

**Decision No. 352**

**K,  
Applicant**

**v.**

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

1. The present 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 in this case was received on 20 December 2005. The Applicant's request for anonymity was granted on 23 January 2006 on the basis that the publication of the Applicant's name was likely to be seriously prejudicial to him.

2. The Applicant joined the Bank in 1994 as an engineer. By 2003, he had received three promotions. His work required extensive traveling to Africa.

3. In November 2002, the Applicant's manager reviewed some of the Applicant's expense claims and noticed that many of his trips involved stopovers in Montreal, where the Applicant's family had continued to reside after he left that city to join the Bank. The stopovers were not a problem *per se*, but it also transpired that his stops in Montreal had been marked as "operational" in the Bank's SAP (Systems, Applications and Products) travel authorization module. The manager surmised that the stops in Montreal should have been marked as "personal" because she was not aware of any work that the Applicant had performed in Montreal. Moreover, she determined that his travel records showed a pattern of being on the high side of the average costs compared to other staff members, and that his ratio of inactive days to total days was unusually high. In due course, an investigation was conducted. It resulted in a determination that in the course of three years the Applicant had been reimbursed for 42 "operational" trips to Montreal that were covered by 22 Statements of Expenses (SOEs). All but two of these SOEs listed Montreal both coming and going, whereas all of the stops were in fact personal. He had thus been reimbursed for in-and-out transportation expenses and per diem in Montreal to which he was not entitled. Over the same period, it was found that he had also claimed per diem for 111 days in New York, of which 52 were Saturdays or Sundays, without his being able to provide details as to his work outside of normal office hours. Indeed, his answers to questions by investigators in effect proposed to reclassify 19 of his declared "operational" New York stayovers as "personal," 14 as "rest stops," and one as "connecting." Ultimately, his explanations with respect to Montreal were considered to be unacceptable. He was accordingly sanctioned for misconduct by: (i) a written reprimand; (ii) a downgrade with ineligibility for promotion until August 2007; and (iii) withholding of his Salary Review Increase (SRI) during the period of the alleged misconduct.

4. The process which led to these findings and sanctions was initiated when the Applicant's manager brought her concerns to the attention of the relevant Chief Administrative Officer in the Africa Region. The latter asked the Accounting Department's Travel Audit Team to undertake an audit of the Applicant's travel expenses.

5. On 20 November 2002, the Applicant's manager raised her concerns with the Applicant, and the next day sent an e-mail advising him that: (i) there were issues with his travel expenses; (ii) he should correctly label all the stops in a trip; (iii) in the future, he should present his Terms of Reference together with a travel request and should not make any change in an itinerary without prior approval.

6. On 12 December 2002, the Audit Team concluded its audit of the Applicant's travel expenses. After examining all 22 of the Applicant's SOEs for travel between January 2000 and November 2002, the Audit Team found that the Applicant had started and ended all his missions, most of which were to Africa, with a stop in Montreal, and that while these stops appeared to be "personal," he had claimed them as "operational" on his SOEs. The audit further revealed that he had claimed expenses in connection with these Montreal stops that were not recoverable in the context of "personal" stops. In addition, the audit uncovered questionable claims submitted by the Applicant in which he appeared to have used an unjustified foreign exchange rate (FOREX) for which he lacked appropriate receipts.

7. In light of the auditors' findings, the Applicant's manager consulted with the Ethics Office, which referred the matter to the Department of Institutional Integrity (INT).

8. After a preliminary inquiry, INT decided to commence a formal investigation for possible misconduct under Staff Rule 8.01. INT explained the basis for the preliminary inquiry and the formal investigation as follows:

An audit of [the Applicant's] Statements of Expenses (SOEs) for mission travel in FY02 and FY03, undertaken by the Accounting Department's Travel Audit Team at the request of management in the AFR Region in November 2002, disclosed a pattern of claims for expenses totaling approximately \$44,000 that appeared either personal in nature or excessive. [The Applicant's manager] consulted with the Ethics Office which in turn referred to INT what appeared to be a pattern of fraud in connection with [the Applicant's] travel claims.

The INT undertook a preliminary inquiry during which the investigator reviewed the auditors' findings, the 22 SOEs at issue, and the corresponding Terms of Reference (TORs) and Back to Office reports (BTORs) supporting the 22 SOEs. The INT validated the auditors' findings which indicate that [the Applicant] may have filed false and fraudulent travel claims resulting in reimbursements for expenses to which he was not entitled. That information formed the basis for a Staff Rule 8.01 investigation into possible staff misconduct.

9. On 8 May 2003, the INT investigators met with the Applicant and provided him with a Notice of Alleged Misconduct dated 7 May 2003, which stated that INT was conducting an investigation into the following allegations:

- a. When preparing your Statements of Expense[s] (SOEs) for mission travel, you claimed as operational travel portions of your travel that were personal in nature on 22 separate missions you completed between January 2000 and November 2002.
- b. As a result of characterizing the personal portions of your travel as operational travel on the 22 separate missions, you received Bank funds to which you were not entitled.

10. On 23 June 2003, the Applicant submitted a written response to INT dated 16 June 2003. With respect to the allegations about his stops in Montreal, the Applicant stated that he had always considered them to be "personal." He explained:

[A]s mentioned to [the INT investigators], my trips to Montreal have always been personal. As was the case for many staff ... I was simply (unintentionally) not entering the trip purpose at every destination city. By default, the system was indicating the trip purpose at every destination to be operational travel. I apologize for this unintentional error. I would like however to highlight that, given the fact that I stop in Montreal during my missions, I have never claimed any home leave (Montreal, Canada is my home leave) for the last 8 years. Although I'm entitled to this home leave, I felt by integrity and loyalty to the institution, that I shouldn't be claiming this home leave since I was visiting Canada very often during my missions. ...

I might have been negligent, but this was surely not intentional (not claiming home leaves to Canada for several years is witnessing of my honesty). I simply was too much absorbed in performing my duties and fulfilling my responsibilities and commitments, or conducting and monitoring complex and high risk

operations.

As part of his written response, the Applicant also noted that: (i) during the period in question, i.e., January 2000 to November 2002, he had had a heavy workload on “complex and high risk/high reward operations”; (ii) during that period, he had spent 477 days on mission and 74 nights on a plane while on mission, and should have been granted 44 rest stops; (iii) most of the time there was no additional airfare cost for passing through Montreal, and whenever he had been asked to pay an additional cost, he did so; and (iv) during the period under review, his travel requests and SOEs had always been compatible and had always been approved by his manager.

11. Within about a year, INT concluded its investigation. Its Final Report was issued on 9 June 2004. With respect to the stops in Montreal, INT concluded that the evidence was reasonably sufficient to show that:

(a) [The Applicant] engaged in a clear and consistent pattern of misrepresentation regarding his 42 trips to Montreal in that he listed them as operational when they were, by his own admission, personal. The SAP system is designed to be “user friendly” and if utilized correctly, by referring to drop down menus and other built in conveniences, there is no reason that someone should “inadvertently” enter incorrect information into the system 22 separate times.

(b) As a result of his misrepresentation, [the Applicant] received and retained \$4,239.38 in both per diem and in-and-out expenses which he itemized on his SOEs in connection with the Montreal trips, monies to which he was not entitled.

(c) Although [the Applicant] claims that the designation of the stops on his itinerary as operational occurred inadvertently due to a default program in the SAP system, after being put on notice that the program labeled all stops as operational he made no effort to go back and correct the errors in his previous submissions. [The Applicant] also failed to take the initiative to contact the Travel Section and attempt to resolve the admitted errors in his SAP entries.

(d) In addition, because [the Applicant] represented his trips to Montreal as operational, the Bank, on some of the trips, incurred the costs of additional airfare to and from Montreal. Those costs should have been borne by [the Applicant] since the trips to Montreal were personal and unrelated to Bank business.

As part of its investigation, INT also reviewed the Applicant’s allegedly unjustified FOREX claims and expenses relating to stops in, or trips to, New York. According to the Bank, “[INT] was unable to reach a factual conclusion that Applicant’s actions in respect to these two claims were inappropriate.”

12. On 9 June 2004, INT submitted its Final Report to Ms. Katherine Sierra, the then Vice President of Human Resources, for a decision. Ms. Sierra concluded that the Applicant had committed misconduct and imposed disciplinary measures. She informed the Applicant of her decisions in a memorandum dated 13 August 2004, which reads in relevant part as follows:

I have concluded ... that there is substantial evidence demonstrating that you committed the misconduct as alleged [in the Notice of Alleged Misconduct].

While I consider your actions grossly negligent, I did give you the benefit of the doubt regarding the intent. However, let this serve as notice that further inappropriate use of funds associated with travel will result in immediate dismissal.

As a result, I have decided, pursuant to Staff Rule 8.01, Section 4, that the appropriate disciplinary measure is to:

- give you a written reprimand (this memorandum) which will remain in your Staff File for a period of three years;
- downgrade you to level GG [from GH] effective immediately. You will be ineligible for promotion until

after August 1, 2007; and

- withhold your SRI for the years during which the misconduct took place.

According to Ms. Sierra's testimony before the Appeals Committee, the Applicant's misconduct did not warrant mandatory termination because he had lacked any intent to defraud the Bank:

A strict application of Staff Rule 8.01 would have mandated that I terminate the [Applicant's] employment. However, I chose, after careful and difficult deliberations, to give him the benefit of the doubt regarding his intent and to decide that his actions constituted gross negligence.

While [the Applicant's] assertion of unintentional mistake was simply not credible, I was not convinced that the [Applicant] intentionally set out to defraud the Bank. ...

However, I did feel that there was enough evidence to show that the actions that were taken [by the Applicant] were deliberate and were taking advantage of loopholes and possible non-review by managers in many, many instances and that that was gross negligence, and that on the part of the senior staff member in particular, that was not acceptable.

13. On 18 October 2004, the Applicant brought a challenge before the Appeals Committee. The Committee's Report of 15 August 2005 concluded that Ms. Sierra had not abused her discretion in finding that the Applicant had engaged in misconduct, or in imposing the disciplinary measures that she did. The Committee recommended that the Applicant's claims be dismissed. On 22 August 2005, Mr. Shengman Zhang, the then Managing Director of the Bank, accepted this recommendation.

14. On 20 December 2005, the Applicant petitioned the Tribunal. He claims that Ms. Sierra's decisions were arbitrary on four counts: (i) the INT investigation was unwarranted; (ii) the investigation was flawed; (iii) the finding of misconduct was unfounded; and (iv) the disciplinary measures imposed were disproportionate. He requests that the Tribunal quash the decisions of Ms. Sierra and order the Bank to pay for the salary which he lost due to the disciplinary measures. He also requests compensation and costs.

#### *Was the INT Investigation Warranted?*

15. The Applicant argues that the INT investigation should not have been initiated at all. His manager was in a position to undertake a preliminary inquiry and should have done so. If she had, the matter would have been resolved with no action to be taken against the Applicant. She was, he insists, aware of the start-up problems of SAP, which had been introduced in 1999-2000, and in particular its propensity to lead to erroneous labeling of travel stops as "operational." The standard-form travel itinerary requires traveling staff members to select a purpose from a proposed menu – e.g., "operational," "personal," or "rest" – but if they do not make that choice, the selection defaults to "operational." Indeed, in December 2002 the manager herself warned her staff that SAP should be overridden manually if a stopover was not "operational." This was after the Applicant had been accused of misrepresenting his Montreal stopovers. In these circumstances, the proper course for the manager would have been to ascertain the reason for the overpayment to the Applicant, the amount owed, and the Applicant's willingness to make reimbursement. She should not have referred the matter to the Ethics Office or to INT.

16. The Applicant also argues that INT itself should not have embarked on a formal investigation given the following matters which were already known: (i) the Applicant had not been aware that SAP by default treated the Montreal stops as "operational"; (ii) other staff members were making the same mistakes and needed to be warned in late 2002 when the problem was discovered; (iii) his manager knew that there had been a failure on her part to check statements and warn staff of any perceived irregularities; (iv) his manager knew that the Applicant was not seeking improper gain because prior to SAP, the stops in Montreal had been classified as "personal"; (v) the Applicant had asked his manager for an accounting and wished to repay any monies overpaid to him; (vi) his manager knew that reimbursements had simply been deposited in the Applicant's bank account and that he had received no statement confirming what had been paid and what had been denied; (vii) the Applicant had a heavy travel schedule and was unlikely to pay attention to whether he had been properly

reimbursed; and (viii) the audit allegedly conducted before the investigation began was not conducted properly, lacked a proper analysis, and was in any case not discussed with the Applicant. Generally, the Applicant insists that pursuant to Staff Rule 8.01, an investigation should be undertaken only if during the preliminary inquiry there is sufficient evidence to merit further proceedings. The Applicant concludes that the circumstances did not warrant an investigation. Evidence only of an overpayment, even repeated ones, without further evidence of intent to obtain an unlawful gain is not sufficient to launch a full investigation with all of its effects on an individual's reputation.

17. The Bank's rejection of these contentions is plainly correct. Staff Rule 8.01, paragraph 4.02, provides that "[w]here an incident of possible misconduct is reported, a preliminary inquiry may be undertaken if necessary to determine whether there is sufficient evidence to warrant further proceedings." *Prima facie* evidence of "intentional" misconduct is not a prerequisite; the expression "incident of possible misconduct" does not go that far. The Applicant's travel records revealed a pattern of possible expense irregularities over a period of three years. The Applicant's manager had no duty to initiate her own investigation. As she was the person who had approved the relevant travel expenses, it may have been reasonably prudent for her to defer to investigators having no involvement in the "incident" to be examined. Indeed, the Applicant has invoked as part of his defense his manager's "failure" to give earlier warning of the problem of SAP's default setting.

18. In *G*, Decision No. 340 [2005], para. 72, the Tribunal held that "[i]t 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." The apparent expense irregularities could not responsibly have been ignored by INT once the matter was referred to it. The defenses listed in paragraph 16 *supra* may have been relevant for consideration at a later stage, but none of them could or should have foreclosed the investigation.

#### *Was the Investigation Flawed?*

19. The Applicant's complaints may be conveniently examined under five headings.

20. First, he reiterates in substance the first four observations listed above in paragraph 16, and criticizes INT for having ignored them. In considering such complaints, the Tribunal does not seek to impose its own views of the micro-management of procedures put in place by the Bank's management. The Tribunal's principal function in disciplinary cases is to review the legal sufficiency of findings of misconduct and the imposition of sanctions. Its assessment of the Bank's conduct at the prior stage, i.e., the investigative process, is limited to verifying that the requirements of due process have been met. The objections raised by the Applicant under this heading may be relevant to the Tribunal's review of the sanction, but do not come close to raising issues of due process.

21. Secondly, the Applicant complains of erroneous findings by INT. In particular, INT concluded that he had failed to correct the errors relating to his Montreal stopovers upon receiving notice thereof. In fact, he says, he corrected his travel request practice as soon as he was apprised of the problem, and offered to make a refund. In the Tribunal's view, his offer of a refund carries no weight; nor does the fact that the Applicant obviously could not continue to file erroneous SOEs leading to improper reimbursement. On the other hand, the Tribunal accepts that the Applicant has a point when he challenges INT's criticism of his "failure" to correct his *past* series of errors when apprised thereof in November 2002. True, he could have contacted various departments to follow through on these corrections. But it is equally true that the matter had already been referred to INT, and it is not obvious that the Applicant should have understood that he was expected to make corrections in matters which were under review and with respect to which his own version of events was being questioned. The Tribunal does not think that the Applicant could be faulted for passivity in this respect. Be this as it may, however, this ostensible "failure to correct" was not the basis for the finding of misconduct, nor for the ultimate sanction. In the context of INT's Final Report as a whole, this criticism may be described as a mild one that evinces no particular animus against the Applicant.

22. The Applicant also objects to INT's conclusion that the Montreal stopovers resulted in higher airfare costs to



the Bank. He contends that transiting through Montreal allowed the Bank to save money by breaking the airfare so as to use the Canadian dollar as a tariff basis. He criticizes INT for making a contrary finding even though it had admitted that the Travel Office could not retrieve the records to make this demonstration. Yet whether the Applicant is right in these respects does not, in the circumstances of this case, invalidate the finding of misconduct, and would therefore be unavailing to his grievance.

23. Thirdly, the Applicant asserts that INT failed to address whether the Montreal stopovers were in fact permitted rest stops. He could have claimed “the majority” of the stopovers as such, thereby entitling him to recover hotel costs, per diem and in-and-out transportation expenses. The weakness of this argument is self-evident. Improper claims are not excused because they could have been justified if they had been made properly in some other manner.

24. Fourthly, the Applicant alleges that INT made prejudicial statements about the Applicant’s travel to, and stays in, New York, and also about his claims relating to foreign exchange rates. Although no misconduct was found in these respects, the Applicant argues that INT’s Final Report levied criticisms on this account that were given weight by the Vice President of Human Resources when she reached her conclusions as to sanctions. This complaint needs to be considered in several parts.

25. As to the New York aspect, INT concluded incontrovertibly that the Applicant received per diem and reimbursement. Even the Applicant, although insisting that some recorded stopovers were in fact nights spent on planes, accepted that a substantial number of his New York trips did not justify the payments he had received on account of them. In this connection, the Tribunal finds that INT viewed the matter in a lenient light. This is worth some comment, since it would negate any suggestion that INT proceeded with a bias against the Applicant. In the Tribunal’s view, the Applicant’s explanations of his New York trips raised legitimate apprehensions that they were *post facto* reconstructions of questionable accuracy. Despite repeated requests, he did not give specific information as to the purposes of individual trips or the identity of persons with whom he met. Rather, he gave general responses as to the overall importance of his coordination with UN personnel in New York, and identified a number of individuals as “the main persons I meet in New York.” The present tense of “meet” is not insignificant, as it denotes an ongoing pattern.

26. He was then warned that if he did not do so himself, INT would directly contact the UN personnel he had identified. The Applicant did not make such contact, writing to the investigator that the need to answer her inquiry was putting him under “undue pressure and unbearable level of stress.” When the investigator then went ahead to contact the UN personnel, their answers were hardly reassuring. Some indicated that although they had met with the Applicant, it was never at his hotel or over a meal, whereas the Applicant had written to the investigators that “most of the time I invite government officials and other partners to breakfast meetings, lunch or dinner” in New York. This of course did not exclude the possibility that others had had frequent meetings with him, indeed outside of office hours, but did not put the Applicant’s explanations in a good light, and all the more so since about half of his claimed per diem days in New York were on the weekend. In one instance, the person identified by the Applicant as a contact for matters “especially” involving the Democratic Republic of Congo said that he had never met with him during the three years in question, but only on one single occasion subsequent to that period, and then only by accident, as he was filling in for the person the Applicant had in fact presented himself to see.

27. It is not irrelevant in this context to note that the Applicant complained of the investigator’s failure to contact a particular individual identified by him. The investigator answered that she had tried to do so on three occasions, but had gotten no response. In light of the Applicant’s complaint, the investigator telephoned once more and this time received a response which fully corroborated the Applicant’s general version of events, but also learned that this person was a friend of the Applicant who socialized with him at home, in the evening, and on weekends. This certainly would not exclude a fruitful professional relationship, but simply underscores the kind of disquieting ambiguities which are avoided by compliance with requirements relating to travel requests.

28. It would perhaps have been preferable for INT to follow its Standards and Procedures for Inquiries and Investigations literally, by explicitly concluding with respect to New York that the evidence fell into one of the

three defined categories, i.e., “reasonably sufficient,” “inconclusive,” or “insufficient to substantiate or refute.” Its wording, to the effect that the evidence “shows” that the Applicant received per diem and reimbursements to which he was not entitled, logically conveys the meaning that INT considered that there was reasonably sufficient evidence for that conclusion, but the Final Report did not say so expressly. It was therefore prudent for Ms. Sierra not to base her decision on these elements of the investigation, and in this respect the Bank’s description in its written pleadings before the Tribunal that INT did not reach a “factual conclusion” that the Applicant’s actions were “inappropriate” suggests a willingness to give him the benefit of the doubt.

29. As for the FOREX transactions, INT’s Final Report cannot be described as containing prejudicial statements. It records that the Applicant claimed conversions at rates in excess of those listed in the Bank’s Common Data Store without furnishing receipts as stipulated in the Bank’s Travel Policy. This was an objective observation. The Bank’s policy may have been questionable, and the Applicant may have a point when he says that credit card transactions in which the issuer makes the FOREX transaction with no possibility of advantage to the cardholder demonstrates effective outlays, and should be accepted as such. That does not, however, invalidate INT’s observation, nor does it prove that it was “prejudicial” to make it. Above all, the FOREX transactions were not a basis for the finding of misconduct, or for the sanctions.

30. As for the weight given by Ms. Sierra to these two matters in the INT Final Report, this is not germane to the issue of whether the investigation was flawed, and rather falls to be examined when assessing the sanctions.

31. Fifthly, the Applicant complains that INT should have corrected its draft report in line with his demonstration of inaccuracies, and that he should have been shown the Final Report before it went to Ms. Sierra for action. The Tribunal does not accept that the Applicant demonstrated errors in the draft report that undermined the ultimate finding of misconduct. The Tribunal has also previously held that an applicant is not entitled to monitor every stage of redrafting. (*See Ismail*, Decision No. 305 [2003], para. 66.)

32. Lastly under this heading, the Applicant asserts that the flawed investigation could not be cured by the Bank’s introduction of subsequent declarations by one of its Travel Specialists (*see* paragraph 44 *infra*). The Tribunal agrees in principle, but the matter is of no moment because the investigation stands on its own merits.

#### *Was the Finding of Misconduct Proper?*

33. The Applicant argues that findings based on an improperly conducted investigation cannot be upheld. This argument naturally fails because, as explained above, the Tribunal does not accept that the investigation was flawed.

34. The Applicant next criticizes the fact that Ms. Sierra took into account INT’s comments about the New York and FOREX issues. Although INT found no wrongdoing in these respects, Ms. Sierra stated that they “shed light” on the Montreal stops, thereby evidencing, in the Applicant’s view, that those factors improperly contaminated her finding. Ms. Sierra’s statement before the Appeals Committee is taken from the transcript of her testimony, which made perfectly clear that her decision “related solely” to the Montreal trips. The Applicant wishes to read the expression “shed light” as being tantamount to an admission that the New York and FOREX issues were elements of the finding of misconduct for which he was sanctioned. It is not. The Tribunal accepts that expression for what it is. The New York and FOREX matters reveal that the Applicant is not a punctilious record-keeper and has difficulty reconstructing a busy pattern of travel. There is no necessary implication of an adverse “contamination.” To the contrary, these considerations may well have been relevant to a moderation of the sanctions in the Applicant’s favor, since Ms. Sierra stated that after careful consideration she had given him the benefit of the doubt that he had not acted with culpable intent. At any rate, the written notification of sanctions was based solely on the Montreal findings, and it is on that basis that the Tribunal has reviewed it.

35. Finally, the Applicant argues at length that Ms. Sierra’s conclusion that he committed misconduct in the form of “gross negligence” is unsustainable, because Ms. Sierra did not find that he had had culpable intent, and gross negligence necessarily involves intent. The Tribunal has not found this argument, replete with

reference to Black's Law Dictionary, to be edifying or persuasive. In the context of Staff Rule 8.01, paragraph 2.01, and its reference to "gross negligence in the performance of assigned duties," the notion of gross negligence involves a knowledge that certain conduct violates one's duty to obey established standards. Whether the Applicant thought that his actions had resulted in a net financial detriment to the Bank is not the criterion of intent. Ms. Sierra clearly did not believe that the Applicant's multiple misstatements as to the purpose of his trips were, as she testified before the Appeals Committee, innocent mistakes on the part of someone who had been described by his own character witnesses as "rigorous, an engineer's engineer, a stickler for the Bank's rules." In other words, he was found to have *known* he was not following the rules, but that is not the same thing as finding that he intended to defraud the Bank. In this respect, Ms. Sierra showed leniency in giving the Applicant the benefit of the doubt, considering that he should after all have noticed that he was now pocketing reimbursements and per diem on account of dozens of family visits, whereas he had never been reimbursed for his Montreal visits during several years before the introduction of SAP.

36. The Applicant also suggests that the Bank is guilty of contributory negligence for failing to supervise and train him with respect to SAP. This argument is not serious. It merits dismissal without further comment.

37. As for a number of additional complaints about the alleged disregard of factors which the Applicant apparently views as mitigating, they will be considered in connection with the issue of proportionality.

#### *Were the Disciplinary Measures Disproportionate?*

38. As noted above, the Applicant repeatedly refers to factors he considers to be exculpatory or at least mitigating, including notably the following contentions:

- his performance for the Bank was outstanding;
- he did not claim home leave for eight years out of his "integrity and loyalty to the institution," and also due to the fact that he regularly stopped over in Montreal in connection with his travel for the Bank;
- his possible negligence is explained by his absorption in his work "conducting and monitoring complex and high risk operations";
- during the period in question, he spent 477 days on mission, including 74 nights on a plane, and did not claim the benefit of 44 rest stops to which he was entitled;
- his Montreal stopovers did not in fact result in overall costs to the Bank, and he challenges the Bank's contrary findings in this regard;
- his manager always approved his SOEs, and should share any blame for the errors contained in them;
- he was prepared to refund any undue reimbursements;
- he was not aware of the default setting of the SAP forms and its propensity to lead to error; and
- other staff members made the same error of allowing the SAP program to default to the "operational" classification for travel definition purposes.

39. The Tribunal finds it disturbing that the Applicant apparently does not perceive how poor these arguments are. Rather than mitigating circumstances, they are, on the whole, aggravating; they suggest that the Applicant feels himself exempted from the inconvenience of obeying applicable rules. A senior staff member – introduced in his own request for anonymity as "a distinguished engineer" and "an outstanding professional" – should lead by example, not presume to be entitled to indulgences denied to colleagues at more modest levels of the hierarchy.

40. Any staff member may have ideas for refashioning the Bank's rules in a multitude of ways that might make



life less bureaucratic. One example is the Applicant's suggestion that someone who does not take home leave should be allowed to take advantage of "personal" stopovers to collect per diem and reimbursements contrary to the rules – as long as he can subsequently show that the net effect was not detrimental to the Bank. He makes a similar argument with respect to recalculating aggregate transportation costs. Yet the Bank would be ungovernable if staff members were allowed to construct *post facto* rationalizations for their disregard of the rules, and thereby be excused if the Bank – totally unaware of these mental rewritings of the rules, and therefore not organized to monitor each individual's way of complying with his or her "conscience" – cannot disprove the rationalization.

41. Equally unpersuasive is the Applicant's reference to his willingness to reimburse the improper payments. People who have benefited from cutting corners but are found out are often eager to make restitution, but misconduct is not so easily expunged.

42. The overall economic consequences to the Applicant of the sanctions imposed for his misconduct may seem harsh if compared to the likely aggregate amounts of overpayments to him. But the evaluation of a claim of disproportionality is not only a matter of sums. In this case, the Bank was quite unconvinced by the Applicant's insistence that he was merely committing a common error, when in fact he had for many years not obtained these payments on account of his "personal" Montreal visits, and then by the fortuitous default setting of the SAP itinerary collected reimbursements on dozens of identical occasions. The Tribunal is also unconvinced by his explanations, and disinclined to reconsider the sanctions imposed by the Bank.

43. It remains to note that the Applicant has raised some complaints about the way in which the Appeals Committee hearing was conducted. Although proof of egregiously biased handling of Appeals Committee proceedings could be valid grounds for a complaint of unfairness, the Tribunal does not exercise appellate jurisdiction over the Appeals Committee, and is not limited to the record created before it. The Tribunal is satisfied that the Applicant has not been prejudiced in this respect.

44. This case gave rise to a procedural episode which merits mention, namely the Bank's proffer of written declarations by a Travel Specialist in the Bank's General Services Department, who had no role in the Applicant's SOEs or in the investigation. These declarations were admitted into the record, and the Applicant availed himself of the opportunity to comment on them. Yet they have had no effect on this judgment. The Bank submitted them since their thrust was that a review of microfiche printouts contradicted the Applicant's contention that the misrecording of the purpose of his Montreal stopovers was accidental. The Applicant disagrees. The Tribunal does not take a position in this regard, having concluded that the implausibility of the innocent-error thesis was more than adequately established as of the date of the disciplinary measures.

## **Decision**

The Tribunal hereby dismisses the application.

/S/ Jan Paulsson

Jan Paulsson  
President

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

At Paris, France, 28 September 2006