

Decision No. 361

**G (No. 2),
Applicant**

v.

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

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute and composed of Jan Paulsson, President, Robert A. Gorman and Francisco Orrego Vicuña, Judges. The application was received on 10 May 2006.

2. The Applicant claims that the Bank violated Principles 2.1 and 9.1 of the Principles of Staff Employment by: (i) refusing to reimburse her for legal fees incurred in the course of an investigation by the Department of Institutional Integrity (INT) which exonerated her; and (ii) failing to compensate her adequately for damage to her personal and professional reputation as a result of being falsely accused and investigated.

Relevant Facts

3. In October 2003, INT commenced an investigation of the Applicant, who was a staff member in the Loan Department (LOA). INT notified her that it was investigating allegations that in the course of an assignment in Afghanistan she had:

- (i) placed herself in a conflict of interest by recommending the engagement of a consultant with whom she had "an intimate personal relationship";
- (ii) exceeded her authority by recommending Citibank to the Afghan government in preference to another bank recommended by those who were actually authorized to do so;
- (iii) abused her authority by taking a business trip to Dubai; and
- (iv) misrepresented the purpose of her mission to Dubai.

4. On 22 October 2003, the Applicant was placed on administrative leave with pay for six months, pending the outcome of the investigation. This leave was subsequently extended for an additional three months, until 21 July 2004. The Applicant challenged the decision to place her on administrative leave. In *G*, Decision No. 340 [2005], the Tribunal dismissed that application.

5. INT concluded its investigation in July 2004. Its Final Report was issued on 9 July 2004, vindicating the Applicant with respect to the most serious allegations. (An allegation of excess of authority was deemed apparently founded, but immaterial in effect and at any rate mitigated by the Applicant's good work.)

6. On 20 July 2004, the then Managing Director of the Bank informed the Applicant by letter about his decision, based on INT's Final Report. He stated that "I have determined that you were not in violation of the World Bank Group's Principles of Staff Employment nor Staff Rules. Please consider this case closed." The last paragraph of his letter, however, noted:

Please also be advised that, in reviewing the evidence, I note that you exercised poor judgment in the extent to which you were involved in the selection of, preparation of the contract for, and payment to a Bank-financed consultant with whom you had previously worked at the Bank. I hope that in the future you will exercise a greater sensitivity to the perception of conflicts of interest in such situations.

7. On 22 July 2004, counsel for the Applicant wrote a letter to the then Vice President of Human Resources Services (HRSVP) raising concerns about the last paragraph of the Managing Director's letter, and requesting that the Bank take the following actions to repair the harm allegedly done to the Applicant because of the investigation:

(i) the HRSVP should send a clearance letter to all witnesses interviewed by INT, informing them that the Applicant had been cleared of all allegations of misconduct, and the Bank's Vice President and Controller (Controller) should send a similar letter to all staff in LOA and to certain other staff members;

(ii) the Controller should send a letter of regret to the Applicant;

(iii) strict observance of confidentiality should be maintained by the Bank regarding investigation-related information;

(iv) the Applicant's Division Manager and the Director of LOA should inform the LOA staff that the Applicant had been cleared of any misconduct;

(v) the Bank should pay for the damage to the Applicant's reputation and to her career, and reimburse all of the legal fees she incurred during the investigation;

(vi) the Applicant's Salary Review Increase (SRI) for 2004 should be 5.2%; and

(vii) Human Resources (HR) should transfer the Applicant from the Controller's Vice Presidency to a new position with promotion opportunities.

8. On 19 August 2004, the Chief Counsel, Corporate Administration Unit of the Legal Department, replied as follows:

(i) the Managing Director would meet with the Applicant and explain the content of his letter;

(ii) management had been working with the Applicant on the clearance letter, but neither the Applicant nor her counsel could dictate the exact content of the letter;

(iii) the documents relating to the investigation would not be made part of the Applicant's personnel file, and while the Bank would keep a copy of these documents in its files, their disclosure would be strictly dictated by the Bank's confidentiality rules;

(iv) in an LOA division meeting, management had already informed staff that the Applicant had been cleared of the allegations of misconduct;

(v) the Bank would not satisfy the Applicant's request for legal fees because it is not the Bank's practice to reimburse such fees when incurred by staff in the course of an investigation; and

(vi) the Applicant's SRI, promotion and reassignment are internal HR matters governed by HR policies and would be reviewed internally.

9. On 25 August 2004, the Applicant met with the Managing Director. The following day, the Applicant sent an e-mail to the Managing Director's Assistant, seeking help with the following: (i) providing notice to witnesses; (ii) review of the Applicant's SRI; (iii) obtaining a new letter from the Managing Director deleting the last paragraph of the 20 July 2004 letter; (iv) reassignment and promotion; (v) obtaining compensation for damage to her personal and professional reputation; (vi) obtaining legal fees and costs; (vii) expediting the harassment case filed by the Applicant; and (viii) obtaining a letter of regret from the Controller.

10. On 1 September 2004, the Assistant sent an e-mail to the Applicant stating that the Managing Director had decided that he would retain the last paragraph as written in his letter of 20 July, that the Bank would not pay any damages to the Applicant, and that the Managing Director would not ask the Controller to send a letter of regret to the Applicant.

11. On 17 November 2004, the Applicant filed her Statement of Appeal with the Appeals Committee, complaining about the following:

(i) the Managing Director's letter of 20 July 2004, wherein he "reprimanded" her for exercising "poor judgment";

(ii) the INT investigation, which allegedly violated her due process rights;

(iii) the letter of 19 August 2004 from the Bank's Chief Counsel, wherein he refused to compensate her for legal fees which she had incurred during the investigation, or to modify a letter to witnesses informing them that she had been exonerated; and

(iv) the 1 September 2004 decision of the Managing Director to refuse her compensation for the emotional distress and damage to her professional and personal reputation allegedly caused by the investigation.

12. Following a jurisdictional challenge by the Bank, the Appeals Committee concluded on 28 March 2005 that while all four claims were timely, it had jurisdiction over only two claims, namely those with respect to the Managing Director's decision of 20 July 2004, and to the due process violations allegedly committed during the investigation.

13. After a full hearing, the Appeals Committee issued its Report on 17 November 2005, concluding that the Managing Director's admonishment of the Applicant for exercising "poor judgment" (presented in his letter of 20 July 2004) was arbitrary. The Appeals Committee recommended that:

(i) the Managing Director's letter of 20 July 2004 should be withdrawn and reissued without the last paragraph;

(ii) the letter that the Bank would send to the witnesses should omit the disputed last paragraph in the Managing Director's letter of 20 July 2004;

(iii) the Applicant should be reassigned to another Regular position, at the same grade and with upward potential;

(iv) the Applicant should be reimbursed for certain medical expenses;

(v) the Applicant should be reimbursed \$5,000 for her legal expenses in accordance with the Appeals Committee's policy, and should be further reimbursed for the remaining balance of attorney's fees incurred in the pursuit of her current Appeal, upon presentation of such legal fees; and

(vi) the Applicant should receive \$10,000 in additional compensation for intangible damages.

14. On 10 January 2006, the Vice President, Financial Sector, informed the Applicant by letter that he agreed with all of the recommendations of the Appeals Committee. The Bank subsequently implemented these recommendations.

15. The present application was filed on 10 May 2006, challenging two of the decisions of which the Applicant had been notified by the 10 January 2006 letter, relating in particular to the Bank's failure to compensate the Applicant for legal fees and costs, and to the amount of compensation awarded to the Applicant for the damage caused to her professional and personal reputation, and for her emotional suffering. As relief, the Applicant

demands appropriate compensation and costs. The Applicant invokes Principles 2.1 and 9.1 of the Principles of Staff Employment, which read in relevant part as follows:

Principle 2.1: The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members.

Principle 9.1: Staff members have the right to fair treatment in matters relating to their employment.

16. On 2 June 2006, the Bank raised a jurisdictional objection contending mainly that the application involved no claim relating to an administrative decision adversely affecting the Applicant's contract or terms of appointment. In *G (No. 2)*, Decision No. 355 [2006], the Tribunal dismissed the Bank's jurisdictional objection and awarded the Applicant costs in the amount of some \$10,000.

The Applicant's Claims

17. The Applicant argues that the INT investigation made it necessary for her to retain legal counsel to defend herself against serious charges that were false. Her legal fees of over \$30,000 amounted to nearly half of her annual salary. The burden of those fees unfairly changed the conditions of her employment. The Bank's refusal to reimburse her violated the Bank's principles of fairness. She argues that there is no basis for refusing to compensate staff members for the heavy costs of defending themselves against false charges relating to their employment with the Bank. There is no written policy to the effect that the Bank will not reimburse innocent staff for the costs of counsel. A policy of not paying attorney's fees to innocent staff members in the context of misconduct investigations would in any event be unfair.

18. INT investigations are, in the Applicant's view, highly formal and legalistic, and generally conducted by attorneys. Faced by the experienced lawyers of INT, the gravity of the charges, and the highly legalized and technical nature of the INT investigation, the Applicant had no choice but to retain legal counsel. It would have been reckless for her not to seek legal advice. For the Bank to require innocent staff to carry the great burden of legal costs without being reimbursed if they are exonerated violates all principles of fairness.

19. As for her intangible prejudice, the Applicant argues that she should be compensated for emotional damage. Being falsely accused of misconduct and having to abide nine months of investigation while placed on administrative leave, the Applicant suffered damage to her physical and mental health, leading to depression and a sleeping disorder. Even though she was exonerated, the Applicant now feels uncomfortable in the Bank because she is concerned about other staff members' knowledge about the investigation and the unfounded accusations made against her. Because of the anxiety the Applicant now suffers at work, she has to take medication to function effectively in the workplace. These disorders are the direct result of the INT investigation, and the Applicant should be compensated accordingly, as in *Sjamsubahri*, Decision No. 145 [1995], where the Tribunal awarded compensation for the "distress" to which the applicant had "undoubtedly been exposed" during an investigation.

20. The Applicant also contends that the Bank should compensate her for reputational damage. The Bank accused the Applicant, as she interprets it, of having an improper sexual relationship, and it conducted a wide investigation in which 26 witnesses were interviewed, including people in Afghanistan. For a person of her religion, the accusation of an improper sexual relationship was devastating to her personally, as well as to her family, friends and colleagues. The investigation has damaged the Applicant's reputation at the Bank, in Afghanistan and potentially in her home country. The Applicant has already suffered actual harm to her reputation because of the three job opportunities she missed as a direct result of the INT investigation. She believes that the Tribunal should award her compensation for the damage to her reputation per the Tribunal's jurisprudence. She cites *Koudogbo*, Decision No. 246 [2001], where the Tribunal awarded compensation to an applicant for harm to her reputation and future job prospects.

21. Finally, the Applicant contends that the Bank should compensate her for serious breaches of confidentiality during the INT investigation. The Bank assured the Applicant that the HRSVP would send a clearance letter to

all witnesses without mentioning the specific allegations against her. Yet his letter included a listing of allegations. This was a serious breach of the Bank's agreement with her, and was moreover inconsistent with the Bank's duty to protect confidential information. Nor did the Applicant's managers comply with other confidentiality requirements. For example, one of the Applicant's managers discussed the case with the then Chair of the Staff Association while the investigation was pending. In addition, while the Applicant was placed on administrative leave, her nameplate was removed from her office; the Applicant's confidential mail at the office was opened before it was given to her; and the INT Report included an unredacted exhibit containing the Applicant's personal bank account number and information relating to her credit cards. These actions show that the Bank disregarded the Applicant's right to privacy and confidentiality. Accordingly, the Applicant believes that the Tribunal should award compensation to her.

The Tribunal's Analysis and Findings

22. The present judgment addresses the Applicant's claims on the merits. In so doing, the Tribunal dismisses the Bank's contention that her claims are collaterally estopped, or barred by the *res judicata* in *G*, Decision No. 340 [2005]. That prior judgment dealt solely with the issue of administrative leave, and explicitly recorded that the Tribunal was not making any "qualitative assessment" of the full INT investigation. The Applicant is therefore not barred from claiming that the circumstances of the investigation were such as to justify her present claims.

23. The substantive issues are whether the Bank violated Principles 2.1 and 9.1 of the Principles of Staff Employment by: (i) refusing to reimburse the Applicant for the attorney's fees that she incurred due to an INT investigation in which she was exonerated; and (ii) failing to compensate the Applicant for the alleged damage to her personal and professional reputation as a result of an allegedly false accusation and the subsequent investigation.

24. Staff Rule 8.01, which governs disciplinary proceedings at the Bank, does not explicitly grant a staff member under investigation a right to an attorney, or to recoupment of attorney's fees. Paragraph 4.10 of Staff Rule 8.01 states as follows:

Assistance During an Investigation. A staff member may be accompanied at investigation interviews by another staff member who is reasonably available and who is not connected to the matter under investigation. The presence of such a person will not relieve a staff member of the obligation to respond personally in the matter under investigation. Members of the Legal Departments of the Bank Group may not represent, advise or otherwise assist a staff member in connection with investigations into suspected misconduct.

25. Whether or not paragraph 4.10 is interpreted so as to allow a staff member under investigation to seek assistance from an attorney outside the Bank, it places no legal obligation on the Bank to provide that staff member with an attorney or to reimburse the cost of such help in the event the staff member decides to retain one.

26. The question then is whether as part of a staff member's due process rights the Applicant has a right to an attorney or is entitled to attorney's fees in a disciplinary proceeding. The Tribunal in *Rendall-Speranza*, Decision No. 197 [1998], para. 57, explained the nature of a disciplinary proceeding in the Bank as follows:

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

proceedings.

27. The Applicant has failed to provide any precedent either from this Tribunal or from any other international tribunal that has recognized the claimed rights as part of those available to a staff member in disciplinary proceedings.

28. In *Islam*, Decision No. 280 [2002], para. 20, the Tribunal observed that its Statute does not require that attorneys file applications before the Tribunal. In the words of the Tribunal there:

[T]he Applicant's assertion that local lawyers in Bangladesh could not help him because the Bank's Staff Rules and legal information are not commonly available to Bangladeshi lawyers is not tenable since, as the Tribunal has found in the past, the Tribunal's Statute does not require applicants to engage attorneys to file their applications.

29. In *Yousufzi*, Decision No. 151 [1996], para. 29, the Tribunal had stated that

[i]n the case of the Applicant her claimed insolvency and financial inability to engage an attorney in due time do not constitute exceptional circumstances under Article II of the Statute. In *Kavoukas and Parham* (Decision No. 3 [1981]) the Tribunal did not consider inability to retain counsel an exceptional circumstance which excused the Applicant who had not filed within the ninety days as required by the Statute. The Statute does not require applicants to engage attorneys to file their applications nor does it impose any charges for filing applications.

30. The United Nations Administrative Tribunal (UNAT) has denied any general right to attorney's fees for the proceedings before it. In *Powell*, UNAT, Judgment No. 237 [1979], the UNAT stated, at para. XXIX, that

[a]s regards costs, the Tribunal has declared in its statement of policy contained in document A/CN.5/R.2 dated 18 December 1950 that, in view of the simplicity of its proceedings, the Tribunal will not, as a general rule, grant costs to Applicants whose claims have been sustained by the Tribunal. Nor does the Tribunal order costs against the Applicant in a case where he fails. In exceptional cases, the Tribunal may, however, grant costs if they are demonstrated to have been unavoidable, if they are reasonable in amount, and if they exceed the normal expenses of litigation before the Tribunal.

31. At the U.N., the Panel of Counsel (composed of serving and retired staff members) assists staff members in disciplinary proceedings, but the *Powell* judgment makes clear that a staff member does not have an automatic right to attorney's fees in the event he or she engages an outside attorney, even if the staff member is ultimately successful in his or her claims.

32. The Tribunal concludes that when the Applicant sought legal assistance and retained her own counsel, she had no right to charge the Bank for legal assistance. The Bank's refusal to reimburse the Applicant for her attorney's fees could not be considered a violation of any right guaranteed under the Principles of Staff Employment, the Staff Rules, or the due process rights of the Applicant.

33. The Tribunal finds that attorney's fees should not ordinarily be awarded when INT pursues a good faith investigation into allegations of misconduct, even though ultimately no misconduct is found. The Tribunal accepts the Bank's reasoning, as it applies to this case, when it submits that:

INT investigation is not litigation, and it was neither necessary nor required for Applicant to hire an attorney during the INT investigation. INT must be free to pursue good faith investigations into allegations of misconduct without the concern for the possibility of incurring an obligation to pay costly attorney's fees if, ultimately, no misconduct is found.

An award of attorney's fees to the Applicant would essentially penalize Respondent for fully and fairly investigating allegations of misconduct against Applicant. Since there was absence of malice and presence

of probable cause for the INT investigation, Respondent has not infringed Applicant's right to fair treatment under Principles 2.1 and 9.1.

34. On the other hand, cases may arise where the Tribunal would award attorney's fees if the circumstances were to show that an investigation was initiated out of malice or if there is "evidence of harassment or other abuse of investigatory initiatives," as per the *obiter dictum* of the Tribunal's judgment in G, Decision No. 340 [2005], para. 78. The Applicant has not provided any convincing evidence that suggests that there was any such malice on the part of INT, that the investigation was commenced simply to harass her, or that there was an abuse of investigatory initiatives.

35. To the contrary, the Tribunal recalls its findings and observations in this respect in G:

(i) On their face, the circumstances of the Applicant's case "were troubling, and required investigation"; (para. 66)

(ii) the circumstances of the Applicant's case were such that the INT "investigators would have exposed themselves to justified criticism if they had not conducted a thorough investigation"; (para. 66)

(iii) "[t]he Applicant put herself in this position by mixing personal and professional relations in a manner which seems to reflect a clear lapse of judgment on the part of a seasoned staff member, who should be more than familiar with the Bank's longstanding and firm policy to avoid promoting individual suppliers to its clients"; (para. 66)

(iv) the Bank did not abuse its discretion by placing the Applicant on paid administrative leave; (para. 69)

(v) "[t]he 22-page, single-spaced Final Report of INT makes it abundantly clear that INT did not take the matter forward on the basis of hearsay or speculation; the documentary evidence alone made it inconceivable that the case would simply have been dropped"; (para. 74)

(vi) "[a]lthough the Tribunal is not asked now to make any qualitative assessment of the Report and its preparation, it is appropriate to observe that it is consistent with the record in its totality, which confirms the Applicant's failure to prove improper motivation at the time when she was placed on administrative leave"; (para. 75)

(vii) "[t]he facts upon which the preliminary investigation was launched were objective. They were of the Applicant's own doing. They may have been susceptible of innocent explanation, but that required that they be explored, even at the cost of some inconvenience and anxiety. This does not justify a claim for compensation, unless investigations cross the line into harassment. The Tribunal finds no evidence of harassment or other abuse of investigatory initiatives"; (para. 78) and

(viii) "the Tribunal has little difficulty in dismissing the Applicant's contention that the decision to place her on administrative leave has irreparably damaged her career. This appears a matter of conjecture on her part. ... The Final Report of INT leaves the Applicant's reputation for integrity intact. The Bank's reaction to that Final Report left her free to resume her career with exactly the same rights and obligations as any other staff member." (para. 83)

36. In considering the Applicant's claim of unfairness, the Tribunal has taken into account the way the Bank has treated the Applicant since the conclusion of the INT investigation, and the number of specific demands made by the Applicant that the Bank has already met.

First, the Applicant demanded that the HRSVP send a clearance letter to all witnesses interviewed by INT informing them that the Applicant had been cleared of all allegations of misconduct. The Bank agreed and met this demand.

Second, the Applicant demanded that her Division Manager and the Director of LOA inform the LOA staff that she had been cleared of any misconduct. In response, the Bank observed that management had already informed the staff at an LOA Division meeting that the Applicant had been cleared of the allegations of misconduct.

Third, the Applicant demanded strict observance of confidentiality by the Bank regarding investigation-related information. The Bank assured her in writing that the documents relating to the investigation would not be made part of the Applicant's personnel file, and that while the Bank would keep a copy of these documents in its files, their disclosure would be strictly governed by the Bank's confidentiality rules.

Fourth, the Applicant requested before the Appeals Committee that the Managing Director's letter of 20 July 2004 be withdrawn and reissued without the last paragraph. In response to the recommendation of the Appeals Committee, the Bank agreed and implemented this request.

Fifth, the Applicant requested before the Appeals Committee that she be reassigned to another Regular position, at the same grade and with upward potential. This was also recommended by the Appeals Committee. The Bank agreed and implemented the request.

Sixth, the Applicant requested before the Appeals Committee that she be reimbursed for certain medical expenses. This was likewise recommended by the Appeals Committee. The Bank agreed and implemented this request as well.

Seventh, the Applicant requested compensation for intangible damages before the Appeals Committee. This was also recommended by the Appeals Committee. The Bank agreed and paid \$10,000 to the Applicant.

Finally, the Appeals Committee recommended that the Applicant be "reimbursed \$5,000 for her legal expenses in accordance with the Appeals Committee's policy," and be further reimbursed "for the remaining balance of attorney's fees incurred for the pursuit of this Appeal upon presentation of legal fees." The Bank agreed and implemented this measure.

37. In light of the above, the Tribunal concludes that the Bank's refusal to reimburse the Applicant for the remaining attorney's fees incurred during the INT investigation cannot be considered unfair.

38. The same findings and considerations lead the Tribunal to conclude that no further compensation is warranted for the Applicant's alleged personal and professional reputational damage caused by the INT investigation.

39. Some specific contentions by the Applicant in this context require discussion. The Applicant argues that the HRSVP, in his clearance letter, breached confidentiality by including a list of allegations against the Applicant. The Applicant should have understood that it would have been difficult for the HRSVP to comply with her request that he send a clearance letter to all witnesses informing them that she had been cleared of all allegations of misconduct without identifying the allegations. Moreover, the letter from the HRSVP omitted any sensitive aspect of the allegations. At any rate, the witnesses must have had some understanding of the subject-matter of the investigation since they had been interviewed by INT. Since there is no evidence that any individual witness breached the confidentiality of his or her interview, it is difficult to understand how the mere general listing of the allegations in the HRSVP's letter breached the Bank's confidentiality policy.

40. A complaint by the Applicant regarding the removal of her office nameplate during her administrative leave was, as shown in the record, addressed by Human Resources (HR) and the Office of Ethics and Business Conduct. Similarly, the Office of Ethics and Business Conduct addressed the Applicant's complaint about her personal letters being opened. The Applicant has not claimed that the steps taken by HR and the Office of Ethics and Business Conduct have been inadequate.

41. With respect to the Applicant's complaint about her then manager's discussion of her case with the then

Chair of the Staff Association, the record indicates that INT addressed the matter and concluded plausibly that the discussion was not improper given its circumstances. The Applicant has not shown an abuse of discretion by INT in this regard.

42. Finally, the Tribunal is unpersuaded by the Applicant's claim that she has suffered professional damage, in particular three missed job opportunities, since she has not provided any evidence in support thereof – not even what those three alleged job opportunities were. It therefore appears that the Applicant's complaint is speculative, as indeed a cognate claim was found to be in G, para. 83:

Finally, the Tribunal has little difficulty in dismissing the Applicant's contention that the decision to place her on administrative leave has irreparably damaged her career. This appears a matter of conjecture on her part. This judgment deals with the Applicant's complaint as framed, and thus concerns the validity of the decision to place her on leave in October 2003, and not subsequent events. There is no evidence that any manager held the view that the Applicant, once placed on administrative leave, would no longer be welcome in pursuing her career; the oral evidence before the Appeals Committee was to the contrary. The Final Report of INT leaves the Applicant's reputation for integrity intact. The Bank's reaction to that Final Report left her free to resume her career with exactly the same rights and obligations as any other staff member.

Decision

For the above reasons, the Tribunal dismisses the application.

/S/ Jan Paulsson
Jan Paulsson
President

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

At Washington, DC, 28 March 2007