



**World Bank Administrative Tribunal**

**2008**

**No. 379**

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

**v.**

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

**World Bank Administrative Tribunal  
Office of the Executive Secretary**

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

**v.**

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

1. This judgment is rendered by a Panel of the Tribunal established in accordance with Article V(2) of the Tribunal's Statute, and composed of Jan Paulsson, President, and Judges Stephen M. Schwebel and Francis M. Ssekandi. The application was received on 14 August 2007. The Applicant's request for anonymity was granted on 12 September 2007. The Bank raised a jurisdictional objection which is the sole matter decided by this judgment.

*Factual Background*

2. The Applicant joined the Bank in 1988 and retired in 2005. At the time of his retirement he was a senior manager.

3. The Bank's Department of Institutional Integrity (INT) conducted two investigations into the Applicant's alleged misconduct during his tenure at the Bank. The two investigations lasted from 2005 to 2007. They resulted in two misconduct decisions of the Vice President of Human Resources (HRSVP), one dated 8 January 2007 and the other 17 April 2007, finding that the Applicant had engaged in misconduct and permanently barring him from future Bank employment and from access to Bank premises.

4. In his decision of 8 January 2007, the HRSVP concluded *inter alia* that:

I have reviewed the lengthy and exhaustive Final Report .... I have full discretion to disagree with the findings and conclusions of INT, there is no basis for doing so here.

You purchased shares of stock in companies that had then-current or prospective business interests in your ... Unit. Further, you failed to recuse yourself from personal involvement in Bank activities involving at least one of these business entities – which at the very least creates the impression that you affected their financial interests. These actions constitute a serious conflict of interest and a breach of your obligation under the Principles of Staff Employment to adhere to a high degree of integrity and concern for the interests of the Bank Group and to avoid situations and activities that might reflect adversely on the Bank Group, compromise its operations or lead to real or apparent conflicts of interests. Moreover, there is reasonably sufficient evidence showing that you purchased some of the shares of stock under preferential terms.

...

Since you have left the services of the Bank, I have decided pursuant to Staff Rule 8.01, section 4, that the appropriate disciplinary measure is to permanently bar you from future employment within the World Bank Group. In addition, you will be prohibited from access to all World Bank Group facilities, absent exceptional circumstances as decided by the Vice President, Human Resources.

5. In his decision of 17 April 2007, the HRSVP concluded *inter alia* that:

The INT report reveals that while you were ... at the World Bank, (a) you personally intervened and advocated for the [X] company ... to serve as a Bank vendor of information technology consulting services, (b) over the course of at least three years, you orchestrated a business relationship between the Bank and [the X company] which favored and enabled [the X company] to become the beneficiary of 32 sole-sourced contracts and/or purchase orders from the Information Solutions Group at the World Bank, and (c) you sought to benefit and further a business relationship between [the X company] and a staff member who was formerly in your ... [Unit] and who continued for some time to work for you as a short term consultant. Based on the evidence of record, I have concluded that in doing so, you failed to discharge your duties “solely with the interests and objectives” of the World Bank in view as required by Principle 3 of the World Bank Principles of Staff Employment.

...

In the case at hand, I conclude that the findings of misconduct I outline above provide a separate, independent basis to impose discipline. Because you have terminated Bank service, the discipline imposed in connection with this matter will be to permanently bar you from future employment within the World Bank Group and to prohibit you from

access to all World Bank Group facilities, absent exceptional circumstances as decided by the Vice President, Human Resources.

6. While the INT investigations were under way, the Washington Post and the U.S. News & World Report, respectively in January and September of 2006, published articles mentioning the Applicant's name in reference to INT's ongoing investigations into allegations against him. The Applicant claims that he asked the Bank at least seven times to investigate the source of the leaks to the news sources. He asserts that his requests were ignored by INT; that the Bank thus failed to protect his rights to privacy and confidentiality; and that in so failing it violated his due process rights.

7. In April 2007, after the disciplinary proceedings against him had concluded, the Applicant sought the Bank's consent to file an application directly with the Tribunal pursuant to Article II, paragraph 2, of the Statute of the Tribunal. The Bank agreed to his request on 26 April 2007, in the following terms:

The Bank agrees to [the Applicant's] request to proceed directly to the Tribunal to challenge the decisions of [the HRSVP] dated January 8, 2007 and April 17, 2007, regarding misconduct findings and disciplinary measures imposed on [the Applicant] ("Misconduct Decisions"). This agreement is limited to the Misconduct Decisions only and does not include any other decisions, actions or alleged omissions by the Bank, or any other allegations that could be made by [the Applicant] ("Other Claims"). If [the Applicant] wishes to raise Other Claims, he must first exhaust remedies with the Appeals Committee, or obtain agreement from the Bank to proceed directly to the Tribunal, in a timely manner. In addition, this agreement is without prejudice to any defenses that the Bank might have to [the Applicant's] claims regarding the Misconduct Decisions, including lack of timeliness or failure to state a claim properly cognizable by the Administrative Tribunal of the Bank.

The Bank will not oppose [the Applicant's] request to file a single Application with regard to both Misconduct Decisions within 120 days from April 17, 2007, the time allowed under Article II(2) of the Tribunal's Statute for filing an Application.

8. The Applicant accordingly filed his application with the Tribunal on 14 August 2007 challenging the two misconduct decisions of the HRSVP including the Bank's alleged failure to protect his confidential personnel information and due process rights.

*The Bank's Jurisdictional Objection*

9. The Bank considers that the Tribunal has jurisdiction only over the Applicant's challenge to the HRSVP's decisions of 8 January and 17 April 2007. The Bank observes that the application raised two additional claims: (i) the Bank breached the confidentiality of his personnel information by disclosing such information to the Washington Post and the U.S. News & World Report; and (ii) INT failed to investigate these disclosures. In the Bank's view, the Tribunal does not have jurisdiction over these two claims for the following reasons.

10. First, the Applicant did not request the Bank to allow him to proceed directly to the Tribunal with his claims about breach of confidentiality or INT's decision not to investigate his allegations. Nor has he exhausted internal remedies with respect to these claims. He can no longer file these claims with the Appeals Committee because they are time-barred.

11. Second, the Applicant cannot bring his untimely claims – i.e. breach of confidentiality and the related failure by INT to investigate – before the Tribunal through the back door by labeling them as “due process” claims and connecting them to his challenge of the misconduct findings and disciplinary measures. This type of bundling of timely and untimely claims has been expressly rejected by the Tribunal in cases like *O*, Decision No. 323 [2004], *Malekpour*, Decision No. 320 [2004], and *Jalali*, Decision No. 148 [1996]. The Tribunal held in these cases that if an applicant's claims arose out of

different events, involved different persons and occurred at different times, then the timeliness requirements must be satisfied with respect to each claim.

12. Here, the Applicant's breach of confidentiality claim involves potential wrongdoing by unknown staff members and a possible violation of the Bank's confidentiality policies. The Applicant's claim with respect to INT's decision not to pursue his complaint about the leaks has nothing to do with the INT's investigations into the allegations of misconduct against the Applicant. These claims should be regarded as distinct from those related to the disciplinary proceedings because the former arose out of separate operative facts, and are based on different considerations, events, and evidence than the claims related to the disciplinary measures. The Applicant should therefore be required to meet jurisdictional requirements with regard to each claim.

13. Third, the Applicant's argument that it would be inefficient to require separate appeals of each decision taken in the course of an investigation, instead of waiting to bring all of his claims when the investigation is completed, is unavailing. His statement is true with regard to matters that arise out of the investigation itself, but not with regard to claims separate from the investigation process. Since claims relating to the breach of confidentiality and INT's failure to investigate are separate from the staff misconduct investigation process, the Applicant should have challenged these separate claims in a timely manner, and should not have waited until the end of the investigations.

14. Finally, the Tribunal should reject the Applicant's argument that he could not have appealed INT's decision not to investigate the leaks because INT never issued "a conclusive written administrative decision" on the matter. This argument is specious because the Appeals Committee and the Tribunal both consider disputes that involve

omissions or failures to act. Moreover, in November 2005 the Applicant complained to INT about the leak to the Washington Post, and INT responded in writing on 8 November 2005 informing the Applicant that it would not investigate the alleged leak. Similarly, on 16 August 2006, INT informed the Applicant's counsel by telephone that it would not pursue the leak to the U.S. News & World Report. Thus, the Applicant cannot dispute the fact that he was on notice of INT's posture with regard to his complaint.

*The Applicant's Response*

15. The Applicant counters first of all that his claim relating to the press leaks is part and parcel of his claim that the Bank violated his due process rights during the INT investigations. His application enumerated numerous due process violations that occurred during the INT investigations. They included INT's failure to protect confidential personnel information. The Bank should not be able to pick and choose which due process violations must be pursued separately. The question whether the Applicant's due process rights were observed in the investigation is well within the Tribunal's purview.

16. Second, the Applicant is not requesting that the Tribunal order the Bank to conduct an investigation into the sources of the leaks. He is not making a separate claim in which he is asking for specific relief from the Bank based on the facts relating to the leaks. Rather, the Applicant maintains that the Bank failed to protect his privacy and his right to confidentiality, and in doing so violated his due process entitlements. These violations, taken together with several other due process violations during the INT investigations, impacted the administrative decisions the Bank took at the end of the flawed investigation processes, which the Applicant is challenging.

17. Third, if the Bank's arguments were accepted, the Applicant would have had to contest separately before the Appeals Committee and the Tribunal each and every "decision" presumably taken by INT in the course of the investigation. This would be unreasonable.

18. Fourth, the three cases cited by the Bank – *O, Malekpour*, and *Jalali* – are distinguishable. None of these cases dealt with challenges of a disciplinary decision based on a misconduct investigation. Moreover, all of the cases involved actions that were formal in nature, well understood as matters that could be appealed, and were clearly appealable at the time. Here, the Applicant is raising due process violations that relate directly to the INT investigations. He is not making a claim that involves a different set of facts, "different persons," "different times" or "important witnesses or documents" which may now be absent.

19. Finally, contrary to the Bank's assertion, INT never told the Applicant in an explicit manner that INT would not conduct an investigation into the leaks. Nor was there ever a clear-cut, specific date on which the Applicant was formally notified by INT of its alleged "decision" with respect to the leaks. The Bank should not be rewarded for evading any response to the Applicant's complaint about the leaks. In sum, the Bank's jurisdictional objection should be dismissed, and the Applicant should be reimbursed for his costs in the jurisdictional phase of the proceedings.

#### *The Tribunal's Analysis and Conclusions*

20. The Tribunal's jurisprudence is clear 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. In *Cissé*, Decision No. 242 [2001], para. 26, the Tribunal stated that:

The Tribunal has held that in disciplinary cases, it may examine: (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.

21. The parties are in agreement that the Tribunal has jurisdiction to review the HRSVP's decisions of 8 January 2007 and 17 April 2007 regarding the misconduct findings and the disciplinary measures imposed on the Applicant. Consistent with its practice of reviewing disciplinary cases, the Tribunal in this case as well may review "whether the requirements of due process were observed." The parties' agreement to come directly to the Tribunal as expressed on 26 April 2007 does not restrict the Tribunal's general scope of review in this disciplinary case. The Applicant submits that his claim with respect to the breach of confidentiality is part and parcel of his claim that the Bank has violated his due process rights during the investigations. Whether that is so, and whether it impacted the decisions of which he complains, are matters pertaining to the merits. As part of its general scope of review of disciplinary cases articulated in *Cissé*, the Tribunal has jurisdiction over the breach of confidentiality claim and may examine on the merits whether the Bank indeed has violated his due process rights in this respect.

22. The Tribunal agrees with the Bank that its jurisprudence, as articulated in *O*, Decision No. 323 [2004], *Malekpour*, Decision No. 320 [2004], and *Jalali*, Decision No. 148 [1996], does not allow an applicant to "tack" numerous old and time-barred claims onto timely claims by means of a "one ball of wax" theory or by alleging a "pattern" of unfairness. The claims and the circumstances in those three cases are different from the

present case. Here the parties agree that the Tribunal has jurisdiction over the HRSVP's disciplinary decisions. The Applicant is asking the Tribunal that in examining these disciplinary decisions, it should also review whether the Bank has violated his due process with respect to his confidential personnel information. The Tribunal's general scope of review in disciplinary cases includes an examination of due process claims that arise out of misconduct investigations. The Tribunal thus will examine the alleged breach of confidentiality only in the context of the Applicant's due process claim. In so doing, the Tribunal is not permitting the Applicant to "tack" separate, old and time-barred claims onto timely claims before the Tribunal.

23. In view of the above, the Tribunal rejects the Bank's jurisdictional objection. The Tribunal deems it appropriate to reserve the issue of costs in order to examine it in light of the Applicant's grievance generally at the merits stage.

### **Decision**

For the above reasons, the Tribunal decides that:

- (i) the Bank's jurisdictional objection is rejected;
- (ii) in reviewing the HRSVP's decisions of 8 January and 17 April 2007, the Tribunal will examine the alleged breach of the Applicant's confidential personnel information but only in the context of his claims of lack of due process in the relevant investigations; 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/ Jan Paulsson  
Jan Paulsson  
President

/S/ Zakir Hafez  
Zakir Hafez  
Counsel

At Washington, DC, 18 March 2008