



**World Bank Administrative Tribunal**

**2009**

**No. 396**

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

**v.**

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

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

**R (No. 2)  
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, and Judges Francisco Orrego Vicuña, Sarah Christie, Florentino P. Feliciano, Zia Mody, Stephen M. Schwebel and Francis M. Ssekandi. The Application was received on 28 July 2008. The Applicant's request for anonymity was granted on 26 August 2008.

2. This case deals with the Applicant's claim that the Bank's decision that he had engaged in misconduct was unfounded and that the disciplinary measures imposed, particularly the restriction of access to World Bank premises, were unwarranted and disproportionate to his conduct and should be withdrawn.

**FACTUAL BACKGROUND**

3. The Applicant worked at the Bank from 1986 to 2005. His last position was that of a Senior Financial Analyst, Level G, in the Africa Region.

4. In 2005, the United States ("U.S.") Securities and Exchange Commission ("SEC") initiated proceedings against a U.S. Corporation ("X Corporation"), a provider of military intelligence and communications solutions in the U.S. and abroad. The SEC alleged that the X Corporation had violated the U.S. Foreign Corrupt Practices Act ("FCPA") by engaging in, among other things, bribery of foreign government officials in connection with certain planned investments in Country Y. The SEC also alleged that a Bank

employee had received payments from the X Corporation in connection with a proposed mobile telephone investment project in Country Y.

5. Following the publication of a newspaper article in 2005 on the SEC proceedings, which referred to the X Corporation's hiring of a Bank official and the payment of \$15,000 to an account in the name of his wife, an informant reported corrupt payments to the Investigations Hotline of the Department of Institutional Integrity (INT). INT investigators commenced a preliminary inquiry into the matter and, with the cooperation of U.S. officials and of representatives of the X Corporation pursuant to the terms of the company's plea agreement with U.S. prosecutors, determined that the individual referred to in the SEC proceedings was the Applicant.

6. By a Notice of Alleged Misconduct dated 22 July 2005 issued by INT pursuant to Staff Rule 8.01 ("Disciplinary Measures"), the Applicant was informed that INT was investigating three allegations. According to INT, one allegation relating to travel fraud was not substantiated; that allegation will accordingly not be discussed in the present judgment. The other two allegations are as follows:

- a. That [the Applicant] engaged in a continuous conflict of interest when [he], beginning on or about August 25, 1999, while a staff member of the World Bank Group (WBG), entered into and signed a joint venture agreement between [the X Corporation] and an entity known as [the L Corporation], of which [he] was a representative/principal, to form [the D Corporation], a company whose intent was to install an advanced telecommunications system in Country Y; and
- b. That [the Applicant] engaged in a continuous conflict of interest when [he], on or about November 22, 1999, while a staff member of the WBG, signed a contract with [the X Corporation] to provide consulting services to [the X Corporation], services for which [he] received compensation.

While the INT investigation was still under way, the Applicant resigned from the Bank effective 31 October 2005, stating that he wished to campaign for election to the presidency of his country. In February 2006, some facts in the INT investigation were referred to in a seminar on corruption given for Bank managers by an outside consultant. This was the subject of the Applicant's first application to the Tribunal. In *R*, Decision No. 371 [2007], the Tribunal dismissed the Applicant's claims that the Bank had improperly disclosed confidential information to participants in the Bank seminar and to the press and then failed to investigate the alleged disclosures.

7. Upon completion of the draft investigation report at the end of March 2006, INT communicated with the Applicant, who was then in Country Y, for the purpose of securing his comments on the draft report. Although it transmitted the draft report to the Applicant's attorney, INT was ultimately unsuccessful in transmitting the draft report to the Applicant and proceeded to finalize it without his comments. INT concluded that the record contained "reasonably sufficient evidence" to show that the Applicant had engaged in "conflicts of interest" and had abused his position, in violation of applicable Staff Rules and Principles of Staff Employment. The INT report stated:

- a. Specifically, the evidence substantiated that, in connection with [the X Corporation's] efforts to develop a mobile telephone network in Country Y in 1999, [the Applicant] agreed to act as the agent for a potential group of investors in a joint venture with [the X Corporation]. [The Applicant] presented himself to [the X Corporation] executives as the representative of a group of investors in the joint venture and its principal; conducted meetings and negotiations on their behalf; and executed a letter of intent and a formal joint venture agreement as the agent of the investing company, [the L Corporation]. [The Applicant] thereafter traveled to Country Y with an [X Corporation] executive ... to initiate the venture and opened a bank account on the venture's behalf. At all relevant times [the Applicant] was an employee of the Bank, never received managerial approval for these activities, nor approached the Outside Interests Committee for evaluation of and approval for his activities.

- b. Subsequently, in connection with [the X Corporation's] continuing efforts to secure joint venture investment in its mobile telephone venture, [the X Corporation] made [the Applicant] a written offer to provide "consulting" services to the company to secure [the L Corporation's] investment. [The X Corporation] offered to compensate [the Applicant] with US\$15,000 cash payment, plus travel expenses in connection with a series of meetings in [Country Y] in late 1999. [The Applicant] accepted this offer in writing, directing [the X Corporation] to wire the fee to his wife's Bank staff credit union account. In accepting the offer, [the Applicant] promised to use his best efforts to secure [the L Corporation's] investment in the joint venture. At all relevant times, [the Applicant] was an employee of the Bank, and never sought approval for this consultancy agreement.

8. INT submitted its final report of 24 April 2006 to the Vice President, Human Resources ("HRSVP"), finding that the Applicant had engaged in misconduct. In a letter to the Applicant entitled "Notification Regarding Decision into Allegations of Misconduct," dated 24 July 2006, HRSVP decided that the Applicant had indeed engaged in misconduct, stating *inter alia* that:

[T]he record is replete with evidence showing that you knowingly entered into a business relationship with [the X Corporation] and that you did so without the approval of the Bank.

I find particularly troubling the fact that your involvement with [the X Corporation] only came to the attention of the Bank by way of a highly publicized enforcement action against [the X Corporation] by U.S. authorities. Further troubling were your evasive and inconsistent statements to the investigators who undertook the investigation into your conduct.

Your actions represent not only a blatant disregard for the rules and policies of the World Bank, but a clear showing of your willingness to use your position at the World Bank for personal gain and to place private business interests above the obligations you were charged with satisfying as a World Bank staff member. One such obligation was to avoid situations and activities that might reflect adversely on the Bank and lead to real or apparent conflicts of interest.

You were expected to identify and responsibly manage real, potential or perceived conflicts of interest as early as possible to prevent damage to institutional and personal reputation. You failed to fulfill these important responsibilities. Your actions have resulted in an irreparable breach of

trust with the World Bank – an international financial institution that strives to lead by example.

9. HRSVP decided that, because the Applicant had in the meantime left the services of the Bank, the appropriate disciplinary measure was to bar the Applicant from future employment within the World Bank Group with permanent effect. In addition, he was barred from access to all World Bank Group facilities, “absent exceptional circumstances as determined by the Vice President, Human Resources.”

10. The Applicant challenged the 24 July 2006 decision of HRSVP before the Appeals Committee. A hearing was held on 30 October 2007. In its Report issued on 25 February 2008, the Appeals Committee upheld the decision of HRSVP and recommended denial of the Applicant’s requests for relief. By letter dated 24 March 2008, the Managing Director informed the Applicant that she had accepted the Committee’s recommendations in their entirety. The Applicant filed an application with the Tribunal on 28 July 2008.

11. The Applicant requests (i) that HRSVP’s letter of 24 July 2006 be withdrawn in its entirety, leaving as a record of his separation from the Bank service only his resignation letter as accepted; (ii) that the decision barring his access to Bank premises be revoked to allow him to enjoy the same right of access as any other citizen and official of a member Government; (iii) payment of equitable compensation; and (iv) attorney’s costs.

12. The Bank requests that the Tribunal uphold HRSVP’s decision and deny all of the Applicant’s claims.

#### PRINCIPAL CONTENTIONS OF THE PARTIES

13. The Applicant contends that: (i) he did not engage in misconduct and did not violate Bank rules on conflicts of interest; (ii) the sanctions imposed were not explicitly

authorized by Staff Rule 8.01 and were disproportionate to his alleged misconduct; and (iii) the investigative process was unnecessarily protracted and unfair to him.

14. The Bank responds that: (i) HRSVP's conclusions are supported by substantial evidence and the Applicant's behavior legally amounted to misconduct; (ii) INT and HRSVP followed all the necessary procedural requirements; and (iii) the sanctions of barring the Applicant from future World Bank Group employment and from unrestricted access to World Bank Group facilities are explicitly authorized by Staff Rule 8.01 and are appropriate given the seriousness of the Applicant's misconduct.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

15. The scope of review by the Tribunal in disciplinary cases is now well-established.

In *Koudogbo*, Decision No. 246 [2001], para. 18, the Tribunal stated that

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."

It is also well-established, as stated in *Dambita*, Decision No. 243 [2001], para. 21, that:

In disciplinary matters, strict adherence to the Staff Rules is imperative and a conclusion of misconduct has to be proven. The burden of proof of misconduct is on the Respondent. The standard of evidence in disciplinary decisions leading, as here, to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.

Furthermore as stated in *Arefeen*, Decision No. 244 [2001], para. 42:

In several decisions, the Tribunal has emphasized that there must be substantial evidence to support the finding of facts which amount to misconduct. (*See, e.g., Carew*, Decision No. 142 [1995], para. 32; *Planthara*, Decision No. 143 [1995], para. 25; and *Mustafa*, Decision No. 207 [1999], para. 17.)

*The existence of the facts*

16. In its report of 24 April 2006, INT concluded that there was “reasonably sufficient” evidence to show that the Applicant had engaged in the behavior described in the first two allegations of misconduct set out in the Notice given to the Applicant at the beginning of the investigation and amounting to engaging in “conflicts of interest.” HRSVP concluded on the basis of INT’s findings that the Applicant had “knowingly entered into a business relationship with [the X Corporation],” without the approval of the Bank; his “involvement with [the X Corporation] only came to the attention of the Bank by way of a highly publicized enforcement action against [the X Corporation] by US authorities”; and the Applicant had clearly shown his “willingness to use [his] position at the World Bank for personal gain and to place private business interests above the obligations [he was] charged with satisfying as a World Bank staff member.” One of these obligations was “to avoid situations and activities that might reflect adversely on the Bank and lead to real or apparent conflicts of interest.”

17. *Representation of the L Corporation.* Regarding the first allegation of misconduct, namely the representation of the entity called the L Corporation, INT presented documentary evidence as well as records of interviews of X Corporation executives. This evidence was largely uncontroverted by the Applicant. It showed that in 1999 the X Corporation sought to develop a telecommunications project within Country Y’s Office of Post and Telecommunications, within the Ministry of Telecommunications (“Build Co-operate and Transfer [BCT] project”). In an effort to sell off part of its interest to a potential investor, the X Corporation spoke to Mr. T, a businessman from Country Y. The



record shows that the Applicant, apparently a good friend of Mr. T, represented him in negotiations and transactions with the X Corporation executives.

18. Specifically, in August 1999, the Applicant, as personal representative of Mr. T, met in Paris with representatives of the X Corporation. On 17 August 1999 a subsidiary of the X Corporation, entered into a Memorandum of Agreement with a group of investors (“GOI”) from Country Y designed to facilitate the GOI’s investment in the BCT project. It appears that Mr. T was the main investor in the GOI. The Applicant, representing the GOI, signed the Memorandum as one of “the duly authorized representatives” of the parties thereto. Under the terms of the Memorandum, the GOI agreed to make a substantial investment no later than 31 October 1999 in a new joint venture to be known as the “D Corporation.” For the purpose of investing in this joint venture, the GOI established the L Corporation under the laws of Switzerland.

19. The formal Joint Venture Agreement was signed on 25 August 1999 between the X Corporation and the L Corporation to form the D Corporation. The Joint Venture Agreement was signed and initialed on each page by the Applicant as representative (“Representant”) of the L Corporation. Subsequently, the Applicant accompanied an X Corporation executive to Country Y to open a bank account for the D Corporation into which Mr. T would transfer monies. The record shows that the Applicant continued thereafter until January 2000 to negotiate with the X Corporation the terms of Mr. T’s investment in the joint venture.

20. The Applicant has not disputed the facts but explains that even though it appeared that he represented the L Corporation, in reality he represented his friend Mr. T (and the GOI) as the sole shareholder of the L Corporation and the only party with a financial

interest in that company. The Tribunal notes that even if the Applicant's claim were true, there was certainly an agency relationship between the Applicant and the L Corporation. The Applicant's initials appear on every page of the Joint Venture Agreement between the X Corporation and the L Corporation and he signed the document "for" the L Corporation.

21. *Consultancy with the X Corporation.* Regarding the second allegation of misconduct, namely the Applicant's consultancy relationship with the X Corporation, the record shows that when as of November 1999 the GOI still had not complied with its funding obligations pursuant to the Joint Venture Agreement, the X Corporation then decided to offer the Applicant a fee "to motivate him to act." On 22 November 1999 an X Corporation official faxed a letter to the Applicant at his Bank fax number noting that the X Corporation viewed the participation of the Applicant's group of investors as "critical to the overall success of the program." The letter also stated:

I would like to ask for your further assistance in late December of 1999 to guarantee the GOI financial participation no later than December 31, 1999. As a result, I am prepared to engage you on a consulting basis for up to 15 days, at \$1,000 per day to assure the GOI participation by December 31, 1999. The total consulting fee will not exceed \$15,000. Additionally, [the X Corporation] will reimburse you for all out-of-pocket expenses related to this assignment.

22. Later that same day, the Applicant faxed from the Bank to [the X corporation] a handwritten letter in which he stated:

[t]his is to confirm my agreement with your letter dated November 22, 1999. As you know, I am committed to this project. I will therefore do my best to ensure that the financial participation of the [GOI] becomes available by December 31, 1999. Looking forward to meeting [the X Corporation's] chairman ... and yourself in Country Y from December 17-21. I am faxing you the Bank account information of my wife ... so as to ensure that the US\$15,000 is wired to her account by Wednesday November 24 1999."

23. The Applicant also attached a copy of a deposit ticket for an account in the name of his wife at the Bank-Fund Staff Federal Credit Union. On 30 November 1999 the X Corporation wired \$15,000 to this account. The record is clear that the Applicant traveled to Country Y in December 1999 to assist the X Corporation in setting up the joint venture with Mr. T.

24. In January 2000, the Applicant's relationship with the X Corporation apparently deteriorated when it became evident that Mr. T was not going to invest in the venture. The Applicant stated that he was disappointed with the X Corporation because, *inter alia*, their interest appeared to be in getting control of the funds pledged to the project while the equipment they provided was second-hand and overpriced. The X Corporation's executives for their part indicated that they were not satisfied with the Applicant's involvement in the venture.

25. The record shows that on 11 January 2000, the Applicant and two X Corporation executives held a telephone conversation where the Applicant stated that he was still working hard to obtain funding for the venture. The Applicant also offered to return the \$15,000 but one X Corporation executive told him to keep it. In a letter dated 12 January 2000, the Applicant concluded: "I consider that I only partially fulfill[ed] my obligations vis-a-vis your company and therefore should not accept the US\$15,000 you wire-transferred to me. Consequently, please find attached a check in the amount of US\$15,000." The Applicant admits that he did not pursue the matter further and the evidence is inconclusive as to whether the check was indeed returned to and cashed by the X Corporation.

26. The Tribunal finds that there is sufficient evidence to establish that while the Applicant was a World Bank employee, he represented the L Corporation in entering into and signing an agreement with the X Corporation for the establishment of a joint venture and later knowingly entered into a business relationship with the X Corporation for which he accepted remuneration in order to assist in the execution of the agreement. The Applicant admits that he had not sought the approval of the Bank's Outside Interests Committee for his actions.

*Whether the Applicant's acts legally amount to misconduct*

27. INT found that in engaging in the acts described above, the Applicant had engaged in misconduct by violating a number of provisions of the Staff Rules. Staff Rule 8.01 as effective during the time of the Applicant's alleged misconduct (August 1999-January 2000), stated in pertinent part:

3.01 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 and other duties of employment ...;

...

- (c) Acts or omissions in conflict with the general obligations of staff members set forth in Chapter Three of the Principles of Staff Employment and Rule 3.01, "Outside Activities and Interests."

Staff Rule 3.01 ("Outside Interests and Activities"), paragraph 6.01(a), effective during the time of the Applicant's misconduct, provided:

Except with the approval of the Committee, a *staff member* not assigned to external service or leave without pay for the purpose of self-employment for profit or performing duties for an outside private entity, and holding a Local Staff, Regular or Special Assignment appointment, an Executive Director's Assistant appointment, a Consultant or Local Consultant

appointment which requires him to devote full time to Bank Group employment, or any other appointment at grade 22 or above [GF or above] (or the equivalent) *shall not engage in self-employment for profit nor perform any service for any outside private entity, whether as employee, director, or partner.* (Emphasis added.)

Paragraph 8.01 also provided:

*A staff member shall disclose any financial or business interest of himself or of a member of his immediate family that might reasonably reflect unfavorably on or cause embarrassment to the Bank Group, or be in actual or apparent conflict with the staff member's Bank Group duties, and shall abstain from exercising any related responsibility, except as otherwise instructed. Disclosure shall be made promptly and in writing to the staff member's manager. Instruction by the manager to proceed with, modify or abstain from the exercise of responsibility shall be in writing, and copies shall be furnished to the department director and the Committee.* (Emphasis added.)

28. The record establishes that by knowingly entering into a business relationship with the X Corporation, without the approval of the Outside Interests Committee, the Applicant engaged in misconduct. He violated Staff Rule 8.01, para. 3.01(c) and more specifically Staff Rule 3.01, paragraph 6.01(a), as quoted above. The evidence is uncontroverted that he agreed to render services to an outside entity and received a fee in consideration therefor. Regardless of whether the Applicant returned the fee, the evidence shows that the Applicant had accepted the solicitation of his paid services by the X Corporation, and that he took concrete steps to render such services.

29. The Applicant has admitted that he did not seek the approval of the Outside Interests Committee but claims that he did not know of its existence and role because the Bank had not actively promoted among staff knowledge about the rules on outside activities or the Committee. The Tribunal is unpersuaded. When the Applicant joined the Bank in 1986 and signed his appointment letter, he confirmed that he understood the Bank's Staff Rules as well as its policies on outside activities and interests; therefore he

was aware, or should have been aware, of the existence of such rules and policies. Furthermore, from the 1980s onwards the Bank's Personnel Manual Statements and Staff Rules including those relating to the Outside Interests Committee have been distributed in paper form. At the time of the alleged misconduct, Staff Rule 3.01 was posted on a Bank Intranet Announcement in April 1999. It was therefore available to the Applicant on his desktop computer along with the Principles of Staff Employment. The Tribunal has previously ruled on numerous occasions that ignorance of the law is no excuse. (*See Koudogbo*, Decision No. 246 [2001], para. 31; *Kwakwa*, Decision No. 300 [2003], para. 21.) The Applicant's failure to familiarize himself with the Bank's rules on outside activities does not excuse his failure to comply with them.

30. Furthermore, in his testimony before the Appeals Committee, the Applicant insisted that he had reported his activities to his manager at the time. The Tribunal notes that whenever the manager's approval is sought under Staff Rule 3.01, such approval must be given in writing. The Applicant has not produced evidence of such approval.

31. Secondly, the Tribunal considers that the Applicant's representation of the L Corporation and the GOI and his subsequent business relationship with the X Corporation also constitutes misconduct on his part. In this respect, he violated para. 3.01(a) and (c) of Staff Rule 8.01 because he failed to observe the Principles of Staff Employment and particularly Principle 3 which states that:

3.1 The sensitive and confidential nature of much of their work requires of staff a high degree of integrity and concern for the interests of the Organizations. Moreover, as 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

...

- (c) conduct themselves at all times in a manner befitting their status as employees of an international organization. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the Organizations. They shall avoid any action and, in particular, any public pronouncement or 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 ...

32. By representing various private entities and accepting payment from one for services rendered the Applicant engaged in gainful activity that adversely reflected on his integrity, independence and impartiality. Notably, he admitted in his interview that he expected compensation for representing Mr. T, not necessarily in money but possibly in political opportunity and recognition.

33. During the time he was advising and representing Mr. T, as well as when he entered into a business relationship with the X Corporation, the Applicant was an employee of the Bank bound by its Principles of Staff Employment and Staff Rules. He himself stressed during his INT interview that he was a “well-known figure” and “very popular” in Country Y, and especially that “throughout the world, I am known as a [national of Country Y] working at the World Bank, and people can tap on that resource as they feel they need it but without involving any wrongdoing.” Furthermore a number of documents reveal that X Corporation executives knew of his position as a World Bank employee. An X Corporation executive stated in an interview that the Applicant was a “world bank official that wanted some private arrangement with us,” and that he (the executive) had queried whether the Applicant’s position in the Bank allowed him to enter into private business deals. The INT report shows that X Corporation representatives believed that the Applicant used his Bank employment to promote business deals in the Africa region.

34. The Tribunal finds that the record demonstrates the Applicant's willingness to use his position at the World Bank for personal gain and to place private business interests above his obligations as a World Bank staff member. He failed to meet his obligation under Principle 3.1 to avoid situations and activities that might reflect adversely on the World Bank Group, compromise their operations, or lead to real or apparent conflicts of interest. Eventually, through this conduct, the Applicant was identified in the SEC complaint as the person who had accepted payments from the X Corporation, a fact which received wide publicity in the U.S. and elsewhere. His actions thus caused significant embarrassment to the Bank, as well as what HRSVP characterized as "damage to institutional and personal reputation" and "irreparable breach of trust with the Bank."

35. The Tribunal also finds that the Applicant violated paragraph 8.01 of Staff Rule 3.01. His statement to the contrary notwithstanding, the Applicant has not proven that he had disclosed to his manager either his business interest in representing the L Corporation or his business relationship with the X Corporation and that he received written approval as required by the Staff Rule. Clearly, since he was an employee of the Bank to which he owed his loyalty, the Applicant should have known that providing paid consulting services, even if outside working hours, would be in clear violation of his duties to the Bank. He admitted in his interview that even after he learned around March 2005 that he had been identified in the SEC complaint, he still did not disclose his activities to the Bank. He argues instead that he was not obliged to report his involvement as it had not matured into what could properly be called an "interest." He also argues that his return of the consultancy fee exonerated him from any violation of Bank rules, a contention that the



Tribunal cannot accept. The Tribunal considers that his conduct on both counts falls materially short of compliance with Staff Rule 8.01 and Principle 3.

36. Finally, the Tribunal finds that HRSVP's statement that the Applicant had made "evasive and inconsistent statements to the investigators" is supported by the record. On a few occasions during his interview, the Applicant could not remember that the L Corporation was a Swiss company and referred to it as a company of Country Y, only to change his testimony when shown the Joint Venture Agreement which he had signed as representative of the L Corporation. The Applicant first stated in his interview that the X Corporation had sent him a check in the amount of \$15,000 to reimburse him for fees or charges that he might have incurred while generally assisting them. Later in his interview, he corrected that statement and admitted that the X Corporation had offered him a consultancy retainer of \$15,000 which he had directed to be deposited in his wife's bank account.

37. The Tribunal finds that HRSVP's letter holding the Applicant guilty of misconduct had sufficient evidentiary foundation.

*Whether the sanction is provided for in the law and is proportionate to the offense*

38. The Tribunal will next examine whether the sanctions imposed on the Applicant accord with the Staff Rules and whether they are proportionate to his offense. (*See S*, Decision No. 373 [2007], para. 51, citing *Mustafa*, Decision No. 195 [1998], para. 28.) Staff Rule 8.01 provides that disciplinary measures imposed by the Bank on a staff member shall be determined on a case-by-case basis, taking into account the seriousness of the matter, extenuating circumstances, the situation of the staff member, the interests of the Bank Group and the frequency of misconduct.

39. HRSVP determined that the seriousness of the Applicant's misconduct warranted termination of his Bank employment and that there are ample precedents for such a sanction. Since the Applicant had resigned before the conclusion of the investigation, termination was no longer an option. HRSVP therefore decided to bar him permanently from future employment and from access to all World Bank Group facilities, absent exceptional circumstances.

40. While there is no evidence that the Applicant had engaged in misconduct in the past, the Tribunal finds that the Applicant's misconduct here was serious. In addition to violating the Bank's rules and policies, his actions caused severe embarrassment to the Bank especially as they were discovered by way of a highly publicized U.S. Government enforcement action against the X Corporation in which he was implicated. The Applicant has not presented any mitigating circumstances. As a Senior Officer who had many years of experience he should have known the applicable rules. (*See K*, Decision No. 352 [2006], para. 39.) Under the circumstances, the Tribunal finds that the sanctions imposed were not disproportionate to the offense.

41. The Applicant has stated that the disciplinary measures of prohibition of future hire and restriction of access to the premises imposed on him were not provided for in the Staff Rule effective at the time the misconduct in question occurred. It is true that they were explicitly introduced in a later version of the Staff Rule (in effect at the time the misconduct was discovered and the Applicant was served with the Notice of Alleged Misconduct). In applying a Staff Rule to a particular conduct the Tribunal held in *AC*, Decision No. 386 [2008], para. 36, that "the applicable rule would be the one in effect at

the time the conduct took place.” Also in *D*, Decision No. 304 [2003], para. 49, the Tribunal held that the Bank has no authority

to apply rules relating to discipline – whether of substance or of sanction – retroactively so as to embrace conduct that had occurred before. Conduct on the part of a staff member which was blameless at the time cannot be made punishable by a subsequently amended staff rule.

42. Still the earlier version of Staff Rule 8.01, effective April 1997 and applicable to the Applicant, did provide for the “[r]emoval of privileges or benefits, whether permanently or for a specified period of time.” The Tribunal finds that the disciplinary measures imposed on the Applicant fall within Staff Rule 8.01.

43. The Applicant specifically challenges the prohibition from access to all World Bank Group facilities and states that it has caused him harm for which he should be compensated. The Applicant states that it prevented him from accompanying the President of Country Y in official visits to the Bank and resulted in the Applicant’s removal from the Cabinet because the President felt that such prohibition would prevent the Applicant from performing his duties efficiently and effectively. The Tribunal has stated that access to Bank’s premises is not an absolute right even for a current staff member. (*See also Mwake*, Decision No. 318 [2004], para. 35.)

44. In *V*, Decision No. 378 [2008], paras. 57-58, the Tribunal found that the Bank’s decision to exclude an applicant from access to its premises was justified and reasonable under the circumstances because the applicant “breached the Bank’s trust and violated its rules of conduct.” Similarly, in the present case, the Applicant’s actions were found, *inter alia*, to “represent ... a blatant disregard for the rules and policies of the World Bank” and to “have resulted in an irreparable breach of trust with the World Bank.” The Tribunal cannot find the Bank’s decision to restrict the Applicant’s access to its premises as

unreasonable under the circumstances. The Applicant is not entitled to remedies for any injury to his career and reputation as a result of disciplinary measures lawfully imposed on account of his own misconduct.

45. The Applicant also claims that confidentiality of his personnel information was breached by the Bank regarding his case when the President of Country Y was informed of the Applicant's restriction of access to premises in connection with the President's trip to the Bank. Contrary to the Applicant's assertions, the record shows that numerous efforts were undertaken by both the Applicant's attorney and the Bank to issue a joint statement to the President explaining the reasons for the Applicant's restriction of access to Bank premises while protecting his confidentiality rights. These efforts were unsuccessful and there is no evidence of a statement having been sent to the President of Country Y. The Applicant's claim that before the completion of the INT investigation the Bank had improperly disclosed confidential information to participants in a Bank seminar and to the press, and then failed to investigate the alleged disclosures, was previously addressed in *R*, Decision No. 371 [2008]. That claim must therefore be dismissed as *res judicata*.

*Whether the requirements of due process were observed*

46. As the Tribunal stated in *V*, Decision No. 378 [2008], para. 48, "even if they are guilty of misconduct, and even though INT investigations are not to be equated with criminal investigations that could lead to penal sanctions, staff members are entitled to due process." As held in *Kwakwa*, Decision No. 300 [2003], para. 29:

the due process requirements for framing investigations of misconduct in the context of the World Bank Group's relations with its staff members are specific and may be summarized as follows: affected staff members must be apprised of the charges being investigated with reasonable clarity; they must be given a reasonably full account of the allegations and evidence brought against them; and they must be given a reasonable

opportunity to respond and explain. (*See King*, Decision No. 131 [1993], paras. 35-37.)

47. The Applicant refers to the Independent Panel Review of the World Bank Group's Department of Institutional Integrity ("Volcker Panel Report"). He states that the Bank failed to adhere to the Volcker Panel's recommendations for the improvement of the investigative process which were issued almost contemporaneously with the Applicant's investigation. He states that INT failed to give him adequate advance notice of the allegations, denied his request to consult a lawyer before the interview, and engaged in improper questioning and speculation while interviewing him.

48. Even though a number of the Volcker Panel Report recommendations were ultimately implemented, these changes came too late for the Applicant. (*See also AJ*, Decision No. 389 [2009] paras. 112 and 113). INT procedures applicable at the time of the Applicant's investigation appear to have been followed. The Applicant was given notice of the allegations of misconduct which were reasonably detailed in their specification; he was advised of the standards applicable to investigation of allegations of misconduct; he was given an overview of the investigative and decision-making process; and he was generally informed of his rights under Staff Rule 8.01. The Applicant was provided an opportunity to respond during his interview as well as subsequently in writing.

49. When the Applicant was provided with the Notice of Alleged Misconduct during the interview of 25 July 2005 and asked to reflect on it, he was told he was not entitled to have a lawyer present during the interview under the applicable Staff Rules, but could retain one to help him in the preparation of his written response. The Tribunal considers that denying a staff member the opportunity to consult with a lawyer may well be unreasonable in some circumstances. The Tribunal notes, however, that the procedure in

effect at the time did not allow for advance notice of the charges of misconduct, nor discussion thereof by the Applicant with his own attorney before the interview. Nevertheless, the record includes evidence that the Applicant was in fact assisted and represented by legal counsel during different stages of the investigation. The Tribunal also notes that the record of the interview indicates that the Applicant was given adequate time and opportunity to respond to questions posed to him and to refresh his recollection, albeit without consulting then and there with an attorney. In *AJ*, Decision No. 389 [2009], para. 136, the Tribunal stated as follows:

The important question is whether the Applicant was given adequate opportunity to defend himself ... The Tribunal is [not prepared] to hold that the absence of counsel during the interview in and of itself amounts to a violation of due process rights, at least in this case where the Applicant has not substantiated how this limitation denied him opportunities to defend himself effectively in a manner that violated his due process rights.

The Tribunal finds that, in the present case, the Applicant has not demonstrated that his due process rights were violated in this respect.

50. The Applicant also complains that he had no opportunity to cross examine any witness who gave information or expressed opinions to the investigators and that all documents given by the X Corporation's attorneys to the Bank were actually inadmissible in any judicial proceeding. As the Tribunal has held, the INT investigation is administrative rather than adjudicatory in nature. The concerns for due process in such a context relate to the development of a fair and full record of the facts, and to the conduct of the investigation in a fair and impartial manner but do not necessarily demand conformity with the requirements of criminal trials (*see V*, Decision No. 378 [2008], para. 50, citing *Rendall-Speranza*, Decision No. 197 [1998]).

51. The Applicant also asserts that INT violated his due process rights by failing to inform him in a timely manner of the status of the investigation and by delaying the investigation and the disclosure to him of the final investigative report. He states that while it took INT nine months to complete its report, that report was rushed to conclusion at a time when the Applicant was in his home country and had no opportunity to receive, review, correct or contest it; the report was submitted to HRSVP without any of the Applicant's comments on it. The Bank states that the time taken to conduct the investigation was reasonable considering the complexity of the Applicant's case and the volume of documents obtained.

52. The Tribunal has stated before that it "has no authority to micromanage the activity of INT" (*G*, Decision No. 340 [2005], para. 73) and that "a lengthy investigation is [not] *per se* an interference with due process if the investigation is reasonably proportionate to the complexity of the facts of the case." (*L*, Decision No. 353 [2006], para. 31.) The only question that is properly before the Tribunal is whether the alleged delay in completing the report of the investigation and the resulting failure to provide it to the Applicant in time to submit his comments thereon resulted in violation of his due process rights and inflicted harm for which he should be compensated.

53. In examining whether a staff member accused of misconduct was afforded the opportunity adequately to defend himself, the Tribunal has consistently viewed the Applicant's right to comment on the report of the investigation as one of the most important due process rights of such staff member. (*e.g.*, *Mustafa*, Decision No. 207 [1999], paras 34-36; *Ismail*, Decision No. 305 [2003], para. 58, 65-66, 73).

54. In *Ismail* at para. 58, the Tribunal stated as follows:

The Tribunal takes the view that denying a party the opportunity to be present when witnesses are interviewed does not necessarily amount to a denial of due process, provided that the party has a proper opportunity to be made aware of what is alleged and to put forward evidence and arguments in response. (*Rendall-Speranza*, Decision No. 197 [1998], paras. 61-62.) Here the Applicant had a full opportunity to respond to the Draft Report and its many annexes.

55. In this case, unlike the applicant in *Ismail*, the Applicant did not provide comments on the draft INT report which contained documents and witness statements used by INT in concluding that the Applicant had engaged in misconduct. In addition, unlike the applicant in *AJ*, Decision No. 389 [2009], para. 136, the Applicant's attorney in this case did not provide comments on the draft INT report although he was given the opportunity to do so.

As the Tribunal noted in *AJ*:

In certain situations, a staff member may request that INT contact his or her counsel in case of need. For example, a staff member may be on mission or on personal travel or may be sick during an investigation. In such situations, if a staff member requests that INT contact him or her through counsel, INT should do so. (*Id.* at para. 137.)

56. Furthermore, the Tribunal found at para. 136 of *AJ* that the applicant's counsel was instrumental in assisting the applicant "to prepare better for interactions and other communications with INT." It held that INT had satisfied the requirement of providing adequate opportunity to the Applicant to defend himself by involving his counsel in the proceedings particularly as "the Applicant's counsel did provide the written response" to the allegations of misconduct and had "provided extensive comments on the [draft] reports [of the investigation]."

57. The record shows that the draft report of the investigation was completed on 21 March 2006, well after the Applicant's resignation from the Bank on 31 October 2005 and at a time when the Applicant was in his home country. However, thereafter INT tried for



one month to get a Non-Disclosure Agreement (“NDA”) to the Applicant in order to have him sign it, prior to the dispatch of the draft report for his comments before submitting it to HRSVP for final decision. On 22 March 2006 the Applicant asked INT to send the NDA by e-mail to him and the draft report to his attorney. On 27 March 2006 he informed INT that he wanted to return to Washington and have the benefit of 10 days after signing the NDA to respond to the draft report but did not know when he would return. As the Applicant’s date of arrival in Washington appeared uncertain according to communications with his attorney, INT sent the draft report to his attorney on 4 April 2006, complying with the Applicant’s earlier request and immediately after the receipt of an NDA signed by the attorney. The attorney received the report on 7 April 2006. The version of Staff Rule 8.01 paragraph 4.09 applicable at the time of the investigation provides that no less than five business days will be given to the staff member to submit comments on the report. The attorney did not submit any comments. He explained that only the Applicant could respond to the allegations of the X Corporation executives. Nor did he forward the report to the Applicant, he said, because of its voluminousness and complex annexes. On 20 April 2006 INT wrote to the Applicant and gave him a final opportunity of one day to sign and return the NDA, stating that the draft report had already been in the possession of his attorney. The Applicant responded on 25 April 2006 claiming that he was unable to open the e-mail attachment sent to his computer in order to sign the NDA. Because INT did not receive the Applicant’s signed NDA, it finalized the draft report and forwarded it to HRSVP without the Applicant’s or his attorney’s comments on it.

58. In sum, the record evidences INT’s attempt to reach the Applicant and to provide him personally with an opportunity to receive and comment on the draft report. INT also

submitted the draft report to the Applicant's attorney in an effort to have him send it to the Applicant or have him comment on it on behalf of the Applicant. It waited for longer than the minimum time required under the Staff Rule for comments to be submitted after the attorney received the report. When this time elapsed, it nevertheless gave the Applicant a final opportunity to send the signed NDA so it could send him the report. For his part, the Applicant gave unclear and conflicting messages, through direct communications with INT and through his attorney, as to the time of his return to Washington and as to his or his attorney's readiness and ability to comment on the draft report. Given the opportunity afforded to him and the relevant time limits for submission of comments under the rules, the Applicant temporized. Perhaps he was constrained by other priorities which could have delayed a response from him, but equally his counsel in Washington should have been in a position to facilitate the process and to react properly to protect his client's position in this sensitive matter.

59. At any rate, the Tribunal finds that INT should have allowed the Applicant additional time, under the circumstances, to provide comments on the draft report of the investigation. As seen above, Staff Rule 8.01 requires that the time allowed to a staff member to comment in writing will not be less than five business days from the date of receipt of the investigative report. But it also provides that the complexity and seriousness of the matter will be taken into account in the setting of time limits to submit such comments. There is no evidence that this was done in this case. The Bank has insisted that the report was the result of a complex investigation consisting of a voluminous and complex record. The Tribunal notes that a report of this nature would surely necessitate a close and thorough review and a subsequent careful and focused preparation of an answer

by the Applicant. As has been shown, however, the draft report was concluded and sought to be sent to him at a time when the Applicant could not readily provide such response. At the same time, the record does not show that INT made any effort to inform him of the progress of the investigation or of the time when the investigation would be coming to a close so that he could make himself available to receive the draft report and prepare and submit his comments thereon. His attorney has indicated that his intervention was limited to formal and technical arguments; only the Applicant could respond to factual allegations. INT has not presented any compelling reason to justify why after it had spent almost nine months (July 2005 to March 2006) to complete its investigation and its ensuing report, it could not have given the Applicant some additional time to scrutinize the report and provide comments thereon. INT did not attempt to show that the Bank's legitimate interests would have been compromised by giving the Applicant some time to return to Washington and prepare his response, especially given that neither the Applicant nor his attorney had had any effective opportunity during the investigation to review the underlying evidence in its entirety.

60. While the Tribunal finds that INT's treatment of the Applicant in this respect was inadequate, it remains a fact that the Applicant's misconduct was proved and that the nature of the evidence is such that INT's imperfect processing of his case would not affect the outcome and warrant rescission of the decision to impose disciplinary measures. The Tribunal will not award compensation to the Applicant, particularly considering that the Applicant's failure to comment on the report was also partially attributable to him. At the same time, the Tribunal considers it important to underscore INT's duty scrupulously to respect staff members' right to due process throughout the investigation and to take

adequate measures to protect such rights as the particular circumstances of each case may demand.

DECISION

For the reasons given above, the Tribunal dismisses the Applicant's claims.

/S/ Jan Paulsson  
Jan Paulsson  
President

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Washington, DC, 1 July 2009