



World Bank Administrative Tribunal

2008

No. 383

**Cadman Atta Mills,
Applicant**

v.

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

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

**Cadman Atta Mills,
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Jan Paulsson, President, Francisco Orrego Vicuña, Sarah Christie, Stephen M. Schwebel, and Francis M. Ssekandi, Judges. The Application was received on 26 September 2007. Mrs. Maimouna Mills, the Applicant's former wife, was authorized to intervene in these proceedings. The World Bank Family Network was authorized to participate as an *amicus curiae*.

2. This case concerns an appeal against the decision taken by the Pension Benefits Administration Committee ("PBAC") on 11 July 2007, which confirmed the decision of the Pension Plan ("Plan") Administrator of 9 February 2007 to (a) accept and comply with an Order from the Maryland Circuit Court for Montgomery County ("the Circuit Court") dated 29 September 2005, granting the Applicant's former wife certain payments to be deducted from the Applicant's pension and (b) continue suspension of a part of his commutation payment pending the outcome of the appeal by the Applicant of an Amended Order entered by the Circuit Court.

FACTUAL BACKGROUND

3. The Applicant joined the Bank on 1 April 1986 and retired on 30 September 2006. The Applicant and Mrs. Mills divorced on 10 August 2004. They had agreed during divorce proceedings before the Circuit Court to split their respective retirement accounts so

that each would have 50% of the pertinent amounts. They also agreed on survivor benefits and other matters. Their agreement on these matters was incorporated in their divorce decree.

4. The Applicant and Mrs. Mills understood that an order reflecting their agreement would be submitted to the Bank for administration in accordance with the rules of the Staff Retirement Plan (“SRP” or “Plan”). At the divorce hearing, in the presence of the Applicant, counsel for Mrs. Mills stated that she would submit such an order to the Bank Plan Administrator. The Applicant declared at the divorce hearing, in answer to a question from the presiding judge, that the initiative to submit an order reflected the agreement reached in the divorce proceedings.

5. During a subsequent motions hearing before the Circuit Court, the Applicant and Mrs. Mills agreed to modify her share in the Applicant’s pension to 41%. On 29 September 2005, the Circuit Court entered an order reflecting the agreement between the Applicant and Mrs. Mills regarding the Applicant’s SRP benefits and the participation that Mrs. Mills would have in such benefits (the “Original Order”).

6. The Applicant maintains that the Original Order related to the equitable division of any retirement account and that this was the only agreement they had reached; the agreement did not refer to any form of spousal support, and none was awarded; and the assets contained in “retirement accounts” are different from pension benefits under the Plan. The Applicant filed an objection in the Circuit Court opposing the Original Order on 5 October 2005, before it was submitted by Mrs. Mills’ counsel to the Bank on 18 October 2005. While the Applicant evidently knew of the existence of the Original Order, he explains that he did not know about its submission to the Bank until 30 November 2005

when he received a copy of the Bank's letter to Mrs. Mills' counsel informing her that the proposed Original Order raised a number of questions.

7. Upon submission of the Original Order, the Bank explained to Mrs. Mills' counsel that while that Order required spousal support to be deducted from pension annuities, it did not address the situation that would arise if the Applicant chose to convert up to a third of his pension to a lump sum pension ("commutation"). The Bank also pointed out other problems related to the waiver of severance payments and the options the Applicant had in respect of a "survivor annuity pension." In light of these comments by the Bank, Mrs. Mills' counsel asked the Bank for guidance as to the appropriate language to be used in the Original Order.

8. Mrs. Mills' counsel submitted a draft Amended Order to the Bank on 22 March 2006. The Bank replied on 4 April 2006 that the draft Amended Order presented no problems. The Applicant wrote to the Bank on 14 April 2006, objecting to the Bank's pre-approval of the draft Amended Order and stating that the provisions of this Order should be held unenforceable against the Plan. The Bank answered on the same date, explaining that the Plan was not taking a position on the rights and responsibilities assigned by a court to either party, and that its only concern was that the order should be clear enough to be implemented.

9. Mrs. Mills' counsel submitted the draft Amended Order to the Circuit Court together with the information provided by the Bank as to its acceptability. The Amended Order was signed on 14 September 2006 and entered on 26 September 2006. The Amended Order, like the Original Order, required that 41% of the Applicant's pension be paid to Mrs. Mills. The Amended Order also established the percentage of the

commutation payment that Mrs. Mills would receive should the Applicant elect a commuted pension amount. Shortly after the signature of the Amended Order and before it was entered, the Applicant requested the maximum commutation of his pension allowed under the Plan.

10. While the record is not clear as to whether at that point the Plan had been informed of all the developments before the Circuit Court, it is established that the Applicant wrote on 29 September 2006 to a Plan Officer stating that an Amended Order was being prepared and that he intended to file an appeal against it. He also wrote to the Bank on 2 October 2006 expressing his views about the Amended Order and its inconsistency with the Plan. However, as of 30 September 2006, the date of the Applicant's retirement, the Bank had not received the Amended Order, and decided to proceed with the implementation of the Original Order in respect of the pension arrangements. The Plan Administrator informed Mrs. Mills accordingly in a letter dated 4 October 2006, a copy of which was sent to the Applicant.

11. On 5 October 2006, Mrs. Mills' counsel sent the Amended Order to the Plan Administrator, who apparently received it on 12 October 2006. The Bank's preliminary conclusion, dated 20 October 2006 and copied to the Applicant, was that the Amended Order seemed acceptable to the Plan but would not be implemented during the 60-day period following the date of its receipt, during which period the Applicant would be able to comment on it.

12. If the acceptability of the Amended Order under the Plan was confirmed within the 60-day period, 41% of the Applicant's monthly pension would be paid to Mrs. Mills. The Plan would also proceed under its rules (SRP Section 12.2) to pay the Applicant 59% of

the commuted sum and would suspend payment of the remaining 41% of such sum for at least the 60-day waiting period provided under Section 5.1(c) of the Plan. It appears that it was still unclear to the Plan whether the 41% envisaged in the Original Order would be based on the pension amount calculated before or after commutation, and whether the commutation itself would be subject to division. Other aspects of the Bank's answer dealt with questions of the optional survivor pension and non-waiver of severance payments payable upon retirement.

13. The Applicant filed with the Circuit Court a motion to vacate the Amended Order. The motion was denied on 4 December 2006. The Applicant also filed an appeal concerning the Amended Order with the Maryland Court of Special Appeals on 25 October 2006. It too was denied, on 5 March 2008.

14. Mrs. Mills had applied to the Circuit Court on 24 October 2006 for enforcement of the Amended Order in view of the Applicant's non-compliance with that Order and his failure to make the proper elections for pension benefits upon his retirement. The Circuit Court decided on 8 November 2006 that the issue of election of survival benefits was moot at the time because the Applicant had remarried, leaving the issue of the pension commutation as the only matter in dispute.

15. The Bank had written to the Applicant on 24 January 2007 seeking to clarify the scope of the appeal and noting that no appeal had been filed against the Original Order. The Bank informed the Applicant on 9 February 2007 that it had been decided that payment of 41% of the monthly pension to Mrs. Mills was to commence as required in the Original Order, and that the payment of 41% of the commuted amount would remain suspended as this question was the subject of appeal. The Bank thereby confirmed its

earlier finding of 20 October 2006. The PBAC's final decision of 11 July 2007, identical to that of 9 February 2007, is the object of this Application before the Tribunal.

THE PARTIES' CONTENTIONS

16. The Applicant contends that the Plan abused its discretion and proper process under the SRP because it decided to treat the Court Orders (i.e. the Original Order and the Amended Order) as having provided alimony or "spousal support." The Applicant maintains that these Orders did not contain such language and were intended only to divide marital property under the guise of "support." The Applicant argues that the Plan cannot implement court orders that divide pension benefits as part of marital property. Furthermore, the Applicant maintains that the Court Order could not limit his options (such as the type of retirement he should choose or his other choices concerning severance or election of survivor annuity).

17. The Applicant also contends that the Court Orders were deficient and did not conform to the Plan's requirements, thereby resulting in the abuse of the Applicant's rights as a Plan participant. On this basis, the Applicant requests rescission of the decisions by the Plan Administrator and the PBAC by which the Orders were approved. The Applicant also argues in this connection that the Plan should not have approved the Original Order after having stated that it did not consider it acceptable, a decision made while Mrs. Mills was in the process of obtaining the Amended Order following the Bank's observations. The Applicant also maintains that the Bank should not have approved the Amended Order before a decision was taken on its acceptability, and before its legal validity and finality was tested in the Maryland courts.

18. The Applicant argues that he was not informed that Mrs. Mills' counsel had provided the Original Order to the Bank, and that he only became aware of it through later correspondence copied to him. The Applicant also believes that the Plan should not have corresponded directly with Mrs. Mills or her counsel to provide legal advice as to how best to proceed in order to produce an order that would be acceptable to the Plan. The Applicant argues that this initiative was improper, breached confidentiality and the Plan's duty of neutrality, adversely affected the Applicant and infringed upon his rights, and amounted to a failure of due process.

19. The Bank, for its part, argues that the decisions it took were in strict compliance with the rules of the SRP as amended on 2 January 1995. In 1995, the Bank decided to adopt a policy, recommended also by the predecessors of the World Bank Family Network, intended to avoid adverse effects that divorce after retirement could have on spouses without adequate means of support who lacked the legal means to recover portions of the Bank retiree's pension if the retiree left the jurisdiction and refused to pay the former spouse directly. The amendment was inspired by the policy embodied in the United States Retirement Equity Act of 1984.

20. Section 5.1(c) of the Plan provides accordingly that participants or retirees may direct the Plan to pay a specified part of their pension to a former spouse pursuant to a decree of legal separation. In addition to this arrangement, Section 5.1(c) provides that

[i]f the participant or retired participant is obligated by a final order of a court to direct that such a payment be made, the [Plan] Administrator shall pay the pension or lump sum payment accordingly after receipt of the order; provided, however, that neither the participant, retired participant, nor [Plan] Administrator may convey an interest in the Retirement Trust Fund of the Plan or in the pension or other benefits of a participant or retired participant to any person.

This Section currently applies not only to pensions and lump sum payments representing commuted pensions but also to withdrawal benefits.

21. The memorandum with which the Bank submitted the proposed amendment to the Executive Directors specifically noted that the Bank may be “requested by a person other than the participant or retired participant to give effect to a final decree of a court ordering support payments.” In such a case, the retiree would be notified and a 60-day period after receiving the order would follow before any payments are made to the former spouse, in order to allow for the retiree’s comments or objections.

22. The Bank explains that a final decision would only be taken after the 60-day period. In case of doubt as to the meaning of an agreement or direction to pay, the Bank would withhold payments to the extent of the disputed amount. Thus Section 12.2 of the Plan provides that “[i]f there is a dispute about the right of any person to payments under the Plan, the Bank may withhold payment until the dispute has been resolved by the Administration Committee or the World Bank Administrative Tribunal, or settled, whether by agreement, arbitration, or a court with proper jurisdiction over the matter.”

23. The Bank maintains that these requirements and procedures were followed to the letter in the instant case. There was a court order incorporating an agreement, submitted by the Applicant’s former spouse to the Plan Administrator; relevant subsequent correspondence was copied to the Applicant; and every available option that the Applicant decided to take was respected. The Bank notes, however, that the Applicant failed to take some options that were available to him, the opportunity for which then lapsed, and that he also failed to submit his own draft order for consideration by the Plan Administrator.

24. According to the Bank, no payments were deducted from his pension until more than a year after the Bank had received the Original Order. The Applicant was notified of its receipt and had ample opportunity to comment and ask questions, and to meet with the staff and his personal attorneys. The payments to Mrs. Mills began after the Plan had received an authenticated copy of the Amended Order, and even then, the 60-day waiting period was observed. The decision to suspend payment pending the resolution of the dispute was also necessary and in accordance with the Plan itself.

25. The Bank explains further that Mrs. Mills received the standard information provided by the Bank in such cases, namely sample language for an order that would be acceptable under the rules of the Plan. It was specifically explained to the Applicant in writing that “an order can be accepted by the Plan so long as it describes the portion of the pension directed to the former spouse as ‘support’ payments.”

26. The Bank maintains that it acted reasonably and fairly throughout the lengthy process described, in accordance with the objective of the Plan’s amended rules, to ensure that a support order could be effectively administered and that there were no obstacles to the implementation of a court order, even where a retiree might not be in agreement with that order.

27. Rather than giving effect to portions of any order that might require the retiree to make certain elections or designations of beneficiaries, as this is not allowed under the “Plan Guidelines” (World Bank Staff Retirement Plan – Explanation of Payment of Spousal Support from Participant’s Pension (for Participants Joining the Plan Before April 15, 1998)), the Plan was merely exercising its discretion in accepting those parts of the Original Order referring to spousal support as envisaged in the Plan’s Section 5.1(c) and

the Plan Guidelines. In this context the Plan decided reasonably that the Original Order was final; the Applicant did not file an appeal against it. Moreover, the fact that the Original Order was superseded by the Amended Order does not affect the reasonableness of the decisions taken since the Applicant's obligation to pay Mrs. Mills 41% of his monthly pension appears in both Orders.

28. In her Application for Intervention, Mrs. Mills claims, *inter alia*, that the Applicant's position before the Tribunal contradicts his position in his submissions before the Courts where he had stated that the Original Order did not need amendment. She further asserts that the Applicant at no time objected to the language in the Orders to the effect that he had a legal obligation to provide support to her in the form of payment of 41% of his pension benefits. She also claims that in providing specifically that any commutation pay would be distributed in the same manner as the pension annuity (i.e., 41% to the Intervenor), the Amended Order did not change the Original Order but merely clarified it. She asks that she be paid her rightful share of the commutation pay immediately upon the receipt of the decision from the Court of Appeals of the State of Maryland.

29. The Applicant made his comments on the Application for Intervention on 19 March 2008, maintaining the views described above.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

30. The Tribunal notes at the outset that the validity of the Court Orders has not been questioned explicitly in the present proceedings. To the extent that their validity might have been an issue before the Maryland courts, it was dealt with both in the Circuit Court's decision of 4 December 2006 denying the Applicant's motion to vacate the Amended

Order and in its decision of 5 March 2008 denying the Applicant's appeal against the Amended Order. What has been questioned in the present proceedings is the compatibility of such Orders with the SRP and the decisions taken by the Plan Administrator and the PBAC in this respect.

31. As the Tribunal held in *Courtney (No. 2)*, Decision No. 153 [1996], appeals brought to it under the SRP may involve issues that cannot be regarded purely as a matter of executive discretion, which is certainly the case here. Accordingly, the Tribunal must examine whether the Plan Administrator and the PBAC correctly interpreted the law and whether the requirements of due process have been observed. The examination of the facts of the case and the conditions required by the SRP for the handling of spousal support orders is central to the Tribunal's review.

32. The Tribunal will address first the question of the powers of the Bank regarding the interpretation of the Original Order and the Amended Order. The Applicant argues that these Orders, properly construed, were not for spousal support, but rather provided for the division of marital property disguised as spousal support. While provision of spousal support is well within the rules of the SRP, particularly with a view to making the necessary deductions from a retiree's pension and paying such amounts directly to the spouse recognized as the beneficiary by the competent jurisdiction, the Plan Guidelines provide that the Plan's powers do not include measures concerning the division of marital property, conveyance of an interest to other persons in the Retirement Trust Fund of the Plan or in the pension, or payment of other benefits of a participant or retired participant to any person.

33. It is well-established that while the Bank has the power or discretion to interpret its own rules and procedures, the interpretation of disputed court orders is to be addressed by the court of competent jurisdiction. In *Mr. "P" (No. 2) v. IMF*, IMF Administrative Tribunal Judgment No. 2001-2 (November 20, 2001), the International Monetary Fund Administrative Tribunal concluded that "[u]nder its Statute, the Administrative Tribunal has no competence to pass upon the validity of municipal law as interpreted and applied by the legal authorities of either Maryland or Egypt" (para. 146). In *E*, Decision No. 325 [2004], this Tribunal, following *Mr. "P" (No. 2)*, held that "the Bank must avoid interpreting or construing the ambiguous or unclear provisions of a decree of a national court" in accordance with the "principle of abstention" applicable to disputed interpretations (paras. 26, 31).

34. The Tribunal "has often declared that the laws of a member state within the Bank, whether statutory or judicial, do not govern the Bank or an organ within it such as the PBAC." *Rodriguez Sawyer*, Decision No. 330 [2005], para. 14 (citing *de Merode*, Decision No. 1 [1981], para. 36; *Mould*, Decision No. 210 [1999], paras. 23-24; *Cissé*, Decision No. 242 [2001], para. 23). The reason for this, as was explained by the Tribunal in *Shekib*, Decision No. 358 [2007], para. 27, is that "[o]therwise, the Bank's operations could be encumbered by entanglements in the domestic laws and judgments of scores of its member nations."

35. The situation is different where the court order is plainly clear and valid, and where its meaning and scope is apparent to the institution entrusted with its application notwithstanding a dispute as to its interpretation by the interested parties. The IMF Tribunal so concluded in *Ms. "M" and Dr. "M" v. IMF*, IMF Administrative Tribunal

Judgment No. 2006-6 (November 29, 2006), when it decided to rescind a decision by the Fund Staff Retirement Plan Administration Committee refusing to give effect to a court order for child support. The Tribunal held that the court order in question was valid; its meaning did not require elaboration and the objections to paternity made by one party in that case were made in bad faith (paras. 158, 176, 186-187, 194, 198, 201, 206-207, 222-224).

36. The above considerations all have a significant influence on the answer this Tribunal must provide in the instant case to the question of the interpretation of the Court Orders and the powers of the Bank.

37. It is important to keep in mind that in 1998 the Bank introduced a new policy in respect of spousal support which, as explained by the World Bank Family Network in its *amicus curiae* submission to the Tribunal of 1 February 2008, sought “to prevent staff members from using institutional immunity to avoid their legal obligations to their families.” Further policy changes were introduced in 2007 in an Update to Policy on Staff Compliance in order to enhance the protection of spouses and children requiring support, particularly with a view to ensuring compliance with court orders.

38. The Tribunal held in *E* at para. 25 and reiterates now that

The Tribunal, which has the power to review Bank policies in the context of their application to applicants’ individual cases, endorses the view that the 1998 Bank Policy is lawful to the extent that it manifests a concern for the enforcement of spousal and child support orders directed against staff members, and seeks to establish a procedure for implementing that goal.

39. The Tribunal notes, notwithstanding the Applicant’s arguments to the contrary, that the Court Orders are quite clear in ordering the direct payment of spousal support. The Original Order expressly stated that its provisions “are intended to provide support for the Defendant.”

40. The specific measures ordered were plainly conceived with the same objective. The Original Order first explains the powers of the Court “to direct the use of the Participant’s Plan benefits to provide support for the Defendant.” The text is clear; it orders that “from the monthly benefit that [the] Participant is now receiving or may hereafter receive or become entitled to receive from the Plan, an amount shall be payable for the support of the Defendant which shall be Forty One Percent (41%) of the amount payable to the Participant from the Plan.” Specific reference to the Defendant’s support is also made in ordering the Participant to “direct the Plan to pay the amount of the Participant’s retirement annuity payments to be paid for the support of the Defendant directly to the Defendant by the Plan in United States currency”

41. Similar language is also found in the Amended Order, which refers no longer to the Defendant’s support but to the “support of the Former Spouse.” The Bank made clear to the Applicant that “an order can be accepted by the Plan so long as it describes the portion of the pension directed to the former spouse as ‘support’ payments.”

42. There is no doubt as to the meaning of the Court Orders as to spousal support, or as to the percentage or modalities of payment to the Applicant’s former spouse. The record is unequivocal. Counsel for Mrs. Mills stated at the divorce hearing: “Your Honor, I will submit an appropriate pension order with regard to the World Bank pension division, and the survivor benefit plan...,” while requesting that the record be kept open for the submission of the Orders. The Court then asked: “Mr. Mills, did Mr. Jacobs and Ms. Fait accurately state the terms of the agreement you’ve reached?” The Applicant answered “Yes, Your Honor.”

43. The Bank understood the parts of the Court Orders concerning spousal support in their only possible meaning and sense as directing the implementation of the Original Order. No dispute could be reasonably believed to exist in this respect. Thus, unlike the situation in *E*, the Bank was well within its powers in not requiring that the Order be referred elsewhere for interpretation.

44. In addition, it was clearly explained in the Original Order that it did not require the Plan to provide any type or form of benefit, option or payment to Mrs. Mills that was not permitted by the Plan. The Order also clearly stated that it should not be deemed to effect a division of the property rights between the Applicant and Mrs. Mills. The Order thus carefully ensured its compatibility with the Plan, and respected the Bank's privileges and immunities.

45. In spite of these clarifications, doubts arose as to the scope of some other parts of the Original Order. What would happen if the Applicant chose to convert up to a third of his pension to a lump sum pension ("commutation"), as he ultimately did? Should 41% of the commutation amount also be payable to Mrs. Mills? The Bank explained to Mrs. Mills that these issues required clarification.

46. The process of amendment of the Order thus began with the Bank considering the terms of the draft Amended Order submitted by Mrs. Mills' counsel to be acceptable, and the text was ultimately approved by the Maryland Court of competent jurisdiction. While the Applicant did not file any appeal against the Original Order before the Circuit Court, which had retained jurisdiction over the case, the Amended Order was first the subject of a motion to vacate and then an appeal as explained above.

47. As the appeal concerned specific issues relating to the commutation and did not have any effect on the monthly payments due under the Original Order, or under the Amended Order, the Bank rightly decided to implement the Original Order insofar as it concerned such monthly payments. In contrast, payment of the commutation amount was kept suspended in accordance with Section 12.2 of the Plan because of the objections raised by the Applicant to the Amended Order which were also the subject of appeal.

48. The scope of the appeal was defined by the Applicant when he wrote to the Bank on 26 January 2007 and explained that “the ruling of the Appeals Court, to my mind, will only affect the Commutation and establish, hopefully once and for all, which version of the spousal support order that the Courts consider final.” The decision of the Court of Special Appeals confirmed that both the Applicant and Mrs. Mills had agreed that the only amendment that remained in dispute was that concerning the commuted pension.

49. The Original Order could be interpreted as including the issue of commutation. While, as noted in *E*, “it is beyond the powers of the Bank to interpret and implement unclear language in the decrees of national courts” (para. 31), it is certainly within its power to give effect to provisions of such orders that are clear. Although this issue was not mentioned expressly in the Order, other provisions make it abundantly clear that the objective is to prevent any reduction of the amount of the pension to the detriment of the former spouse. This objective is applicable to commutation. However, the Bank opted *ex abundante cautela* to regard this item as unclear and suspended the associated payment until the point was settled.

50. The question was in any event clarified in the Amended Order which expressly stated that if the Applicant opted for a commuted pension amount “the Former Spouse

shall also receive Forty One Percent (41%) of Participant's commuted benefit when payable under the terms of the Plan." The issue was taken to the Maryland Court of Special Appeals, which on 5 March 2008 confirmed that the commuted amount was indeed within the terms of the original agreement between the Applicant and Mrs. Mills as the Original Order provided that the Defendant's benefit was 41% of "the amount payable to the Participant from the Plan."

51. It follows that the Bank acted within its powers under the Plan's terms in deciding to pay Mrs. Mills 41% of the Applicant's monthly pension amount and to suspend payment of the commuted part to Mrs. Mills until the issue of the scope of the Order became clear.

52. The only question remaining in this context is whether the Bank abused its discretion in deciding to implement the Original Order after having considered that its terms required clarification and in spite of the Applicant's opposition. As indicated in the decision of the Court of Special Appeals, the "Original Order was not rejected by the Plan Administrator; instead, questions were posed in an attempt to clarify the Original Order."

53. The decision of the Court of Special Appeals indicates that the Bank had not received notice of the entry of the Amended Order at the time the Applicant opted for commutation and notes also that the decision to implement the Original Order was adopted prior to the receipt of the Amended Order. The Applicant accepts that the decision to implement the Original Order was taken on 4 October 2006 and that the Amended Order was received by the Plan only on 12 October 2006. It follows that those parts of the Original Order that were not disputed, in particular the monthly payments, could be implemented without the need to await for any further judicial action in respect of an Amended Order which would clarify only the issue of commutation. As this last issue was

still controverted, and later subject to appeal, the Bank appropriately suspended payment of associated benefits until settlement as provided under Section 12.2 of the Plan. The Tribunal finds that the Bank did not abuse its discretion in the Bank's decision to implement the Original Order.

54. It appears, moreover, that the Applicant hurried to opt for commutation before the Bank was informed of the Amended Order. No information on the pertinent court proceedings was apparently made available to the Bank. As the Applicant did not file an appeal against the Original Order, his later opposition to the Amended Order could not encompass the terms of the Original Order, which were those implemented by the Bank.

55. The balance of the Applicant's complaints relates mostly to procedural issues. The first such issue is whether the Applicant was informed by the Bank of the presentation of the Original Order by Mrs. Mills' counsel, as required under the SRP. The Applicant contends that he was not informed and that he only learned about this submission on receiving copies of the answer addressed by the Bank to Mrs. Mills' counsel. The Bank maintains that he was so informed.

56. Section 5.1(c) of the SRP and the Plan Guidelines provide indeed that the Bank will notify the participant of the order and that related payments will not be made during the 60 days following approval of the order. The record does not show that the Bank expressly complied with this obligation in unequivocal terms; no letter of formal notification has been produced. The question for the Tribunal is to determine whether there was a breach of the applicable rules resulting in prejudice to the Applicant.

57. The Tribunal does not believe so. The required notification is not related to the existence of an order but to the payments that will be made in implementation thereof. The

Bank had decided not to make any payments at the time of the notification of the Original Order to the Applicant since it was requesting clarification. When the Bank decided to make the payments, the Applicant was duly informed in writing. It is reasonable to presume that an applicant that has participated in court proceedings, as is the case here, would know when an order has been approved by that court and entered into the record. No ignorance of this fact can be alleged.

58. Nor does the Tribunal believe that there could be prejudice to the Applicant since he knew from the Court proceedings, as noted above, that the Original Order would be submitted by Mrs. Mills' counsel to the Bank. The Applicant was well aware of the contents of that submission because, as noted by the Court of Special Appeals, the provision of the Original Order directing spousal support and its percentage was actually read into the record in the presence of both the Applicant and Mrs. Mills. The Applicant was notified of every step that followed that submission, either directly or by being provided with a copy of the pertinent correspondence. No prejudice has therefore been established on the part of the Applicant.

59. The Applicant has also complained about the fact that the Bank corresponded directly with Mrs. Mills and her counsel and should have done so only through the Applicant. The Applicant believes this to be an abuse of discretion which violated his due process rights and was detrimental to his interests as a Plan participant.

60. Yet the very purpose of the amendment to the SRP in respect of spousal support was precisely to allow for the former spouse to communicate directly with the Bank for implementation of the court order. If the former spouse does so directly there is every reason for the Bank to answer also directly and not through the Applicant. The only

requirement is that the Applicant be informed of such communication, as indeed he was in the present case.

61. The Applicant also argues that such communications were improper because they were aimed at helping Mrs. Mills' counsel in the implementation of the Original Order in violation of the Bank's duty of neutrality. The Tribunal finds nothing to suggest that this was the case. The information provided by the Bank was to explain what was possible under the terms of the Plan and what was not. All such information is available to the participants in the Plan through various internal communications. It must be equally accessible to former spouses who are entitled to draw support from the participants' pensions as ordered by a court. The record further shows that what the Bank did was to send Mrs. Mills' counsel the Plan Guidelines on divorce decrees.

62. The Applicant has requested that the Tribunal order the Plan Administrator to withdraw the approval given to the Original Order by letter of 4 October 2006 and the approval given to the Amended Order by the Bank's letter of 20 October 2006, to release the 41% of the commutation pension withheld, to cease payments to Mrs. Mills and to restore to him an amount equal to the pension payments already improperly made to Mrs. Mills. The Applicant also requests that he be awarded legal costs in the amount of approximately \$47,651 and other relief that the Tribunal shall judge appropriate.

63. The Bank opposes his petitions and further requests the Tribunal to direct the Plan to release the suspended portion of the commutation payment to the Intervenor, without interest. The Intervenor also requests legal costs in the amount of \$6,000.

64. In light of the considerations set out above, the Tribunal decides not to award the Applicant any relief. It makes no award of legal costs, including those claimed by the Intervenor.

65. The Tribunal directs the Plan to release the suspended portion of the commutation pension, without interest.

DECISION

For the above reasons, the Tribunal decides that:

- (i) the Application is dismissed in its entirety;
- (ii) no legal costs are awarded; and
- (iii) the Staff Retirement Plan Administrator shall release to the Intervenor the commutation payment withheld, without interest.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Paris, France, 18 July 2008