



World Bank Administrative Tribunal

2008

No. 378

**V,
Applicant**

v.

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

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

**V,
Applicant**

v.

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

1. This judgment is rendered by a panel of the Tribunal established in accordance with Article V(2) of the Statute of the Tribunal, and composed of Jan Paulsson, President, and Judges Stephen M. Schwebel and Francis M. Ssekandi. The Application was received on 16 July 2007. The Applicant's request for anonymity was granted on 1 August 2007.

2. The Applicant in this case challenges the Bank's decision, communicated to him on 21 September 2005, terminating his appointment for misconduct effective 23 September 2005. He also challenges the Bank's subsequent decision of 23 June 2006 denying him access to the Bank's buildings and facilities.

3. The Applicant contends that the termination decision was not warranted because he had already tendered his resignation to the Bank on 21 September 2005, effective the same day. He thus requests that the Tribunal quash the termination decision, allow his resignation to stand and set aside the denial of access to the Bank's buildings and facilities.

BACKGROUND

4. The Applicant joined the Bank in October 1991 as a Financial Analyst in the Bank's Africa Region. In June 1996, he was promoted to Senior Financial Analyst, Level 24. In October 2001, the Applicant went on External Service Without Pay to work for the Government of the Côte d'Ivoire, where he still is employed.

5. The charges of misconduct which led to the termination of the Applicant's employment stemmed from his work in the Africa Region covering a number of countries, including Rwanda. It was alleged that between 1999 and 2001, he received substantial remuneration from a bank in Rwanda for services ostensibly rendered by a business entity owned by his wife, while he was working on Bank projects in the country. The Notice of Alleged Misconduct from the Director, Department of Institutional Integrity (INT), dated 9 September 2003, was served on the Applicant on 11 September 2003 during his interview with INT. Paragraph 1 of the Notice read as follows:

This memorandum is to advise you that under the authority of Staff Rule 8.01, the Department of Institutional Integrity (INT) is conducting an investigation into the following allegations:

Without the knowledge of the World Bank and without the approval of the Outside Interests Committee, you were employed as a financial consultant to the Banque Continentale Africaine Rwanda (BACAR) between August 1, 1999 and October 31, 2001, and that you received remuneration totaling approximately \$275,000 for those consulting services.

6. The INT investigation began in 2003 and was completed in 2005. The INT Final Report, dated 15 August 2005, submitted to the Vice President, Human Resources, (HRSVP), found that the evidence was "reasonably sufficient" to show that:

- (a) The Applicant had received "approximately \$215,000 from BACAR" for services rendered through a business entity called C – B – Consulting Services (CBCS) during the period 1 August 1999 to 16 July 2001. CBCS was owned by the Applicant's wife.
- (b) The Applicant's outside employment and receipt of consequent pecuniary gain while in regular employment by the Bank was not disclosed to the Bank and lacked the necessary approval of the Outside Interests Committee.

- (c) The Applicant had knowingly made “untruthful statements” to the INT investigators concerning his interest in CBCS and his financial relationship with BACAR.

7. On 21 September 2005, the HRSVP informed the Applicant by letter of the same date that after due consideration of the INT Report, he had concluded that there was substantial evidence showing that the Applicant had “engaged in the misconduct alleged” in the Notice of Alleged Misconduct. Specifically, “[t]hrough ... a private financial consulting firm owned by your wife, you received the amount of approximately \$215,000 for consulting services to BACAR. Evidence shows that you, and not your wife, . . . were running CBCS and being paid for the services provided to BACAR.” The HRSVP also concluded that the Applicant knowingly engaged in activities involving a conflict of interest in violation of Bank Staff Rules and that such actions “have resulted in an irreparable breach of trust with the World Bank.” Finally, the HRSVP also accepted INT’s conclusion that the Applicant had made untruthful statements to INT in violation of his duty as a staff member to cooperate with INT during an investigation. Accordingly, the HRSVP terminated the Applicant’s appointment effective 23 September 2005.

8. By letter dated 21 September 2005, but apparently faxed on 22 September 2005 to the Manager, Africa Human Resources Unit (HRS01), the Applicant tendered his resignation pursuant to Staff Rule 5.02 (External Service) paragraph 3.02(b) and Staff Rule 7.01 (Ending Employment) paragraph 2.01, stating “such resignation to be effective today.” The Manager, HRS01, responded by letter dated 22 September 2005 and faxed to the Applicant’s attorney that same day, stating that the Applicant’s resignation letter of 21 September 2005 was received on 22 September 2005. The Manager, HRS01, informed the

Applicant that “your resignation is not accepted as you were informed yesterday by the Vice President of Human Resources that you have been terminated due to misconduct. The conditions of the memo you received yesterday still hold.”

9. The Applicant filed a statement of appeal challenging the termination of his employment with the Appeals Committee on 7 November 2005. On 24 August 2006, he filed an additional statement of appeal challenging the 23 June 2006 decision denying him access to all the Bank’s buildings and facilities. The appeal was heard by the Appeals Committee on 23 October 2006.

10. In its Report dated 19 January 2007 the Appeals Committee found that the record was undisputed with respect to the following facts:

- (a) the amount of \$215,000 was paid into a bank account controlled by the Applicant’s wife;
- (b) there was no evidence in the record that she performed any work for BACAR;
- (c) the Applicant failed to provide any plausible explanation regarding her services to BACAR;
- (d) the evidence was reasonably sufficient to show that the Applicant performed extensive consulting services to BACAR while employed by the Bank, even though it was not sufficient to show that the Applicant actually received compensation directly in exchange for his services;
- (e) the Applicant had failed to obtain the necessary approval from the Outside Interests Committee and did not disclose his and his wife’s interest in BACAR pursuant to Staff Rule 3.01 (Outside Activities and Interests), paragraph 8.01;

- (f) the extent of the Applicant's involvement with the Chief Executive Officer of BACAR (CEO) and BACAR, coupled with the knowledge that a large sum of money was being transferred by BACAR to his wife, constituted a conflict of interest and a reckless disregard on the part of the Applicant of the Bank's Staff Rules that govern Outside Activities and Interests; and
- (g) the Applicant had been afforded due process throughout the investigation.

11. The Appeals Committee concluded that the Applicant's failure to report his and his wife's interests and activities with BACAR while he was employed with the Bank exposed the Bank to risk and damage to its reputation. The Appeals Committee deemed the Applicant's behavior reckless, justifying the HRSVP's decision to terminate his employment.

12. The Appeals Committee also concluded that the Bank's decision to prohibit the Applicant's access to the Bank's buildings was not arbitrary. It stated that the Applicant had not been treated differently from other former staff members in similar situations and that he had been afforded appropriate due process, having received notice of the decision and availed himself of the opportunity to respond by filing an appeal. The Appeals Committee unanimously recommended that all of his requests be denied.

13. On 29 January 2007, the Bank's Managing Director accepted the Appeals Committee's recommendations, leading to the current Application before the Tribunal.

THE CONTENTIONS OF THE PARTIES

14. The Applicant challenges two decisions:

- 1 the rejection of his tendered resignation and the termination by the Bank of his employment for cause; and

2 denial of access to the Bank's premises.

15. In his Application, the Applicant contends that the decision to terminate his appointment was an abuse of discretion "because it was not taken on a proper appraisal of the facts and was the result of an unfair and abusive process." He asserts that the rejection of his resignation on the ground that he had been terminated was, in the circumstances of the case, excessive and retaliatory.

16. The Applicant comprehensively challenges the INT Report. He alleges that the information obtained by INT from employees of BACAR was "suspect and untested." In particular, he states that most witnesses were "confused about [his wife's] qualifications, Applicant's friendship with [the CEO] and had little or no knowledge of [the CEO's] business relationship with [his wife] since it was confidential." He notes that he had no opportunity to challenge the witnesses, all of whom were in Rwanda and could not be present before the Appeals Committee, or respond to their rather muddled testimony such as "the claim [that] Applicant's wife drives a school bus in Montgomery County (false), and that Applicant used a business card with CBCS on it (false) and even more ridiculous worked for the World Bank as a CBCS consultant." He concludes that the INT Report had not been properly tested and thus "does not constitute an adjudication of Applicant's guilt or innocence."

17. Next, the Applicant challenges the HRSVP's decision to terminate his employment rather than accept his resignation as arbitrary. He contends that the refusal to accept his resignation "was unjust and was a deliberate attempt to justify the investigation and impose a punishment."

18. Finally, the Applicant contends that termination was a disproportionate sanction, as his only proven offense was failure to report to the Outside Interests Committee the contract for consulting services between his wife and the CEO.

19. In its Answer, the Bank states that the evidence gathered by INT proves that between October 1999 and July 2001 the Applicant provided extensive financial management services and auditing advice to BACAR while an active employee of the Bank. Since the Applicant did not disclose his outside consulting activities to the Bank, he acted in violation of Staff Rule 3.01, paragraph 6.01, “which prohibits staff from performing services for outside entities without approval of the Outside Interests and Activities Committee.” Violation of Staff Rule 3.01 constitutes misconduct under Staff Rule 8.01 (Disciplinary Measures).

20. The Bank adds that the Applicant’s assertions that he provided only *ad hoc* advice to the CEO as a personal friend, for which he did not receive payment, and that the payments made by BACAR related to a contract made between the CEO and his wife’s consulting firm, CBCS, were not credible. INT attempted to verify the Applicant’s assertions but was unable to do so. On the contrary, the investigation “uncovered substantial evidence that the Applicant’s explanations were false.” Both the Applicant’s wife and the CEO were in the United States at the time of the INT investigation, but declined INT’s invitation to testify. In the Bank’s view, “[t]hese individuals could have confirmed the Applicant’s explanations and provided exculpatory evidence, but they declined to be interviewed.”

21. Furthermore, the Bank states that INT interviewed employees of BACAR as well as employees of LOITA Capital Partners (LOITA), a firm which had been hired by BACAR,

on the Applicant's advice, to manage BACAR. The witnesses provided INT with extensive testimony and various documents recovered from BACAR, including contracts, payment records, faxes and correspondence between BACAR, the Applicant, and CBCS. The Bank contends that the evidence collected showed that BACAR had paid approximately \$275,000 to CBCS between August 1999 and July 2001 against CBCS invoices and on the basis of a contract between CBCS and BACAR. The contract covered "oversight of management of BACAR," and the invoices from BACAR showed that services provided were for the financial management and internal audit of BACAR. This contradicted the Applicant's assertions during the INT investigation that a contract had been concluded with CBCS for his wife to provide computer consulting services to the CEO. Witnesses from BACAR who were interviewed stated that all the work under the contract had been rendered by the Applicant who visited BACAR's offices regularly during his Bank missions to Rwanda, and not by his wife. In fact, the witnesses said that they had never seen his wife at BACAR's premises. The witnesses stated that the Applicant was intimately involved in BACAR's operations. BACAR's officials were required to discuss many aspects of BACAR's operations with the Applicant; he approved budgets, negotiated major contracts and examined financial statements. He also made recommendations on business and operational plans, capitalization, regulatory compliance, financial recovery and restructuring over a period of 20 months. Thus, the Applicant's claims that INT did not obtain sufficient evidence to demonstrate that he performed services for BACAR is simply not credible. In fact, while the Applicant was known to be an official of the Bank, his role at BACAR was ambiguous. He claimed to have been "contracted by the World Bank as [CBCS]," a status that one BACAR official considered confusing. LOITA staff

were surprised that the Applicant, as a Bank official, was playing such an active role in the management of BACAR.

22. The Bank asserts that the evidence indicates that the Applicant ran CBCS and used it to receive payments from BACAR. He negotiated the fees and submitted the work invoices to BACAR, albeit signed by his wife, and “conducted the firm’s business as evidenced by numerous invoices, faxes, notes and letters he sent on the firm’s stationery.” Apart from signing the initial contract and placing her name on each invoice submitted to BACAR, the Applicant’s wife did not seem to play any role in the management of CBCS. The Bank concludes that since it was the Applicant and not his wife who was performing services for BACAR, he had a duty under the Bank’s Staff Rules to disclose this outside activity to his managers and obtain approval from the Outside Interests Committee.

23. The Bank disputes the Applicant’s claim that he was never paid by BACAR, emphasizing his failure to adduce evidence from his wife and the CEO to support his assertions that payments made by BACAR were for work performed by his wife.

24. In sum, the Bank states that the Applicant’s “attempt to minimize the seriousness of his misconduct is not persuasive.” The Bank asserts that the Applicant was aware that the Bank’s rules prohibited outside employment and was fully aware that approval from the Outside Interests Committee was required “before a staff member could engage in self employment for profit or perform services for outside entities.” The Applicant must also have understood that, given his grade level, approval would not have been secured from the Committee for the extensive consulting activities in question. The decision to terminate the Applicant’s appointment was thus “not an excessive sanction,” having regard to the fact

that the Applicant knowingly and intentionally violated the Bank's rules and then made numerous false statements during the INT investigation.

25. On the issue of the resignation, the Bank rejects the Applicant's contention that the Bank was required to accept his resignation rather than terminate his appointment. The Bank points out that the letter of resignation submitted by the Applicant did not precede the termination as alleged. The Applicant's letter to the Manager, HRS01, was sent on 22 September 2005, a day after the HRSVP met with the Applicant on 21 September 2005 and handed him the letter of termination of the same date, stating that the Applicant's appointment with the Bank would end as of 23 September 2005. The Bank adds that it is not required to accept a resignation if there are compelling reasons to terminate a staff member on other grounds and that "compelling grounds existed" to terminate the Applicant for misconduct.

26. In his Reply, the Applicant alleges that since CBCS was his wife's company the central issue was whether a staff member is under a duty to report his wife's activities to the Outside Interests Committee, "where the activity is a private business undertaking of a spouse that is not in conflict with the Applicant's duties to the Bank." He asserts that there was no evidence of work product by him, except for "scribbled notes and short advices" given to BACAR in the course of recruiting LOITA to assume management of the Bank. He also states that his wife did speak to the INT investigators and told them that she did the work, which was enough to dispel any insinuations to the contrary. His wife's work for the CEO was of a "highly confidential and privileged nature" which explains why Ernst & Young, the accounting firm which conducted an independent audit of BACAR at the

request of the National Bank of Rwanda, did not have access to the CEO's documents and could not find any trace of the work she performed.

27. In its Rejoinder, the Bank provided a detailed analysis of the documentary evidence gathered by INT from BACAR showing that the Applicant was tasked to provide extensive services in support of the management and operation of BACAR, ranging from, *inter alia*: reviewing the liquid assets; uses of the assets; loans made; payable credit; net exchange on a daily basis; providing input with regard to major decisions taken by the Executive Board and BACAR's management on a weekly basis; examining BACAR's financial dossier; its internal audit reports and status of its loan portfolio, on a monthly basis; and advising on "[a]ll major decisions to be taken"; on "[p]reparation of the Board of Directors General Assembly;" and on "[c]ontracts of Executive Board members with major clients," on an "as needed" basis. The Bank also pointed to the fact that at least three senior managers of LOITA testified that the Applicant provided services to BACAR and its CEO and was paid fees for these services, ranging from \$10,000 to \$12,500 per month. Witnesses affirmed that the Applicant's wife never performed any services at BACAR. The fact that payments were routed through CBCS did not disprove the fact that BACAR made the payments as remuneration for services rendered by the Applicant. To the contrary, CBCS was used by the Applicant to conceal the receipt of payments from BACAR for his services. It was obvious that the Applicant's wife, whose expertise was stated to be in computer systems, could not have provided the extensive financial analysis and support to BACAR called for in the contract between CBCS and BACAR and invoiced for by CBCS.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

The Finding of Misconduct

28. 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.

29. In essence, the Applicant’s case is that the Bank erred in refusing to accept his resignation, essentially because the decision to terminate his appointment with the Bank was not well-founded, but rather based on a flawed INT investigation. He thus requests that the termination be quashed and his resignation be left to stand.

30. Staff Rule 7.01, paragraph 2.02, provides that “[t]he Bank Group may decline to accept the resignation of a staff member and separate the staff member from service for cause.”

31. The evidence adduced in this case, both during the INT investigation and before the Appeals Committee, clearly establishes the following facts.

- (a) The Applicant joined the Bank in October 1991 and was in full-time service for the Bank until he left on External Service Without Pay in October 2001. He served in the Bank’s Africa Region, which included Rwanda, the domicile of BACAR, the bank alleged to have engaged the Applicant to provide consulting services for a substantial fee over a two-year period.

- (b) In the course of his visits to Rwanda on Bank business, the Applicant went to the offices of BACAR several times to consult with the CEO and his son (who was also his deputy) as well as the head of LOITA, the BACAR management firm, and another officer of LOITA, on a number of issues related to BACAR's banking operations and financial management. In fact, one witness claimed that during these visits staff would see the Applicant once or twice a week – and during some periods, every day – at the offices of BACAR. This witness claimed that he met the Applicant many times. The Applicant himself told this witness that he was in Rwanda on Bank missions, a fact that the witness found to be strange given the Applicant's extensive involvement in the operations of BACAR.
- (c) The INT investigation recovered several documents from the premises of BACAR, many handwritten and some typewritten notes, which were signed by the Applicant and addressed to the management of BACAR, especially the CEO and his son, as well as to the top management of LOITA.
- (d) The documents recovered by INT during the investigation included several exchanges of correspondence signed by the Applicant, addressed to the CEO or his deputy advising in detail on various aspects of BACAR's financial management, including advice on the terms of the contract between LOITA and BACAR, such as the structure of the fee payable to LOITA, and on operational modalities for management of BACAR.
- (e) The dossier recovered by INT also included a contract, and its amendments, between CBCS and BACAR, requiring CBCS to “fulfill the duties of special

advisor to the Office of the Chairman & CEO of BACAR, SA, in connection with this Office's responsibility regarding oversight of management of BACAR, SA," for a net monthly fee of \$12,500, and an annual fee of \$10,000 for reimbursement of related expenses. There were also a number of fax covers accompanying each of CBCS monthly invoices, spanning almost the entire period of the contract (from 1 August 1999 to 31 October 2001) on CBCS letterhead signed and annotated by the Applicant, urging quick payment action by BACAR. The invoices requested a "[f]ee for special advisor to the office of the Chairman & CEO ... concerning oversight of management [and internal audit] of BACAR." These fax covers, signed and annotated by the Applicant, continued to flow until July 2001, long after the time (mid-2000) when the Applicant claims to have ceased dealing with the CEO. Neither the CBCS/BACAR contract nor the CBCS invoices identified the "special advisor" or the actual individual designated by CBCS/BACAR to perform the remunerated services. The omission of this crucial contractual term in the contract left room for speculation as to the actual provider of the required services, thus allowing the Applicant to claim that his wife, who signed the contract and the invoices, actually performed the work.

- (f) The payments made by BACAR amounted to a total of \$275,000, although only \$215,000 could be matched by INT against CBCS invoices.

32. The Applicant does not dispute this evidence, but rather seeks to give it an innocent explanation, to wit that his visits to BACAR were social visits to meet the CEO, a personal friend. He states that the CEO often sought his advice on an *ad hoc* basis and, in particular,

wanted his help with the management of BACAR's operations, because he did not have banking experience. The Applicant volunteered his advice to the CEO on the management and operation of BACAR, without fee. He recommended that the CEO contract a management firm for this purpose and suggested, among others, that he recruit LOITA to manage BACAR. LOITA was owned by friends he had known when he worked for an audit firm before joining the Bank. The Applicant further contends that the documents recovered by INT are "mainly scribbled notes and short advices" which he wrote to the CEO to assist during the transition until LOITA started its work. A number of these documents related to the LOITA contract and others were unrelated to BACAR, but rather related to other entities owned by the CEO.

33. With regard to the payments made to CBCS, the Applicant claims they were made for private and confidential work performed by his wife for the CEO, with which the witnesses interviewed by INT were unfamiliar. The Applicant argues that the evidence available pointed only to services rendered by his wife to the CEO for which her consulting firm, CBCS, was paid the alleged fee. The work performed for the CEO by his wife was of a private business nature; he had no obligation to report such activity to the Bank. He thus challenges the HRSVP's conclusion that he was paid by BACAR for the advice he provided to the CEO as having insufficient evidentiary basis.

34. Furthermore, the Applicant asserts that even if the Bank's Staff Rules were read to require that he should have reported his wife's activity to the Outside Interests Committee, his failure to do so was more a result of bad judgment on his part and not evidence of misconduct. He believed that there was nothing wrong in his wife rendering services to a person or entity not connected to the Bank. In any case, such infraction did not justify

termination. He should thus have been allowed to resign rather than be terminated for cause.

35. The Tribunal recognizes that the Applicant bears no burden to prove his innocence. In this case, however, it is clear that the documentary evidence compiled by INT and the evidence provided by witnesses disprove his assertions. In particular, it is clear that:

- (i) the payments were made pursuant to a contract with BACAR, to a consulting firm bearing the name of the Applicant's wife; the Applicant claims to have no knowledge of the legal character of this firm, but he has not provided evidence of his assertion that it was in fact controlled by his wife and not by himself;
- (ii) the services for which payments were made as described in the contract and invoices are exactly the type of services that the INT investigation found to have been rendered by the Applicant over almost the same contract period; an independent audit carried out by Ernst & Young and the INT investigation found no evidence of any services rendered by anyone else to justify the large sum paid by BACAR under the contract, other than the services performed by the Applicant;
- (iii) the remunerated services under the contract differ materially from the kind of services the Applicant described in his first interview with INT as having been rendered by his wife; the Applicant said then that the CEO engaged her to assist him with computer systems, in which apparently she had considerable experience and expertise; yet almost each of the invoices submitted by CBCS

for payment referred to “oversight of management and internal audit” and none mentioned computing;

- (iv) a number of the invoices submitted by CBCS were accompanied by a fax cover under the letterhead of CBCS but with the Applicant’s name and annotations urging senior BACAR managers to make payments; in fact, one such fax cover, dated 20 August 2000, had a reference to earlier discussions followed by an emphatic instruction from the LOITA manager indicating that the BACAR “advisor, [the Applicant]” had directed that in future, due to delays, invoices should be paid in advance in the first 10 days of the month; and
- (v) the fax covers of the invoices span almost the entire period of the contract, the last known cover accompanying the invoice of 11 July 2001, thus contradicting the Applicant’s assertions that he ceased dealing with BACAR by mid-2000.

36. While the evidence does not directly connect the payments by BACAR to the Applicant and prove that the money was either handed over to him or deposited to his personal account, circumstantial evidence amply justifies the HRSVP’s conclusion that the payments were made for services rendered by the Applicant to BACAR. This is borne out by the fact that these were the services required under the contract between CBCS and BACAR, and were billed for by means of the invoices issued by CBCS. Such invoices were supported by the Applicant, who urged prompt settlement in the cover faxes.

37. In any event, the Applicant’s assertion that the BACAR payments related to work performed by his wife for the CEO is not credible. The Tribunal is not persuaded by the

Applicant's belated attempts to retract his earlier statement to INT that his wife's expertise was in computer systems and not financial management and audit. He states now that his wife was providing private and confidential services to the CEO connected with the misappropriated accounts of genocide victims. This new twist on the evidence is not convincing. The failure of his wife and the CEO to agree to be interviewed by INT and provide verification of these assertions suggests the contrary.

38. The Tribunal rejects the Applicant's contention that the HRSVP erred in finding him guilty of misconduct in the absence of direct evidence pointing to his receiving remuneration from BACAR. Evidence which by unambiguous circumstances reasonably leads to the conclusion of guilt is sometimes the best evidence available and entitled to decisive weight. The Tribunal has stated that "[i]n situations where, because of the nature of the allegation, there might be no direct evidence, the evidence available must be so clear as to generate conviction in the mind of a reasonable person" (*M*, Decision No. 369 [2007], para. 60.) Circumstantial evidence which satisfies the test set out in *M* is sufficient to establish a charge of misconduct.

39. In the instant case, there was evidence from which the HRSVP could have reasonably drawn the inference that the Applicant carried out concurrent outside employment while still a Bank official and was paid for it. That evidence was sufficient to establish that he was guilty of misconduct under the Bank's rules. As set out earlier in this judgment, the documentary evidence gathered by INT showed extensive consulting services rendered by the Applicant to BACAR over a period of two years. The witnesses interviewed by INT painted a pattern of deep involvement by the Applicant in the operation and financial management of BACAR, an area in which the Applicant, according to his

Curriculum Vitae, had substantial experience and considerable expertise. His wife, on the other hand, did not have any demonstrable expertise in finance. Even if she did, it is not possible to accept that she was able to perform the functions called for in the contract, for which she would have justifiably billed \$215,000, without ever going to Rwanda to familiarize herself with BACAR's operations and to meet and consult with officials managing BACAR. Witnesses testified unanimously that they never saw her at BACAR's premises and never interacted with her at all. Ernst & Young found no evidence of work done by her. On further investigation INT found documents, many of which on CBCS letterhead, connecting the Applicant with work identical with that called for under the CBCS contract with BACAR. Witnesses confirmed that the Applicant was heavily involved in the financial management of BACAR, and visited the bank regularly over the contract period, giving instructions to management and reviewing major contracts entered into by BACAR.

40. Under the circumstances, the Tribunal is satisfied that the evidence available was substantial and sufficient to justify the finding made by INT and the conclusions drawn by the HRSVP that the Applicant violated the Bank's rules on outside activities and interests.

The Proportionality of the Disciplinary Measure Imposed

41. The Applicant claims that the sanction of termination imposed by the Bank was disproportionate to the alleged offense because the only proven offense was the failure to report the contract for consulting services his wife had entered into with the CEO to the Outside Interests Committee. The Applicant states that he had no duty to report on his wife's activities where the activity had no connection with the Bank's activities in Rwanda. He adds that he did not commit any other type of misconduct and that termination was not

mandatory in his case. Furthermore, he claims that the HRSVP had a choice of sanctions, including a reduction in grade level or dismissal.

42. The Bank states that in determining the disciplinary measures to be imposed in the Applicant's case, the HRSVP took into account the seriousness of the misconduct, relevant extenuating circumstances and the Bank's practice in similar cases. He properly decided to terminate the Applicant's employment and bar him from future employment with the Bank.

According to the Bank:

- (a) the Applicant's misconduct was serious because he knowingly violated the Bank's rules on outside activities and interests;
- (b) there were no extenuating circumstances, since the Applicant had not been forthcoming during the investigation, made intentional misrepresentations, and showed no remorse for his actions; and
- (c) a review of the Bank's practice in disciplinary matters showed that two staff members had been terminated in the past for misconduct comparable to that of the Applicant.

43. The Tribunal recalls that Staff Rule 8.01, which has similar language in all of its applicable versions, 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 conduct for which disciplinary measures may be imposed.

44. Staff Rule 8.01 gives a choice of disciplinary measures to the decision-maker, depending on the circumstances of the case when misconduct is determined to have

occurred, provided that the determination in question is made within three years from the date the misconduct is discovered.

45. The Applicant was informed of the termination on 21 September 2005, well within the time period established under Staff Rule 8.01. In the Applicant's case, the misconduct was discovered in September 2003, when he was provided with the Notice of Alleged Misconduct. On the issue of proportionality, the Tribunal finds that on his own admission, during the INT interview, the Applicant was well aware of his obligation to obtain approval, prior to engaging in any outside activity, from the Outside Interests Committee. In the course of the INT interview, the Applicant interrupted the interviewer to point out that "you cannot be in the Bank and run a separate business on the side."

46. The evidence shows that the Applicant, employed by the Bank as a Senior Financial Analyst, chose to provide consulting services for a private banking institution in one of the Bank's member countries to which he had been assigned to be team leader on a Bank project. The Applicant's violation of the Bank's rules, knowingly and intentionally, while attempting to conceal such violations, is a serious case of misconduct. Termination of employment in such a case cannot be considered disproportionate. The Bank had every reason to reject the Applicant's attempts to resign to avoid the clear sanction befitting his misconduct, based on Staff Rule 7.01, in effect at the time the Applicant tendered his resignation (21 September 2005), which prescribes in paragraph 2.02 that:

The Bank Group may decline to accept the resignation of a staff member and separate the staff member from service for cause.

Due Process during the INT Investigation

47. The Applicant's complaints about INT's information gathering by way of interviews relate mostly to his criticism of INT's methodology and the inherent pertinence or credibility of what the persons interviewed by INT had to say.

48. As stated above, the Tribunal considers the evidence of misconduct to be compelling. But 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. (*See Kwakwa*, Decision No. 300 [2003], para. 29.) The Tribunal stated in *D*, Decision No. 304 [2003], para. 55, that minimum guarantees must be observed, including the requirements that the accused staff member is informed of the allegation against him and that he is given a fair opportunity to defend himself, to rebut accusations, and to give his version of the pertinent events as to facts, arguments and conclusions. (*See also Rendall-Speranza*, Decision No. 197 [1998], paras. 57-63.) The Tribunal needs to consider the Applicant's complaints to the effect that he had no opportunity to challenge INT's witnesses, all of whom were in Rwanda and could not be brought before the Appeals Committee to clarify their prior testimony, that the Bank never attempted to retrieve papers sequestered by the Attorney General of Rwanda from the offices of BACAR, and that reliance was placed upon testimony obtained without oath and through interviews without provision of actual transcripts. He points out that the only verbatim transcript available in this case is his own interview, while other interviews were recorded from notes and constituted only a summary of testimony. He argues that such summaries could therefore be slanted to bring out issues the investigator saw as supporting a particular finding and to leave out exculpatory comments. The Applicant also complains

that he was interviewed in September 2003, before the other witnesses were interviewed in November 2003 and even 2004, which he says is contrary to INT's own manual of standards and procedures.

49. The Bank replies that the Applicant had a full and fair opportunity to present his defense. The Bank further notes that the Applicant does not provide any evidence to support his assertion that his wife's work might have been confiscated by prosecutors who searched the CEO's office during a criminal investigation. In any event, the Bank points out that some employees would have remembered the underlying analysis of depositors' accounts, or at least would have seen the Applicant's wife at BACAR's offices. In regard to transcripts of witness evidence, the Bank was not required at that time to record witness testimony verbatim. The Bank states that the standard practice was to interview the accused staff member early in the inquiry in order to obtain a response to the allegations; the accused staff member, however, is permitted to review all of the evidence obtained by the investigators at the end of the inquiry and provide comments.

50. The formal investigation of the Applicant's alleged misconduct took place between 11 September 2003, when the Applicant was first given the Notice of Alleged Misconduct, and 15 August 2005, the date of the Final Report of the investigation. Staff Rule 8.01 appears to have been followed during the investigation. The investigation is of an administrative and not an adjudicatory nature. It is part of the grievance system internal to the Bank. The purpose is to gather information and to find facts, so that the Bank can decide whether to impose disciplinary measures or to take any other appropriate action pursuant to the Staff Rules. The concerns for due process in such a context relate to the development of a fair and full record of facts, and to the conduct of the investigation in a

fair and impartial manner. They do not necessarily demand conformity with all the requirements of judicial proceedings. (*Rendall-Speranza*, Decision No. 197 [1998].) Imputing ill motives to the investigators without evidential support, as the Applicant seems to do, does not advance his case.

51. The Tribunal is of the view that the value and weight of the testimony obtained by INT are not diminished solely because witnesses did not testify under oath and their testimony was not transcribed verbatim. Such was not the practice at the time. It is only in some judicial proceedings that witnesses must testify under oath. (*Rendall-Speranza*, Decision No. 197 [1998], para. 63.) The practice of preparing summaries of interviews, which has since been replaced with the method of securing verbatim transcripts, is not in and of itself necessarily insufficient. Most of the summaries prepared by the investigators in this case were verified by the witnesses interviewed and have not been impugned.

52. The Applicant complains that he had no opportunity to discuss or even respond to the HRSVP's "arbitrary decision" to choose termination rather than to accept the Applicant's resignation. He was only allowed to comment on the Report. His comments became an annex to the Report, but there was no proceeding before a misconduct panel as there is at the United Nations. He points out that the final decision was taken in secret without any discussion with him. He states that the HRSVP even refused to give him a copy of the Final Report of the investigation after the Applicant's termination of employment.

53. The Bank replies that Staff Rule 8.01 does not provide for an oral presentation to the HRSVP, before a decision on misconduct is made. That Rule permits staff members to make written and oral presentations to the investigators. It also affords staff members an

opportunity to comment on the findings made in the Investigative Report. The INT Report, including evidence provided by the staff member as well as the Applicant's comments, are forwarded to the HRSVP, along with the investigative record, for a decision. This process affords the staff member adequate protection and meets the due process standard requirements.

54. The Tribunal notes that the Applicant was not given the Final Report in a timely manner despite his clear request for it. This would otherwise constitute a procedural irregularity but in the present case the Tribunal concludes that the Applicant was not prejudiced thereby. The Tribunal nevertheless reiterates that the staff member concerned is entitled to the Final Report which should as a rule be attached to the sanction letter in order to allow a meaningful assessment of the chances of appeal. (*See also Ismail*, Decision No. 305 [2003], paras. 65-66, and *M*, Decision No. 369 [2007], para. 87.) In the present case, this circumstance manifestly did not inhibit the Applicant's decision to appeal.

55. The Tribunal finds no merit in the Applicant's complaint that he was not interviewed by the HRSVP before the sanction of termination was imposed. Staff Rule 8.01 does not provide for an oral presentation to the HRSVP before a decision on misconduct is made. The Tribunal notes that the Applicant was interviewed by INT extensively and was given an opportunity to comment on the draft INT Report. A copy of the Applicant's comments was before the HRSVP when he made his decision. The Tribunal therefore finds no basis for the Applicant's complaints that his rights to due process were violated and that the final decision was arbitrary.

The Restriction of the Applicant's Access to Bank Premises

56. The Applicant challenges the Bank's decision to restrict his access to the Bank's premises. He claims that because this decision came only shortly before the Appeals Committee was to hear his appeal in June 2006 it bears the clear imprint of retaliation.

57. The Bank points out that the Applicant's claim that he has a right to enter the Bank as a visitor at any time is groundless. The Bank refers to *Mwake*, Decision No. 318 [2004], in which the Tribunal recognized that the Bank has a legitimate interest in controlling access to its facilities. Members of the general public do not have access to the Bank; nor do former Bank staff. The Bank claims that in cases where an individual has been terminated for serious misconduct it has a compelling interest to impose reasonable and proportionate disciplinary measures, including restricted access to its premises. The Applicant, according to the Bank, has breached the Bank's trust and violated its rules of conduct. Under these circumstances, the Bank's decision was justified and reasonable.

58. The Tribunal is not persuaded by the Applicant's claims that he has a right like "any other citizen" to have access to the Bank's premises, without limitation. It is a reasonable exercise of discretion, in the circumstances such as those of this case, to deny or restrict access of a staff member to the Bank's buildings or to a specific office.

Overall Conclusion

59. The Tribunal concludes that the Bank's decision to reject the resignation tendered by the Applicant was justified and in accordance with Staff Rule 7.01, paragraph 2.02, which provides that: "[t]he Bank Group may decline to accept the resignation of a staff member and separate the staff member from service for cause." The HRSVP justifiably concluded that the Applicant, a senior official of the Bank, had engaged in outside

activities without first obtaining the approval of the Outside Interests Committee. He also found that the Applicant had received substantial remuneration from an outside entity over a period of almost two years. The Tribunal is satisfied that the finding of misconduct was for cause and in accordance with the Bank's rules. For this reason, the Bank's refusal to accept the Applicant's resignation was justified and was not an abuse of discretion. The Tribunal is furthermore satisfied that the sanction of termination was not disproportionate. Finally, the Tribunal holds that the Bank's decision to restrict the Applicant's access to the Bank's premises was within its discretion.

DECISION

For the foregoing reasons, the Tribunal dismisses the Application.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Zakir Hafez
Zakir Hafez
Counsel

At Washington, DC, 18 March 2008