

Decision No. 246

Eléonore Rita Koudogbo,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on November 20, 2000, by Eléonore Rita Koudogbo 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, composed of Francisco Orrego Vicuña (a Vice President of the Tribunal) as President, Thio Su Mien (a Vice President of the Tribunal), Bola A. Ajibola and Elizabeth Evatt, Judges. The usual exchange of pleadings took place. The case was listed on July 6, 2001.

2. The Applicant claims that the decision to terminate her employment based on a finding of misconduct was erroneous and that there was abuse of process in the conduct of the investigation. She further contests the rejection by the Vice President, Human Resources (HRSVP), of the Appeals Committee's recommendations to reinstate her and to give her back pay and all benefits from the date of her termination. She seeks rescission of the notice of termination, compensation for lost pay and costs of resettlement, damages in the amount of three years' net salary and publication in the Niger press of a retraction of a notice of June 19, 1999 of her termination.

Facts

3. The Applicant joined the Niger Resident Mission on January 25, 1985 on a Local, Regular appointment, as a Secretary. The Applicant eventually attained the position of Senior Administrative Assistant of the Resident Mission. The Applicant's performance review (PPR) for the 1996 review period indicates that as a Senior Administrative Assistant she would be taking on the responsibility for supervising and coordinating "all the construction works" for the "extension/remodeling" of the Niger office (hereinafter "Renovation Project"), which project had just been approved.

4. In 1997, a new Resident Representative joined the Niger Mission. In January 1999, the Resident Representative heard rumors, which he disregarded, of improprieties regarding the Applicant's involvement in the Renovation Project. On March 19, 1999, a person described by the Bank as a visiting "senior staff member" informed the Resident Representative of having heard that the Applicant had received financial benefit from the Contractor in charge of the Renovation Project and that the Applicant's husband was supplying the cement for the Renovation Project. In the light of these allegations, the Resident Representative initiated a preliminary inquiry under Staff Rule 8.01, paragraph 5.02, to determine whether there was sufficient evidence to merit a full investigation.

5. In March 1999, during the preliminary inquiry, the Resident Representative met with the Contractor, who made the following allegations: (i) he had offered to give the Applicant a gift if his bid for the Renovation Project was accepted; (ii) he had given to the Applicant's husband 400,000 CFA (approximately USD \$800 at the time) and received the contract believing that the Applicant had helped him; (iii) he later agreed to purchase from the Applicant and her husband the cement needed for the project; and (iv) the Applicant and her husband had given to him (the Contractor) 200,000 CFA in exchange for a tax exoneration form, which the Bank had issued to the Contractor for the purchase of the cement needed for the Renovation Project.

6. On March 23, 1999, the Contractor put the above allegations in writing. The Resident Representative then contacted by telephone the Applicant who was in Washington on training to advise her of the allegations. The Applicant provided the following verbal responses: (i) she admitted knowing about the 400,000 CFA paid by the Contractor to her husband, but claimed that she had just learned of the deal and denied responsibility for her husband's actions; (ii) she admitted knowing of her husband's role in supplying cement for the Renovation Project, but saw nothing wrong with the arrangement; and (iii) she also acknowledged that the Contractor had been given 200,000 CFA by her husband in exchange for the tax exoneration form, but claimed that the tax exoneration form was given to her husband as a guarantee for repayment of a loan of 200,000 CFA that her husband had made to the Contractor.

7. By an e-mail dated March 29, 1999, the Resident Representative asked the Applicant to return immediately to Niger to answer the allegations that the Contractor had submitted. On March 31, 1999, the Resident Representative discussed with the Manager of the Office of Professional Ethics (OPE) the allegations of the Contractor and the Applicant's response to these allegations. The Resident Representative continued to request from the Applicant a written response to the Contractor's allegations. Meanwhile, the Applicant met with the Resident Representative on at least two occasions where she responded orally to the allegations of the Contractor. The Resident Representative recorded these responses as well as his own understanding of them in e-mails to the OPE and the Internal Audit Department (IAD).

8. By an e-mail dated May 17, 1999, the Resident Representative forwarded to the Applicant a memorandum to her from the Manager, OPE, dated May 14, 1999, which stated that under the authority of Staff Rule 8.01, "Disciplinary Measures," the OPE was investigating allegations that:

You/Your husband ... received on June 25, 1997 payment of an amount CFA 400,000.00 from [the Contractor] ... in connection with the award of the contract to rehabilitate and extend the World Bank office in Niger;

In October 1997, after the award of the contract to this same contractor ... your husband, supplied 40 tons of cement for the construction work; and

You and/or your husband are in possession of the ORIGINAL document of tax exoneration issued by the Bank for the procurement of 110 tons of cement, which should be in the *sole possession* of the contractor, and that CFA 200,000 for [sic] given to the said contractor by your husband for the purchase of this document. [Emphasis in original.]

The Applicant was asked to respond to the allegations in writing by close of business May 21, 1999.

9. There is, in the record before the Tribunal, a letter to the Resident Representative dated May 20, 1999, from the Contractor in which, the Applicant alleges, the Contractor retracted his allegations against her.

10. By an e-mail dated May 21, 1999, the Applicant responded to the allegations described in the Manager's, OPE, memorandum of May 14, 1999. In an e-mail dated May 24, 1999, the Resident Representative explained to the Manager, OPE, his understanding of the Applicant's response to the allegations. After reviewing the evidence, the Manager, OPE, provided a report dated June 11, 1999 to the Managing Director and Corporate Secretary, to whom the OPE reported.

11. The Manager, OPE, advised the Managing Director that the evidence supported a finding of misconduct and she requested his decision in the matter. She presented the following conclusions: (i) the Applicant divulged to her husband confidential Bank procurement information which her husband then used to their financial advantage; (ii) it was highly unlikely that the Applicant was unaware that the Contractor had paid her husband 400,000 CFA "for what [the Contractor] perceived as her help in obtaining the contract"; (iii) the Applicant "was aware of the conflict of interest concerns raised by involving her husband in Bank procurement, but did it anyway"; and (iv) the Applicant had the tax exoneration form at her home when it should have been in the possession of the Contractor "or rendered to the customs authorities, which raises an issue of the intent of use of this document for personal gain."

12. In a memorandum to the Applicant dated June 16, 1999, the Manager, OPE, advised the Applicant that after the Managing Director considered all the facts and circumstances of this matter, and the Applicant's written response, he determined that misconduct on the above-mentioned four grounds had occurred.

13. On June 23, 1999, the Niger Resident Mission placed a notice in French in the local newspaper advising the public that the Applicant was no longer a member of the World Bank staff and that the Bank disclaimed further responsibility for her actions.

14. The Applicant filed a Statement of Appeal on October 18, 1999. In the Report, issued on June 27, 2000, the Appeals Committee reached the following conclusions: (a) the Applicant's evidence and explanations were credible, while the Contractor's allegations were "tainted"; (b) there was no proof of the allegation of a gift of 400,000 CFA to the Applicant's husband for the help of the Applicant to the Contractor in securing the contract for the Contractor; and (c) there was insufficient evidence of the improper use of the tax exoneration form. The Appeals Committee further found that while the cement transaction "could be perceived as being a conflict of interest," it was not a "serious breach of appropriate conduct" that could "legitimately be defined as 'misuse of Bank funds or other public funds for private gain in connection with Bank activities or employment, or abuse of position in the Bank for financial gain'" under Staff Rule 8.01, paragraph 4.01(a), warranting the "mandatory sanction of dismissal." The Committee further found that "insufficient effort" had been made by the OPE to ensure that the Applicant was afforded due process and fair treatment in the investigation. The Committee also found that the notice placed in the Niamey press regarding the Applicant's termination of employment had caused significant damage to the Applicant's reputation and prospects for future employment.

15. The Appeals Committee made the following recommendations: (i) that the Applicant be reinstated with retroactive effect from the date of termination, with back pay and all benefits to which she would have been entitled had her employment not been terminated; (ii) that the Bank place a retraction notice in the local press; and (iii) that the Bank pay legal costs in an amount up to \$5,000.

16. In a letter to the Applicant dated August 15, 2000, the Vice President, Human Resources (HRSVP), stated that he concurred only with the finding that there were "process errors" in the way the investigation leading up to the Applicant's termination had been handled and decided that the Applicant should be awarded three months' net salary at her most recent rate of pay and an additional \$5,000 towards her legal fees, on the condition that she waive any further right to appeal. The Applicant filed an application with the Tribunal on November 20, 2000. An offer by the Bank to have a new investigation conducted by the Anti-Corruption and Fraud and Investigations Unit, and to defer the Tribunal's proceedings pending the outcome of the investigation, was not accepted by the Applicant.

Considerations

HRSVP's decision

17. With regard to the Applicant's claim that the decision of the HRSVP to reject the Appeals Committee's recommendations is an abuse of authority, the Tribunal ruled in *de Raet*, Decision No. 85 [1989], para. 54:

The Tribunal is not a court of appeal from the Appeals Committee and does not review the manner in which the Appeals Committee has dealt with a case before it. ... The function of the Appeals Committee is to assist the management of the Bank to determine for itself whether there has been a failure on the part of the Bank. The function of the Appeals Committee ends with its recommendation, which the Bank may or may not accept.

The Tribunal further found in *Lewin*, Decision No. 152 [1996], para. 45:

If the Bank decides to reject the recommendations of the Appeals Committee, and, thus, to confirm its previous decision which the Applicant had contested before the Committee, this decision has to be reviewed by the Tribunal directly, and on its own merits. The Tribunal's task is to pass judgment upon whether the Bank has violated the contract of employment or terms of appointment of the Applicant. It is not to pass judgment upon whether the Bank has rightly or wrongly accepted or rejected the

recommendations of the Appeals Committee. There is, consequently, nothing wrong *per se* in the Bank's decision not to accept the recommendations of the Appeals Committee.

The Tribunal finds, in accordance with the above jurisprudence, that the HRSVP was free to accept or reject the recommendations of the Appeals Committee and his partial acceptance of the recommendations, in the sense that there had been procedural irregularities in the conduct of the investigation of the Applicant's misconduct, was not an abuse of discretion.

Scope of review

18. As the Tribunal has pronounced in several cases in the past, its scope of review in disciplinary cases is not limited to determining whether there has been an abuse of discretion. When the Tribunal reviews disciplinary cases, it "examines (i) the existence of the facts, (ii) whether they legally amount to misconduct, (iii) whether the sanction imposed is provided for in the law of the Bank, (iv) whether the sanction is not significantly disproportionate to the offence, and (v) whether the requirements of due process were observed." (*Carew*, Decision No. 142 [1995], para. 32.)

Existence of facts

19. The first issue that the Tribunal must address is whether an examination of the facts in this case shows that the Applicant committed misconduct serious enough to warrant the decision of the Managing Director to terminate her service. Some facts in this case have been established through admissions of the Applicant, through the testimonies of parties before the Appeals Committee as presented in the Appeals Committee Report and through relevant documentation attached to the pleadings. Other facts, however, are disputed and bring into question the credibility of the persons who allege that such facts took place. It is the task of the Tribunal to ascertain which facts have been established and which are merely unsubstantiated allegations. In this respect, the Tribunal notes that, regretfully, the transcripts of the hearing before the Appeals Committee are not available to assist the Tribunal in its determination.

20. A determination as to the credibility of the Applicant and of her alleged accuser, the Contractor, is of great importance in the Tribunal's examination as to whether the allegations of the Applicant's misconduct have been proven. With regard to the Applicant's credibility, the Tribunal notes that the Applicant has been consistent in her denials of the instances of misconduct. The explanations of these denials, however, are at times confusing.

21. The credibility of the Contractor has been attacked by the Applicant, the Respondent and the Resident Representative. Of relevance in this respect is a letter which the Contractor wrote on May 20, 1999 after filing his allegations in writing. In this letter, the Contractor mainly stated that he had written his allegations at the insistence of the Resident Representative but with the understanding that no harm would be caused to the Applicant. He was very surprised to find that the Applicant would be dismissed as a result of these allegations. He stated that he did not consider the matter as an affair of his and that if the Resident Representative wanted to dispense with the Applicant's services, he would have to find another "accomplice."

22. The Applicant describes the Contractor's letter as a retraction of his allegations and states that it serves to discredit him. The Respondent argues that the letter does not amount to a retraction of the Contractor's allegations. The Tribunal finds that the Contractor did not retract his allegations, but, rather, simply expressed his disappointment, and perhaps anger, at the Applicant's dismissal on account of his allegations. However, the Tribunal also finds that, on the basis of the evidence before it, it cannot determine with certainty the credibility and the accuracy of the evidence of the Contractor.

23. In the light of the above findings, the Tribunal will examine whether the four instances of alleged misconduct as described in the memorandum of the Manager, OPE, to the Applicant dated June 16, 1999, on the basis of which the Applicant's employment was terminated, have been proved. The first two instances of alleged misconduct were that the Applicant abused the authority vested in her as a supervisor of contracts in that:

- (a) [The Applicant] divulged to [her] husband confidential Bank procurement information, which he used to [their] joint financial advantage; and

(b) it is highly unlikely that [she was] not aware that [the Contractor] paid [her] husband 400,000 CFA for what [the Contractor] perceived as [her] help in obtaining the contract.

24. The Tribunal will examine these instances of alleged misconduct together as they are related. As is explained more fully below, the Tribunal finds that they have not been proved.

25. The Tribunal notes that although the original allegation of misconduct in the memorandum of May 14, 1999 from the Manager, OPE, to the Applicant stated that the Applicant and her husband had received payment of 400,000 CFA for the award of the contract to rehabilitate and extend the World Bank Office in Niger, the finding of misconduct was simply that “it [was] highly unlikely” that the Applicant was not aware that the Contractor had paid her husband 400,000 CFA for what the Contractor perceived as her help in obtaining the contract. The Tribunal finds that the selection of the words “it is highly unlikely,” in and of itself, is a statement of an assumption and clearly not a statement of evidence as to the alleged misconduct.

26. The Tribunal notes that the Ethics Officer testified before the Appeals Committee that there was no evidence that the Applicant had given her husband privileged information regarding the awarding of the contract. It has been established that the contract was awarded to the Contractor by the General Services Department of the Bank. In addition, the findings of the above instances of misconduct were made by the Resident Representative who, as was noted in the OPE report, recognized that the Applicant had nothing to do with the awarding of contracts, yet believed that confidential information regarding the awarding of the contract was passed to the Applicant’s husband who used it “to advantage” with the Contractor. The Resident Representative’s findings were mere speculation.

27. The Tribunal further fails to understand why the allegation of the “kickback,” if unproven and not used as a basis to justify the finding of misconduct, was nonetheless included in the report of the OPE to the Managing Director for his decision that misconduct had occurred and in the memorandum of June 16, 1999 in relation to one of the instances of misconduct. The Tribunal concludes that the decision on the Applicant’s misconduct and termination, to the extent that the decision was based on an allegation that was not sufficiently proven, is tainted with irregularities.

28. The Tribunal will next examine the third instance of alleged misconduct as described in the memorandum of June 16, 1999, namely that the Applicant abused her authority in that

[she was] aware of the conflict of interest concerns raised by involving [her] husband in Bank procurement, but did so anyway.

This instance of misconduct was based on the second allegation against the Applicant which related to the Applicant’s husband supplying 40 tons of cement for the construction work to the Contractor in October 1997.

29. The Tribunal, on the basis of the documents before it and on the basis of the testimonies of the parties involved, finds, first, that it has been established that the Applicant’s husband did provide 40 tons of cement for the Renovation Project. The Applicant has admitted to this as well as to the fact that she was aware of the transaction since October 1997 when construction started. The Applicant’s husband was clearly aware that there was a need for procurement of cement for the Bank’s Project and he offered to assist in such procurement. It is also proved, through the Applicant’s admission, that there was some financial advantage gained by the Applicant’s husband.

30. The Applicant has further acknowledged that she condoned her husband’s involvement in the procurement of cement for the Renovation Project. According to her explanation, she believed that her husband’s intervention in the supply of the cement was in the interest of expediting the Project. She further believed that her husband’s small financial gain was reasonable and justified, that he only acted as intermediary, and that he never took possession of the cement. Notwithstanding the above explanations of the Applicant, the Tribunal finds that her conduct in this regard involved a conflict of interest, as she was a staff member who was entrusted with the supervision of the Renovation Project and for making payments to the Contractor as a third party who in turn paid the Applicant’s husband a fee for his involvement in the procurement of the cement.

Although the Applicant was not directly involved in the transaction, she knew about it. It is also clear that the Applicant must have been aware of the conflict of interest concerns in the light of the fact that her position involved fiduciary responsibilities.

31. Indeed, the Tribunal observes that, as her PPRs showed over the years, the Applicant's position as a Senior Administrative Assistant carried significant responsibilities, many of which involved fiduciary trust. In this respect, her 1996 PPR showed that in her position as a Senior Administrative Assistant she was responsible for the effective daily functioning of administrative services in all areas of operation, including budget monitoring, finance management, procurement and inventory of Bank property. In this PPR, the Applicant herself had stated that she would be taking on the responsibility of supervising and coordinating all the construction works for the Bank's Renovation Project. It should be reasonably expected, therefore, that, in order to execute diligently and successfully these significant duties, the Applicant would acquire, if she had not already done so, a thorough knowledge of the Bank's procurement guidelines, Staff Rules and the Principles of Staff Employment, particularly those that had direct applicability to the execution of such duties. Even if she had no knowledge of such provisions, her failure to observe them would not be justified, as ignorance of the law is no excuse.

32. As to the Principles of Staff Employment, Principle 3.1, "General Obligations of Staff Members," is of particular relevance. It states in pertinent part:

[A]s employees of international organizations, staff members have a special responsibility to avoid situations and activities that might reflect adversely on the Organizations, compromise their operations, or lead to real or apparent conflicts of interest. Therefore, staff members shall: ... not accept in connection with their appointment or service with the Organizations any remuneration, nor any benefit, favor or gift of significant value from any ... governments or other entities or persons [Staff members] shall avoid any action and, in particular, any ... personal gainful activity, that would adversely or unfavorably reflect on their status or on the integrity, independence and impartiality that are required by that status

Furthermore, Staff Rule 3.01, "Outside Activities and Interests," paragraph 7.01, "Financial Interests in Bank Group Transactions," provides:

Neither a staff member nor a member of his immediate family shall accept a direct financial interest in any Bank Group transaction, whether by way of compensation, commission, favorable buying or selling arrangements, gift, or otherwise.

33. In the light of these provisions, the Applicant should have been reasonably expected to realize that the involvement of her husband in the procurement of goods or services to the Bank would create a situation of conflict of interest on her part. Indeed, the Applicant admitted before the Appeals Committee that, in hindsight, her judgment in the cement issue might have been poor.

34. In addition, the Applicant should have been reasonably expected to have a thorough knowledge of the particular Staff Rules which would apply in the event she failed to execute her important fiduciary duties in a proper manner and the measures that might be taken against her in the event of such failure. In this respect, Staff Rule 8.01, paragraph 3.01, "Misconduct," is of particular importance. It provides in pertinent part:

Disciplinary measures may be imposed whenever there is a finding of misconduct. Misconduct does not require malice or guilty purpose. Misconduct includes, but is not limited to, the following acts and omissions: (a) Failure to observe Principles of Staff Employment, Staff Rules, ...; abuse of authority; ... (b) ... use of Bank Group funds or property for improper purposes; ... (c) Acts or omissions in conflict with the general obligations of staff members set forth in ... the Principles of Staff Employment and Rule 3.01, "Outside Activities and Interests"; [and] ... (d) Misuse of Bank Group funds ... for private gain in connection with Bank activities or employment, or abuse of position in the Bank for financial gain.

35. Furthermore, Staff Rule 8.01, paragraph 4.01, "Disciplinary Measures," prescribes:

Disciplinary measures imposed by the Bank Group on a staff member shall be determined on a case-by-case basis, except that termination of service shall be mandatory where it is determined that any of

the following misconduct has occurred:

- (a) misuse of Bank funds or other public funds for private gain in connection with Bank activities or employment, or abuse of position in the Bank for financial gain.

36. The Tribunal holds that the Applicant had a special responsibility under Principle 3.1 to avoid a situation or activity that would lead to a real or apparent conflict of interest, which she did not meet. The Tribunal further holds that the Applicant was in violation of Staff Rule 3.01, paragraph 7.01, on the basis that a member of her immediate family (her husband) accepted a direct financial interest in a Bank Group transaction by way of commission. By violating the above Principle and Staff Rule, the Applicant committed misconduct.

37. The Tribunal will examine last the fourth instance of misconduct, namely, that the Applicant abused her authority in that

[she] had the tax exoneration form at [her] home when it should have been in the possession of [the Contractor] or rendered to the customs authorities. This raises [the] issue of [her] intention of use of this document for personal gain.

38. As the Respondent has explained, tax exoneration forms are documents that are provided by the member governments of the Bank pursuant to Article VII of the World Bank's Articles of Agreement to afford the Bank its tax immunities for goods purchased in connection with its operations. The tax exoneration form was given to the Contractor in order to purchase the cement for the Renovation Project on a tax-exempt basis. From the documents and the testimonies of the parties involved, it appears that the tax exoneration form was given for 110 tons of cement to be provided for the Bank's Renovation Project. This form was issued on October 13, 1997 and expired on January 13, 1998. The views presented by the parties on this matter are conflicting.

39. In spite of those differing views, the Tribunal concludes that no improper use was made of the tax exoneration form, particularly because the form was only filled out for 40 tons of cement, which is precisely the amount of cement delivered to the Contractor. The Applicant, however, has not explained satisfactorily the reason why the form was kept for some time at her home and not in the Bank's files.

40. It is the Tribunal's conclusion from a review of all the original allegations on which the finding of misconduct was made that only the allegation relating to the cement transaction has been proved.

Due process

41. The Tribunal finds that there were a number of procedural irregularities that tainted the ethics investigation.

42. Staff Rule 8.01, paragraph 5.01, requires that incidents of possible misconduct for which mandatory termination is to be imposed shall initially be notified to the OPE. In the present case, the Respondent has consistently argued that the Applicant's conduct rose to the level of mandatory termination; however, the Resident Representative did not contact the OPE until March 29, 1999, well after he had initiated the preliminary inquiry. The Resident Representative, as a manager authorized to conduct preliminary inquiries into allegations of misconduct against staff under his supervision, should have reasonably been expected to be familiar with Staff Rule 8.01, paragraph 5.01, and comply with it.

43. The Tribunal further notes that the Resident Representative initiated the preliminary inquiry under Staff Rule 8.01, paragraph 5.02, on the basis of nothing more than the rumors conveyed by a senior staff member, who had no first-hand knowledge of the alleged situation, and the allegations of the Contractor, whom the Resident Representative has characterized as untrustworthy. The initiation of investigations, preliminary or otherwise, on the basis of rumors and allegations by questionable sources, clearly does not comport with the basic elements of due process.

44. The Tribunal finds another irregularity in that after the Resident Representative contacted the OPE at the end of March, the OPE advised him to continue with the preliminary inquiry, despite the fact that the matter was serious enough to require OPE's involvement in the inquiry, as it raised the possibility of mandatory termination. Furthermore, the Tribunal finds troubling the Resident Representative's insistence at the request of the OPE

and IAD throughout the preliminary investigation to have the Applicant provide a written response to the Contractor's allegations. The Tribunal notes that, at this stage, a formal investigation had not yet started and the Applicant had not been informed officially of the allegations of misconduct against her, yet she was expected to defend her actions in writing against allegations that amounted to nothing more than rumors.

45. The Tribunal finds that there were also several irregularities in the conduct of the official investigation of the Applicant's alleged misconduct, one of the most serious being the decision to assign the conduct of the investigation to the Resident Representative. This was in violation of Staff Rule 8.01, which provides at paragraph 5.03:

When the Office of Professional Ethics determines that the matter appears to be less serious, the Office of Professional Ethics may agree that the manager conduct the investigation. In all other cases, the investigation shall be conducted by the Office of Professional Ethics, or the person designated by the President or the Vice President, Human Resources.

46. The matter of the Applicant's misconduct clearly did not appear to be "less serious," as the Applicant was being investigated for misconduct that might require mandatory termination under the Staff Rules. That the OPE also believed the matter to be serious is evidenced by the fact that it involved IAD and the Fraud and Corruption Oversight Committee at the preliminary inquiry stage. Under paragraph 5.03, the OPE had a duty to conduct the investigation itself or, at the very least, to have the Vice President, Human Resources, assign it to an impartial third party, perhaps a manager from another Country Office in the vicinity who would conduct the investigation under the OPE's constant guidance and close supervision and whose involvement would defy the appearance of any unfairness, bias, undue influence or impropriety in the conduct of the investigation. The Ethics Officer's explanation before the Appeals Committee that the OPE did not have the resources to investigate cases in Country Offices is not a sufficient justification for assigning the investigation to the Resident Representative.

47. The assignment of the formal investigation to the Resident Representative was inappropriate for a number of other reasons as well. First, the Resident Representative was involved in the matters under investigation. The record shows that although the Resident Representative relied on the Applicant's assistance for the supervision and coordination of the Renovation Project, he had signature authority for all matters relevant to this project and was responsible, by his own admission, for the signing of the checks that the Applicant handled.

48. Second, the Resident Representative's relationship with the Contractor is not clear. The record shows that the Resident Representative requested a release of a performance bond for works undertaken by the Contractor, a request which was later withdrawn through the intervention of the Applicant. Moreover, it has been alleged that the Contractor was involved in the refurbishing of the Resident Representative's official residence. Lastly, although the Applicant and the Resident Representative appeared initially to have been on good terms, their relationship clearly deteriorated after the initiation of the proceedings. The record shows there were heated discussions between the Resident Representative, the Applicant, her husband and the Contractor. All of the above instances could legitimately have raised the question of lack of impartiality on the part of the Resident Representative in conducting the investigation.

49. Furthermore, a closer look at the record and particularly the report of the investigation shows that the findings of the investigation were based on nothing more than the Applicant's responses to the allegations of the Contractor or "admissions" as the Respondent characterizes them, the Resident Representative's personal interpretation of these admissions, and a series of e-mails between the Resident Representative and the OPE in which the Resident Representative continued to present his own assumptions.

50. What is more disturbing is that, as the Ethics Officer testified before the Appeals Committee, and as is very clear from the record, the OPE relied entirely on the Resident Representative's informal communications and reports on interviews to the OPE in its preparation of the report that was then presented to the Managing Director for his decision on the Applicant's termination. Not only was there a lack of any close supervision of the Resident Representative by the OPE in the conduct of his investigation, but there were no direct

communications from any of the officers of the OPE with any of the parties to the investigation. The explanations of the Resident Representative were taken at face value and the explanations concerning the Applicant's admissions were never examined. There is no indication that there was additional interviewing of other witnesses that might have shed some light on the credibility of the evidence presented nor were there any consultations with other persons believed to have information of probative value in the investigation. Further, there is no indication that there was a review of materials believed to contain information of probative value other than the documents attached to the investigation report which either were not complete or not adequately translated. The Applicant was never afforded a proper opportunity by the OPE to put forward her evidence and arguments.

51. The Tribunal finds that the manner in which the investigation was conducted by the OPE does not reflect the due diligence that one would reasonably expect from this department in the conduct of investigations of allegations of such serious misconduct.

52. A further serious irregularity in this case is that the Applicant was completely unaware of, and therefore unable to adequately respond to, any of the assumptions and speculations as presented by the Resident Representative in the investigation report. This was because the investigation report was never given to her before a decision on the matter of her alleged misconduct was taken in her case, as is required. (*Mustafa*, Decision No. 207 [1999], para. 34.) The Respondent itself has admitted in its pleadings to this procedural irregularity.

53. The Tribunal also notes that the Applicant was never properly notified under which provision of Staff Rule 8.01 the disciplinary measure of termination was imposed. Such notification does not appear either in the investigation report or in the memorandum of June 16, 1999, by which the Manager of OPE informed the Applicant of the imposition of the disciplinary measure of termination. Reference to this provision first appeared in the proceedings before the Appeals Committee. Notification of the provision invoked, namely paragraph 4.01(a), would have adequately informed the Applicant of the fact that her termination was mandatory and, therefore, of the reasons for the disciplinary measure imposed as required under Staff Rule 8.01, paragraph 5.08.

54. Despite the Applicant's assertion to the contrary, the Tribunal believes that the responsible Managing Director was the appropriate person to make the decision on the disciplinary measure to be imposed. In this respect, however, the Tribunal would like to address a significant issue: As the Tribunal found earlier, the Managing Director had to base his decision on erroneous facts or misrepresentations presented in the investigation report. This, the Tribunal finds, was done through no fault of his own. It is the duty of the OPE, and the Bank provides it with the appropriate resources for this purpose, to conduct investigations of misconduct diligently and to present accurate findings so that the Managing Director can make appropriate determinations based on these findings. There is no requirement under the Staff Rules – nor is it practical and economical – for the Managing Director to conduct another examination of the facts to determine if the OPE properly arrived at its conclusions or, in other words, executed its duties under the Staff Rules.

Notice in the press

55. The Tribunal further finds that the Bank's decision to place a notice in the press regarding the termination of the Applicant's employment, disclaiming any liability for any actions of the Applicant after the date of her termination, was not only unnecessary but entirely inappropriate. The Tribunal notes that the way the announcement was worded implied that the Applicant might attempt an illegal act for which the Bank wanted to decline any responsibility.

56. The Tribunal notes first that although the Applicant had financial responsibilities in the office, she was only a member of the staff of the Resident Mission reporting to the Resident Representative who had final signature authority in financial transactions. Second, the Respondent's explanation that such announcements were local practice in Niger does not justify the potential damage to the Applicant's reputation and to her prospects of finding employment in the small community she lived in, particularly if the basis for her termination and this announcement were to be reversed in the future. The Tribunal further notes that such practice is not a practice

of the Bank with respect to all its staff in similar situations, at least in Headquarters, possibly indicating inequality in the treatment of the Applicant vis-à-vis other Bank staff in similar situations who are not subject to such practice.

Remedies

57. The irregularities affecting the investigation in this case are of such a nature and an extent that it would have been both pointless and untimely to have a new investigation undertaken, as offered by the Bank and refused by the Applicant. Such irregularities have a still more serious implication. Although the Tribunal is persuaded that the Applicant acted improperly in connection with the conflict of interest issue discussed above, and that this might justify a sanction, it cannot conclude in the light of such an irregular investigation that mandatory termination was necessarily the conclusion to have been reached.

58. The Tribunal notes that on the basis of the report of the Appeals Committee in this case, the Vice President, Human Resources, decided that the Applicant be awarded three months' net salary at her most recent rate of pay and US\$5,000 in legal fees, on the condition that she waive any further right of appeal. In a recent case, the Tribunal cautioned in respect of this kind of conditional remedy. (*Cissé*, Decision No. 242 [2001], para. 39.) The Tribunal must now state that this conditioning was entirely inappropriate given the imbalance of power as between the Bank and the Applicant.

59. The Tribunal concludes that the Applicant should be awarded compensation for the serious procedural irregularities in this case and for the unwarranted publication in the press referred to above.

Decision

For the above reasons, the Tribunal unanimously decides that:

- (i) the Respondent shall pay the Applicant compensation in the amount of two years' net salary; and
- (ii) the Respondent shall pay costs in the amount of \$20,000; and
- (iii) all other pleas are dismissed.

/S/ Francisco Orrego Vicuña
Francisco Orrego Vicuña
President

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

At London, England, July 23, 2001