

Decision No. 145

Dominique Sjamsubahri,  
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 Bola A. Ajibola, F. Orrego Vicuña, Thio Su Mien and P. Weil, Judges, has been seized of an application, received on January 13, 1995 by Dominique Sjamsubahri, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on July 6, 1995.

2. The Application arises out of complaints made against the Applicant, a level 24 staff member, by another staff member ("the complainant"). The complaints against the Applicant were lodged in conjunction with a complaint against the Bank regarding what the complainant saw as an improper failure on the part of the Bank to grant him a promotion.

3. The complaint led to an extended investigation by the Bank's Ethics Officer (EO) who submitted a lengthy report to the Vice President, Management and Personnel Services (VPMPs). The latter decided, on the basis of the recommendations made in that report, that the Applicant should receive the disciplinary penalty of an oral reprimand for her behavior as well as a written warning that if such behavior occurred in the future it would be considered a more serious matter. Subsequently, the VPMPs decided that only the oral reprimand should be given and this was noted in a memorandum from the EO to the Applicant dated February 9, 1993, which stated that the written record of the conversation with the Applicant on the matter would bring the matter to a close; that only one copy of the memorandum would be retained (in the EO's files); that no copy of it would be placed in the Applicant's Special Personnel File; and that no-one else would receive a copy.

4. The Applicant requested from the Director, Personnel Management Department (PMD), a copy of the Report of the EO. This request was denied. The Applicant thereupon initiated the procedure for administrative review, invoking three grounds: lack of due process; the decision to withhold the Inquiry report; and the conduct of the EO during the Inquiry. The Applicant requested the reversal of the adverse decision resulting from the EO's Inquiry and the formal withdrawal of the EO's memorandum of February 9, 1993.

5. This request having been denied, the Applicant appealed to the Appeals Committee, which recommended that the oral censure and any documents related thereto should be withdrawn and destroyed. At the same time, the Committee expressed support for the recommendation that the Applicant would benefit from a change of environment to another department. The recommendation relating to the withdrawal of the oral censure was not accepted by the VPMPs.

6. The Applicant then brought the matter to this Tribunal, seeking substantial damages for loss of career opportunities and adverse effects on her health, the withdrawal and destruction of the report of the EO and related documents, and costs. The basis of the application is, essentially, that due process was not observed in the investigation by the EO and subsequently. The Bank takes the position that the requirements of due process have been satisfied.

7. The Tribunal must, therefore, consider whether the procedure followed was in any material way flawed by irregularity. The Applicant has made numerous submissions in this connection. The Tribunal will, however,

focus only on those that appear to it to be particularly important.

8. The starting point must be Staff Rule 8.01. Within this Rule, Section 3.01 provides that disciplinary measures may be imposed when personal or professional misconduct occurs and indicates, though not exhaustively, conduct for which such measures may be imposed. Section 5.01 provides that “disciplinary proceedings may be initiated by the Bank whenever conduct for which disciplinary measures may be imposed is observed or reported” to an appropriate Bank officer. Section 5.02 provides that “where a staff member is alleged to have engaged in conduct for which disciplinary measures may be imposed, an investigation to determine the substance and circumstances of the matter will take place”.

9. It must, however, be understood that a complaint by a staff member of what may be called “inter-personal” misconduct cannot automatically trigger proceedings of the kind prescribed in Staff Rule 8.01. The victim’s complaint is merely the starting point for consideration by the Bank of whether or not it will commence disciplinary proceedings. Staff Rule 8.01, Section 5.01 leaves the Bank an option. The Rule says: “Disciplinary proceedings may be initiated by the Bank”. It does not say that such proceedings “shall” be initiated by the Bank. Before initiating disciplinary proceedings in such circumstances the Bank must, in a necessarily preliminary way, decide whether there is sufficient substance to the complaint in terms both of evidence and gravity to warrant taking the matter further. Were this not so, it would be open to any staff member, by making accusations of no matter how flimsy a character, to compel the opening of a formal investigation by the Bank which it is easy to imagine could cause significant harm to a possibly innocent fellow staff member. If the procedure had to be initiated automatically upon complaint by the complainant staff member, the discretion vested in the Bank by the opening words of Staff Rule 8.01, Section 5.02 “Disciplinary proceedings may be initiated by the Bank Group....” would be negated.

10. Consequently, when one staff member complains against another, the Bank must make an initial assessment of the complaint looked at as a whole. In the present case there is no evidence that the complaints made about the Applicant by the complainant were subjected to this necessary preliminary scrutiny by management in the Internal Audit Department (IAD), by the Personnel Officer (PO) concerned or even by the EO. Although the matter appears to have been referred to the Legal Department at an early stage, there is no indication of whether that Department considered this aspect of it. The Bank thus appears simply to have accepted the complaints made by the complainant as a proper basis for starting a full-scale disciplinary investigation without considering whether there was sufficient prima facie evidence and, if there were, whether the seriousness of the matter alleged were likely to justify the extended degree of examination that then followed.

11. In so doing the Bank evidently failed to consider that prior to the period of the events on which the allegations made in the complaint are based, the Applicant had served in her department for some seven years with an unblemished record. The department head has stated that during the period for which he had been head of the department no one had ever made any adverse comments or allegations concerning the Applicant’s behavior and that the feedback received from her colleagues and client departments alike had been extremely positive and congratulatory. The complainant had worked with the Applicant for a period of some eighteen months prior to the filing of his complaint in June 1992. During that period he had shown no discontent with the Applicant, even though some of the matters, including one of the principal episodes, occurred more than a year before the complaint was made. Indeed, the complainant had on more than one occasion spoken in approving and appreciative terms of the manner in which the Applicant had worked with him and given him help. Nor does the Bank appear to attribute any significance to facts such as the following: that the complaints made against the Applicant were evidently closely connected with the complainant’s dissatisfaction at not having been promoted; and that the principal episodes to which the complaints made in July 1992 related occurred as long before as April, May, August and November 1991 and January and February 1992.

12. Another procedural irregularity occurred after the EO had accepted the request that he should investigate the matter. The Director, IAD, asked that only those persons should be examined as witnesses who were then still in the employment of the Bank, and the EO accepted that instruction. Why the request was made and accepted has never been explained. It was not justifiable.

13. A further defect in the procedure was non-compliance with Staff Rule 8.01, Section 5.05. This requires that a staff member will be notified of the disciplinary measures that will be taken and the reasons for their imposition by the person who determined what the measures will be, or by the EO. It concludes: "Except where the measure is oral censure, the notification will be in writing". On November 19, 1992, the Ethics Officer met the Applicant in the presence of the Auditor-General, and advised her that the Director, PMD, had decided that the Applicant should receive an oral reprimand for her behavior and a written warning that similar conduct in the future would be considered a more serious matter. It is thus evident that the Director, PMD, intended to go further than oral censure by adding a written warning. Under the terms of Staff Rule 8.01, para. 5.05, this meant that the notification must be in writing. This requirement was not met. Nor was this defect remedied by the fact that on February 9, 1993, the EO purported to record the main points of the November 19 meeting in a memorandum to the Applicant in which he also informed her that the Director, PMD, had "recently decided that rather than proceed with a written warning, this present memorandum, as the official record of our conversation, would serve to bring the matter to a close." The Director, PMD, having originally decided on a penalty that went further than merely oral censure, could not, some 10 weeks later, remedy the failure to meet the procedural requirement of written notification of the disciplinary measures and of the reasons for their imposition by reducing the scope of the disciplinary measures.

14. A more serious procedural irregularity was the refusal of the VPMPs to give the Applicant a copy of the EO's Report of his investigation. Two weeks after the communication from the EO of February 9, 1993, just referred to, the Applicant requested from the EO a copy of his report on the inquiry. On March 25, 1993, the VPMPs denied this request, giving as his reason that if such reports were to be subject to the distribution requested by the Applicant, they would not be able to serve their intended purposes. The Tribunal is quite unable to understand, or condone, this refusal to provide the Applicant with what was, in effect, the decision against her on the basis of which the VPMPs had then taken his further decision that the Applicant should receive an oral reprimand and a written warning. The report was not made available to the Applicant until the proceedings which she initiated before the Appeals Committee on August 4, 1993.

15. The fact that Staff Rule 8.01 does not expressly require the EO to provide an applicant with a copy of his report does not mean that there is no such requirement. Not every aspect of the due process required in the administration of disciplinary measures is written down in Staff Rule 8.01. The Appeals Committee understated the matter when it concluded that "due process would have been better served if his report had been given to the Appellant, in this case, at the time the decision for the oral censure was announced to her". The failure to communicate the report meant that the requirements of due process were not satisfied.

16. The Applicant has made other criticisms of the manner in which the proceedings have been handled, but the Tribunal does not find it necessary to go further into these matters.

17. The conclusion that the Tribunal must reach is that the proceedings against the Applicant have been flawed at a number of significant points. As a result, the report of the EO of November 10, 1992 must be treated as a nullity, as must all the measures flowing from it including, in particular, the decision of the VPMPs of November 18, 1992 and the EO's memorandum to the Applicant of February 9, 1993. The copy of that memorandum that the EO retains in his files must be removed.

18. There remains for consideration the question of the Applicant's claim for damages for loss of career opportunity, adverse effects on her health and legal fees.

19. The Applicant claims that she had been slated for panel clearance for promotion to a managerial position and that consideration of this move was deferred pending the outcome of the "investigation" and has not been resumed. She also asserts that her health has been affected.

20. It is, of course, well established that a decision whether to promote or not is a matter of managerial discretion which cannot be challenged in the absence of evidence of abuse of discretion (Apergis, Decision No. 83 [1989], para. 57). There is no evidence here that the question of the Applicant's promotion was affected by

the investigation or by any other challengeable reason. It is, therefore, not possible to award her compensation on that basis. Nor has the Applicant produced any evidence of damage to her health specifically attributable to the manner in which the investigation was conducted.

21. One specific consequence of these findings is that so far as the allegations of misconduct made against the Applicant are concerned there remains nothing on the record that amounts to evidence of anything that would have justified disciplinary measures under Staff Rule 8.01. The allegations made should not in any way be allowed to prejudice the Applicant's future position in the Bank and, in particular, any promotion for which she is entitled to be considered. However, it seems to the Tribunal that the Applicant should be compensated for the distress to which she has undoubtedly been exposed by proceedings so significantly flawed as are those examined above. The Tribunal, therefore, equitably assesses the compensation due to the Applicant at \$70,000.

**Decision:**

For the above reasons, the Tribunal unanimously decides:

- (i) to declare null and void the report of the EO of November 10, 1992, to quash the decision of the VPMPs of November 18, 1992 and to declare null and void the EO's memorandum to the Applicant of February 9, 1993;
- (ii) to order the removal from the EO's files of his memorandum to the Applicant of February 9, 1993 and any other documents relating to the matter;
- (iii) to order the Respondent to pay to the Applicant compensation equitably assessed in the sum of \$70,000;
- (iv) to order the payment to the Applicant of legal costs of \$5,000; and
- (v) to dismiss all other pleas.

A. K. Abul-Magd

/S/ A. K. Abul-Magd  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary

At Washington, D.C., November 9, 1995