

Decision No. 345

**I,
Applicant**

v.

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

1. The application in this case was received on 11 April 2005. The Bank raised a jurisdictional objection. This objection was dismissed in the Tribunal's Judgment No. 343 [2005]. The present judgment accordingly disposes of the merits of the application. It is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Jan Paulsson, President, Sarah Christie and Florentino P. Feliciano, Judges.
2. The Applicant worked in the Loan Department of the Bank for twenty years and retired in 1994 as a Senior Disbursement Officer. He claims that the investigation of Ms. G, a current staff member, was conducted wrongfully and to his prejudice.
3. In March 2003, i.e., in his tenth year of retirement, the Applicant was hired as a Short-Term Consultant for a Bank-financed project in Afghanistan. In October 2003, the Department of Institutional Integrity (INT) commenced an investigation of Ms. G, based on allegations that she had engaged in misconduct involving the Applicant. In particular, INT investigated whether Ms. G's personal relationship with the Applicant had influenced her to recommend to the Afghan government that it hire the Applicant for a consulting contract. As part of its investigation, INT inquired into the issue of potential conflicts of interest in the process pursuant to which the Applicant ultimately was offered the consulting contract and received payment thereunder.
4. INT interviewed the Applicant in April 2004. The Applicant cooperated in the investigation and voluntarily answered questions posed by INT. During the course of the investigation, INT also interviewed several witnesses. Some witnesses informed INT that the Applicant and Ms. G had an intimate relationship, while others indicated only that they were close friends. INT concluded its investigation in July 2004, reporting that there was insufficient evidence to support a finding of misconduct on the part of Ms. G with respect to the most serious charges. Although it also found that she had exceeded her authority in some respects, the report concluded that this was mitigated by her good overall performance. Upon receipt of this report, the Bank decided to take no action against Ms. G.
5. In the course of its investigation, INT found that the allegations of an intimate relationship between Ms. G and the Applicant were not substantiated. On 3 May 2004, the Applicant had written to the President of the Bank raising concerns with respect to these allegations. His letter stated that the allegations were defamatory and "should be immediately retracted by the individuals responsible for making them at the Bank." The Applicant requested that the Bank take remedial steps and conduct an inquiry.
6. On 29 June 2004, counsel for the Applicant wrote a letter to the President of the Bank reiterating the Applicant's concerns about the allegations of an intimate relationship. In that letter, the Applicant's counsel also complained about an allegedly defamatory Bank memorandum about the Applicant, and wrote:

[I]n the course of the investigation of Ms. [G], whom we also represent, it came to light that there was an office memorandum about [the Applicant] in the investigation record. The document was partially redacted, but it indicated that there was an issue between him and the World Bank. This issue apparently

caused the then Ethics Officer to prevent [the Applicant] from being rehired in the Bank.

[The Applicant] wasn't aware of this document until it was brought to his attention during the INT investigative process. [The Applicant] is seriously disturbed and concerned that this document and any other documents related thereto in the Bank's possession constitute an unwarranted blemish on his otherwise distinguished career. ... [T]he memorandum is defamatory per se and is now appearing in formal Bank documents.

We would request, therefore, that you take steps to provide an explanation on this matter and recognition that the memorandum in question is improper and makes unfounded remarks regarding [the Applicant].

On the same day, 29 June 2004, the Applicant's counsel also wrote a letter to the INT Director raising these concerns. He requested the Director to provide his office with an unredacted version of the memorandum and other related documents so that the Applicant could review them and best determine his legal rights and remedies.

7. On 5 August 2004, the Acting Director of INT wrote to the Applicant's counsel in response to the Applicant's letters of 3 May and 29 June 2004. In his letter, the Acting Director stated:

[T]he Bank has finished its investigation, and the Managing Director who reviewed the [INT] report concluded that the allegations were not substantiated. Nevertheless, it is clear that the allegations were serious in nature, that they were made in good faith, and that the Bank had a duty to investigate them. ...

I would like to point out that the Bank has not directed any accusations against [the Applicant], nor was he the subject of INT's inquiry. Therefore, [the Applicant] can be assured that this matter has not impacted his ability to receive consulting contracts financed by the World Bank.

8. On 28 September 2004, the Applicant filed a Statement of Appeal challenging the refusal of the Acting Director of INT to: (i) retract a defamatory allegation involving him and Ms. G; (ii) correct records of the Applicant's Bank employment which had been wrongly published in an INT Report of Investigation; (iii) apologize to the Applicant; and (iv) take appropriate actions to mitigate damage to his reputation.

9. On 20 October 2004, the Bank filed a Challenge to Jurisdiction with respect to all of the Applicant's claims as raised in his Statement of Appeal. On 4 January 2005, the Appeals Committee concluded that it did not have jurisdiction to review the Applicant's appeal because its subject-matter was not within the competence of the Committee.

10. The Applicant applied to the Tribunal on 11 April 2005, claiming that the investigation of a current staff member, Ms. G, was conducted wrongfully and to his prejudice in two principal respects: (i) the Bank defamed the Applicant and failed to protect his privacy in investigating the allegations against Ms. G; and (ii) the Bank's handling of the former Ethics Officer's memorandum about the Applicant in the course of its investigation of Ms. G was wrongful. These are the substantive claims which fall to be adjudicated now.

11. Of obvious relevance here is the Tribunal's judgment dismissing Ms. G's application arising from the decision to place her on administrative leave, Judgment No. 340 [2005], since it concerned the same investigations as those which give rise to the present application. The following passages set out a number of findings which are pertinent to the Applicant's grievance:

66. The circumstances of this case are such that the investigators would have exposed themselves to justified criticism if they had not conducted a thorough investigation. The Applicant put herself in this position by mixing personal and professional relations in a manner which seems to reflect a clear lapse of judgment on the part of a seasoned staff member, who should be more than familiar with the Bank's longstanding and firm policy to avoid promoting individual suppliers to its clients. It ultimately turned out that the financial advantages to her friend were modest, and that her expressions of "love" and "dearest" relations bespoke nothing more than wholly respectable affection. But on the face of it the circumstances were troubling, and required investigation. It is not enough to say that the amounts involved were small; the investigators could not know at the outset whether they were glimpsing the tip of an iceberg. The

issue is not whether the Applicant's relations with Mr. I were *improper*; it suffices that they were *personal* and *close*. The issue is only whether the Bank failed to respect the Applicant's rights in placing her on administrative leave.

...

72. It is for the INT officers to evaluate the information at their disposal, and to pursue the matter if there are apparent anomalies, inconsistencies, ambiguities or lacunae which make it appropriate to explore the core of factual circumstances which indicate the possibility of wrongful behavior. In this case, there were undoubtedly objective circumstances which demanded explanation. In addition to the troubling and unusual objective facts reviewed above ..., different persons had different recollections as to whether the Applicant had confirmed or denied a personal relationship with Mr. I. In a meeting with her Division Chief in June 2003, the Applicant was recorded as claiming that her supervisor had been aware of her mission to Dubai. When contacted by the Division Chief, the supervisor said that this was not the case.

73. The fact that the conclusion may ultimately be favorable to the person under investigation plainly does not mean that the inquiry should not have been conducted at all. Perhaps it is conceivable that the investigators might have gone straight to the exculpatory evidence with a minimum of embarrassment to the Applicant. But that is all too easy to say in retrospect. Moreover, the Tribunal has no authority to micromanage the activity of INT. What is required of INT is not that every inquiry be a perfect model of efficiency, but that it operates in good faith without infringing individual rights.

...

78. The facts upon which the preliminary investigation was launched were objective. They were of the Applicant's own doing. They may have been susceptible of innocent explanation, but that required that they be explored, even at the cost at some inconvenience and anxiety. This does not justify a claim for compensation, unless investigations cross the line into harassment. The Tribunal finds no evidence of harassment or other abuse of investigatory initiatives.

12. The "troubling and unusual objective facts" alluded to in para. 72 were overcome by a reasonable explanation provided to INT by Ms. G, which the Bank fairly summarized as follows:

She indicated that the Applicant and his wife used her home address for mailing purposes, and gave her power of attorney over their bank account for convenience because they did not live in the United States. She also stated that the Applicant's hotel bill for the mission to Dubai listed her home address because she had booked the room through American Express and it was easier to use her address than his As to the terms of endearment used in correspondence with the Applicant, Ms. [G] stated that such statements were common among friends in her culture and provided correspondence with others to support her claim. Ms. [G] further demonstrated that she used variations of names of several friends and relatives as passwords, not only the Applicant's.

13. The Applicant's references to "libelous, derogatory, and defamatory" statements about him need to be examined with discernment. The INT investigation, as found in Judgment No. 340 [2005], was triggered by legitimate concerns about the *possibility* of a conflict of interest. The expression of such concerns in the context of an investigation by the appropriate body cannot reasonably be equated with published allegations about someone who was not even the object of the investigation. Moreover, the report of INT, in reaching a conclusion favorable to Ms. G, decisively and formally negates blameworthiness on the part of the Applicant. Ms. G was by all accounts a close and longstanding friend of the Applicant. While nothing has been revealed that would cast any doubt but that their friendship was in all ways honorable, and that the Applicant's relationship with Ms. G was "avuncular," the fact remains that the Applicant, himself a former lending officer of 20 years' standing in the Bank, must to some extent accept for his own account the observation made by the Tribunal in its Judgment No. 340 to the effect that Ms. G had "put herself in this position by mixing personal

and professional relations in a manner which seems to reflect a clear lapse of judgment on the part of a seasoned staff member, who should be more than familiar with the Bank's longstanding and firm policy to avoid promoting individual suppliers to its clients."

14. Draft and final INT reports are subject to a strict protocol. The investigation itself is subject to precautions, such as written instructions to witnesses that they "may not discuss this investigation with anyone outside INT without prior authorization" The Applicant has not alleged that any of these safeguards were violated by the Bank. Indeed, inasmuch as he sent a copy of his own letter of complaint to the President of the Bank and to the Ambassador of his country in Washington, the Applicant seems to have done more to disseminate news of the investigation than the Bank did.

15. In its Answer, the Bank has submitted that:

INT had a duty to investigate allegations made in good faith by Bank staff. The inquiry was conducted thoroughly, professionally, and in accordance with the Bank's confidentiality procedures. There is no evidence to suggest that the Bank made any false statements about the Applicant, or that such statements were published by the Bank. The Applicant's claims of defamation and violation of Principles of Staff Employment are groundless. Moreover, if the Applicant's arguments were to be accepted, INT could never investigate good faith allegations of misconduct, because it would always be open to charges of defamation and violation of privacy rights by the accused or by the witnesses involved in the investigative process. Such a result would paralyze the Bank's efforts to fight fraud, corruption and other misconduct.

The Bank adds that it "regrets that this matter has caused the Applicant discomfort, but there is little else that the institution can do to alleviate his concerns."

16. The Tribunal is satisfied that the Bank's response is well founded, and in the final analysis constitutes a full answer to the Applicant's request for apology or retraction. It is to the Applicant's credit that he gave voluntary answers to the investigators; but that does not entitle him to complain when they did their job and went on to *verify* the relevant facts.

17. As for the Applicant's request of correction of his record of employment which he alleges was "wrongly published" in the INT report, the facts are quite simple. The Applicant left the Bank under a Mutually Agreed Separation Agreement (MAS) after it was found that he had sent an offensive electronic mail message to another staff member. His employment record therefore stated that he could not be rehired by the Bank. INT attached the memorandum recording this ban on rehiring as an attachment to its report. It did not include the reason for the MAS, which was irrelevant to the INT investigation. The ban on rehiring, however, cannot be dismissed as irrelevant; INT needed to ascertain that it did not extend to the consultancy contract in which Ms. G was significantly involved. INT had no duty to engage the Applicant in a discussion of the incident that led to the MAS – a long-closed chapter of no concern to the unavoidable investigation of Ms. G. At any rate, the attachment to the INT report was subject to the same confidentiality protocol as the report itself. The Applicant has alleged no breach of that protocol, let alone *proved* any such breach.

18. The Applicant has been given the full opportunity to prove his serious accusations as to the allegedly unfair and prejudicial procedure followed by INT and the alleged violation of his privacy and reputational rights. He has not been able to substantiate his contentions; indeed, his suggestion that it is for the Bank to demonstrate the proper handling of the investigation (insofar as it affected him) merely underscores his own lack of evidence of impropriety. The Bank has explained in detail how the matter was handled, and has cited the protocols followed by INT to reduce the "discomfort" experienced by those who, like the Applicant, voluntarily testify in its investigations. The Tribunal has seen no evidence that the investigation was tarnished by any wrongful handling of the Applicant.

Decision

The Tribunal hereby dismisses the application.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Nassib G. Ziadé
Nassib G. Ziadé
Executive Secretary

At Washington, DC, 26 May 2006