

Decision No. 343

**I,
Applicant**

v.

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

1. The World Bank Administrative Tribunal has been seized of an application, received on April 11, 2005, by I against the International Bank for Reconstruction and Development. The Bank has raised a jurisdictional objection to be 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 usual exchange of pleadings with respect to jurisdiction took place and the case was listed on August 9, 2005, to decide the issue of jurisdiction only.
2. The Applicant worked in the Loan Department of the Bank for twenty years and retired in 1994 as a Senior Disbursement Officer. He claims that the investigation of a current staff member was conducted wrongfully and to his prejudice. The Bank objects that the Tribunal lacks jurisdiction over his claim. This judgment deals only with that objection.
3. In March 2003, in his tenth year of retirement, the Applicant was hired as a Short-Term Consultant for a Bank-financed project in Afghanistan. In October 2003, the Department of Institutional Integrity (INT) commenced an investigation of Ms. G, a staff member in the Loan Department, based on allegations that she had engaged in misconduct involving the Applicant. In particular, INT investigated whether Ms. G's personal relationship with the Applicant had influenced her to recommend to the Afghan government that it hire the Applicant for a consulting contract. As part of its investigation, INT inquired into the issue of potential conflicts of interest in the manner in which the Applicant ultimately was offered the consulting contract and received payment thereunder.
4. INT interviewed the Applicant in April 2004. The Applicant cooperated in the investigation and voluntarily answered questions posed by INT. During the course of the investigation, INT also interviewed several witnesses. Some witnesses informed INT that the Applicant and Ms. G had an intimate relationship, while others indicated only that they were close friends. INT concluded its investigation in July 2004, reporting that there was insufficient evidence to support a finding of misconduct on the part of Ms. G with respect to the most serious charges. Although it also found that she had exceeded her authority in some respects, the report concluded that this was mitigated by her good overall performance. Upon receipt of this report, the Bank decided to take no action against Ms. G.
5. In the course of its investigation, INT found that the allegations of an intimate relationship between Ms. G and the Applicant could not be substantiated. On May 3, 2004, the Applicant had written to the President of the Bank raising concerns with respect to these allegations. His letter stated that the allegations were defamatory and "should be immediately retracted by the individuals responsible for making them at the Bank." The Applicant requested that the Bank take remedial steps and conduct an inquiry.
6. On June 29, 2004, counsel for the Applicant wrote a letter to the President of the Bank reiterating the Applicant's concerns about the allegations of an intimate relationship. In that letter, the Applicant's counsel also

complained about an allegedly defamatory Bank memorandum about the Applicant, and wrote:

[I]n the course of the investigation of Ms. [G], whom we also represent, it came to light that there was an office memorandum about [the Applicant] in the investigation record. The document was partially redacted, but it indicated that there was an issue between him and the World Bank. This issue apparently caused the then Ethics Officer to prevent [the Applicant] from being rehired in the Bank.

[The Applicant] wasn't aware of this document until it was brought to his attention during the INT investigative process. [The Applicant] is seriously disturbed and concerned that this document and any other documents related thereto in the Bank's possession constitute an unwarranted blemish on his otherwise distinguished career. ... [T]he memorandum is defamatory per se and is now appearing in formal Bank documents.

We would request, therefore, that you take steps to provide an explanation on this matter and recognition that the memorandum in question is improper and makes unfounded remarks regarding [the Applicant].

On the same day, June 29, 2004, the Applicant's counsel also wrote a letter to the INT Director raising these concerns. He requested the Director to provide his office with an unredacted version of the memorandum and other related documents so that the Applicant could review them and best determine his legal rights and remedies.

7. On August 5, 2004, the Acting Director of INT wrote to the Applicant's counsel in response to the Applicant's letters of May 3, and June 29, 2004. In his letter, the Acting Director stated:

[T]he Bank has finished its investigation, and the Managing Director who reviewed the [INT] report concluded that the allegations were not substantiated. Nevertheless, it is clear that the allegations were serious in nature, that they were made in good faith, and that the Bank had a duty to investigate them. ...

I would like to point out that the Bank has not directed any accusations against [the Applicant], nor was he the subject of INT's inquiry. Therefore, [the Applicant] can be assured that this matter has not impacted his ability to receive consulting contracts financed by the World Bank.

8. On September 28, 2004, the Applicant filed a Statement of Appeal challenging the refusal of the Acting Director of INT to: (i) retract a defamatory allegation involving him and Ms. G; (ii) correct records of the Applicant's Bank employment which had been wrongly published in an INT Report of Investigation; (iii) apologize to the Applicant; and (iv) take appropriate actions to mitigate damage to his reputation.

9. On October 20, 2004, the Bank filed a Challenge to Jurisdiction with respect to all of the Applicant's claims as raised in his Statement of Appeal.

10. On January 4, 2005, the Appeals Committee concluded that although the Applicant's appeal was timely, its subject-matter was not within the competence of the Committee because it was not directed "against an administrative decision which allegedly alters or is in breach of terms of appointment or conditions or employment, or any formal disciplinary action based on misconduct (e.g., formal reprimands)."

11. The Applicant filed his application with the Tribunal on April 11, 2005.

12. Before the Tribunal, the Bank invokes Article II, paragraph 1, of the Tribunal's Statute, which provides:

The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member. The words "contract of employment" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan.

13. The Bank goes on to articulate a jurisdictional argument which reads as follows (*in extenso*):

The Tribunal lacks jurisdiction in this case because the Bank has not made an administrative decision with

regard to the Applicant that would breach any terms or conditions of his employment. At the time of the INT investigation the Applicant was retired and no longer employed by the Bank. Although he provided information to INT, he was never a subject of the investigation himself. In *Walden v. IBRD*, Decision No. 167 [1997], the Tribunal has denied jurisdiction over a claim made by a former staff member regarding findings of the Ethics Officer, concluding that “the report of the Ethics Officer, in itself, did not constitute a ‘decision’ which could properly be made the subject of administrative review.” Rather, it is the management’s action on the findings of an ethics investigation that gives rise to an administrative decision that can be challenged through the Bank’s grievance system. In this case, management did not take any action against the Applicant. Therefore, there is no administrative decision for the Tribunal to review.

14. The Applicant has convincingly rebutted the Bank’s argument. His case is not a mere challenge to an INT report. He criticizes the process as unfair and prejudicial. The Bank cites *Walden* without mentioning that the passage it quotes is *obiter dictum*; the claim in that case was rejected for failure to bring a timely complaint.

15. The application in this case makes very clear that the issues are the Applicant’s privacy and reputational rights, and involve violations of the terms and conditions of his employment, which the Applicant contends survive even after his separation and retirement from the Bank. He relies on Principle 2.1(a) of the Principles of Staff Employment, which states that the Bank shall “establish and maintain appropriate safeguards to respect the personal privacy of staff members and protect the confidentiality of personal information about them.” According to the Applicant, the Bank willfully and wrongfully, or at least in a recklessly negligent manner, gave credence to a false rumor about the Applicant by publishing it internally and externally in writing and during its interviews of about thirty persons both within the Bank and in the Afghan government, and of unspecified others.

16. The Applicant urges that the Tribunal note that administrative decisions may be both affirmative, i.e., a positive exercise of the administrative power, or negative in the sense of a failure to exercise a power which affects a staff member’s rights. He argues that at the conclusion of the INT investigation, the Bank did not withdraw the allegation about an intimate relationship, reprimand the rumor-mongers, apologize, or deliver to him the unredacted, allegedly defamatory Ethics Office memorandum.

17. Finally, the Applicant rejects the Bank’s statement that it has not directed any accusation against the Applicant. The allegation of an intimate relationship was made as much against the Applicant as against Ms. G, and there was an implication that he had received a consulting contract on the basis of that relationship. The allegations were made on the bases of admitted “rumors” and of untested information. Had INT carried out a proper preliminary inquiry, both allegations would have been quickly dismissed. To accept the Bank’s argument that there was no administrative decision would, the Applicant argues, deprive him of the only forum in which he could have his rights vindicated.

18. The Tribunal agrees, noting that in its Advisory Opinion of 1956 relating to the Judgments of the Administrative Tribunal of the International Labour Organisation, the International Court of Justice counseled against an interpretation of the relevant contract of employment which, “by considering exclusively the literal meaning of its provision relating to duration,” would disentitle the employee from relying on it when challenging its non-renewal. (See *Carter*, Decision No. 175 [1997], para. 14.) By a parity of reasoning, the Tribunal does not accept a narrow conception of its jurisdiction which leaves a former staff member incapable of bringing a case based on an alleged violation of his rights.

19. Whether in fact the relevant rules extend to the benefit of retired staff members under the circumstances is a matter of substance, not jurisdiction.

20. The Applicant’s arguments have been presented in a concise and cogent fashion. The Bank’s jurisdictional objection should not have been made. There is no reason not to grant the Applicant costs in the amount requested insofar as they pertain to the case before this Tribunal.

Decision

For the above reasons, the Tribunal decides that:

- (i) the Bank's request to declare the application inadmissible for lack of jurisdiction is denied;
- (ii) the Applicant is awarded costs in connection with the jurisdictional phase of these proceedings in the amount of \$2,907.55; and
- (iii) the dates for the filing of pleadings on the merits will be determined by the President of the Tribunal and communicated to the parties.

/S/ Elizabeth Evatt
Elizabeth Evatt
President

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

At Washington, DC, November 4, 2005