

Decision No. 207

Ghulam Mustafa,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on November 24, 1997, by Ghulam Mustafa against the International Bank for Reconstruction and Development. The Tribunal granted the Respondent's request to separate jurisdictional issues from the merits, and pleadings were filed with respect to those issues. In Mustafa, Decision No. 195 [1998], the Tribunal denied the Bank's request to declare the application inadmissible for lack of jurisdiction. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Francisco Orrego Vicuña (a Vice President of the Tribunal) as President, Bola A. Ajibola and Elizabeth Evatt, Judges. The usual exchange of pleadings took place with respect to the merits. The case was listed on February 17, 1999.
2. This case deals with the Applicant's claim that he did not sexually harass Ms. X. He argues that the disciplinary measure of termination was wrongfully imposed on him and that the investigation of Ms. X's allegations was flawed, both substantively and procedurally.
3. The Applicant was a Program Officer in the World Bank Resident Mission in Islamabad, Pakistan (RMP) and a supervisor of a number of staff members employed at RMP, including Ms. X, who was a short-term temporary staff member in RMP from April 9, 1995 to October 31, 1995 and a local long-term temporary Secretary (Staff Assistant) in RMP from December 3, 1995 until November 3, 1996.
4. On April 2, 1996, the Chief, RMP, sent to all staff members a memorandum explaining the Bank's guidelines regarding sexual harassment in the workplace. On April 14, 1996, Ms. X, after discussions with the Human Resources (HR) Officer, made a formal complaint against the Applicant alleging that he had sexually harassed her at the workplace. In her complaint, Ms. X further raised allegations of sexual harassment in connection with a trip to Lahore, Pakistan, that she had taken with the Applicant (from Friday, June 16 to Saturday, June 17, 1995), which trip she had understood to be official.
5. By a memorandum dated April 15, 1996, the Acting Chief, RMP, informed the Applicant of Ms. X's allegations and asked him to respond to the charges by close of business on April 25, 1996. He appointed the Head of the Social Sectors Unit of RMP to conduct an investigation.
6. On April 25, 1996, the Applicant submitted to the investigator his response to Ms. X's allegations of sexual harassment. In his response, the Applicant "strongly" denied Ms. X's allegations and he asserted that the trip to Lahore had not been official.
7. The investigator thereafter met with Ms. X on April 28 and May 5, 1996 and with the Applicant on May 3, 4 and 6, 1996. During the course of the investigation, the investigator also interviewed one former female subordinate staff member of the Applicant (Ms. Y) and one former male staff member (Mr. A). The Applicant specifically did not object to the questioning of Ms. Y, as he felt that her testimony would clear his name. The investigator also traveled to Lahore, Pakistan, to collect information related to Ms. X's allegations, from which trip he returned on May 10, 1996. The investigator submitted his report to the Chief, RMP, on May 11, 1996.
8. In his report, the investigator concluded that the Applicant had engaged in sexual harassment at the workplace and he recommended that the Applicant be removed immediately from his then workplace in order to

stop further harassment. It was the investigator's opinion that the Applicant's version of events was not supported by the evidence and that Ms. X's allegations were credible and reinforced by the testimony of Ms. Y.

9. On May 29, 1996, the Ethics Officer contacted the Applicant by telephone and informed him of the investigator's findings. The Applicant was at that time placed on administrative leave with pay.

10. At the request of the Ethics Officer, the investigator thereafter reported his findings regarding interviews with two additional witnesses who, after the initial investigation, had been suggested by the Applicant. The first person contacted by the investigator, Ms. B, stated that she had worked for the Program Office for only about two weeks and that she did not remember anything unusual about her short stay with the World Bank. The second person, Ms. C, reported instances of sexual advances on the part of the Applicant but asked that her testimony not be disclosed.

11. In a memorandum to the Manager, Human Resources Services, dated June 14, 1996, the Ethics Officer explained that according to the results of the investigation there was a "considerable body of evidence" that a "serious case" of sexual harassment had occurred. The Ethics Officer then presented what were, according to him, the key points, responses and observations regarding his telephone conversation with the Applicant on May 29, 1996. The Ethics Officer concluded that, in light of all the evidence, the Applicant had done the acts of which Ms. X accused him and that his actions constituted "serious misconduct."

12. By an e-mail dated June 18, 1996, the Manager, Human Resources Services, informed the Ethics Officer of his decision that misconduct in terms of sexual harassment had taken place and he recommended immediate termination of the Applicant, in accordance with Staff Rule 8.01, paragraph 4.01. The Applicant was notified on June 23, 1996 of the decision to terminate his employment.

13. Following repeated requests by the Applicant for a copy of Ms. X's complaint, a copy of the investigator's report as well as copies of other documents related to the investigation, the Applicant, in July and August 1996, received most of the requested documents but not the investigator's report. On July 7, 1996, the Ethics Officer provided to the Applicant a written summary of the investigation.

14. On September 16, 1996, the Applicant filed a request for administrative review of the decision to terminate his employment as a result of the investigation into the allegation of sexual harassment brought by Ms. X. With his request for administrative review, the Applicant submitted a statement from one of the two additional character witnesses (Ms. C) who had been interviewed by the investigator after his initial enquiry. In this statement, Ms. C, in contradiction to her earlier statement to the investigator, denied that the Applicant had made any objectionable advances towards her. In a memorandum to the Applicant dated October 10, 1996, the Director of the Asia Technical Department, who conducted the administrative review, upheld the decision under review. The Applicant filed a statement of appeal with the Appeals Committee on December 24, 1996. The Applicant received a copy of the actual report of the investigation as an attachment to the "Respondent's Answer to the Appellant's Statement of Appeal," which was filed on March 7, 1997.

15. The Appeals Committee in its report issued on July 10, 1997 concluded that neither the finding that serious misconduct had occurred, nor the resulting decision to terminate the Applicant's employment, was an abuse of discretion and it recommended that the Applicant's requests for relief be denied. On July 15, 1997, the Vice President, Human Resources (HRS), accepted the Committee's recommendation and informed the Applicant of this decision.

16. In his application to the Tribunal the Applicant contests the following decisions: (i) the decision of the Manager, Human Resources Services, to terminate his employment; (ii) the administrative review decision; (iii) the Appeals Committee's report; and (iv) the Vice President's, HRS, decision to accept the Committee's recommendation.

17. The scope of the Tribunal's power in disciplinary cases as discussed in Carew (Decision No. 142 [1995],

para. 32) is not limited to determining whether there has been an abuse of discretion. When reviewing disciplinary cases, the Tribunal examines (i) the existence of the facts, (ii) whether they legally amount to misconduct, (iii) whether the sanction imposed is provided in the law of the Bank, (iv) whether the sanction is not significantly disproportionate to the offense, and (v) whether the requirements of due process have been observed.

18. The first question that the Tribunal must address is whether, by an examination of the facts, the investigator and the Ethics Officer properly arrived at the conclusion that sexual harassment had indeed taken place and whether the Manager, Human Resources Services, properly determined that the Applicant's behavior amounted to misconduct.

19. The Bank has made the prevention and eradication of sexual harassment a very important part of its personnel policy. This was explained by the Chief, RMP, in his memorandum of April 2, 1996 to all staff members, which memorandum discussed the Bank's guidelines regarding sexual harassment in the workplace and emphasized that sexual harassment was a serious violation of the standards of conduct that all RMP staff members were required to follow and that it would not be tolerated. As conveyed to the staff members at that time by the Chief, RMP, sexual harassment was defined as "[a]ny unwelcome sexual advance, request for sexual favor or other verbal, non-verbal or physical conduct of a sexual nature, which unreasonably interferes with work, is made a condition of employment, or creates an intimidating, hostile or offensive environment." It is this definition that the Tribunal will therefore use to determine, first, whether facts show that the Applicant's behavior legally amounted to misconduct.

20. The central issues regarding the question of misconduct relate to (i) the credibility of the Applicant, of Ms. X and of the witnesses that the investigator interviewed in order to establish whether the Applicant had sexually harassed Ms. X, (ii) whether the facts as presented by Ms. X amount to sexual harassment if proved, and (iii) whether these facts are proved. In this respect, the Tribunal has reviewed both (a) the facts pertaining to the Applicant's and Ms. X's trip to Lahore as they appeared in the record and as presented to the investigator during the course of his investigation, as well as (b) the testimonies of the witnesses that the investigator interviewed regarding the Applicant's conduct in the office in general.

21. With regard to the trip to Lahore, the claims made by Ms. X are denied by the Applicant. Both parties have presented opposing versions of the same events. Ms. X alleged that she believed that this was an official trip, that the Applicant arranged for the purchase of both his and her tickets through the Bank's travel agent, that the hotel accommodation was arranged accordingly, and that they used the World Bank car to get to and from the airport. An examination of the investigator's findings and a review of all the documents related to this trip tend to lend credibility to Ms. X and to cast serious doubt on the Applicant's credibility; many discrepancies appear between the Applicant's testimony and the facts established through the investigation. The contentions presented and the facts established by the investigation are as follows:

(i) The Applicant initially claimed that he paid for his ticket and that Ms. X paid for hers. There is no conclusive evidence that Ms. X paid for her ticket. The request for Ms. X's trip was made by another colleague of Ms. X in RMP, Mr. A, who requested that the travel arrangements be made for "our undermentioned officials" and that they be "care of" the Applicant. In this request, the invoice for the payment of the trip was sent by the travel agent to the attention of the Applicant. To substantiate his allegation that Ms. X paid for her ticket to Lahore herself, the Applicant has attached an invoice for a trip that Ms. X had taken to London in July 1995 which was also issued to his care, as well as a copy of a receipt showing that Ms. X paid for that trip by herself. The Applicant, however, has not provided a similar receipt for Ms. X's trip to Lahore. The Tribunal also notes that the travel agent issued the two tickets to Lahore and that both vouchers were given to the Applicant.

(ii) The Applicant initially denied, when first questioned by the investigator, that he and Ms. X used a World Bank car to commute to and from the airport because the trip to Lahore was personal. However, during the administrative review, the Applicant admitted that the car had been used for a personal trip, but maintained that the driver had been aware of this. He now asserts before the Tribunal that the car was used for

personal business after official hours and that this was, therefore, not improper. In this connection, he claims that the car was leased by the Bank from a contracting company and asserts that if the trip had been official, overtime would have been claimed by the driver because the car was used on June 16 and June 17, 1995, which were weekend days. Notwithstanding the Applicant's claims, it is now not in dispute that a World Bank car was in fact used and this lends support to Ms. X's claim that she believed that the trip was official. Use of an official Bank car even during a weekend would give any reasonable individual the impression that the car was being used for official purposes and that the trip itself was official.

(iii) The Applicant told the investigator that he paid for his room and that no other party was involved. He failed to inform the investigator, however, that he had used another company to make reservations for himself and Ms. X, and that, in the end, he was to pay for both of them through that company for all of the costs.

(iv) When asked by the investigator whether he and Ms. X had stayed in connecting rooms, the Applicant said that he had stayed in a single, not a connecting, room. Although he later explained that there are no entirely separate rooms in the hotel except for the "deluxe rooms" and that all single rooms are connected with doors that are locked from both sides, the Applicant did not offer this explanation in his initial response to the investigator.

(v) The Applicant claimed that Ms. X had stayed at her aunt's house rather than at the hotel. This, however, does not explain how Ms. X was able to give an accurate description of her room. It is noteworthy that hotel records indicate that telephone calls were made from Ms. X's room.

22. The Applicant sought to cast doubt on Ms. X's credibility. He alleged that Ms. X knew that official procedures had not been followed and that, therefore, she should have known that the trip was not official. However, it is not at all clear that Ms. X was thoroughly familiar with the procedures regarding official trips in that she had worked in the Applicant's section only a little more than two months when the trip to Lahore took place. Furthermore, the fact that Ms. X was to meet representatives of a Non-Governmental Organization (NGO), with whom the Bank and the Applicant had been involved in the past, could reasonably have created in Ms. X's mind the impression that the trip was indeed official. In this respect, the Tribunal notes that among the duties described by the Applicant in his 1995 PPR were included press/NGO briefings, meetings with senior provincial government officials and detailed field visits. Furthermore, the certificate provided by the Professor of the Engineering University in Lahore stating that the Applicant had visited the Government College in Lahore to inquire about his son's education – apart from the fact that it was provided only in the proceedings before the Tribunal and was not reviewed during the investigation – does not disprove the claim of Ms. X as to her understanding of the purpose of the trip. In this respect, the fact that Ms. X had personal business in Lahore, namely seeking employment for her older sister, does not mean that the underlying purpose of the trip was not, in her mind, official.

23. To explain the inconsistencies in his testimony before the investigator, the Applicant has attached several medical certificates covering the period of December 1995 to April 1996. He asserts that these records show that he had been suffering from "temporary amnesia" around the time when he was first questioned by the investigator. While one medical record dated March 19, 1996 indicates that the Applicant had complaints of amnesia, no corresponding diagnosis was provided, nor is it at all evident that a course of treatment for amnesia was recommended. The Tribunal attaches little weight to this certificate and notes that the Applicant was given adequate time to respond to Ms. X's charges in writing and had even more time later to collect his thoughts and memories prior to his first meeting with the investigator.

24. In addition to the clear inconsistencies in the Applicant's testimony and in his presentation of the facts, Ms. X's allegations are reinforced by the testimony of Ms. Y who had worked for the Applicant as a temporary staff member for almost two-and-a-half years. This evidence was not objected to by the Applicant as Ms. Y was in fact the witness who the Applicant said would "clear [his] name." Ms. Y described to the investigator instances of sexual harassment on the part of the Applicant that had striking similarities with those instances alleged by Ms. X. When the Applicant was informed of Ms. Y's testimony, he claimed that she was retaliating for her

appointment not being confirmed. This claim is not supported by the record. The Applicant asserts that Ms. X's charges of sexual harassment were also motivated by retaliation, a claim which is equally not supported.

25. The Applicant further suggests that the fact that Ms. X filed her complaint ten months after the alleged incident in Lahore, and that Ms. Y never reported any incident of sexual harassment until interviewed by the investigator, is proof that their claims were based on retaliatory motives. The Tribunal, however, has found that delays in reporting claims of sexual harassment do not necessarily negate the credibility of those claims. In Rendall-Speranza (Decision No. 197 [1998], para. 75), the Tribunal held that it

appreciates that delay in reporting instances of harassment may be explainable for reasons other than that the victim has welcomed the sexual advances. There may be strong pressures not to make even a well-based complaint, such as fear that one will be branded as a troublemaker, a fear that one's image for ethical probity may become tarnished, uncertainty about the definitions in the employer's policy or the commitment to its implementation, a wishful belief that the victim can handle the matter herself without creating undue inconvenience or embarrassment to others, and ultimately perhaps by a fear of retaliation by the harassing party.

Some of these reasons were given by Ms. Y when she was asked by the investigator why she never came forward with her allegations against the Applicant. She did, indeed, mention that she "did not trust the system," that she feared that she would be blamed and that her name "would go to mud." She also stated that she did not want to hurt her employment opportunities with the World Bank. Similarly, fear of "name smearing" was one of the reasons given by Ms. X for not coming forward with her complaint until only twelve days after the Chief, RMP, assured members of its staff that sexual harassment in the workplace would be taken seriously. In this respect, it is reasonable to assume that Ms. X had an interest in staying with the Bank and that this interest may also explain her willingness to have her younger sister substitute for her at work.

26. Moreover, the Tribunal notes that there is no reason to believe that Ms. X, Ms. Y and the driver of the car used for the trip to Lahore were conspiring in any way against the Applicant, as the Applicant has alleged. Indeed, the Applicant has not shown that "conspiring" against him would have benefited them in any way.

27. In light of the above, the Tribunal finds that the facts established in this case amount to an act of serious misconduct by the Applicant in the form of sexual harassment. The Applicant's testimony and his presentation of facts were inconsistent, Ms. X's testimony regarding the trip to Lahore was supported by the record and her testimony regarding the Applicant's behavior towards her was strongly corroborated by at least one witness. The Applicant was unable convincingly to impeach the credibility of Ms. X or of the other witnesses. Further, the Bank properly applied the definition of sexual harassment to the facts of this case. The investigator, the Ethics Officer and the Manager, Human Resources Services, properly concluded that the Applicant was guilty of such misconduct.

28. The Tribunal will next examine whether the sanction imposed on the Applicant was provided for in the Staff Rules of the Bank and whether it was disproportionate to the offense. Staff Rule 8.01, paragraph 4.02, provides for a series of disciplinary measures, the most serious of which is termination of appointment. Under this Staff Rule, the Bank imposes disciplinary measures on a case-by-case basis taking into account the seriousness of the matter, the extenuating circumstances, the situation of the staff member, the interests of the Bank and the frequency of conduct for which disciplinary measures may be imposed.

29. There is no doubt that the Bank treats the eradication of sexual harassment with utmost importance and seriousness. It has been made clear to staff members that sexual harassment will not be tolerated because it constitutes a serious violation of the standards of conduct that all staff members are required to follow. In the present case, the record reflects that the Applicant's conduct was not restricted to an isolated incident. Rather, the evidence presented shows that the Applicant engaged in a sustained pattern of unacceptable behavior with more than one female subordinate. The Tribunal finds, therefore, that the Manager, Human Resources Services, was justified, in the circumstances of the case, to impose the strictest of disciplinary measures, namely, the termination of the Applicant's appointment.

30. The next question that the Tribunal will address is whether there existed any procedural irregularities in the disciplinary proceedings which resulted in the Applicant's termination of appointment. The procedure to be followed with regard to the imposition of disciplinary proceedings is described in Staff Rule 8.01, Section 5. The Applicant argues that virtually every provision of Staff Rule 8.01 was violated.

31. The Tribunal notes that the investigation was conducted by the appropriate persons in accordance with Staff Rule 8.01, paragraph 5.03, i.e., the Ethics Officer from the Office of Professional Ethics and a senior officer at the field office in RMP, particularly since the investigation was being conducted away from headquarters. Further, the notice given to the Applicant, pursuant to Staff Rule 8.01, paragraph 5.04, that the matter was being investigated, described in detail Ms. X's complaint and her allegations. The Applicant was offered the opportunity to respond in writing to each of Ms. X's allegations within a reasonable time. During the investigation, both the Applicant and Ms. X were given more than one opportunity to present their views on the events in question.

32. Pursuant to paragraph 5.04(c), the investigator interviewed persons that had information of probative value in the investigation. Although the Applicant raised no objection to the investigator interviewing Ms. Y, he complains that he was not allowed to respond to the written evidence and that he was not allowed to cross-examine and confront Ms. Y and the other witnesses. In this respect, the Tribunal has earlier held that when a party is not provided with the transcripts of the testimonies of all the witnesses, this party is not deprived of the opportunity to put forward evidence and arguments and to have them properly considered. (See Rendall-Speranza, Decision No. 197 [1998], para. 61.) Furthermore, the fact that an investigator does not allow the parties to be present when the witnesses are interviewed, and to examine and cross-examine them, does not violate per se any basic right of the parties. (See *id.* para. 62.) As the Tribunal has emphasized in the past, the nature of an investigation in the context of disciplinary proceedings is administrative and not adjudicatory, and compliance with all the technicalities of judicial proceedings is not necessary, provided that the investigation is conducted in a fair and impartial way. (See *id.* para. 57.) In the present case, this would require that the Applicant be given an adequate opportunity to respond to the allegations made against him and to put forward his evidence.

33. The Tribunal notes, however, that in spite of the investigator having summarized his interviews with the parties and the witnesses and having thoroughly conducted his investigation regarding the trip to Lahore, there was an irregularity in the conduct of the proceedings. In fact, this irregularity related to the notification of the decision on the disciplinary measure that was imposed. Pursuant to Staff Rule 8.01, paragraph 5.08, the Applicant was notified of the final outcome of the investigation and of the disciplinary measures to be imposed. However, he was not at that time provided with a copy of the investigator's report. Rather, the Applicant was simply provided by the Ethics Officer in a memorandum of July 7, 1996 (i.e., two weeks after he received the notification on the imposition of disciplinary measures against him) with a summary of the report. Despite his repeated requests, the Applicant was not given an actual copy of the report until the proceedings before the Appeals Committee had commenced. The Tribunal has ruled in this respect:

The fact that Staff Rule 8.01 does not expressly require the [Ethics Officer] to provide an applicant with a copy of his report does not mean that there is no such requirement. Not every aspect of the due process required in the administration of disciplinary measures is written down in Staff Rule 8.01.... The failure to communicate the report meant that the requirements of due process were not satisfied.

(Sjamsubahri, Decision No. 145 [1995], para. 15.)

34. In accordance with the above jurisprudence, the Tribunal finds that not providing the Applicant with the report of the investigator as soon as it was completed was a violation of due process, especially in the light of the seriousness of the case and of the gravity of the disciplinary measure imposed on him. There is no doubt that, without the detailed analysis of the investigation provided in the investigator's report, the Applicant was not afforded the opportunity to defend his rights properly, prior to a decision being taken in this case, and then at the administrative review level – and even when he first filed with the Appeals Committee – and that he was clearly prejudiced.

35. This irregularity was only partly extenuated by the Applicant's receipt of a written summary of this report. The Respondent's contention that the Ethics Officer's memorandum to the Applicant of July 7, 1996 provided such a summary has limited merit. An examination of this summary shows that the Applicant did not have a full description of all the evidence of the investigation as presented in the report. The Ethics Officer, himself, admitted that he reviewed with the Applicant only the key points of evidence presented by the investigator. Even if the Tribunal were to accept the Respondent's contention that the Ethics Officer had earlier presented the Applicant with all the findings of the investigator during their telephone conversation of May 29, 1996, a telephone conversation, no matter how lengthy, cannot substitute for a detailed written report because the Staff Rule requires that notification of disciplinary measures and the reasons for their imposition be in writing. It is particularly important that the proper procedures be followed in the case of field staff who do not have ready access to the services and facilities available at headquarters to protect their interests.

36. Having examined all the facts of the case, the Tribunal concludes that despite the fact that there was a serious procedural irregularity, this does not detract from the essential point that the misconduct of the Applicant has been proved and that the Applicant has not at any time put forward any evidence which could tend to cast doubt on the findings against him. The Tribunal, therefore, finds no grounds for quashing the decision of the Respondent to terminate the Applicant's appointment and shall award the Applicant compensation only on account of the Respondent's failure fully to accord to the Applicant his procedural rights.

Decision

For the above reasons, the Tribunal unanimously decides to dismiss the application, save in the following respects:

- (i) to order the Respondent to pay to the Applicant compensation assessed in the amount of 3 months' net salary;
- (ii) to order the Respondent to pay costs in the amount of \$2,500 for the jurisdictional phase of the case (*Mustafa*, Decision No. 195 [1998]); and
- (iii) to order the payment to the Applicant of costs in the amount of \$1,500.

Francisco Orrego Vicuña

President

Nassib G. Ziadé

Executive Secretary

At London, England, May 14, 1999