

## Decision No. 143

Antony Planthara,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of A.K. Abul-Magd, President, E. Lauterpacht and R.A. Gorman, Vice Presidents, and F.K. Apaloo, F. Orrego Vicuña, Thio Su Mien and P. Weil, Judges, has been seized of an application, received on September 22, 1994, by Antony Planthara, against the International Bank for Reconstruction and Development. The Tribunal took a procedural decision refusing to issue an interrogatory to another staff member of the Bank, as requested by the Applicant, because it was unnecessary. There was the usual exchange of pleadings. The case was listed on April 11, 1995.

**The relevant facts:**

2. The Applicant joined the Bank in September 1969, as a Machine Operator in the Office Services Division of the Administration Department. At the time his employment was terminated he was a Production Control Assistant at level 14 in the Printing and Graphics Division of the General Services Department. As a result of allegations of overtime abuse in the Print Shop all overtime claims of Print Shop staff from November 1992 to April 1993 were checked against the automated garage log-in/log-out records and the Bank lobbies sign-in/sign-out records. In the case of the Applicant, the records showed discrepancies.

3. The Applicant's Division Chief and the Ethics Officer (EO) met with the Applicant on July 8, 1993 to advise him that an investigation was under way concerning his overtime claims. By memorandum, dated July 9, 1993, to the Applicant the EO requested a written explanation of the discrepancies, consisting of 21 items, listed in the memorandum. The EO alleged that the Applicant had in fact claimed in overtime 17 hours 30 minutes in excess of what he had actually worked.

4. In a memorandum, dated July 23, 1993, to the EO, the Applicant explained that most of the discrepancies were due to his charging for travel time from and to his home. He proposed eliminating claims of one half hour or less. By his calculation the excess of overtime amounted to 9.5 hours over a period of six months which "hardly supports a charge of seeking to obtain unwarranted compensation." He also stated that there was no preconceived plan to overcharge the Bank on a systematic basis. He said that he had not claimed overtime on occasions when he had worked overtime.

5. By memorandum, dated October 14, 1993, the EO recommended to the Director, Personnel Management Department (PMD), that the Applicant's employment be terminated because fraudulent claims for overtime not worked had been made on at least 19 occasions during the six-month period under review, the excess overtime claimed in his view being 11.75 hours. By memorandum, dated October 21, 1993, the EO informed the Applicant that the Director, PMD, had decided that because of the fraudulent overtime claims, his "appointment with the Bank should be ended effective October 29, 1993." As a result of a request made by the Applicant, by memorandum, dated October 22, 1993, the EO advised the Applicant that the revised termination date was November 30, 1993. The Applicant was placed, thenceforth, on administrative leave.

6. By memorandum, dated October 25, 1993, to the Director, PMD, the Applicant requested administrative review of the decision to terminate his employment. He stated that (i) "there was no intent on my part and certainly no preconceived plan to systematically or otherwise overcharge the Bank" and, therefore, there could be no fraud or fraudulent claim; (ii) the so called overcharges were not in fact overcharges, because he used

his own car, did not charge for taxi cabs, and normally travelled at a time when traffic was heavier than at his normal quitting time, with the result that there was no real loss to the Bank; (iii) the Staff Rule on overtime was silent on the question of charging for travel time on weekends or increased travel time as a consequence of overtime worked; and (iv) the action taken against him did not take account of the fact that he had often not charged overtime and had worked regularly through the day without a break. He also claimed that the penalty was "totally disproportionate to the alleged infraction, considering also my 24 years of loyal service to the Bank and my excellent record," and he was not given a proper warning in accordance with the requirements of Staff Rule 7.01, para. 10.01, which deals with termination of employment for misconduct.

7. By memorandum, dated November 4, 1993, to the Applicant the Director, PMD, informed the Applicant that he could not reverse his decision. He noted that the Applicant had not denied the overcharges but tried to justify them on grounds which were found to be insufficient, that the EO could reasonably have concluded from the fact that on 19 occasions more overtime was claimed than was supported by the security logs, that there was fraudulent intent to deceive, and that it was Bank practice to terminate employment for fraud. Moreover, he stated that the Applicant's case was not helped by his reference to the Staff Rules, for Staff Rule 6.03, "Overtime," explicitly stated that only overtime worked on Bank premises (with certain exceptions inapplicable to the situation) was compensable, and Staff Rule 7.01, para. 10.02, provided that notice of termination was to be given as provided in Rule 8.01, and might be summary. He added that it was not permissible for the Applicant to make trade-offs at his own volition: use of his own car rather than a taxi for which the Bank would have paid, overtime worked but not claimed offset against overtime claimed but not worked.

8. On November 24, 1993 the Applicant filed his statement of appeal with the Appeals Committee. The Appeals Committee in its report concluded:

(a) the Appellant was given all notifications required by Staff Rule 8.01;

(b) the Appellant's claims for overtime were fraudulent; and

(c) in the circumstances of this case the disciplinary measures imposed were appropriate.

It recommended that the Applicant's request for relief be denied. By letter, dated June 23, 1994, to the Applicant, the Vice President, Management and Personnel Services (MPS), stated that he accepted the recommendation.

### **The Applicant's main contentions:**

9. There was no fraud on the Applicant's part, because he did not willfully, with knowledge of falsity and intent to defraud, submit false overtime claims and receive payments to which he had not been entitled.

10. There was no pattern of conduct which showed that the Applicant had intent to defraud. The pattern indicated was one of charging the correct amount, undercharging or failing to charge, not overcharging.

11. The Applicant was not accorded due process in that he was not given a proper warning of possible termination of employment in accordance with the requirements of Staff Rule 7.01, para. 10.01, and relevant facts were not considered by the EO.

12. There is evidence of entrapment by the Respondent.

13. The Respondent attempted improperly to influence the Applicant's supervisor and prevent him from answering interrogatories.

14. There was prejudice against the Applicant on the part of the EO.

15. The penalty of termination of employment was disproportionate to the alleged misconduct of the Applicant.

16. The Applicant made the following pleas:

- (i) reinstatement in his position with the Bank and return to him of all his entitlements, including accrued home leave;
- (ii) payment of full salary compensation for loss of employment from and after January 7, 1994 at the rate of his past monthly compensation; and
- (iii) payment of costs estimated to amount to \$11,000.

**The Respondent's main contentions:**

17. The Applicant's conduct was fraudulent. His conduct demonstrated a pattern of fraudulent overcharging.

18. The Applicant had also wrongfully charged for travel time which the Staff Rules did not permit. It was not relevant whether he knew or did not know that this was not permitted.

19. The Applicant was afforded due process. There was no requirement that a staff member under investigation for misconduct be notified of the possibility of termination nor were relevant facts not considered by the EO.

20. The Respondent did not improperly try to influence the Applicant's supervisor and prevent him from answering interrogatories.

21. The EO's investigation and recommendations were not tainted by bias.

22. Termination of employment was not a disproportionate disciplinary measure in cases of fraudulent conduct.

**Considerations:**

23. The Applicant has been accused by the Bank of having committed fraud by claiming overtime in excess of time actually worked. The disciplinary measure imposed has been termination of employment. The basic rule invoked by the Respondent is Principle of Staff Employment 3.1(c) to the extent that it imposes an obligation on staff members not to "engage in any activity that is incompatible with the proper discharge of their duties with the Organization". Staff Rule 8.01 elaborates on this Principle by defining conduct for which disciplinary measures may be imposed, with particular reference to "unlawful acts (e.g., theft, fraud, felonious acts, use or possession of illegal drugs); and other misconduct (e.g., physical assault; harassment on the basis of race, color, sex, sexual orientation, or national origin; willful misrepresentation of facts intended to be relied upon)".

24. The Applicant is correct in arguing that in cases of disciplinary measures the Tribunal is not confined to a limited control of abuse of power as if it were purely a matter of executive discretion and that it may exercise broader powers of review in relation to both facts and law. As stated in Carew, Decision No. 142 (1995), in a situation involving disciplinary measures

[T]he Tribunal 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...

25. While not denying accusations of excess overtime claimed, the Applicant contends that there was no intent to defraud the Bank and offered various justifications to explain such overcharges. These justifications are basically related to the travel time involved in commuting to and from the Bank in connection with that work. Assertions by the Applicant that he was careless in reporting or that he did not know how the excessive claims came about are obviously not acceptable defences. Central to the determination of whether or not this justification is acceptable is the question of interpretation of Staff Rule 6.03 governing overtime.

26. Staff Rule 6.03 is explicit in stating that "no payment will be made for overtime work performed outside

Bank Group premises". The meaning of this provision is clear in that it excludes work done in places other than Bank Group premises with the very limited and specific exception of staff members required to work outside those premises on a regular basis, such as drivers and messengers (Section 2.04). In the present case the work actually performed by the Applicant was done on Bank premises but the justification of travel time relates to time spent outside such premises. The question is therefore whether the Staff Rules may reasonably be read to mean that as long as the work is done on the premises other time spent in connection therewith can be rightfully claimed or, on the contrary, the exclusion of payment for work performed outside such premises excludes also travel time.

27. The Applicant asserts that by using his own automobile to commute to and from work he saved the Bank taxi expenses, for which his travel time claims were thus a functional equivalent. Section 3.01 of Staff Rule 6.03 does allow for the reimbursement of taxi fares to and from the staff member's home in connection with overtime worked. This rule is not, however, related to travel time, which cannot be claimed as overtime worked, but rather to actual expenditures in taxi fares which can be reimbursed. Reimbursement of out-of-pocket expenses is clearly separate from payment for overtime services. Application for reimbursement is done separately and requires the pertinent receipts. Although taxi fares can be reimbursed, the use of the staff member's car is not included in this rule, not even by implication.

28. Should there be a reasonable doubt as to the interpretation of the Rule, many other staff members who need to commute daily in connection with overtime worked could have submitted applications for additional overtime in terms of travel time or for the reimbursement of the use of private cars, but this has not been the case in the printing facilities or elsewhere in the Bank. That the printing industry in the Washington area or generally in the host country pays for travel time of its workers is not a tenable argument, because the Bank Print Shop is not a part of such industry and its employees are members of the international civil service.

29. In light of the above, the explanations offered by the Applicant for claiming excess overtime cannot be accepted. It should be noted further that the time devoted to the Applicant's travel was never claimed as such but was instead made to appear as overtime actually worked on the Bank premises when in fact the Applicant had left earlier. The log-in/log-out system of control offers a sufficiently accurate measure of recorded time spent on the Bank premises, which in this case clearly does not match the claims for overtime.

30. In light of the fact that the Print Shop staff had been warned about overtime abuses at a meeting called by the Division Chief in November 1992, the benefit of the doubt as to the Applicant having believed that he was claiming rightly is no longer available. Both the facts of the case and the meaning of the Staff Rules lead to the conclusion that intent to defraud the Bank and knowledge of falsity were present in the overtime claims submitted by the Applicant.

31. The Tribunal must next address the question whether or not the requirements of due process were adequately observed in this case. The Applicant's main contention on this point is that he was not given a proper warning that a possible termination of employment was envisaged, a failure which in his view violates due process. It is clear from the record that the Respondent met the essential requirements of due process as defined by the Tribunal in terms of informing the Applicant of the specific accusations and charges brought against him, providing ample opportunity for him to answer the allegations in writing, as he had requested, and presenting him with the relevant evidence.

32. However, the Applicant's contention raises the issue whether a particular and additional notification of possible termination of employment should also be promptly given when the accusations are of a certain gravity. In connection with this last issue it should be noted that Staff Rule 7.01, Section 10.02, refers to the notice of termination in conjunction with Rule 8.01, Section 5.05. None of these rules, as they were written when the disciplinary measure was imposed, required an initial notification of termination. An earlier version of Staff Rule 7.01 which contained this additional requirement was expressly amended on this point by the current text. Rule 7.01 further adds that notice of termination may be summary.

33. The initial notification envisaged under Staff Rule 8.01, Section 5.02, refers only to the fact that the Bank is

undertaking an investigation of an allegation that a staff member has engaged in conduct for which disciplinary measures may be imposed, and that the matter warrants an explanation from such staff member. An additional notification may refer to the placement of the staff member on administrative leave. Because the determination of the specific disciplinary measure to be imposed can be reached only at the last stage of the proceedings – after examining all the evidence and the explanations of the accused person, and after taking into account the seriousness of the matter, the circumstances of the case and other elements specified in Staff Rule 8.01, Section 4.01 – it would be unwarranted to notify at an early stage that termination is being considered.

34. Account should also be taken of the fact that, once disciplinary measures are envisaged in the proceedings, termination is always an option available under Staff Rule 8.01, so that this does not require any additional individualized notification. The seriousness of the matter will be determined by the very nature of the charges brought against the staff member. That the matter in this case was serious is not open to doubt, which is the very reason why the help of legal counsel was sought by the Applicant at an early stage.

35. The Applicant has also raised the issue of entrapment. His arguments on this point are related to the nature of the warning about overtime abuses given by the Respondent at a meeting of the Print Shop staff and to the Applicant's assertion that he did not in any event participate in that meeting. These arguments are not tenable. A general meeting of the staff was called at the request of a new division chief because overtime abuses had become a matter of concern. It is sufficient warning that the attention of the staff is in general terms called to this problem without the need to discuss every specific form that such abuses might take. It is precisely as a consequence of this meeting that an investigation of all overtime claims for a period of six months was carried out. Neither is it necessary that every single staff member should have attended the meeting. Information about this kind of problem travels fast. In any event ignorance of the law is not an acceptable excuse for misconduct.

36. Prejudice and the existence of bias have also been invoked as elements vitiating the decision to impose disciplinary measures in this case. The fact that the Ethics Officer (EO) may have taken verbatim notes of statements made by the Applicant at several meetings with him does not in any way amount to prejudice or bias. Although the EO had on two prior occasions looked into matters concerning the Applicant's conduct, no disciplinary measures had been imposed in those instances and the matters were unrelated to the present case. Unlike the situation discussed in Gyamfi (Decision No. 28 [1986], para. 45), where two members of a committee had had previous involvement with the case, there is no element in the present case putting in question the perception of fairness and impartiality.

37. The question of proportionality has also been raised in this case. The Tribunal has dealt with aspects of proportionality in prior cases in order to determine whether there is "some reasonable relationship between the staff member's delinquency and the severity of the discipline imposed by the Bank" and "to determine whether a sanction imposed by the Bank upon a staff member is significantly disproportionate to the staff member's offense, for if the Bank were so to act, its action would properly be deemed arbitrary or discriminatory" (Gregorio, Decision No. 14 [1983], para. 47).

38. Staff Rule 8.01, Section 4.01, refers in effect to proportionality in providing that the Bank shall determine the imposition of disciplinary measures on "a case by case basis", taking into account, among other elements, "the seriousness of the matter," "extenuating circumstances," "the situation of the staff member," and "the frequency of conduct for which disciplinary measures may be imposed."

39. It is proper, therefore, for the Tribunal in this case to consider "the seriousness of the matter" and "the frequency of conduct" in assessing the proportionality between the Applicant's wrongdoing and the Bank's decision to terminate his services. The Tribunal considers that fraud is always a most serious matter. This is particularly true where, even if the amounts improperly claimed by a staff member are not large, the conduct consists of repeated acts of unethical behavior. Thus, in this case, where the Applicant persisted in and showed a pattern of abuse, the Respondent is entitled to take a serious view of his misconduct.

40. However, if other elements envisaged in Staff Rule 8.01, Section 4.01, are taken into account, the disciplinary measure imposed by the Bank is significantly disproportionate to the misconduct. Here, the Tribunal



notes the long service of the Applicant as a staff member of the Bank for a period of 24 years, his diligent performance in the discharge of duties, and the positive performance reviews and evaluations he received. Moreover, the Tribunal notes as well that the amount of money improperly claimed for alleged overtime work was modest, and that the Applicant's employment was not one involving higher management responsibilities.

41. The Tribunal therefore concludes that termination of employment, in these circumstances, is not proportionate to the Applicant's misconduct. This conclusion is further reinforced by the Tribunal's examination of Staff Rule 8.01, Section 4.02, which sets forth a wide range of possible disciplinary sanctions, of which termination of service is obviously the most severe.

42. The Respondent asserts that, despite the severity of termination, such has been the discipline which in earlier instances has been imposed upon staff members found guilty of fraud. Although it would be appropriate in many cases to terminate the employment of a staff member who commits fraud, a mechanical and uniform imposition of this discipline is inconsistent with the obligation that Staff Rule 8.01, Section 4.01, imposes upon the Bank to impose disciplinary measures "on a case-by-case basis," taking into account the various factors listed there.

**Decision:**

For the above reasons, the Tribunal unanimously decides:

- (i) to quash the decision of the Respondent terminating the employment of the Applicant;
- (ii) in the event that the Applicant is to be compensated without further action being taken by the Respondent in the case, that the Respondent shall pay to the Applicant a sum equivalent to 18 months net pay;
- (iii) costs in the amount of \$7500 are to be paid to the Applicant; and
- (iv) all other pleas be dismissed.

A.K. Abul-Magd

/S/ A.K. Abul-Magd  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary

At London, May 19, 1995