



World Bank Administrative Tribunal

2008

No. 380

**Z,
Applicant**

v.

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

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

**Z,
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, and composed of Jan Paulsson, President, and Judges Stephen M. Schwebel and Francis M. Ssekandi. The Application was received on 14 August 2007. The Applicant's request for anonymity was granted on 27 September 2007.

2. The Bank terminated the Applicant's employment after its internal investigation determined that she had improperly claimed reimbursement on two occasions in the total amount of \$333.08 with the intent to defraud the Bank. She challenges the termination of her employment before the Tribunal asserting that on these two occasions she made a mistake and had no intent to defraud.

RELEVANT FACTS

3. The Applicant joined the Bank's General Services Department (GSD) as a temporary employee in 1998. She received an Open-Ended appointment in 2001. In July 2004, she was promoted to the position of Contract Coordinator at Level E.

4. In 2005, a Senior Auditor of the Bank conducted an audit of the Bank Purchasing Card (PCard) usage in GSD. One of the objectives of the audit was to ensure that staff members complied with the regulations and guidelines governing the use of PCards. The PCard is designed for payment of business expenses, not for travel or training costs.

Business expenses charged to the PCard are paid directly by the Bank through the PCard program. A staff member's official travel expenses, in contrast, are paid either with a personal credit card or Bank-issued Diners Club card, and then reimbursed by the Bank through a Statement of Expenses (SOE).

5. The Senior Auditor found two travel-related expenses charged to the Applicant's PCard in 2004 which had been paid by the Bank directly and for which she nevertheless also had submitted SOEs for reimbursement. The Senior Auditor raised these findings with GSD's Director, who in turn authorized the Senior Auditor to contact the Department of Institutional Integrity (INT). In June 2005, the Senior Auditor forwarded to INT his findings for further review.

6. INT commenced a preliminary inquiry on 15 June 2005. On the basis of the Auditor's findings and the related documents, INT determined that the Applicant had submitted SOEs for the amount of \$333.08 after she had charged them to her PCard: a clear case of double-billing.

7. Based on INT's findings following its preliminary inquiry, Human Resources (HR) sent on 19 July 2005 to the Applicant an "Options Letter" offering her the option to resign with a bar to re-hire, in lieu of INT conducting a formal investigation.

8. The Applicant declined the offer and instead opted for a formal INT investigation. She also wrote a letter to HR stating that she had never intended to commit any financial misconduct and never intentionally defrauded the Bank. She provided the Bank with a check in the amount of \$333.08.

9. Given the Applicant's stance, INT commenced a formal investigation. On 21 September 2005, INT met with the Applicant and presented her a Notice of Alleged

Misconduct alleging that she had engaged in fraud with respect to the travel-related expenses. INT considered that as a result of her actions, she received Bank Group funds – i.e. the \$333.08 – to which she knew she was not entitled.

10. INT interviewed the Applicant on the same day it presented her with the Notice of Alleged Misconduct. She informed INT that in addition to the PCard, she also had a personal Visa credit card, a personal debit card, and a Bank-issued Diners Club card. She asserted that in the two instances at issue, she mistakenly believed that she had paid for these expenses with her personal credit card and not the Bank-issued PCard.

11. On 22 September 2005, the Applicant wrote to INT explaining that she had made the mistake because both incidents occurred during a very difficult transition period in her Unit. Because her manager left in October 2003, she had to undertake additional tasks and responsibilities in addition to her regular assignments. She stated that her situation was aggravated by the harassing treatment she received from a senior colleague at her Unit for which she had sought help from management. Her situation improved after that colleague retired in October 2004.

12. After completing its investigation, INT submitted its Final Report to the Vice President of Human Resources (HRSVP) on 11 April 2006. In the Final Report INT made the following findings:

- On July 11, 2004, [the Applicant] traveled to ... New York on mission and while there (on July 13, 2004) used her Bank issued PCard to purchase a meal at a restaurant ... [in the amount of \$63.00].
- [The Applicant] affixed the receipt from this meal to her SOE shortly after her return to Washington, and on August 4, 2004 sought and received reimbursement for this meal through the SOE process.
- On August 10, 2004, [the Applicant] listed this cost as official business on the PCard Activity Log and asserted on this same log that the receipt was lost.

- The Bank covered this cost.
- On September 13, 2004, [the Applicant] traveled to Princeton, New Jersey on mission. She rented a car from National Car Rental at Reagan National Airport for this trip [in the amount of \$270.08].
- [The Applicant] used her Bank issued PCard to rent this car.
- [The Applicant] affixed the receipt from this car rental to her SOE shortly after her return to Washington, and on September 17, 2004 sought and received reimbursement from the Bank for this cost through the SOE process.
- On September 27, 2004, less than two weeks after her return from her Princeton mission (September 27, 2004), [the Applicant] sent an e-mail to her budget officer ... wherein she acknowledged to [the officer] that she had used her PCard to rent the car and requested that [the officer] post this expense under training.
- On January 19, 2005, [the Applicant], on the PCard Activity Log, listed the car rental cost from her mission to Princeton, and submitted this expense as official.
- The Bank covered this cost.
- Five days after she signed her PCard Activity Log, [the Applicant] received an e-mail from ... [a] Senior Program Assistant [of her Unit] entitled "Using PCard for Travel Related Expenses" wherein [the Senior Program Assistant] alerted [the Applicant] that [she] had used her PCard for travel-related items (*e.g.*, car rental) and stated that it was [the Senior Program Assistant's] understanding that such costs were to be listed on SOEs.
- [The Applicant] responded to the above e-mail within ninety minutes and apologized for her use of the PCard, stating that "I will keep that in mind."
- A review of [the Applicant's] mission travel during the summer and fall of 2004, shows that she rented only one car, the one referred to above.

13. Based on these findings, INT concluded in its Final Report that:

Irrespective of the context [the Applicant] seeks to provide for her actions or the justifications she posits for her asserted forgetfulness, the evidence substantiates that on two separate occasions while on official Bank travel: (i) [the Applicant] used her PCard for a car rental and a meal; (ii) sought and

received reimbursement for these same expenses via her SOEs; and (iii) listed these expenses as official Bank purchases through the PCard process that were later paid by the Bank. As a result, [the Applicant] received Bank funds to which she was not entitled. [The Applicant] states that she did not intentionally receive funds to which she was not entitled. The documentary and other evidence shows that [the Applicant's] assertion is not credible and substantiates the allegation that she engaged in travel fraud on two separate occasions and did so with knowledge and deliberation.

14. After reviewing the INT Final Report, the HRSVP determined that the Applicant had committed misconduct and imposed disciplinary measures. He informed the Applicant of his decision in a letter dated 27 June 2006, which reads in relevant part as follows:

I have carefully reviewed INT's Report After much deliberation I conclude there is substantial evidence showing that you knowingly defrauded the Bank by twice double-billing the Bank for travel-related expenses incurred by you. You acknowledge having twice double-billed the Bank for travel expenses, but claim that on both occasions it was a mistake. The facts uncovered during the course of the investigation render this claim untenable. In reaching this conclusion I gave you every benefit of the doubt. However, your explanations, when viewed in the light of contemporaneous communications from and actions undertaken by you, are simply not credible.

In light of my conclusion that you knowingly defrauded the Bank, termination of your appointment is mandatory under Staff Rule 8.01. Your appointment will be terminated effective close of business Wednesday, June 28, 2006.

As your termination is based on misconduct, you will not be eligible for rehire by the World Bank Group. In addition, you will be prohibited from access to all World Bank Group facilities, absent exceptional circumstances as decided by the Vice President, Human Resources.

15. On 8 September 2006, the Applicant challenged the HRSVP's decision before the Appeals Committee. The Committee's Report of 25 April 2007 concluded that the HRSVP had not abused his discretion in finding that the Applicant had engaged in misconduct, or in imposing the disciplinary measures that he did. The Committee

recommended that the Applicant's claims be dismissed. On 30 April 2007, the Managing Director of the Bank accepted this recommendation.

16. On 14 August 2007, the Applicant petitioned the Tribunal. She challenges the Bank's decision of 27 June 2006 on the following grounds: (i) the INT investigation was flawed; (ii) the finding of misconduct was unfounded; (iii) INT exceeded its legal authority by instructing HR that the Applicant's employment must be terminated; and (iv) the disciplinary measures imposed were arbitrary. She requests that the Tribunal (i) quash the decisions of the HRSVP; (ii) reinstate her at the same level with full back pay and benefits; (iii) order the Bank to remove all records relating to the investigation from her personnel records; and (iv) order the Bank to consider her for a future managerial position. She also requests compensation and costs incurred during the proceedings of INT, the Appeals Committee and the Tribunal.

17. The Bank argues that the Application should be dismissed because: (i) the HRSVP properly concluded that the Applicant had committed fraud; (ii) the INT investigation was thorough and procedurally sound; (iii) INT did not do anything improper or beyond its authority; and (iv) the disciplinary measures imposed by the HRSVP were reasonable.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

18. 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.

19. The Bank terminated the Applicant's employment because INT and the HRSVP concluded that she engaged in "travel fraud on two separate occasions and did so with knowledge and deliberation" and "knowingly defrauded the Bank." It therefore appears necessary to determine whether the Bank properly established that the Applicant intended to defraud the Bank.

20. What separates mistake from fraud is intent, the accidental from the purposive. In deciding whether a staff member is guilty of fraud, "a determination of intent must be made." Judgment No. 1244, UNAT (2005). If a Tribunal finds that "the fact of intent" is not "reasonably justified or supported by the evidence" then "the Respondent's characterization of the Applicant's conduct" as fraud is "legally incorrect and constitutes an abuse of the Respondent's discretion." *Id.*

21. Intent to defraud cannot be automatically inferred simply because some documentary evidence contradicts the accused staff member's version of events. A fuller examination of the facts and circumstances of the case must precede a determination about the presence of intent to defraud. *See Singh*, Decision No. 105 [1991].

22. In the present case, the Applicant was charged with two instances of fraud. The first relates to the \$63.00 reimbursement of a restaurant bill. The Bank advances the following arguments to show that the Applicant had the intent to defraud:

- (i) the Applicant used the PCard to pay the bill at the restaurant on 13 July 2004. She sought reimbursement by submitting the restaurant bill through the SOE process on 4 August 2004. A few days later, on 10 August 2004, when

completing the PCard Activity Log, the Applicant listed this cost as official business and asserted on the same Log that the receipt was lost. The Applicant's assertion that she did not remember submitting the restaurant receipt with the SOE when she also included the same bill on her PCard Activity Log is not credible because this short passage of time should not have clouded the Applicant's memory;

- (ii) it is not convincing that the Applicant confused different credit cards. The Bank's PCard is a Master Card with a distinct appearance. The Applicant's personal credit card was a Visa; she did not have a personal Master Card. It was thus unlikely that the Applicant used her PCard without notice;
- (iii) the Applicant contends that she did not pay attention to the restaurant receipt submitted with the SOE except for the dates and amounts. But the record showed that she did take a close look at the receipt. For example, the Applicant took time to black out the credit card number from the restaurant receipt. To find the number on the receipt and delete it, one would have to review it carefully;
- (iv) staff members receive PCard statements for their respective charges and are required to certify the accuracy of the PCard statements through the PCard Activity Log. In the process of certifying the accuracy of the July 2004 PCard statement, the Applicant was required to substantiate each expense with a receipt or an explanation. To complete this task, she had to review each charge, locate the receipt, match the charge with the receipt, and attach the receipt to the PCard report prepared through the PCard Activity Log. The

Applicant stated that she looked for the receipt from the restaurant when preparing the July 2004 PCard report, so she took conscious note of it. She said that she could not find it and reported it as lost. This shows that she did focus on the content of her July 2004 PCard statement and on the restaurant bill specifically. Thus it is difficult to believe that the Applicant failed to notice individual transactions and the content of the PCard statement; and

- (v) the Applicant's interview with and written submissions to the INT investigators show that she remembered virtually all aspects of the meal at the restaurant. The only details that seem to have escaped her notice were related to the double-billing. The Applicant's ability to recall most relevant facts, except for those that tended to incriminate her, undermines her claim that she was generally distracted and inattentive.

23. The Applicant explains the circumstances of her mistake with respect to the restaurant bill in the following manner:

[The Applicant] thought she used her own personal credit card. She had several credit cards in her wallet and presumably she pulled out the Bank's PCard instead of her personal card. After [the Applicant] signed the card receipt, she simply put the copy in her wallet together with all the other receipts she had collected during the training [in July 2004]. At some time – she does not remember whether it was then or later – she followed the advice of ... the Senior Resource Officer of [her Unit] ... and blanked out the credit card number to avoid the danger of credit card fraud.

Three weeks later, on August 4, 2004, [the Applicant] completed her Statement of Expenses ("SOE") for the trip. In preparing the SOE, [the Applicant] simply pulled out the receipts in her wallet and submitted them. Because she had a lot of work to do at the time and was under intense pressure from the demands of her work and various deadlines, as well as being under stress from the extremely difficult time she was having with [another colleague], she did not pay much attention to details except the dates for the receipts and the dollar amounts. By accident, she included the [restaurant] receipt for \$63.00 in her SOE. She did not actually need to attach the receipt at all in order to claim reimbursement because the Bank

does not require receipts for less than \$75.00. She did not notice that the receipt was for her PCard rather than her personal credit card.

A week later, on August 10, [the Applicant] also had to complete her PCard Activity Log for items she had charged. When she did this, she simply reviewed and copied the Expense Activity of the GE PCard's Charge Details which was posted online. As had been the case when she did her SOE, [the Applicant] was under extraordinary pressure and just wanted to get the job done as quickly as possible so she could get back to her numerous responsibilities. Accordingly, she did not review the items carefully and she certainly did not remember that she had already listed the [restaurant] amount on her SOE. Instead, [the Applicant] hunted through receipts in her wallet to match them where possible with the entries listed on the PCard Charging Details. Obviously, she did not find the [restaurant] receipt so she just assumed she had lost it and wrote that on her PCard Activity Log. The speed with which she completed her PCard Activity Log is clearly shown by a number of other mistakes in addition to the [restaurant] receipt. For example, she listed all the dates as 2005 rather than 2004; she entered an amount of \$6.63 instead of \$5.63 for the PC Mall entry; and the total was incorrectly listed as \$1,467.59 rather than \$1,466.59.

24. With respect to the second allegation involving the car rental bill in the amount of \$270.08, the Bank advances the following arguments to demonstrate that the Applicant had the intent to defraud:

- (i) on 13 September 2004, the Applicant rented the car to travel to Princeton. On 17 September 2004, she submitted the car rental charged to her PCard for reimbursement through SOE. A few days later, a Senior Resource Management Officer, GSD, asked the Applicant about a hotel charge in her PCard for the July 2004 trip. The Applicant then looked at her PCard charges online after speaking to the Officer. The Applicant sent an e-mail to a Budget Officer and acknowledged to the Budget Officer that she used the PCard for the car rental. Since the Applicant was aware soon after she submitted the SOE that she had paid for the rental car with the PCard, not her personal

credit card, her assertion that it did not occur to her to question the validity of her SOE lacked credibility; and

- (ii) on 19 January 2005, the Applicant submitted her PCard activity report for approval, which included the car rental. On 24 January 2005, she was informed by an e-mail from a Senior Program Assistant that her PCard report improperly included the car rental and that the costs should have been claimed on her SOE instead. The Applicant responded to the Program Assistant's e-mail acknowledging her mistake and promising to be more careful in the future. Since the problem with billing was brought to her attention repeatedly, and required conscious consideration, it was difficult to believe it never occurred to the Applicant that she submitted the car rental both through the PCard and the SOE systems.

25. The Applicant explains in her own words the circumstances relating to the car rental bill as follows:

In September 2004, I was instructed to travel to Princeton

Pursuant to this instruction, on 13 September 2004, I rented a car from the National Car Rental at Reagan National Airport for the trip. For this purpose, I thought I used my card to pay for the rental.

Since I considered the liquidation of expenses related to my trip as the least important aspect of my work and which I perhaps naively thought as something that affects only my person, I hastily prepared an SOE and immediately submitted the same to the Accounting Department so that I could move on to the next task which I deemed was more pressing since it affects the operations of the office as a whole. I just mechanically affixed whatever receipts I had in my file.

Sometime thereafter, my attention was called by the GSD Senior Resource Management Officer ... who asked me whether the Statler [hotel expense for the July 2004 trip] charged on my PCard was training-related. I then went online and browsed my online statement on GE Net Service and I noticed that I used my PCard on certain training-related expenses,

specifically on hotel expenses at Statler and on car rental expense. At this point, I suddenly remembered a previous instruction from my Budget Officer ... regarding the proper mapping of training expenses to the appropriate budget.

Specifically, in a previous quarterly budget review, there was a discussion as to the proper mapping of PCard expenses. During that review, I recall the Budget Officer as saying that if the PCard is used for training charges and subscription renewals, I have to inform him so that he could repost the charge to the discretionary budget instead of the overhead budget.

Thus, on 27 September 2004, I sent the following email message to [the Budget Officer]:

...

I used my PCard for training.

1. \$1,131.40 – Statler Hotel – Housing in Cornell University
2. \$270.08 – National – Car rental for Benchmarking in Princeton

Please post under training.

However, it did not occur to me at the time that with respect to the car rental, the same was already reported in the SOE that I earlier submitted.

Due to my heavy workload, I was only able to submit the PCard Activity Log on 19 January 2005.

On 24 January 2005 ... the Senior Program Assistant to the Senior Manager sent me the following message via email:

...

“I just wanted to bring something to your attention. I would be remiss if I didn’t.”

“I just noticed from the PCard log that you paid for travel related items (e.g. car rental) using your PCard. You may be right and I may be wrong (and I am willing to be proved wrong!), but I have always been told that such items should be paid using your Diners and reflected in your SOE.”

With [her] email, it occurred to me that perhaps the car rental expense may not be considered training-related but travel-related. Since I did not have much time to belabor this matter due to the many duties competing for my attention, I eventually took her view as the correct one and simply assumed

that the whole thing was a negligible administrative matter. Thus, I sent her back an email reply on the same day, as follows:

...

“I am sorry about this. I will keep that in mind. Thank you very much for reminding me.”

26. In view of the above, the Applicant argues that the conversation with the Senior Resource Management Officer was not about the car rental at all, but about a much earlier charge for a hotel expense. There is simply no evidence at all, she contends, that anyone brought the car rental charge to her attention shortly after she submitted her SOE for that expense. The Applicant’s 27 September 2004 communication with the Budget Officer was simply for the purpose of explaining that she used the PCard for training purposes. There is nothing in the January 2005 communication with the Program Assistant that shows the Applicant was aware that the car rental charge had also been claimed months earlier on an SOE. Her communication with the Program Assistant therefore does not indicate that she had any knowledge of the double-billing. At no point did anyone raise a question about her SOEs. These communications do not show guilty knowledge.

27. Although the Tribunal is convinced that the Applicant’s conduct constituted misconduct in the sense of Staff Rule 8.01, paragraph 2.01 (“Reckless failure ... to observe ... norms of prudent professional conduct”), it has considered with great care the issue whether the documentary evidence presented by the Bank is so decisive that it must conclude that she indeed had the intent to defraud. Fraud is never presumed. INT has to show from the facts and circumstances of the case that the Applicant had the requisite intent. In this respect, *Staff Guide to INT (2006)*, states that “[i]n keeping with INT’s role as a neutral fact-finder, INT investigators collect evidence that is both exculpatory and inculpatory.” The Tribunal will thus consider whether in determining the question of

intent to defraud INT was diligent in seeking both inculpatory and exculpatory evidence and in giving them proper weight.

28. It is a matter of record that throughout 2004 the Applicant had an unusually burdensome workload. The Applicant testified before the Appeals Committee that:

Throughout 2004, I was terribly overloaded with work, very stressed, indeed. I was performing three or four different jobs: my own, that of my previous manager who had moved, my old job, while I was training my replacement and when she took maternity leave in September, and the responsibilities of the F Level Food Service Officer who had harassed me while she was there, and then, when she retired, left me her job.

29. A written statement from the Applicant's supervisor confirms the Applicant's unusual workload during 2004. It is not unreasonable to assume that people tend to make mistakes when they have a heavy workload and are under stress. The INT Report concluded that the Applicant committed fraud with "knowledge and deliberation." But her alleged deliberation was not perfect. Her records contained other mistakes that did not benefit her, and which in fact could have prompted her manager to review her transactions with added scrutiny. For example, in her 2004 PCard Activity Log report she listed all the dates as 2005 rather than 2004; she entered an amount of \$6.63 instead of \$5.63 for the PC Mall entry; and the total was incorrectly listed as \$1,467.59 rather than \$1,466.59. Someone wishing to commit fraud with deliberation is likely to be careful to avoid trivial mistakes that might trigger additional scrutiny. It is unclear why INT seemed to have accepted these mistakes as innocent, but not so with respect to the restaurant bill.

30. The INT Report and the testimony of the HRSVP do not suggest careful examination of the question whether the Applicant's mistakes were so unusual that they compelled findings of knowledge and deliberation. The Senior Resource Management Officer of GSD testified before the Appeals Committee that "we have a lot of this

happening in our department ... [b]ecause people confuse their PCard. So what they do is they write us a check and we give it to Accounting to cancel it off.” A thorough investigation alert to inculpatory as well as exculpatory factors might have noted this relevant factor and would have given it proper weight.

31. The INT Report does not contain any evidence of tampering with any receipt or any attempts to hide expenses. INT stresses the fact that the Applicant took the step to black out the credit number on the restaurant bill receipt. But this is not clear evidence of fraud. The Applicant explains that she was just following the general advice of the Senior Resource Management Officer of her Unit. The Officer confirmed the Applicant’s version when she testified before the Appeals Committee in the following manner:

[The Applicant’s Counsel]: Now, did you ever have any discussions with [the Applicant] about credit card fraud and the dangers of credit card fraud?

[The Senior Resource Management Officer]: Yes.

[The Applicant’s Counsel]: Can you tell us about them.

[The Senior Resource Management Officer]: Whenever we go out for lunch or dinner and sometimes she pays for the bill, and she’ll ask me to look at the bill – I’m the one who calculates the tip for our meal, and then one time I said – when I look at the bill I say “Look here. Look at this. Look at this Visa Credit Card” – I mean, “look at this bill. It has all the” – I don’t know how many digits the credit card number ... so I told her, “Make sure that, when, you know – If you need to submit – when you need to submit this, cancel off the credit card number,” because that is what I also do when I submit my SOE. I tell her to cancel off the number, because we don’t – because all our SOE goes to Chennai and I don’t know who else touches the SOEs. So that is why I ask her to cross.

32. From the above testimony, it is reasonable to conclude that by blacking out the credit card number, the Applicant was following the general advice of her colleague. The blacking out did not facilitate her committing the alleged fraud in any manner. The act of blacking out the credit card number from a receipt did not by irresistible inference trigger a

reminder that the receipt came from the use of the PCard. It may have been an act of unthinking habit. It was hardly compelling evidence of intent to defraud.

33. Nothing in the PCard and SOE systems raises a flag when someone logs entries resulting in double-billing. With respect to the car rental bill, the Bank notes that in September 2004, after speaking to the Senior Resource Management Officer, the Applicant looked at her PCard charges online. That, according to the Bank, should have prompted her to question the validity of entering the car rental bill in her SOE. However, the database for PCard charges and SOE claims are not linked. A look at PCard charges online does not necessarily trigger a simultaneous look at the SOE claims. Similarly, it is difficult to find anything in the Applicant's e-mail exchanges with her colleagues in September 2004 and January 2005 about the use of her PCard that should have automatically prompted her to question the validity of her SOE submitted on 17 September 2004. It is difficult to make a retrospective imputation of knowledge of falsity of the claim she made in her 17 September SOE from these subsequent e-mail exchanges.

34. As to whether INT failed to give proper weight to some exculpatory factors, the existence of a pattern is an important factor (if not always essential) in determining intent to defraud. An isolated act is more plausibly fraudulent if it concerns substantial amounts. But, even with small amounts, where the staff member "persisted in and showed a pattern of abuse, the Respondent is entitled to take a serious view of [the staff member's] misconduct." *Planthara*, Decision No. 143 [1995], para. 39. In cases where intent to defraud is not so evident, it is relevant to ask whether the acts are repetitive. The auditors reviewed her previous SOEs over a period of time and found no other instances of double-billing. The Applicant made a series of trips soon after September 2004. INT discovered

nothing improper with her claims except for the two instances in question. INT appears to have given insufficient weight to this exculpatory evidence.

35. INT and the HRSVP did not find the Applicant credible, particularly when she asserted that the two instances of double-billing were mistakes. In this regard, INT mostly weighed the documentary evidence together with the Applicant's explanations. These documents, however, do not convincingly show that the Applicant had the intent to defraud. INT should have sought other evidence to assess the Applicant's reputation for truth and integrity in transactional dealings in the Bank, particularly in the case of a staff member of several years' standing who is in a position to deal with suppliers. The testimony of the Applicant's co-workers, particularly her managers, would have been useful in this aspect. But INT interviewed none other than the Applicant.

36. The Tribunal notes that during the Appeals Committee hearings, the Applicant's senior manager described her as a "good and trusted colleague." The Applicant's other supervisor testified that she had "never met a more honest and dedicated employee to the World Bank. I couldn't imagine her to do anything other than be honest." When asked about the Applicant's termination, she testified that:

I couldn't believe it, number one. I have worked at the World Bank for about 15 years. I see a lot of people doing a lot of strange things over those years that I raised my eyebrows about. I couldn't believe that a dedicated and hardworking employee like [the Applicant] could possibly be treated that way by the World Bank.

37. There must certainly be cases where the documentary evidence is so compelling that interviewing other individuals would be unnecessary. But this case required a determination as to intent to defraud if mandatory termination was to be justified. Thus, the documentary evidence has to be compelling with respect to the Applicant's intent. The Tribunal cannot find the documentary evidence decisive to such a degree.

38. Finally, the record does not show whether the HRSVP has given sufficient consideration to the similarities of the facts in this case to that of *K*, Decision No. 352 [2006]. In *K* (*see* para. 11), INT concluded that the evidence was reasonably sufficient to show that:

[The Applicant] engaged in a clear and consistent pattern of misrepresentation regarding his 42 trips to Montreal in that he listed them as operational when they were, by his own admission, personal. The SAP system is designed to be “user friendly” and if utilized correctly, by referring to drop down menus and other built in conveniences, there is no reason that someone should “inadvertently” enter incorrect information into the system 22 separate times.

As a result of his misrepresentation, [the Applicant] received and retained \$4,239.38 in both per diem and in-and-out expenses which he itemized on his SOEs in connection with the Montreal trips, monies to which he was not entitled.

Yet, the then HRSVP did not find fraud on the part of the applicant. The HRSVP decided “after careful and difficult deliberations, to give him the benefit of the doubt regarding his intent and to decide that his actions constituted gross negligence.” *Id.* at para. 12.

39. An HR document which analyzed the INT investigation of the Applicant suggests that the *K* case was brought to the attention of the HRSVP. The HR document comments that:

there is precedent in that [the applicant] claimed as operational travel portions that were personal 22 times, and received Bank funds to which he was not entitled. The then VPHR did not terminate him because she gave him the benefit of the doubt regarding intent, as the SAP travel system automatically defaulted to “Operational Travel” at that time. That decision was taken in consultation with [the Legal Department]. To terminate the [Applicant in this case] and not [the applicant in *K*] could be construed as arbitrary.

40. During the Appeals Committee proceedings, the HRSVP was asked specifically about how to distinguish the present case from *K*. His response was less than convincing.

He stated before the Appeals Committee that:

The first consideration of this [*K*] case is that I cannot talk for my predecessor....

So to me, I ask questions about this [*K*] case. I want to understand why it happened. And my understanding from this [*K*] case is that my predecessor found there was no intent. It was really, truly, a mistake in this case, and but I have not reviewed the case. I do not understand how this decision was taken, but I understand that the reason for what – for this case to be taken in this way was because there was not the issue of intent.

This is less than a satisfying response from the HRSVP, especially the statement that he had given the Applicant “every benefit of the doubt” and asserted that he was “also careful about not appearing to make differences between different cases that seem to be within the same – in the same context.” When the Tribunal compares the present case with *K*, it sees similarities between them. The HRSVP’s inability to explain why despite similarities he decided in this case that there was intent to defraud is unsatisfactory.

41. Considering all the circumstances, the Tribunal rules that the record does not contain sufficient evidence to conclude that the Applicant had the intent to defraud. Therefore, the Tribunal sets aside the HRSVP’s determination that the Applicant had committed fraud.

42. This determination of the Tribunal does not mean that the Applicant was blameless. The Applicant committed serious errors on these two occasions, and disciplinary measures were warranted. The Applicant’s heavy workload is certainly not an excuse for not following the rules of the Bank. No matter how busy he or she may be, a staff member cannot be “exempted from the inconvenience of obeying applicable rules.” *K*, Decision No. 352 [2006], para. 39. The Tribunal concludes that the Applicant’s actions constituted a “[r]eckless failure ... to observe ... norms of prudent professional conduct.” As for appropriate disciplinary measures, the Tribunal notes that HR did consider the following

lesser disciplinary measures as an option, which the Tribunal determines as appropriate in the Applicant's case:

- demote to Level D
- no salary increase for 2004 (the year in which the misconduct occurred)
- no promotion for three years as from 27 June 2006
- decision letter to stay in career file for three years as from 27 June 2006, after which it will be expunged.

43. The Tribunal accordingly orders the Bank to set aside the HRSVP's termination decision and to reinstate the Applicant. The HRSVP may then decide to impose some or all of the disciplinary measures listed in the previous paragraph.

Other Matters

44. The Applicant complains that INT's mode of interrogation was intimidating and accusatory, verging on outright bullying. The Tribunal, however, does not "micromanage the activity of INT." *G*, Decision No. 340 [2005], para. 73. It is understandable that "[t]o be under investigation for possible misconduct of an unethical nature is likely to be a disturbing experience." *Id.* at para. 66. Having reviewed the record, the Tribunal is not convinced that INT's mode of interrogation violated the Applicant's due process rights.

45. The Applicant claims that INT gave weight to an additional allegation about which she was never given supplemental written notice, namely, that she improperly used Bank funds to pay for her classmate's meal at the restaurant. The Bank argues that the investigative report shows that INT's conclusions were limited to the double-billing allegations. The report mentions that the restaurant bill included charges for two people, but only as a factor to be considered in assessing the Applicant's credibility. Since the Applicant was not charged with misconduct for paying for her classmate's meal, there was

no need to issue a supplemental notice with respect to this matter. Moreover, the Applicant had a fair opportunity to respond to the reference to the excessive charges on the restaurant bill. This issue was mentioned in the draft final report reviewed by the Applicant, and she commented on it extensively.

46. After considering the scope of the investigation and the INT Report, the Tribunal concludes that INT did not commit any procedural violation with regard to its alleged failure to provide the Applicant with a supplemental notice regarding the payment of her classmate's meal. The Applicant was not charged with misconduct relating to the payment for the meal of another person.

47. The Applicant complains that after she provided comments on the draft report, INT added two and a half pages to the Final Report containing assertions of new allegations and facts, without giving her a chance to review them. The Bank responds that INT's standard procedure is to permit the accused staff member to comment on the draft report, which includes all of the findings made by INT, together with all of the underlying evidence. The staff member's comments are attached to the Final Report as provided to the HRSVP. In this case, INT neither conducted a follow-up investigation nor made any new findings as a result of the Applicant's comments. In the additional pages added to the Final Report, the investigators mostly responded to her comments.

48. In *Ismail*, Decision No. 305 [2003], the Tribunal stated that it "does not consider it essential for the Bank to refer every minor amendment to a draft report, including its response to submissions, to the person whose conduct is in question." *Id.* at para. 66. There the Tribunal concluded that "the Draft Report was amended by annexing in full the Applicant's Comments and by the insertion in the Report of two paragraphs to reflect those

comments and the Bank's response; another part of the Draft Report no longer relevant was deleted. These changes could be considered as minor, and did not require further comment from the Applicant." *Id.* at para. 65.

49. But also in *Ismail*, the Tribunal found that the investigators annexed a Clarification Document of 12 pages with the Final Report without giving the applicant a chance to review them. The Tribunal determined that

the Clarification Document was a substantial document containing argument on virtually every point raised by the Applicant. It included substantial argument and reference to the evidence, and it was clearly intended that the Clarification Document be read with the Report to which it was annexed and that it influence the decision of the VPHR. The failure to send it to the Applicant was in the circumstances a breach of procedural fairness. *Id.* at para. 66.

50. In the present case, INT added two and a half pages to the Final Report, in which it provided its rebuttal to the Applicant's comments on the draft report. INT did not conduct any additional investigative activity for its rebuttal. These few added pages containing the rebuttal were not a substantive revision to the Final Report, and did not require another round of comments from the Applicant. It is true that in the added pages, INT included a new fact relating to the Applicant blacking out the credit card number from the restaurant receipt. INT did not consider this new fact to be significant, and thus merely included it in a footnote. But from the testimony of the HRSVP, it is evident that he did take this information into account in his assessment of the Applicant's credibility. INT is duty-bound not to add any new evidentiary information that might influence the HRSVP without giving the subject of the investigation an opportunity to comment on that new information. However, as the present judgment rescinds the HRSVP's decision, it is not necessary to attach further consequence to this failure.

51. Finally, the Applicant claims that INT improperly lobbied the HRSVP's office for a specific disciplinary sanction against the Applicant, namely termination. As evidence, the Applicant refers to an internal HR document. The document records a conversation between an HR Officer and the INT Investigators during which the investigators underscored the fact that under Staff Rule 8.01 "termination is mandatory when it is determined that there is misuse of Bank funds for personal gain or abuse of position in the Bank for personal gain." Before the Appeals Committee, the INT investigator who conducted the Applicant's investigation explained that INT did not make a recommendation regarding whether the HRSVP should find misconduct in the Applicant's case or regarding what disciplinary measure should be imposed. He added that INT provides clarification regarding Staff Rule 8.01 if HR requests it, but INT does not make recommendation regarding the choice of disciplinary measures to be imposed in a given case. The HRSVP also testified that he did not remember INT making any recommendations regarding discipline.

52. The record reflects that the INT investigators referred only to the terms of Staff Rule 8.01 and to what they would require had the HRSVP found intent to defraud in the Applicant's case. The record does not contain any evidence suggesting that anyone from INT spoke to the HRSVP directly regarding the choice of disciplinary measures that should have been imposed in the Applicant's case.

DECISION

For the above reasons, the Tribunal orders that:

- (i) the decision to terminate the Applicant's employment is rescinded;

- (ii) the Bank shall reinstate the Applicant to the same position or to a position similar to the one she was occupying at the time of the termination of her employment, subject to the condition that the Bank may impose some or all of the disciplinary measures set out in paragraph 42 of this judgment;
- (iii) the Bank shall contribute to the Applicant's costs in the amount of \$15,300;
and
- (iv) all other pleas are dismissed.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Zakir Hafez
Zakir Hafez
Counsel

At Washington, DC, 18 March 2008