

## Decision No. 340

**G,  
Applicant**

**v.**

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

1. The World Bank Administrative Tribunal has been seized of an application, received on November 15, 2004, by G against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Elizabeth Evatt (a Vice President of the Tribunal) as President, Jan Paulsson (a Vice President of the Tribunal), Sarah Christie and Florentino P. Feliciano, Judges. The Applicant's request for anonymity was granted on January 24, 2005. The usual exchange of pleadings took place and the case was listed on August 9, 2005.

2. The Applicant is a Finance Analyst, Grade GE, in the Loan Department ("LOA") of the Bank. She joined LOA in 1982 and has been a Finance Analyst there since 1990. On October 21, 2003, she was placed on administrative leave with pay pending the outcome of an investigation by the Bank's Department of Institutional Integrity ("INT"). INT's Final Report, dated July 9, 2004, vindicated the Applicant with respect to the most serious allegations, and concluded that an allegation of excess of authority, although apparently founded, was immaterial in effect and at any rate mitigated by the Applicant's good work. No sanctions were ultimately imposed on the Applicant, but she now seeks redress on the sole ground that the decision to place her on administrative leave was wrongful.

### Summary of Facts

3. The Applicant went on a three-week assignment to Afghanistan in November 2002. While in Afghanistan, she worked closely with officials from the Ministry of Finance and the Central Bank. The Afghan government decided to hire a commercial bank to provide services to its Central Bank, and planned a mission to Dubai for early January 2003 so that government officials could meet with various banks to determine their suitability. These officials invited the Applicant to accompany them on this mission.

4. In early January 2003, the Applicant requested approval from her supervisor at LOA to join the Afghan delegation. The supervisor did approve, but with the caveat that "[the Bank] should not be seen as giving the blessing on any particular bank." The Applicant ultimately did not join the delegation in Dubai because of problems with her visa.

5. The Applicant returned to Afghanistan on January 22, 2003, and worked there until April 1. During this time, the Afghan government received proposals from three commercial banks willing to provide banking services to the Central Bank. The government decided to hire a consultant to evaluate the proposals. Government officials asked the Applicant if she knew of anyone who could perform the work in question. The Applicant suggested Mr. I, a former LOA member who had been the Applicant's mentor when she first joined the Bank.

6. The Afghan government hired Mr. I in March 2003 for a fee of approximately \$2,500. The relevant officials decided to travel to Dubai once again in early April 2003 to meet with the banks under consideration. They invited Mr. I and the Applicant to join them in Dubai. The Applicant joined the meetings in Dubai on April 2-3, 2003, and continued on to Washington on April 4. She did not seek explicit permission from any supervisor at

LOA for this April mission; she subsequently explained that this was unnecessary for two reasons: (i) the supervisor had previously approved her joining the Afghan delegation for the January 2003 meetings in Dubai relating to the same issue; and (ii) the April trip to Dubai would be of minimal cost since she was at any rate scheduled to leave Afghanistan for Washington on April 1, via Dubai, and could thus conveniently extend her stopover in Dubai for two days.

7. After returning to Washington, the Applicant submitted to LOA a withdrawal application for the payment of Mr. I's consulting fees and expenses in the amount of \$1,927.38. A Finance Officer of LOA reviewed the application and approved the payment.

8. On June 4, 2003, Ms. A (Consultant Finance Officer, LOA) and Ms. B (Finance Assistant, LOA), while routinely reviewing payment instructions for a supplier, noticed a payment to Mr. I. Ms. A knew that Mr. I had worked in LOA while employed at the Bank, and had heard from colleagues that Mr. I had a personal relationship with the Applicant. With this in mind, Ms. A asked Ms. B to collect documents relevant to the payment to Mr. I.

9. Ms. A and Ms. B reviewed the documents and discovered the following:

- i) Mr. I's invoice included a receipt for a stay at the InterContinental Hotel in Dubai dated April 3, 2003, this invoice being addressed to "Miss [I]" at the Applicant's home address in Virginia;
- ii) the Applicant was in Dubai on the same dates as Mr. I;
- iii) the Applicant had recommended to the Afghan government that it hire a consultant to review bids from three commercial banks that were seeking to act as the correspondent bank for the Afghan government, an assignment for which Mr. I was ultimately hired; and
- iv) the Applicant had processed the application for payment to Mr. I.

10. Ms. A and Ms. B became suspicious and expressed their concerns to their LOA Division Chief. Together with him, they briefed the LOA Director. Subsequently, Ms. A found that Mr. I had listed the Applicant's Virginia address as his own in the Bank's Retiree Directory. Ms. A communicated this additional information to the Division Chief and the Director.

11. The Applicant had left for her annual leave on June 3, 2003. On the day of her return on June 24, 2003, the LOA Division Chief met with her and sought clarification on the following points:

- i) the circumstances surrounding the award of the consulting contract to Mr. I;
- ii) the extent of the Applicant's involvement in drafting Mr. I's terms of reference;
- iii) the purpose of the Applicant's April 2003 mission to Dubai;
- iv) the apparent difference between the consultancy fees due to Mr. I and the amount signed off as payable by the Applicant; and
- v) the consultations between the Applicant and other LOA staff regarding Mr. I's contract and the Applicant's mission to Dubai.

The Applicant's responses did not dissipate the Division Chief's concern that the Applicant might have committed misconduct.

12. Accordingly, on July 1, 2003, the Division Chief sent an e-mail to the INT Investigations Hotline. Shortly thereafter, INT commenced a preliminary inquiry pursuant to Staff Rule 8.01, paragraph 4.02 (Preliminary Inquiry). A preliminary inquiry is the first step in INT's two-step approach to decision-making regarding possible misconduct: (i) preliminary inquiry; and (ii) investigation. At the preliminary inquiry stage, INT focuses on

whether there is any foundation or merit to the initial suspicions and allegations; if so, it conducts an investigation.

13. On July 3, 2003, the Regional Chief Financial Officer for the South Asia Region requested a meeting with the LOA Director. The Chief Financial Officer, who had just returned from a mission that included Afghanistan, expressed concern to the Director with respect to the fact that Afghan officials had informed her that the Applicant had recommended Citibank as the correspondent bank with whom the government should conduct its business. The LOA Director relayed these concerns to INT.

14. INT concluded its preliminary inquiry sometime in October 2003. It focused on two broad issues: the Applicant's role in the contract award and subsequent payment to Mr. I, and her alleged role in the Afghan government's decision to choose Citibank. The preliminary inquiry was conducted in three main stages:

- (1) INT reviewed the information and documents provided by LOA;
- (2) INT formally interviewed the LOA Division Chief, the LOA Director and the Regional Chief Financial Officer for the South Asia Region; and
- (3) once these two stages established an evidentiary foundation, INT accessed and reviewed the Applicant's archived e-mails to find out if there was any corroborating evidence to support the initial allegations of misconduct.

15. INT did not notify the Applicant about the preliminary inquiry, nor did it interview the Applicant about the allegations during the preliminary inquiry. According to INT, it decided to keep the preliminary inquiry "very discreet" to avoid "premature notifications" to the Applicant as well as "the risk that rumors start to spread."

16. When concluding its preliminary inquiry, INT determined that there was sufficient foundation to merit an investigation based on the following:

- i) documentary evidence which revealed that the Applicant and Mr. I listed the same home address in the Bank's PeopleSoft database; and the address on Mr. I's bill from the InterContinental hotel in Dubai was the same as the Applicant's home address;
- ii) a review of one of the Applicant's e-mails, which suggested that they might have shared a bank account;
- iii) a review of another of the Applicant's e-mails, which revealed that the Applicant had used multiple variations of Mr. I's name as the password for many of her personal financial accounts and other services;
- iv) e-mails sent by the Applicant to Mr. I which suggested a close relationship between the two, and in particular one e-mail in which the Applicant used the terms "My dearest" and "With all my love";
- v) some evidence which supported an inference that the Applicant had presented Mr. I's withdrawal application and related documentation in a manner calculated to conceal his contract from staff members who knew of her relationship with Mr. I;
- vi) in an interview, the Chief Financial Officer had told INT that she had information which suggested that the Applicant had recommended to the Afghan government that it choose Citibank; and
- vii) the LOA Division Chief had told INT in an interview that the Applicant's Dubai mission had not been approved by any managers at LOA.

17. INT met with the Division Chief and the Director of LOA in October 2003 and informed them about the conclusions of its preliminary inquiry. INT did not, however, provide any written report on the preliminary inquiry to them, nor to the Applicant. Considering INT's preliminary inquiry and taking into account the fact that the Applicant had fiduciary responsibilities as a Finance Analyst in LOA, the Division Chief and the Director, after

their meeting with INT, decided to recommend to the Vice President, Human Resources ("HR"), to place the Applicant on administrative leave for the duration of the investigation.

18. On October 15, 2003, INT sent a memorandum to the Applicant notifying her that it was conducting an investigation under Staff Rule 8.01 into the allegations that in the course of her 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 in preference to another bank recommended by those who did have the authority to make that decision;
- iii) abused her authority by taking a business trip to Dubai; and
- iv) misrepresented the purpose of her mission to Dubai.

19. On October 16, 2003, INT interviewed the Applicant. During the interview, which lasted more than three hours, the Applicant gave her explanations with respect to the allegations of misconduct.

20. On October 20, 2003, based on the recommendation of the Division Chief and the Director of LOA, the HR Officer for LOA requested in writing of the Acting Vice President, HR, that the Applicant be placed on administrative leave.

21. On October 21, 2003, the Acting Vice President, HR, approved the administrative leave request. On October 22, 2003, the Applicant received a Notice of Administrative Leave, which in relevant part stated:

This is in reference to your Notice of Alleged Misconduct, dated October 15, 2003, from the Department of Institutional Integrity (INT) concerning the investigation into allegations that you have committed misconduct.

In accordance with paragraph 5.05, Staff Rule 8.01, this is to advise you that you are being placed on Administrative Leave with Pay, with immediate effect pending the outcome of that investigation. The period of Administrative Leave shall remain in effect until the investigation has been completed and management has made a decision, but not for a period exceeding six months.

22. Because of the administrative leave, the Applicant was asked not to come onto Bank premises without authorization, her Bank ID card was taken away, and her access to the Bank's e-mail system was suspended.

23. The Applicant filed a Statement of Appeal on November 20, 2003, challenging the Bank's decisions to: (i) conduct the investigation of alleged misconduct; and (ii) place her on administrative leave. Following a jurisdictional challenge by the Bank, the Appeals Committee decided to review only the issue of administrative leave. On July 21, 2004, the Appeals Committee concluded that the Bank had not abused its discretion in placing the Applicant on administrative leave, and also concluded that the Applicant had not been placed on administrative leave for improper motives.

24. Now the Applicant requests that the Tribunal:

- i) conclude that the decision to place the Applicant on administrative leave was arbitrary and capricious;
- ii) award her compensation calculated at 24 months' net salary; and
- iii) award her costs in the amount of \$36,891.86.

#### **Applicant's Contention No. 1 – The Administrative Leave Decision Was Not Justified**

25. The Applicant argues that the imposition of administrative leave was arbitrary in a number of ways. The

Acting Vice President of HR offered no justification for her decision. Although the Bank has subsequently attempted to justify its decision by citing Staff Rule 8.01, paragraph 5.05, the Staff Rules do not exist in a vacuum; to apply them blindly, without regard to principles of managerial fair play as articulated by this Tribunal and other international administrative tribunals, is unacceptable.

26. Here, the Acting Vice President, HR, simply notified the Applicant that Staff Rule 8.01 permitted her to place the Applicant on administrative leave. She provided no further justification or reasoning. She appeared to give credence to the views of supervisors who had negative attitudes toward the Applicant. It was not until the Appeals Committee hearing that the Bank attempted to offer some, albeit unconvincing, explanations. The failure to offer any explanations other than a form letter suggests that the Respondent gave little thought to the administrative leave decision, which it believed was a "fairly standard situation in this kind of INT investigation." What has been traditionally done, or recognized as standard practice, is not always fair or right.

### **Bank's Answer to Applicant's Contention No. 1**

27. The Bank responds that given (i) the nature of the allegations raised against the Applicant; (ii) her fiduciary role within the Bank; and (iii) INT's finding after a preliminary inquiry that a full investigation was warranted, sufficient grounds existed to place the Applicant on paid administrative leave pending the completion of the full investigation. The Acting Vice President's decision to do so was a proper exercise of managerial discretion. The administrative leave decision was carried out consistently with Bank policy and procedure, and the Applicant was accorded full due process.

28. In her role as a Finance Analyst, the Applicant acts in a fiduciary capacity. The Finance Analyst plays a substantial role in the approval of disbursements to the Bank's borrowers and their contractors and consultants. The Finance Analyst has access to provide first-level approval annually for hundreds of millions of dollars in withdrawal applications. Finance Officers rely heavily on the clearance of the Finance Analyst when they give final approval for payment of a disbursement. Therefore, Finance Officers as well as the LOA management must be able to trust that a Finance Analyst's scrutiny of withdrawal applications is based solely on the merits of the application and not on any external factors.

29. The allegations of misconduct against the Applicant related precisely to her responsibilities as a Finance Analyst. The most serious allegations concerned the Applicant's actions and influence as a Finance Analyst in recommending a particular consultant and then approving payment to him. At the time of the decision to place the Applicant on administrative leave, there was evidence that the Applicant had: (i) recommended to the Afghan government that it hire a consultant to review the bids from commercial banks; (ii) recommended a close personal friend, Mr. I, to the Afghan government on a single-source basis as the consultant that it should hire; (iii) participated in the drafting of Mr. I's terms of reference; (iv) approved payment to Mr. I based on the withdrawal application submitted by the Afghan government; and (v) delayed submitting the withdrawal application for approval by a Finance Officer until Ms. A was not in the office.

30. The Applicant's approval of payment to Mr. I for his airfare raised additional troubling questions, even though the amount of that expense was relatively small. While the Applicant was likely correct that Mr. I should have included a provision to reimburse his airfare, it is not within the authority of a Finance Analyst to correct a contract between the borrower and a consultant without, at a minimum, making inquiry of the task manager, if not the implementing agency. The fact that the Applicant alone approved the payment heightened the Respondent's legitimate concern relating to the potential for conflicts of interest in the approval of payments to a personal friend.

31. The LOA management was also concerned by evidence relating to the Applicant's alleged travel on mission to Dubai without informing her manager, let alone obtaining his authorization, and her alleged recommendation of Citibank to the Afghan government. These additional allegations added weight to the Bank's doubts as to whether the LOA management could trust the Applicant to carry out her fiduciary role in a professional and ethical manner. It should be noted that in her June 24, 2003, meeting with the LOA Division Chief, the Applicant herself confirmed aspects of her conduct which LOA had found troubling.



32. With respect to the LOA management's recommendation to HR that it place the Applicant on administrative leave in view of the Applicant's fiduciary responsibilities, it is the general practice of HR in cases of INT investigations involving a fiduciary issue to place the person whose conduct is being investigated on administrative leave pending the conclusion of the investigation.

33. In sum, the Bank argues, considering the evidence in hand at the time, the Acting Vice President of HR properly placed the Applicant on administrative leave in compliance with Staff Rule 8.01, paragraph 4.07, and in accordance with Bank policy with respect to placement of staff on administrative leave where investigations involve fiduciary issues. The requirements of due process were observed. The administrative leave decision was consistent with HR practice as well as the Bank's policies and procedures for staff members holding fiduciary responsibilities.

### **Applicant's Contention No. 2 – The Recommendation of the LOA Management to Place the Applicant on Administrative Leave Was Improperly Motivated**

34. The Applicant argues that the LOA management was biased against her. The Applicant was an active member of the Staff Association, which both the Division Chief and the Director resented. During the Appeals Committee hearing, the Chair of the Staff Association testified that the LOA managers were critical of Staff Association delegates in LOA such as the Applicant. For example, the Division Chief called her Staff Association colleagues a "bunch of rabble rousers." The Chair also testified that the Division Chief was ill-disposed toward the Applicant and that this influenced his decision to recommend administrative leave. In addition, the LOA Director resented the Applicant for demanding a promotion in connection with her assignment in Afghanistan. This should have been apparent to the INT investigator during the preliminary inquiry when the Director said in an interview that "[the Applicant] 'shot herself in the foot' by making several unreasonable demands."

35. The Division Chief and the Director failed to testify adequately to the Applicant's conscientious, honest and exemplary service over 22 years. During the preliminary inquiry, INT met with the Division Chief on August 5, 2003. He explained to INT that it was outside the Applicant's authority to involve herself in the hiring of consultants and that she should have referred the matter to her supervisor. He added that the Applicant's act of hiring a consultant was the "equivalent of a medical intern performing open heart surgery."

36. The Division Chief failed, however, to explain to INT that he had not acted as her supervisor during the Afghan mission and was not qualified to say whether she was acting outside her terms of reference. Had the Division Chief reviewed her terms of reference, or even spoken to the Applicant's supervisor during the Afghan mission, he would have noticed that her terms of reference were flexible so that she could "adapt to the needs on the ground." One of the Applicant's identified duties in her terms of reference was to "provide other assistance, as identified and agreed." The Division Chief provided a one-sided view to INT. This is obvious from the testimony of the INT investigator before the Appeals Committee:

[T]he picture that was being portrayed by the manager was a concern that [the Applicant] had arranged for a consultant who was a close personal friend of hers to receive a consultancy contract and that [the Applicant] had also been involved in drafting the terms of reference for that particular consultancy, and it was all framed in the context of a conflict of interest.

37. Placing the Applicant on administrative leave was an extreme measure. The Division Chief and the Director failed to consider other options fairly. Indeed, to place the Applicant on administrative leave immediately after referring the matter to INT was a "knee-jerk reaction." Given her 22 years of exemplary service, the LOA management could have considered the Applicant for a position to train newly recruited staff in LOA. Likewise, there was a possibility of a three to six-month special assignment in Malawi. Her request for the assignment in Malawi was met with a hasty "no" from the Division Chief.

38. Finally, the Tribunal should note that the LOA managers never asked INT to weigh the Applicant's case seriously in light of the fact that she had been an exemplary employee for many years, and had just performed

remarkably well on a difficult mission with an absent manager, loose terms of reference, and work with inexperienced government officials. They failed to explain to INT that neither of them had any direct knowledge of the facts relating to the allegations, because they were not in Afghanistan and were merely retelling hearsay and gossip. It is also important to note that the Appeals Committee found that “aside from testimony related to the statement ‘rabble rousers’ [the Division Chief’s] testimony was not credible.” It is fair to say that the Appeals Committee believed that the Division Chief lied throughout the Appeals Committee proceedings. He likely lied, or at least exaggerated or failed to disclose material facts to INT regarding the initial allegations, and also did so to HR regarding the placement of the Applicant on administrative leave.

## **Bank’s Answer to Applicant’s Contention No. 2**

39. The Bank argues that the evidence does not support the Applicant’s allegation that her active role in the Staff Association influenced the LOA management’s recommendation to the Acting Vice President, HR. Nor is there support in the Appeals Committee Report, or in the full transcript of the Appeals Committee hearing, that either the Division Chief or the Director was ill-disposed toward the Applicant. In fact, the Director stated that the Division Chief had gone out of his way to be supportive of the Applicant’s career aspirations. Likewise, a full reading of the record of the INT interview with the Director, from which the Applicant has taken a statement ostensibly confirming her proposition that the Director resented her, does not bear out the allegation of resentment.

40. The LOA managers did not act hastily when requesting that the Applicant be placed on administrative leave. In fact, they waited several months until the results of INT’s preliminary inquiry were in hand before deciding to do so. The Director explored whether the Applicant could be assigned other work in LOA not using the Loan Administration System (LAS) or involving financial records or communication with clients, but since the essence of LOA work involves these activities, this turned out not to be a viable option. They consulted on the matter with their Vice President, and also with officials from the Legal Department and INT. When INT informed the LOA management that there was ample basis for a full investigation, they held further discussions on whether to recommend placing the Applicant on administrative leave, and tried to balance the Applicant’s interest with that of the institution. Ultimately, a consensus emerged that since LOA was a financial operation disbursing billions of dollars in payments that year, and in light of the outcome of INT’s preliminary inquiry, the recommendation should be to place the Applicant on administrative leave. This was communicated to HR. In short, there is no basis for concluding that the recommendation to the Acting Vice President, HR, to place the Applicant on administrative leave was made for any reason other than concern for the financial rectitude of LOA’s operations.

## **Applicant’s Contention No. 3 – The Acting Vice President, HR, Blindly Followed the LOA Management’s Recommendation**

41. The Applicant argues that the Acting Vice President, HR, did not exercise independent judgment as to whether administrative leave was warranted in the Applicant’s case. Nothing in the record shows that the Acting Vice President took any independent action to test the credibility of the allegations against the Applicant.

42. At the very least, HR if not INT could have spoken to the Applicant to hear both sides of the story before making such a drastic decision. All the record shows is that the HR Officer for LOA sent an e-mail to the Acting Vice President, HR, on October 20, 2003, for her signature to be used for the Notice of Administrative Leave. The e-mail reads:

[The Applicant] is under investigation by INT for (possible misconduct). As she has fiduciary responsibilities ... it is the opinion of [the LOA Director] and myself that she should be on administrative leave during the investigation. ... [The attached template] has been used ... previously .... Could you please sign today so that I can deliver to [the Applicant] also today.

43. On October 22, 2003, the same HR Officer delivered to the Applicant the Notice of Administrative Leave dated October 21, 2003. It would be impossible for the Acting Vice President to have tested the reliability of the information in less than one working day.

### **Bank's Answer to Applicant's Contention No. 3**

44. The Bank states that it was not incumbent on the Acting Vice President, HR, to conduct her own investigation before reaching her decision to place the Applicant on administrative leave. Senior managers are entitled to rely on facts presented by internal investigatory bodies. The Acting Vice President, HR, was aware that allegations of misconduct had been raised against the Applicant. She was also aware that INT had concluded that there was ample basis to proceed with a full investigation. She had received from the Applicant's Department Director the request that the Applicant be placed on administrative leave.

### **Applicant's Contention No. 4 – INT's Preliminary Inquiry Was Deficient and Defective**

45. First, the Applicant complains that during the preliminary inquiry INT relied mostly on interviews with the LOA Division Chief, the LOA Director and the Chief Financial Officer for the South Asia Region. None of these persons had any first-hand knowledge of the facts relating to the allegations.

46. Second, INT failed to interview relevant witnesses such as the Applicant, Ms. A, Ms. B and Mr. C, the Applicant's supervisor for administrative issues during the Afghan mission. Had INT interviewed witnesses with first-hand knowledge during the preliminary inquiry, it would have halted that inquiry. It would have learned that the charges were based on improper motivation, unsubstantiated rumor and hearsay. Had INT at least notified the Applicant about the allegations, she could have had an opportunity "to respond to the charges, to explain [her] suspect behavior, to inform the investigators, and so better to focus and expedite (and perhaps conclude) the preliminary inquiry." Had INT interviewed the Applicant, who in INT's view ultimately provided plausible explanations in response to the allegations, INT might well have more carefully evaluated the decision to proceed to a full-blown investigation. INT's failure to notify or interview the Applicant is inconsistent with INT's duties as articulated by the Tribunal in *D*, Decision No. 304 [2003].

47. Third, INT improperly accessed the Applicant's e-mail during the preliminary inquiry. INT "pillaged" the Applicant's e-mail before it had a shred of credible corroborating evidence apart from hearsay. Relying on rumor, INT wrote to the General Counsel and the Managing Director of the Bank in support of its request to gain access to the Applicant's e-mail, stating that "INT has received credible information from two Bank managers that a subordinate staff member may have committed misconduct." INT relayed to the General Counsel and the Managing Director what the LOA managers had presumably told INT. It failed to explain how it had tested the information and why it believed that the information was credible. This shows that INT acted irresponsibly. Ultimately, INT was granted access to the Applicant's e-mail based on the LOA managers' unreliable information. The information INT obtained after having been wrongfully granted access to the Applicant's e-mail was then used by the Respondent to escalate the inquiry into a full investigation which in turn precipitated the arbitrary decision to place the Applicant on administrative leave.

48. Fourth, during the preliminary inquiry INT failed properly to review, evaluate and weigh available evidence. When INT accessed the Applicant's e-mails, it found a short note from the Applicant to Mr. I with salutations such as "My Dearest" and "with all my love." Based on this, INT concluded that the allegation of an intimate relationship was sufficiently corroborated. Had INT interviewed the Applicant, she could have explained that Mr. I is a 70 year-old former staff member who lives in another country with his wife. The Applicant could have explained the true nature of their friendship. Instead INT, presumably at the behest of the Division Chief, decided to interpret the e-mail exchanges as indicating an improper relationship.

49. INT failed to review exculpatory or explanatory evidence. INT failed to consider the Applicant's other correspondence with Afghans, and failed to consider that Middle Easterners like the Applicant greet and interact with trusted colleagues as though they are family, much like a brother or sister. In addition, when INT scoured the Applicant's e-mail, it failed to review correspondence between the Applicant and other senior staff working on the Afghan project with respect to the drafting of Mr. I's terms of reference. In particular, INT failed to review a no-objection letter on hiring a consultant sent from a task team leader for the Afghan project. Had INT interviewed the Applicant's former supervisor, he would have clarified that he had retired from the Bank on



March 31, 2003, that he was occupied with other matters in the months before his retirement, and that he had asked the Applicant to be “hands-on” with everything the Afghan government was doing and with whatever it asked. He would have clarified that the Applicant’s new supervisor, the Division Chief, was supposed to be her “hands-off” supervisor during his retirement phase, and that the Applicant had flexible terms of reference. He would have testified about the improper motivations of the new LOA management against the Applicant. Moreover, INT did not give proper weight to the statements made by Mr. E, a Bank staff member and the Administrator of the Afghanistan Reconstruction Trust Fund. When INT interviewed him in August 2003, he explained to INT that: (i) the hiring of Mr. I was proper, considering the circumstances; (ii) he did not believe that the Applicant had acted beyond her authority by going to Dubai; (iii) he did not believe that the Applicant had influenced the Afghan government to choose Citibank; and (iv) it was important to examine the motivations behind the allegations and the accuracy of the information provided. Clearly, Mr. E’s explanatory statement was not considered with respect to the preliminary inquiry and the decision to conduct a full investigation.

50. Fifth, when the Bank relies heavily on the fact that Mr. I’s contract was a single-source contract, it fails to give due consideration to the fact that it had been issued under emergency conditions and was almost nominal in amount. The Bank also disregards the fact that this contract was consistent with its own *Guidelines on Selection and Employment of Consultants by World Bank Borrowers*. INT failed to take into account that the consultancy contract was regular in nature, extremely modest financially, properly awarded under a contract with terms of reference approved by a task team leader, and fell within the Applicant’s responsibilities.

51. Sixth, INT failed to offer any document, such as a preliminary report or a memorandum on the inquiry, setting out the facts that had led it to conclude that a full investigation was warranted. Nothing in the record shows that the INT official who conducted the preliminary inquiry was sufficiently experienced in the complexities of the Bank or that she was otherwise well suited to investigate allegations of misconduct with respect to a consultancy contract in post-conflict Afghanistan. It is a recognized fact that INT has problems. In 2004, the year in which the Applicant’s case was concluded, INT closed 17 internal investigations. Two of them were referred to managers as they involved procedural irregularities, three were not investigated beyond the preliminary inquiry due to a lack of evidence, and of the remaining twelve that were closed following a full investigation, “only one was substantiated; six were unsubstantiated and five were unfounded.” These results show that INT has done a poor job of triage in deciding when to pursue an investigation and when not to do so.

52. In sum, the Applicant states, it is clear that INT’s preliminary inquiry was deficient and defective. INT started with double or triple hearsay, rumor and gossip, interviewed the wrong people, ignored the information supplied by Mr. E, improperly and hastily scoured the Applicant’s e-mail, failed to review the e-mail for exculpatory evidence, failed to interview or at least notify the Applicant of the allegations, and thus denied her an opportunity to “respond to the charges, to explain [her] suspect behavior, to inform the investigators, and so better to focus and expedite (and perhaps conclude) the preliminary inquiry.” INT may thus have contributed to the arbitrary decision to place the Applicant on administrative leave.

#### **Bank’s Answer to Applicant’s Contention No. 4**

53. That the Applicant considers that INT’s preliminary inquiry should have been done differently does not, the Bank responds, render it “defective and deficient” as she contends. Her assertion appears to arise from a lack of appreciation of the difference between the purpose and procedure of a preliminary inquiry, on the one hand, and those of a full investigation, on the other. A preliminary inquiry is performed for the purpose of establishing whether there is any foundation to allegations of misconduct made by a complainant to INT. The outcome of a preliminary inquiry is a determination of whether further investigation is warranted, not whether an allegation is fully substantiated. The purpose of the preliminary inquiry is to assess allegations discreetly in order to determine their credibility and to decide whether there is sufficient evidence to notify a staff member in writing of the allegations and of the initiation of a full investigation. A preliminary investigation allows INT to assess the situation without prematurely raising the stress level on the person being investigated, and minimizes the risk of rumors spreading. Accordingly, staff members against whom allegations of misconduct are raised are rarely interviewed during the preliminary inquiry stage. Such interviews occur where no corroborating evidence is

available, such as in harassment cases. In the Applicant's situation, corroborative evidence was available in the form of hard-copy documents and other contemporaneous records, so her situation did not require consultation with her prior to her being formally notified of the allegations against her at the conclusion of the preliminary inquiry. Nothing in the record suggests that INT staff carried out the preliminary inquiry in any way other than consistently with Staff Rule 8.01 and INT's own internal procedures.

54. The Respondent did not engage in "pillaging" the Applicant's e-mail. Part of the standard process of a preliminary inquiry is to identify and review available documentation relating to the allegations. After examining hard-copy documents and interviewing the Director and the Division Chief, INT concluded that a credible basis existed to proceed to the next step of reviewing the Applicant's e-mail, with a view to corroborating the evidence already in hand. It was in this context and with appropriate approvals that INT accessed the Applicant's e-mail.

55. The Applicant's Director did explore the possibility of assigning the Applicant to other work in LOA, not using the LAS or involving financial records or communication with clients. Since the essence of LOA work involves these activities, however, this proved not to be possible.

56. The contention that INT does a poor job of deciding if it should pursue an investigation, and that INT is used by managers for improper purposes, has no basis. Indeed, the latter assertion is essentially a recasting of the charge of improper motives behind the administrative leave, and equally lacking in substance.

#### **Applicant's Contention No. 5 – The Applicant Was Not a Fiduciary Charged with Serious Financial Wrongdoing**

57. The administrative decision was arbitrary because the Applicant is not a true fiduciary, there was no risk to Bank property without the cooperation of the Finance Officer, and she was not charged with serious financial wrongdoing. As a Finance Analyst at Grade GE, the Applicant is not a fiduciary. She has no control or authority to disburse any Bank money. The Finance Officer is the fiduciary. Any breach in the secure disbursement system would require a conspiracy. There is nothing in the record to suggest that any other LOA staff had been placed on administrative leave pending the outcome of the Applicant's misconduct investigation. Mr. F, a senior Finance Officer who had worked in LOA for 17 years, testified that:

I personally believed when I heard about this that if [the Applicant] was guilty of anything, then the entire team should have been put on administrative leave, because it is an interconnected thing. ... It is a system that is so closely linked that you have to have three people really working in connivance, or whatever, so that they can get some payment out fraudulently.

58. To reach the Respondent's conclusion that placing the Applicant on administrative leave was the only logical decision given the nature of her duties and of the misconduct allegations, the Respondent would have the Tribunal believe that a loyal staff member who has served for 22 years with no previous record of misconduct would conspire with the Finance Officer to divert funds to independent, third-party contractors, suppliers, and consultants for private gain during an ongoing misconduct investigation. That is preposterous.

59. Since there is no evidence to suggest that the Finance Officer has been placed on administrative leave and is the subject of a misconduct investigation, the conspiracy theory fails. The Respondent has failed to show how placing the Applicant on administrative leave protects Bank personnel. The decision harmed the Applicant alone, by fueling the rumor mill and damaging her professional integrity.

60. Moreover, none of the charges against the Applicant alleged any serious financial wrongdoing as was the case in *D*. There, the applicant was an investment officer and was charged with two of the most severe forms of misconduct. Accordingly, the Tribunal concluded that the administrative leave was justified because it was in the interest of the institution "to remove from a position of financial responsibility a person being charged with serious financial wrongdoing." Here, there were no allegations of serious financial wrongdoing such as taking kickbacks or misusing a position for financial gain.

## **Bank's Answer to Applicant's Contention No. 5**

61. The Applicant's claim that she is not a "true fiduciary" is without merit. Financial Analysts play a substantial role in the approval of disbursements to the Bank's borrowers and their contractors and consultants. Finance Officers rely heavily on the clearance of Finance Analysts when they issue the final approval for payment of a disbursement. Therefore, Finance Officers as well as the LOA management must be able to trust that a Finance Analyst's scrutiny of a withdrawal application is based solely on the merits of the application and not on any external factors.

62. LOA in FY03 disbursed approximately \$19 billion. In FY03, given that there were 55 Finance Analysts in LOA, a single Finance Analyst would approve approximately \$345 million during the average fiscal year. The Finance Analyst position is, thus, a key fiduciary control in the processing of payments to borrowers and requires the utmost integrity and fidelity to the Bank's mission.

63. The Applicant argues that the Respondent should have considered the "nominal amount" of the contract in question and the exigencies of the situation under which it was issued. Had the circumstances of the Applicant's case been other than what they are, i.e., had they involved a question of sole-sourcing to a consultant with no connection to the Applicant, it might well have been appropriate for the Respondent to consider such factors. But these were not the circumstances of the Applicant's case when it initially surfaced. In fact, it was the seeming non-arm's length aspect of the situation which reasonably caused the LOA management to question the Applicant's integrity. That the investigation subsequent to October 2003 ultimately allayed this concern does not invalidate it at the time it arose.

## **Applicant's Contention No. 6 – The Administrative Leave Decision Has Irreparably Harmed the Applicant**

64. The Applicant asserts that the administrative leave has embarrassed her, damaged her reputation and caused her monetary loss. In addition, the Applicant argues that she has suffered a compensable moral injury as recognized by the Tribunal in *Lopez*, Decision No. 147 [1996].

## **Bank's Answer to Applicant's Contention No. 6**

65. Situations that result in investigations of conduct are never pleasant for those who are the subjects of such allegations. This, however, does not lead to the conclusion that the investigation was improperly motivated or carried out defectively, or that the Applicant is therefore entitled to financial compensation. There is no evidence that the issues raised by the Applicant's managers were brought forward for any reason other than concern for the integrity of the LOA disbursement process. Nor is there any evidence to sustain the Applicant's charges that INT carried out its work defectively or that the Acting Vice President, HR, acted arbitrarily in deciding to place the Applicant on administrative leave. No "moral injury" occurred. The Applicant is not entitled to costs incurred in connection with an application that has no merit or in connection with a related appeal earlier rejected by the Appeals Committee.

## **The Tribunal's Evaluation**

66. To be under investigation for possible misconduct of an unethical nature is likely to be a disturbing experience. But equally, it would be absurd if investigators could proceed only if there was certain evidence of guilt. The circumstances of this case are such that the investigators would have exposed themselves to justified criticism if they had not conducted a thorough investigation. The 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. It ultimately turned out that the financial advantages to her friend were modest, and that her expressions of "love" and "dearest" relations bespoke nothing more than wholly respectable affection. But on the face of it the circumstances were troubling, and required investigation. It is not enough to say that the amounts involved were small; the investigators could not know at the outset whether they were glimpsing the tip of an iceberg. The issue is not whether the Applicant's relations with Mr. I

were *improper*; it suffices that they were *personal* and *close*. The issue is only whether the Bank failed to respect the Applicant's rights in placing her on administrative leave.

67. The jurisprudence of the Tribunal is clear to the effect that the scope of its review in connection with disciplinary cases is broader than with respect to decisions of a purely managerial or organizational nature. (*Kwakwa*, Decision No. 300 [2003], para. 20.) But the Tribunal has also stated that placing a staff member on administrative leave under Staff Rule 8.01 is, in itself, not a disciplinary measure. If a decision to impose administrative leave is challenged, the Tribunal will consider whether the decision was an abuse of discretion – while still acknowledging that it is indeed a matter of discretion. (*Ismail*, Decision No. 305 [2003], para. 54.)

68. The Tribunal held in *D*, Decision No. 304 [2003], paras. 68-69, that it is in the legitimate interest of the Bank (or, more precisely, the IFC in that case) to remove a staff member charged with financial wrongdoing from continued responsibility for financial matters. The Applicant's argument that she should not have been placed on administrative leave because her work was not of a fiduciary nature is unconvincing. In her application to the Tribunal, she contended surprisingly that she had not been "charged with serious financial wrongdoing." But the problem was precisely one of possible financial irregularity, stemming from the Applicant's undeniable personal relationship with Mr. I. Nor will the Tribunal entertain technical arguments about the distinction between first-level approvals and higher disbursing authority. This unacceptable contention is summarily rejected.

69. The Tribunal sees no reason to question the Bank's decision that it was not feasible to assign the Applicant to alternative tasks not involving financial responsibility. Such tasks were at the heart of the Applicant's entire department; alternative occupations for someone of her seniority may not, as the Bank contends, have been available. Indeed, her managers might have taken the view that such an assignment would have the potential of creating greater embarrassment to the Applicant as questions would have been asked by a wider circle of colleagues as to the underlying reason. At any rate, this is the type of managerial determination the Tribunal is not called upon to second-guess.

70. In considering the Applicant's second contention, it must be recalled that a finding of improper motivation cannot be made without clear evidence (*Lysy*, Decision No. 211 [1999], para. 71), and that the Applicant has the burden of proof (*Marchesini*, Decision No. 260 [2002], para. 52).

71. The thrust of the Applicant's grievance appears to have been fundamentally misdirected. As is clear from the transcript of the hearing before the Appeals Committee, much of her evidentiary presentation focused on the alleged resentment against her activities as a Staff Association delegate on the part of managers who had examined issues relating to the alleged misconduct and recommended that she be placed on administrative leave. In oral testimony this degenerated into unseemly *ad hominem* aspersions. But INT would be derelict in its duty if it abandoned its investigation merely because some persons providing information have expressed a negative view of Staff Association activities, or because friends of the person being investigated say that one manager is a liar, or that another has a drinking problem.

72. It is for the INT officers to evaluate the information at their disposal, and to pursue the matter if there are apparent anomalies, inconsistencies, ambiguities or lacunae which make it appropriate to explore the core of factual circumstances which indicate the possibility of wrongful behavior. In this case, there were undoubtedly objective circumstances which demanded explanation. In addition to the troubling and unusual objective facts reviewed above (see, e.g., para. 16), different persons had different recollections as to whether the Applicant had confirmed or denied a personal relationship with Mr. I. In a meeting with her Division Chief in June 2003, the Applicant was recorded as claiming that her supervisor had been aware of her mission to Dubai. When contacted by the Division Chief, the supervisor said that this was not the case.

73. The fact that the conclusion may ultimately be favorable to the person under investigation plainly does not mean that the inquiry should not have been conducted at all. Perhaps it is conceivable that the investigators might have gone straight to the exculpatory evidence with a minimum of embarrassment to the Applicant. But that is all too easy to say in retrospect. Moreover, the Tribunal has no authority to micromanage the activity of INT. What is required of INT is not that every inquiry be a perfect model of efficiency, but that it operates in



good faith without infringing individual rights.

74. The 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. In the event, the Report vindicated the Applicant. INT concluded that with respect to her relations with Mr. I, one could not substantiate a finding that there was a conflict of interest or an attempt to conceal financial improprieties; INT's conclusion was the same as regards the allegation that she sought to mislead her managers with respect to the purpose of her stay in Dubai in April 2003. As for her purported disregard of instructions not to recommend the Afghan government's selection of a particular bank to serve as a consultant, INT determined that there was substance in the allegation but nevertheless observed that her recommendation had been correct and in any event was immaterial to the government's decision. Moreover, INT's investigation led it to conclude that the Applicant's overall performance in Afghanistan had been positive – some adjectives used were “excellent,” “respected,” and “extremely committed.” The Applicant was shown a draft of this Report, and the final version contains detailed notes of her comments as well as the extent to which they led to amendments to the Report.

75. Although 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.

76. With respect to the Applicant's third contention, this Tribunal has held that senior managers are entitled to rely on facts as presented by internal investigating bodies (*Koudogbo*, Decision No. 246 [2001], para. 54). The Applicant's contention as framed must therefore be dismissed summarily. Whether the conduct of such organs itself may create liability on the part of the Bank is a distinct issue.

77. This observation leads conveniently to the Applicant's fourth contention, which merits more detailed consideration. It focuses on the issue of whether the Applicant's rights were infringed because of the way in which INT conducted its preliminary inquiry.

78. The first matter to be considered is whether there must be a defined evidentiary basis for initiating a preliminary inquiry. It is difficult to articulate a positive standard. Neither Staff Rule 8.01, paragraph 4.02, nor INT's Standards and Procedures for Inquiries and Investigations define any threshold in this regard; it appears to be a matter of discretion. A meaningful negative answer, on the other hand, was given by the Tribunal in *Koudogbo*, Decision No. 246 [2001], at para. 43, to the effect that a preliminary inquiry cannot be launched on the basis of rumors or allegations from questionable sources. An inquiry may be disruptive. It should not be triggered merely because there have been isolated, anonymous, indirect, word-of-mouth tips. Such indications may be very valuable in law enforcement everywhere, but they must be considered critically. The line to be drawn may be difficult to define in the abstract, but the need to do so does not arise in this case. The 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 at 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.

79. The Tribunal rejects the Applicant's harsh words for INT, and her assertion that the high percentage of investigations which do not lead to disciplinary sanctions bespeaks a pattern of rushing into disruptive proceedings without just cause. INT is not to be criticized when it acknowledges fairly that there is insufficient evidence of wrongdoing; what would be intolerable is if INT were put under pressure to distort its findings in order to justify its decision to conduct a full investigation.

80. The Applicant believes that she was not given timely notice of the preliminary investigation. But since a preliminary inquiry is not an adjudicatory process, it is not open to challenge on as broad a range of grounds as those which may invalidate judicial proceedings, and in particular lack of notice. (*See Rendall-Speranza*, Decision No. 197 [1998], para. 57.) It is clear from Section 2.2 of the INT's Standards and Procedures for



Inquiries and Investigations that the subject, or his or her managers, are generally not given notice at the initial stages of an inquiry. The Tribunal has nevertheless expressed its expectation that the subject of a preliminary inquiry should be informed of that fact at the earliest reasonable moment, taking into account concerns regarding tampering, collusion, and the like. (*D*, Decision No. 304 [2003], para. 65.) Yet in *D*, the Tribunal did not require notification of a preliminary inquiry in each and every circumstance. There, the Tribunal was troubled for two reasons by the Bank's late notification to the applicant with respect to the allegations of misconduct: (i) INT investigators had questioned at least three IFC clients during the preliminary inquiry without taking into account whether the questioning of such outside individuals would spread rumors or gossip concerning the allegations; and (ii) INT, after concluding the preliminary inquiry phase and determining that a formal investigation was necessary, sent a mission to Tanzania to interview IFC clients there, and only after those interviews were conducted was the subject given notice of the allegations of misconduct.

81. In the present case, the formal Notice of Alleged Misconduct was issued on October 15, 2003. The Applicant was interviewed on October 16, and placed on administrative leave on October 21. Of course the Notice was not a bolt of lightning from a clear sky. The Applicant had previously been questioned about all elements of Mr. I's consultancy, and about her personal relationship with him, as early as June 24. She was therefore in a position to participate in the lengthy interview with INT on October 16, recorded in a seven-page, single-spaced memorandum. The Applicant's responses are reported in considerable detail; she had obviously been in a position to prepare herself. It is quite true that early notice may give a person suspected of wrongdoing the occasion to exculpate himself, and so avoid the disruption and embarrassment of an in-depth investigation. But in this case the interview did not have that effect, and the investigation proceeded. Whether the direct intervention of the suspected person can cut short an investigation (or limit its scope) depends on the nature of the possible contribution of the suspected person. The Tribunal has reviewed the affidavit signed by the Applicant on October 31, 2003. It includes a two-page list of persons "who are in my mind potential witnesses." The Applicant's own detailed version of events was ably recited but nevertheless required a probing examination. The only thing that the Applicant might have been able to clear up is the nature of her relationship with Mr. I. The Applicant appears to believe that it is important that her relationship with Mr. I was one of deep friendship rather than one involving any element of physical intimacy; she considers the latter a matter of defamation. It is indeed possible that any doubts on this score could have been cleared, but it is in fact not of importance for present purposes. The active promotion of a sole consultant who was a close friend was a sufficient concern for INT. In sum, the Tribunal cannot find that the decision to place the Applicant on administrative leave was materially affected by a tardy notification.

82. The Applicant also questions INT's access to her e-mail during the preliminary inquiry. True, in *D*, Decision No. 304 [2003], paras. 58-60, the Tribunal criticized the "precipitate" search of the applicant's e-mail in the absence of some "objective corroboration" of the rumors which had triggered the inquiry. But the present case is quite different. The Applicant and Mr. I listed the same home address in the Bank's PeopleSoft database; the address given on Mr. I's bill from the hotel in Dubai was not his own, but that of the Applicant in the U.S.; the Applicant had power of attorney over a bank account owned by Mr. I; and she used variations of his name as the password for many of her personal accounts and other services. INT's decision to examine her e-mail does not merit censure in these circumstances.

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 decides to dismiss the application.

/S/ Elizabeth Evatt  
Elizabeth Evatt  
President

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

At Washington, DC, November 4, 2005