfied in this case. Although the Bank may have intended to empower INT to have deductions made whenever a staff member has failed to make court-ordered support payments in whole or in part, that is not what the text of the 1998 Bank Policy states. The Applicant in this case, as shown by his response and even by Mrs. E's claim viewed alone, made the preponderance of the support payments required of him. It is therefore not the case that "the staff member has not furnished [INT] with evidence establishing that the required payments were made . . . in part." Applying this language precisely as written, INT was not empowered by the 1998 Bank Policy to hold the proceeding it did and to direct that there be reductions from the Applicant's salary in the amount of his Housing Loan payments and payment of that amount in turn to Mrs. E as part of her support payments. If the Bank wishes to provide in the future for INT jurisdiction in these circumstances – i.e., where there is a dispute over only part of the support due – it would be well advised to clarify and revise the wording of the 1998 Bank Policy in this respect.

30. More pertinently, the focus of the parties' arguments before the Tribunal has been whether the Applicant's monthly repayments of the 1992 World Bank Housing Loan may be credited toward his court-ordered support obligations because they fall within the language of the Divorce Decree, which reads in relevant part:

> At this time, [the Applicant] pays the mortgage on the [Virginia] property by automatic withdrawal from his account. To the extent that any payments for said obligation are withdrawn from [the Applicant's] account on December 20, 2001 or thereafter, [the Applicant] shall be and hereby is entitled to a dollar for dollar credit for such withdrawal against his spousal support obligation.

31. The Applicant contends that repayments of the Housing Loan were obviously intended by the Virginia judge to be included in the "mortgage" payments that he was entitled to credit against his support payments, particularly because the exclusive and obvious purpose of that loan was to assist him in the purchase of his house. The Respondent, on the other hand, contends that the Applicant's payments toward the 1992 promissory note are not "mortgage" payments, because the loan was not secured by the property itself and that such an unsecured loan cannot be regarded as a mortgage.

32. As noted above, the 1998 Bank Policy empowers INT to order salary deductions and corresponding support payments "if the documentation evidences the clear legal obligation of the staff member to make monthly payments of a readily ascertainable amount." The precise language used by the Bank is no doubt intended to reflect the principle, discussed above, that it is beyond the powers of the Bank to interpret and implement unclear language in the decrees of national courts or to establish amounts that are not readily ascertainable. Given this concern to avoid actions in excess of Bank powers, the Bank and its internal agencies such as INT should, when called upon to examine the judgments of national courts, refrain from resolving plausible conflicting interpretive claims.

33. After reaching its conclusion in the proceeding against the Applicant, INT wrote to the Manager, HRSSC: "[The Applicant's] submission confirms that he has repeatedly failed to provide spousal and child support in the full amount due on the first and fifteenth days of each month. The court order evidences a clear legal obligation for [the Applicant] to make payments of a readily ascertainable amount." This language was obviously designed to mirror that of the 1998 Bank Policy.

34. The Tribunal concludes, however, that this decision on the part of INT, as well as the subsequent parallel decisions of the Manager, HRSSC, and the VPHR, were not well-founded under the 1998 Bank Policy and

exceeded the powers of the Bank. The Tribunal finds that the conflicting interpretations of the Divorce Decree, presented to INT by the Applicant and by his former spouse concerning the crediting of "mortgage" payments made by the Applicant, raised a genuine and reasonable doubt as to the meaning of that word within the context of the Decree.

35. Although the Applicant relies in part upon the transcript of the divorce proceedings before the state court judge to buttress his contention that the judge meant to credit him for the payments he made toward his 1992 Housing Loan, the Tribunal concludes that such reliance is unnecessary – and that it would in any event be questionable, in light of the fact that this transcript was not presented by the Applicant to INT in a timely fashion. The texts of the Divorce Decree and of the documents that were in fact presented to INT are sufficient in the circumstances of this case to warrant the conclusion that the Decree contained significant ambiguities that are beyond the power of the Bank to resolve.

36. Thus, the Decree notes that the Applicant "pays the mortgage on the [Virginia] property by automatic withdrawal from his account" and that he is entitled to a credit for such withdrawals against his spousal-support obligation. Although that language arguably refers only to the mortgage payments made to the mortgagee Credit Union through checking-account withdrawals, it might well also embrace the Housing Loan repayments made by the Applicant through automatic and regular deductions from his Bank salary. Moreover, the Divorce Decree, in itemizing the respective financial responsibilities of the Applicant and his former spouse, directs that Mrs. E "shall be solely responsible for all mortgages and expenses on said property, and shall indemnify [the Applicant] and hold him harmless from same." Because the credit against the Applicant's monthly support obligations was thus meant to allow him to shift to his former spouse the payments of her debts for the "mortgages and expenses" on the Virginia property, it would be reasonable to conclude that the Virginia court meant to allow for such credits not only for the Applicant's mortgage payments but also for his payment of related expenses, such as the 1992 Housing Loan.

37. The Applicant has further pointed out that the Housing Loan, although technically unsecured by the Virginia real property, has most of the other characteristics of a mortgage loan. Indeed, the promissory note signed in 1992 by the Applicant and co-signed by Mrs. E provides: "In the case of loans for purchase of real property, if at the time of termination [of my employment] I am unable otherwise to repay the entire remaining balance, I undertake to sell (or refinance) said real property or any right, title of [sic] interest which I have therein, and to apply forthwith the proceeds therefrom to the remaining indebtedness to the Bank." This arrangement is very similar in effect to the terms of a secured real estate loan, i.e., a mortgage. So too is the twenty-year term of the Housing Loan.

38. The Respondent emphasizes that INT, during the course of the proceeding between the Applicant and his former spouse, sought an opinion from the then Benefits Manager, HRSSC, as to whether the Bank's treatment of its housing loans makes them the equivalent of a mortgage, and that the Benefits Manager gave several reasons why they are not. The very fact that INT made such an inquiry suggests that it regarded the term "mortgage" in the Divorce Decree as not free of doubt. Moreover, even though the Benefits Manager forwarded to INT his analysis as based upon Bank documents and practices, the precise question before INT was rather how that term was intended by the divorce court in Virginia. While the Bank's practices and the common understanding of the term "mortgage" are relevant to this inquiry, they are not dispositive.

39. That the Respondent has lost sight of this basic fact – and of the significant limitations upon its powers – is demonstrated by its seriously mistaken assertion in its pleadings: "[E]ven if the court meant to interpret the IBRD housing loan as a mortgage, the court would quite simply have been wrong. As discussed earlier, IBRD housing loans are *not* mortgages." (Emphasis in original.) As should be inferred from what the Tribunal has already stated above, it is not for the Bank to instruct the courts of the state of Virginia as to the correct meaning of terms in the decrees of those courts. The issue here was whether the court intended to allow the Applicant to reduce his support obligation by the periodic payments made by him in connection with his World Bank Housing Loan. That was a judgment for that court to make, whether its terminology was artful or not, and it is altogether beyond the power of the Bank to declare that the national court would be "quite simply" wrong in the interpretation of its own language.

40. In sum, the Tribunal concludes that INT and the Manager, HRSSC, erred when they concluded that the Decree was "clear" and that the credit against the Applicant's spousal support payments properly to be given for his "mortgage" payments was "readily ascertainable" – and was limited to the formal mortgage payments directed to the Credit Union. This error rendered these disputed decisions beyond the limited power of INT in contravention of the 1998 Bank Policy.

41. The Tribunal emphasizes that even if, for the sake of argument, the Bank's interpretation of the disputed term were thought more persuasive than that of the Applicant, the issue here is not one of relative persuasiveness. Rather, it is the question whether the word "mortgage" as used in the Divorce Decree permits of two reasonable meanings, in which case the Bank is to refrain from attempting a definitive interpretation and is rather to leave the matter to the Virginia court to resolve. It therefore does not follow from the Tribunal's judgment that the claim of the Applicant's former spouse of entitlement to a greater support payment is foreclosed. It simply means that the burden lies upon Mrs. E, should she wish to vindicate her position, to turn to the Virginia courts.

Due Process in the INT Proceedings

42. The Applicant challenges the procedure that was utilized by the Bank in ascertaining his liability for support payments under his Divorce Decree. His principal contentions are that INT was not properly authorized by Bank policies to investigate his case, that INT did not properly follow the 1998 Bank Policy, that its procedures did not accord with those set forth in Staff Rule 8.01 relating to discipline for the misconduct of staff members, and that other protections of due process were not extended to him. The Respondent, to the contrary, contends that the procedure utilized by INT was consistent with the 1998 Bank Policy, with the applicable staff rules, and with the requirements of due process.

43. Although the Applicant has succeeded in his application with respect to the merits of the case, the Tribunal finds that his claims relating to defective procedures are still properly before it for consideration. For one thing, these alleged defects may have impaired his abilities to present his case and may thus have caused at least intangible injury for which compensation may be appropriate. For another, these alleged defects arguably manifest serious problems of administration that should be addressed by the Bank.

44. At the threshold, the Applicant contends that INT was the wrong agency altogether, under the Bank's applicable rules, to investigate the claim of his former spouse regarding liability for support payments, since such authority was given by the 1998 Bank Policy to the OPE, which was succeeded by the EBC in a 2001 reorganization. The Applicant asserts that it is the EBC – which is formally a part of the Bank's so-called Conflict Resolution System, and which has been given responsibility for ensuring staff awareness of the Bank's ethical standards – that was tasked with enforcing family support obligations. He further points to the fact that the EBC website on the Bank's intranet states:

> Where a final court order requiring a staff member to pay spousal or child support is sent to the WBG, the Ethics Office will advise the staff member to comply with this personal legal obligation. If the staff member does not show evidence within 30 calendar days that the payments have been made, the WBG will initiate deductions from the staff member's salary and direct these amounts in accordance with the Court Order.

45. The Applicant's contention raises several issues. Did the Bank have the discretion to give to INT (as distinguished from EBC) the authority to investigate claims and enforce Bank rules regarding family support orders? Did the Bank clearly assign this authority to INT? Did the Bank provide clear notice to its staff members of this assignment of authority to INT?

46. There is no doubt that the Bank has the discretion, when deciding how best to implement and enforce its rules for the conduct of staff members, to choose one or another means of internal administration. As the Tribunal has recently stated: "[I]t is 'not within the competence of the Tribunal to consider which alternative

would have been best or more effective to attain the desired objectives of the reform.'" *Elder*, Decision No. 306 [2003], para. 17. The issue "is whether there was a managerial determination 'in the interests of efficient administration.'" *Martin del Campo*, Decision No. 292 [2003], para. 54.

47. The Respondent contends that the authority to implement its family support policies (which the Applicant concedes are in themselves reasonable) was given to INT – upon its formation in 2001 – because of its general authority to investigate charges of staff misconduct and the availability of INT staff skilled and experienced in the conduct of factual investigations. The Tribunal concludes that this is an altogether reasonable justification and also comports with "the interests of efficient administration," so that there has been no abuse of the Bank's discretion. EBC, which the Applicant appears to contend is the proper organ within the Bank to conduct such investigations of claimed support delinquencies, is given the separate responsibility for advising and educating staff members concerning such matters. This division of authority between EBC and INT does not appear to the Tribunal to be unreasonable or arbitrary or otherwise an abuse of discretion.

48. The Tribunal also concludes that the Bank has taken the proper steps to "task" INT with the investigatory authority exercised in this case. As is set forth in the Terms of Reference for INT: "The Bank Group has charged INT with the responsibility for the investigation of fraud and corruption in Bank Group operations. The Bank Group has also charged INT with the responsibility for investigating allegations of misconduct against Bank Group staff." There remains a question, however, as to whether the different functions of INT and EBC have been clearly and adequately communicated to the staff. This matter will be explored below.

49. The Applicant also invokes a 1995 amendment to the SRP to support his claims relating to defective procedure. That SRP amendment anticipated the 1998 Bank Policy, which applies to active staff members, by enforcing family support obligations of retired staff members through a procedure much like that being considered here. The 1995 SRP amendment provides, in part:

> If the Bank is requested by a person other than the participant or retired participant to give effect to a final decree of a court ordering support payment, it will notify the participant or retired participant. Where the Bank is in doubt about direction to pay a decree, it will retain payments pending its resolution by the action of the principals, the retained sum to be paid without interest when the doubt is resolved.

A memorandum, intended by the Bank for use by counsel retained by disputing parties, characterized the SRP procedures as follows:

> The Bank will not interpret agreements between spouses or former spouses, directions to pay or decrees of courts in cases of ambiguity or resolve questions where there is a *bona fide* dispute about the efficacy, finality or meaning of a decree. In these cases, the Bank will retain the amount disputed pending the resolution of outstanding questions by the parties themselves.

50. Although the Applicant invokes these 1995 SRP provisions, it is clear that they do not apply to his circumstances. They are meant to be utilized when there are claims directed against assets of retired staff members under the SRP, rather than against salary payments due to active staff members. The Applicant fails to make clear why he believes the SRP provisions to be pertinent to his case.

51. The Tribunal, however, notes that the differences between the pertinent terms of the SRP and the 1998 Bank Policy are not clearly warranted, and can indeed contribute to confusion on the part of staff members, if not indeed on the part of agencies within the Bank. The 1998 Bank Policy, for example, provides that if there is no "clear legal obligation" to pay a "readily ascertainable amount" – i.e., if there is doubt on the part of INT – the staff member is entitled to continued payment of his salary. This contrasts with the SRP instruction that in instances of doubt, the Bank shall "retain" the amount in dispute for later payment when the doubt is resolved. Moreover, the Bank has stated – in the memorandum prepared for private counsel dealing with support claims against pension funds – that the Bank will not interpret support agreements or decrees if there is a "*bona fide*

dispute" between the parties about their meaning; whereas the comparable issue under the 1998 Bank Policy is whether there is a "clear legal obligation." These are somewhat different standards, one turning upon the subjective views of the parties and the other turning upon the assessment of INT. There is no apparent reason, or any invoked by the Respondent, for these differences in treatment between active and retired staff members, or between the 1998 Bank Policy and the SRP.

52. A particularly persuasive challenge with regard to the procedure used by INT concerns its failure to comply with the procedure set forth in Staff Rule 8.01 for "disciplinary proceedings" in connection with charges of "misconduct" on the part of a staff member. Paragraph 2.01(g) of Staff Rule 8.01 defines "misconduct" to include "[f]ailure to meet personal legal obligations as required by Bank Group policies, including but not limited to payment of court-ordered spousal and child support." Although the latter language did not take effect until January 1, 2004, i.e., until after the material facts of the instant case, there appears to be no dispute that the failure to make family support payments was regarded by the Bank as a species of misconduct even before then.

53. Paragraph 4 of Staff Rule 8.01 sets forth in careful detail a process for investigation, decision and imposition of disciplinary measures by INT in connection with charges of misconduct. Under Staff Rule 8.01, INT first conducts a preliminary inquiry to determine whether there is sufficient basis to merit an investigation. If there is to be a more thorough investigation, the staff member accused of misconduct is promptly notified of the charge and informed of his rights and obligations; he has a right to respond either orally or in writing; at any interview of him by INT, the accused is entitled to the assistance of another staff member; after INT conducts its investigation of the parties and others and prepares a report, the staff member is entitled promptly to see it and to comment on its findings; the comments of the accused are forwarded along with the INT report to the VPHR for a decision; and the staff member will be informed of any disciplinary measures to be imposed, the reasons therefor, and the right of appeal. It is obvious that INT did not utilize these "8.01 procedures," and the Respondent asserts that there was no need to.

54. The Applicant claims that, because his alleged failure to make support payments was treated as a form of misconduct and was investigated by INT, he should have been accorded the procedural protections provided under Staff Rule 8.01, and that the failure to do so justifies overturning the recommendation of INT and the resulting decision of the Manager, HRSSC. The Respondent contends that there is no bar to its adopting a different and less elaborate procedure for addressing the matter of family support claims, that the procedure utilized was consistent with the requirements of due process, and that in any event Staff Rule 8.01 was inapplicable here because there was no claim of serious misconduct on the part of the Applicant and no imposition of disciplinary measures.

55. Just as it is within the discretion of the Bank to assign the enforcement of its policies to one or another suitable entity within the institution, that entity has discretion to utilize suitable procedures when making findings, conclusions and recommendations. The Tribunal finds that there was no abuse of discretion in giving to INT, outside of the framework of Staff Rule 8.01 and with less elaborate procedures, the power to investigate and make recommendations concerning the alleged failures of a staff member in making family support payments pursuant to a divorce decree.

56. Nevertheless, the procedures formulated under the 1998 Bank Policy must accord with the fundamentals of due process of law, and the distinctions between them and the procedures under Staff Rule 8.01 must be transparent. The Tribunal concludes that these requirements have not been fully satisfied.

57. The Respondent contends that the streamlined procedure used by INT pursuant to the 1998 Bank Policy was fully consistent with due process, because the Applicant was provided with his former spouse's lengthy letter containing complaints against him, and the Divorce Decree upon which she was relying; and he was given the opportunity, of which he availed himself, to respond in writing. Such notice of the claims and an opportunity to respond in writing are of course central elements of due process of law. But they are not necessarily the only such elements.

58. The Tribunal is concerned about the absence of a number of important protections for the Applicant in determining his liability for support payments. He was not clearly informed that the procedural machinery and protections of Staff Rule 8.01 were not to be applied to his case, despite the facts that his alleged failures fell technically within the definition of "misconduct" and that his case was to be investigated by INT. He was given no opportunity to see the final report, or a draft of it, before it was presented to the Manager, HRSSC, so that he might make pertinent oral or written comments or corrections. (The INT report indicates that a copy was in fact sent to the Applicant, but his denial that he received it for some two weeks is not challenged by the Respondent and in any event appears credible.) He was neither promptly informed of the fact that the completed INT report had been transmitted to the Manager, HRSSC, nor promptly provided with a copy of that report at that time. The brief notification given to him by the Manager, HRSSC, by e-mail – although it stated the Manager's conclusions – contained no underlying analysis or explanation whatever regarding the disputed issues that had previously been addressed by the Applicant and decided by INT.

59. In the aggregate, these failings in the INT procedure may unfairly disadvantage a staff member in the presentation of his defensive case against the claims of a divorced spouse, with serious financial consequences.

60. There is also a serious concern relating to due process of law when the procedure actually used by INT under the 1998 Bank Policy is not explicitly differentiated to an affected staff member from the procedures that apply under Staff Rule 8.01 for the investigation of staff misconduct. Given the fact that "[f]ailure to meet personal legal obligations as required by Bank Group policies, including but not limited to payment of court-ordered spousal and child support" is expressly treated as within the definition of "misconduct" under Staff Rule 8.01, and given the fact that misconduct charges are investigated by INT, it is reasonable for a staff member such as the Applicant to believe, when confronted with an INT investigation, that it will comply with the terms of that Staff Rule, at least absent a clear disclaimer. The Tribunal is concerned that the typical staff member to whom the 1998 Bank Policy is being applied by INT will not be alerted to the fact that it is not the intention of the Bank to afford the procedural protections of Staff Rule 8.01.

61. This lack of transparency of the applicable procedures constitutes a failure of due process. The Tribunal has referred in previous cases to "[t]he need for a guarantee of procedural fairness and transparency in the proceedings and decision-making arrangements" of the Bank. (*A*, Decision No. 182 [1997], para. 14; *see also Shenouda*, Decision No. 177 [1997], para. 37.)

62. Another troubling lack of transparency is exemplified by the Respondent's denial that the Applicant's supposed delinquency in support payments in this case even fell within the definition of staff "misconduct" under Staff Rule 8.01. The Respondent claims that there are two sorts of failures in complying with support orders: one, such as that with which the Applicant was charged, is not very serious, and can be handled under the less elaborate procedures of the 1998 Bank Policy, while Staff Rule 8.01 (in the words of the Respondent's answer) is meant to apply "only in egregious cases and only after the 1998 policy has been applied." The Respondent reinforces this analysis by contending that although that Staff Rule contemplates the imposition of "disciplinary measures" (listed at length in the Staff Rule), the salary deduction here was not such a measure and so did not have to be preceded by a full "8.01 investigation."

63. No Bank documents, accessible to staff members or otherwise, make a distinction between two sorts of delinquencies in support payments, with different attendant procedures. As noted above, Staff Rule 8.01 defines "misconduct" to include the failure to pay court-ordered spousal and child support, and gives investigatory authority to INT, with full procedural guarantees. Nowhere in the rule is there a restriction to "egregious" cases. Nor is there any restriction whatever in that Staff Rule, or in the definition of "misconduct," which limits it to cases in which the procedures in the 1998 Bank Policy have first been exhausted.

64. Nor can a reasonable staff member be expected to appreciate that an involuntary deduction from his salary, and a diversion to his former spouse, is not a "disciplinary measure" but merely the enforcement of a pre-existing legal obligation. Among the disciplinary measures set forth in Staff Rule 8.01 are restitution, and forfeiture or reduction in pay. These are arguably, at least to a typical staff member, not different in kind from

the direction given by the Manager, HRSSC, in this case.

65. The confusions and lack of transparency surrounding the treatment of the Applicant in this case are compounded by the misleading information set forth on the intranet websites regularly accessible to staff members of the Bank Group. Most pertinently, on the website of the EBC, there is a statement – set forth in full at paragraph 44 *supra* – that conveys the clearest impression that compliance with support obligations, culminating in deductions from salary, is enforced by "the Ethics Office," a reference that, on the EBC website, can only be read to mean the EBC itself. There is no reference there at all to INT. A staff member concerned about rights, procedures and allocation of responsibilities in matters of family support can only be thoroughly confused, if not positively misled, by the information displayed on the EBC website.

66. The Tribunal emphasizes that there is nothing in the internal law of the Bank, including the decisions of this Tribunal, that would prevent the Bank from giving to INT the sort of authority it appears that the Bank seeks to grant in matters of family support obligations of staff members. But it must do so clearly, consistently and transparently, which is not the case on the record here.

67. The Tribunal thus concludes that the procedure utilized by INT did not afford full due process of law to the Applicant, principally because of a lack of transparency in distinguishing that procedure from the investigatory procedures that normally obtain under Staff Rule 8.01 with respect to charges of misconduct, and because of a failure promptly to provide the Applicant with the INT report either before submitting it to the Manager, HRSSC, or at the same time as that submission and before a final decision was made by the Respondent. Although the Applicant's claim with respect to his support payments has been sustained here on the merits, the Tribunal finds that these failures of due process impeded his presentation and the fair disposition of his case, and warrant compensation. In awarding this compensation, however, the Tribunal is also mindful of the fact that the Applicant declined the Bank's reasonable offer to suspend its re-direction of the disputed payments to Mrs. E while the Applicant sought a clarification of his Divorce Decree from the Virginia court.

Decision

For the above reasons, the Tribunal decides that:

(i) the Respondent shall cease deducting from the Applicant's salary and re-directing to his spouse the semi-monthly amount of $193.40, absent further pertinent action by the Virginia court, and shall reimburse the Applicant for the payments in that amount improperly deducted from his salary commencing August 15, 2003

(ii) the Respondent shall pay the Applicant compensation in the amount of $5,000 net of taxes;

(iii) the Respondent shall pay the Applicant costs in the amount of $1,000; and

(iv) all other pleas are dismissed.

/S/ Bola A. Ajibola
Bola A. Ajibola

President

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

At Washington, DC, November 12, 2004