



**World Bank Administrative Tribunal**

**2010**

**No. 429**

**Yang-Ro Yoon (No. 9),  
Applicant**

**v.**

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

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

**Yang-Ro Yoon (No. 9),  
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 Tribunal's Statute, composed of Jan Paulsson, President, and Judges Florentino P. Feliciano, Francis M. Ssekandi, and Mónica Pinto. The Application was received on 20 July 2009.

2. In this Application, her ninth before this Tribunal, the Applicant contests, *inter alia*, the Bank's revocation of her right to access her Bank's e-mail account, its blocking of her access to the Bank's e-mail system, the role of the Department of Institutional Integrity ("INT") in the decisions leading to the revocation of her e-mail privileges, and the alleged improper procedures followed in the revocation of such privileges.

**FACTUAL BACKGROUND**

3. On 28 October 2004 the Applicant sent an e-mail message to the Bank's President and several distribution lists of Bank staff members commenting on the restructuring of the Bank's Conflict Resolution System ("CRS") and in particular commenting in great detail about her various cases before the Tribunal. The message contained a large number of attachments. In response, the Vice President of Human Resources ("HRSVP") in a message dated 5 November 2004 informed the Applicant that

an e-mail with broad distribution is not the appropriate way to address [her] concerns. ... [Her] actions are a misuse of the Bank's e-mail system

which is intended for business purposes, not for the pursuit of personal agendas. ... [Her] actions could be perceived as creating a hostile work environment by some of the parties who are named in [her] transmission. ... This is a serious matter ... [and] similar actions ... could be considered harassment and subject to potential disciplinary measures .... The CRS provides a number of portals for the effective management of issues raised by staff. (“Warning 1”)

4. After receiving Warning 1, the Applicant sent another 19 e-mail messages to numerous individuals, including the President of the Bank, Executive Directors, various managers, as well as large distribution lists of staff members. In those messages she complained about the CRS and the Tribunal, and dwelled on her cases before the Appeals Committee and the Tribunal. Several staff members complained about the Applicant’s e-mail messages in late 2007. As a result, the Acting Director of Human Resources Client Services (“HRSCS”) wrote the Applicant on 15 January 2008 to remind her that

[d]ue to the many complaints from staff received by management after [her] latest mass mailings ... as [she] has been advised in the past ... [her] practice of broadcasting ... personal messages constitutes misuse of the Bank’s e-mail system, which is intended for business purposes. [Her] broadcasts can also be perceived as creating a hostile work environment by persons named and criticized in the emails. ... [S]uch broadcasts could constitute a violation of the Bank’s harassment policy. ... [D]isclosures [of confidential information] could constitute a violation of Staff rule 2.01 .... Comments on the Whistleblowing policy may be submitted to the comments line provided for that purpose. [Her] views on other matters may be expressed in other appropriate forums .... (“Warning 2”)

The Acting Director also informed the Applicant that her actions were contrary to the directives in AMS 12.10 which applies to staff use of the Bank’s e-mail system and was reminded that her continued actions could constitute additional misconduct. As in Warning 1, she was advised to stop sending mass e-mail messages.

5. The Applicant nevertheless sent three more similar mass e-mail messages. On 5 March 2008 she received an e-mail message from the Acting Director, informing her that

her right to access the Bank's e-mail system had been revoked effective immediately because of her misuse of the Bank's e-mail system.

6. As of 5 March 2008 the Applicant was excluded from the Bank's communications network. Her Bank e-mail account was cancelled and she no longer had access to e-mail messages, but she was given access to a CD of her archived e-mail messages. She was also informed on 6 March 2008 that she was put on administrative leave as of the close of business 7 March 2008, with limited access to the Bank's premises until the date of the termination of her employment on 9 May 2008 (the administrative leave and termination of her employment are the subjects of other applications). On 5 May 2008 the Vice President and Chief Information Officer, after consulting with senior management, requested that e-mail messages from her personal AOL account and other portals be blocked.

7. The Applicant filed an appeal with the Appeals Committee on 11 April 2008. A hearing was conducted on 15 October 2008. The Appeals Committee found on 21 January 2009 that the evidence did not show that the Bank's decision to revoke the Applicant's e-mail access was "tainted by any illicit motivation" and that it was "a separate decision ... made independently from the decision to terminate her employment." The Appeals Committee concluded that the Bank did not abuse its discretion, in revoking the Applicant's e-mail access. HRSVP accepted the Appeals Committee's recommendation on 12 February 2009.

#### THE CONTENTIONS OF THE PARTIES

8. The Applicant argues that there was no reasonable basis for revoking her access to the Bank's e-mail system. She asserts that as a staff member, e-mail access is a right not a privilege, and that even if it were a privilege, it could not be stripped away without proper

process. She also argues that while the absence of a business purpose for her e-mail messages is not *per se* a violation of the rules, her messages had a clear business purpose, namely, “the Bank’s ongoing CRS reform project(s).” The Applicant concludes that the real motive behind the revocation was to “silence” her and “erase the right to free speech within the Bank.”

9. The Applicant further argues that the Bank has no guidelines or standards about what constitutes a business purpose or harassment or personal attack to guide staff members, making it therefore difficult for staff to determine when his or her e-mail messages cross the line. Furthermore, she contends that the existence of alternative fora for expressing her views about the CRS does not preclude her from using other means of communications to do so. She also argues that because the Bank did not take any action for about three years after Warning 1, it was precluded now from taking action on the basis of the doctrine of estoppel.

10. The Bank answers that it was justified in revoking the Applicant’s e-mail access. The Bank points to paragraph 28 of AMS 12.10 which provides: “The Bank Group reserves the right to revoke access ... at any time if it can be shown that any staff ... has abused access privileges or compromised the integrity of Bank information.” The Bank also notes that paragraph 6 of AMS 12.10 requires staff members to “follow institutional directives” set out in the policy, including limiting the use of e-mail to business purposes and keeping personal e-mail to a minimum (AMS 12.10, paragraph 8), not sending harassing or disparaging e-mails (AMS 12.10, paragraph 10), refraining from sending e-mail messages with large multimedia attachments (AMS 12.10, paragraph 16), and using e-mail only for carrying out Bank business (AMS 12.10, paragraph 23). The Bank

contends that on the basis of the 23 e-mail messages sent by the Applicant it had a reasonable and observable basis to conclude that the Applicant abused e-mail access privileges and the revocation was a proper exercise of managerial discretion.

11. The Bank also argues that the Applicant had other available venues to share its comments about the CRS and must have been aware of them.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

12. The Bank has raised a preliminary objection to the Tribunal's jurisdiction over certain of the Applicant's claims. The Bank's jurisdictional challenge must be dismissed because the Bank did not raise it within 21 days after receiving a copy of the Application, as required under Rule 8, paragraph 1, of the Tribunal's Rules.

13. The decision to revoke the Applicant's access to the Bank's e-mail system is a managerial decision within the Bank's discretion. As previously held, "[t]he Tribunal has made clear that it will not overturn a management decision in non-disciplinary cases unless there has been an abuse of discretion." *Yoon (No. 6 and No. 7)*, Decision No. 390 [2009], para. 53. Specifically, the Tribunal will not

re-examin[e] the substance of the Bank's decision with a view to substituting the Tribunal's decision for the Bank's. The duty of the Tribunal is to assess the Bank's decision – as to both its content and the manner in which it has been made – to determine whether it constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure. *de Raet*, Decision No. 85 [1989], para. 56.

The Tribunal must determine whether the decision was made with a reasonable and observable basis. *See also Desthuis-Francis*, Decision No. 315 [2004], para. 26.

14. The Tribunal notes that the Applicant's practice of sending e-mail messages to a large number of addressees is a well known fact within the Bank, and has already been

noted in *Yoon (No. 6 and No. 7)*, Decision No. 390 [2009], starting at para 9. This practice is the factual basis for the Bank's decisions challenged in this Application.

15. The record includes at least 23 mass e-mail messages sent by the Applicant through her Bank e-mail account.

16. AMS 12.10 governs the Bank's e-mail policy. Pursuant to paragraph 34 of AMS 12.10 in effect at the time of the events in this Application, each staff member who receives an e-mail account must read and sign the Bank's policy "as an acknowledgement that staff understand and will abide by the policies defined in the document." Thus it is clear that the Applicant is bound by the provisions of AMS 12.10, which also include the following:

3. The [e-mail] service is ... provided to staff globally by the Bank Group to conduct official business.

...

6. ... It is the responsibility of the Bank Group to set and enforce reasonable access limits and parameters of use to safeguard the functionality and integrity of the Bank Group Email system. It is the responsibility of all Bank Group staff to follow institutional directives clarified in the security policy, to prevent ... misuse of the Email system.

...

8. The Bank Group's Email is to be used for business purposes. While personal electronic mail is permitted, it is to be kept to a minimum.

...

10. The display or transmission of ... anything that may be construed as harassment or disparagement of others is not permitted on the Bank Group Email system.

...

12. The Bank Group reserves the right to review electronic messages sent by staff to Internet discussion groups, electronic bulletin boards or other public forums and to remove any determined to be inconsistent with World Bank Group interests or policy.

...

16. ... Staff should not send nonbusiness communications to large Notes mail groups inside or outside the Bank Group. The World Bank Group reserves the right to reject or delay sending any messages with attachments large enough to cause mail delivery delays.

...

23. Staff will be provided access to an Electronic Messaging account as part of a series of standard operational tools defined as baseline necessities to carry out the Bank Group's core business. ...

27. Staff members who terminate employment or contract with the Bank Group for any reason ... may no longer access ... Bank Group Email accounts ....

28. The Bank Group reserves the right to revoke access to the account at any time if it can be shown that any staff, employee or contractor, has abused access privileges or compromised the integrity of Bank information.

...

29. Violations of any of these provisions may result in discipline up to and including termination as described in Staff Rule 8.01, "Disciplinary Measures."

17. The revocation of access to and of use of the Bank's e-mail system must accord with the Bank's policies and procedures in force. Warning 1, sent in November 2004, was based on AMS 12.10 even though the e-mail message did not expressly mention it. In particular, the Bank informed the Applicant that her e-mail messages "with broad distribution" were not appropriate, that her actions were a "misuse of the Bank's e-mail system" by pursuing "personal agendas" and that her actions "could be perceived as creating a hostile work environment" and "could be considered harassment and subject to potential disciplinary measures." Warning 2, sent on 15 January 2008, is based on the language of AMS 12.10 as well as other applicable Bank rules. In this message the Bank informed the Applicant that other staff members complained about her mass messages, that her "practice of broadcasting ... personal messages constitutes misuse of the Bank's e-mail



system” and “can also be perceived as creating a hostile work environment,” in “violation of the Bank’s harassment policy” and Staff Rule 2.01. She was also informed that her actions were contrary to the directives in AMS 12.10 which applies to staff use of the Bank’s e-mail system and was reminded that her continued actions could result in additional misconduct. As in Warning 1, she was advised to stop sending mass e-mail messages.

18. Similarly, the message sent to the Applicant on 5 March 2008 referred to her “continued abuse and flagrant disregard of the warnings you have received.”

19. In addition, as the Bank noted, at least six broadly circulated e-mail messages sent by the Applicant “included large attachments with confidential documents,” also against the directives of paragraph 16 of AMS 12.10.

20. The Applicant argues that a staff member’s access to e-mail is a right not a privilege. The Bank disagrees. The Tribunal notes that paragraph 28 of AMS 12.10 specifically uses the word “privilege” when discussing revocation of access to an e-mail account, making clear the Bank’s intent. The Tribunal accepts the Bank’s assertion that e-mail access is a privilege that may be revoked by the Bank if a staff member abuses it.

21. The Applicant argues next that her e-mail messages had a legitimate business purpose, i.e., to comment on the ongoing CRS reforms, as permitted under AMS 12.10. The Bank disagrees. Paragraph 8 of AMS 12.10 clarifies that the e-mail system is to be used primarily for business purposes. Similarly, paragraph 23 of AMS 12.10 provides that staff will be provided access to an e-mail account in order to carry out the Bank’s core business. The Tribunal notes that all of the Applicant’s e-mail messages are related to the same subject, namely, the Applicant’s grievances within the Bank and the alleged failures

of the Bank's CRS with regard to her case. While "core business" is not defined in the policy, the Bank told the Applicant in both Warnings 1 and 2 that her e-mail messages were not considered to be Bank business, and that they did not have a business purpose. She did not object at the time she was informed of the Bank's views. Finally, the Tribunal notes that staff members as well as ordinary members of the public can express their views about the Bank through whatever means might be available to them. In the case of Bank staff members, each staff member expressly accepts certain restrictions by signing and agreeing to abide by the Bank's e-mail policy set out in AMS 12.10.

22. The Applicant was also warned that her e-mail messages could "be perceived as creating a hostile work environment," in "violation of the Bank's harassment policy." She argues that her e-mail messages do not constitute harassment because the content was true. But even if the content of her messages were true, such veracity is irrelevant in determining whether her messages constitute harassment. While the Applicant points to the support she received from some staff members, the Bank has submitted evidence of staff members complaining about the Applicant's e-mail messages.

23. Furthermore, paragraph 16 of AMS 12.10 prohibits the sending of non-business communications to large distribution lists, which the Applicant breached repeatedly by attaching large documents to many of her e-mail messages.

24. The Applicant also alleges that the true motive behind the revocation of her e-mail access was to prevent her from expressing her views in violation of her right to free speech. However, the Tribunal notes that the Applicant has agreed to comply with the provisions of AMS 12.10, as discussed above. In particular, the Tribunal notes that the scope of freedom of expression within international organizations may be restricted in

specified circumstances. Those restrictions are normally shown in the relevant rules of the organization, here AMS 12.10. Furthermore, the purpose of the Bank's e-mail system and its limits are clearly stated in a written policy by which the Applicant has agreed to abide. The revocation of the access to and the utilization of her e-mail account posed no obstacle to the Applicant's decision to distribute her comments through another medium, and thus did not deprive the Applicant of her freedom of expression. Revocation of access to e-mail was simply a response to what was considered to be a misuse of the Bank's e-mail system.

25. She also alleges that the revocation was in retaliation against her whistleblowing, but the record contains no evidence of this.

26. The Applicant next alleges that there are no clear procedures for revoking a staff member's access to the Bank's e-mail system and in any case, the Bank should have brought disciplinary charges against her before revoking her e-mail access. She further contends that she never received a warning that her e-mail access could be revoked, and when she did, she was not given any time to respond because the revocation was effective immediately. She also argues that the decision to revoke her access was taken without the proper authority.

27. The Tribunal notes that the Bank's decision was taken following a process that started in 2004 with Warning 1, but in any event no later than January 2008. The adversarial nature of the process leading to the decision follows from the e-mail exchange. She was not prevented from replying to those warnings or from explaining her position. She continued to send mass e-mail messages for three years. After receiving complaints from other staff members, the Bank gave the Applicant Warning 2, reiterating what was said to her in the first notice but also adding that this situation was within the ambit of

AMS 12.10. Under the circumstances, the Tribunal finds that the Applicant was duly notified and had the opportunity to respond. She chose instead to ignore the warnings and did not dispute the Bank's principles as stated in the warnings. A staff member cannot transform the Tribunal into a forum of first instance in which disputes are alleged, discussed, and resolved for the first time. *See Yoon (No. 6 and No. 7)*, Decision No. 390 [2009], para. 100.

28. The Applicant also argues that because the Bank did not act on Warning 1, it should be estopped from taking any action in the future. The Tribunal disagrees. The Applicant received Warning 2 reminding her of Warning 1 and informing her that that the Bank could take action in response to her actions. Warning 2 clearly stated that she was breaching AMS 12.10 and that she could be subject to disciplinary action. The Applicant also ignored Warning 2 and continued to send mass e-mail messages throughout the Bank. The Bank revoked her e-mail access about two months later.

29. The Applicant also complains that her e-mail access could not be revoked without the Bank taking disciplinary action against her. However, as rightfully argued by the Bank, while AMS 12.10 provides that disciplinary action may be taken, it does not require it. Furthermore, the Bank also argues that even if it had taken the disciplinary route, it would still have revoked her e-mail access as a provisional measure until the investigation was concluded on the basis that the Applicant's e-mail messages were inappropriate and she refused to obey the Bank's requests.

30. The Applicant alleges that the decision to revoke her e-mail access was not authorized by the appropriate person at the Bank, but as she stated in her pleadings, the

decision was made at a high managerial level and leaves little to dispute. Accordingly, the Tribunal finds that the record does not support the Applicant's allegation in this regard.

31. The Applicant also argues that the revocation of her e-mail access was detrimental to her ability to work. The record shows that she was notified on 5 March 2008 that her employment would be terminated on 9 May 2008 and she was placed on administrative leave beginning 8 March 2008. Her e-mail access was revoked on 6 March 2008. Paragraph 3 of AMS 12.10 specifically provides that e-mail access is provided to carry out core Bank business, but in view of the fact that she had not performed any work in the preceding months and was not expected to perform any work by virtue of being placed on administrative leave, the Tribunal finds the Applicant's argument unsubstantiated by the evidence.

32. The Applicant finally argues that the Bank abused its authority by deciding to quarantine e-mail messages sent by her through an external portal, i.e., AOL. Paragraph 17 of AMS 12.10 provides that the Bank "reserves the right to quarantine some incoming Email attachments and may limit the release of those not pertaining to Bank business." There is no evidence in the record that the Bank abused its authority or that its motivation was anything other than enforcing its policy with respect to electronic messaging.

33. On the basis of the above, the Tribunal finds that the Bank had a reasonable and observable basis for its decision to revoke the Applicant's access to the Bank e-mail system.

#### 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, 23 March 2010