

Decision No. 362**N,
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 its Statute and composed of Jan Paulsson, President, Robert A. Gorman and Francisco Orrego Vicuña, Judges. The application in this case was received on 19 May 2006. The Applicant's request for anonymity was granted on 28 July 2006 on the basis that the publication of his name was likely to be seriously prejudicial to him. The Respondent requested that the application be declared inadmissible for lack of jurisdiction. In *N*, Decision No. 356 [2006], the Tribunal decided that it had jurisdiction over two of the claims asserted by the Applicant.
2. The President of the Tribunal granted certain requests by the Applicant for the production of documents, and denied others. Some documents were produced for examination by the Tribunal *in camera*; having reviewed them, the Tribunal has determined that they do not contain additional information pertinent to its understanding of the application and therefore should not be entered into the record.
3. After the usual exchange of pleadings in respect of the merits, the case was listed for judgment on 26 March 2007.
4. The Applicant claims administrative negligence and incompetence on the part of both the Internal Audit Department (IAD) and the Department of Institutional Integrity (INT) of the Bank, arising out of a travel management audit and a subsequent investigation into alleged misconduct by the Applicant. The Applicant seeks moral damages in consequence of the handling of the audit and the investigation. He also claims costs. The facts of the case were laid out in the judgment on jurisdiction, *N*, Decision No. 356 [2006], and shall not be repeated here except as especially pertinent to the allegations on the merits.
5. The Applicant's first claim concerns a decision by IAD's management to refer his case to INT for investigation following an audit of travel expense-related administrative transactions. The Applicant considers that this decision was an abuse of managerial discretion, as it was taken without IAD either interviewing him or reviewing the supporting documentation available both in the Country Office where he worked and at the Bank's Headquarters. In the Applicant's view, the decision was based solely on computer-generated data presumed to reflect irregularities, and not on any analytical examination of the actual facts. A proper search, the Applicant maintains, would have easily explained what erroneously appeared at first sight to be exceptions to the Bank's travel policies, and thereby corrected the incongruities of the raw data.
6. The Applicant alleges that IAD failed to act prudently and in accordance with relevant accounting standards. Its decision breached the fairness and impartiality requirements which the Bank must observe under Principle of Staff Employment 2.1, as well as the right to fair treatment in employment matters, to which staff members are entitled under Principle of Staff Employment 9.1. The Applicant believes that just as staff members are subject to disciplinary measures under Staff Rule 8.01, para. 2.02(c), when they knowingly make false allegations of misconduct, IAD should be held at least to a standard of reasonable professional responsibility before referring serious allegations of wrongdoing to INT.
7. The Bank asserts that IAD proceeded in strict accordance with its 23 February 2004 Terms of Reference (TOR) for the auditing of travel management. The Bank also asserts that IAD, in order to determine if the

system of control of travel management was adequate and operating effectively, followed proper procedures with respect to: (i) data extraction, comparison and analysis; (ii) interviews with staff and management from the Accounting Department (ACT) and the General Services Department (GSD); and (iii) review of supporting documentation accessible to IAD.

8. The Bank acknowledges that IAD could not find supporting documentation in the Applicant's case because that documentation was archived in the Country Office and was not available through the database system consulted by IAD. In the Bank's view, however, this did not diminish the seriousness of the questions that had arisen during the general search.

9. According to the Bank, IAD was under no obligation to consult the Applicant because the TOR for the audit required it to consult only with staff and management in ACT and GSD. The Bank asserts that while auditors must, in line with the "International Standards for the Professional Practice of Internal Auditing," have sufficient knowledge to identify indicators of fraud, they are not expected to have the experience required of persons whose primary responsibility is to detect and investigate fraud, a matter which at the Bank falls under INT's functions.

10. The Applicant's second complaint alleges gross negligence on the part of INT in the conduct of the preliminary inquiry which it launched as a consequence of the referral by IAD. The Applicant asserts that INT ignored the rules governing the conduct of preliminary inquiries, particularly the requirement of Staff Rule 8.01, para. 4.02, to establish through the preliminary inquiry whether there is sufficient evidence to warrant further proceedings. According to the Applicant, INT also ignored its own "Standards and Procedures for Inquiries and Investigations," which requires that INT at this stage of the investigative process conduct interviews, gather relevant documentation and identify evidence that could verify the allegations; none of this was done.

11. In the Applicant's view, the investigators did not understand the Bank's travel policies, the special conditions for staff working in Country Offices, or even the Bank's electronic database system.

12. The Applicant argues that as a consequence of this negligence, the entire burden of collecting the appropriate information and proving his innocence was placed on him, thus undermining the presumption of innocence. Had both IAD and INT done a reasonable search for the supporting documentation, interviewed the Applicant or discussed the matter with ACT or GSD, the absurdities of the results produced by the computerized search, including the attribution to the Applicant of travel done by another staff member, and the bizarre appearance of an itinerary physically impossible in a 24-hour period, would have been detected at the outset. Moreover, the Applicant argues that this kind of search for documentation and information is routinely done by the Bank the world over.

13. The Bank argues in connection with this complaint that it scrutinized and eventually discarded a number of the cases which had been originally identified as problematic, but that in six cases, including the Applicant's, there appeared to be "patterns" of travel policy exceptions that required further consideration. Accordingly, the review period for each of those cases was extended to 24 months and INT, as the then Acting Director of INT wrote in a Memorandum to the Bank's President, "built on IAD's audit work by conducting a line-by-line examination of the staff member's statement of expenses ... and related documentation, including supporting receipts, trip approval histories, and leave records." Subsequently, Staff Rule 8.01 formal investigations were initiated in all six cases, including that of the Applicant.

14. The Bank explains that INT did not contact any staff members in the Country Office where the Applicant worked because this would have alerted such staff and risked damaging the Applicant's reputation in the Country Office. The Bank also argues that INT could not have contacted the Applicant before issuing the Notice of Alleged Misconduct on 16 June 2005 and initiating the formal investigation because the preliminary inquiry is concerned only with establishing whether there is sufficient evidence to indicate possible misconduct requiring further investigation.

15. The Bank further notes that the Applicant was given an adequate opportunity to respond to the Notice of

Alleged Misconduct, and that after examining the Applicant's written response and its accompanying documentation, INT informed the Applicant on 22 July 2005 that there was a reasonably sufficient basis for it to conclude that he had not abused the Bank's travel policies. On 19 October 2005, INT concluded its investigation, closed the case and decided that there was no need to forward its findings to the Vice President of Human Resources. The Bank asserts that all of the procedures followed and steps taken in the Applicant's case were in complete accordance with the Staff Rules and strictly within the Bank's managerial discretion.

16. In the Tribunal's view, while the Bank correctly argues that IAD was, in accordance with the audit's TOR and the "International Standards for the Professional Practice of Internal Auditing," required only to meet and interview key staff and management in ACT and GSD, i.e., not the Applicant himself, this does not excuse a failure to apply basic measures of prudence.

17. It is precisely because the audit was based on the examination of the result of a database search that any conclusions arising from such an examination required discussion with the departments that handle the specific relevant information. This was not done and, as the Applicant has shown, the approach resulted in many absurdities and in relevant information going unchecked and even unnoticed. Thus, for example, according to IAD's findings the Applicant purportedly flew (as the Applicant puts it) "from [the Country Office] to Washington, D.C. and back to Frankfurt in a single day while simultaneously claiming 10 days' hotel and expenses in Washington," and spent "a 5 day rest stop in Paris on the way to Dakar while simultaneously claiming hotel and expenses in Dakar for the same dates." Another trip reviewed was not even made by the Applicant, but by another staff member with a completely different last name.

18. The prudence which the handling of any such situation requires is quite independent and separate from any question of fraud, and relates only to making accurate information available. To this end, it is quite right to assert that auditors are not expected to have the expertise of fraud investigators. Nevertheless, they must provide reliable information to whomever is in a position to examine the matter in depth.

19. Particularly inexcusable is the fact that the auditors did not bestir themselves to seek information from the Country Office where the Applicant worked, as they apparently did not even realize that the pertinent data was filed there. In fact, the Applicant explains that it was only in the course of a later videoconference interview with INT that both he and an official from the Country Office realized that the data had not been available either to IAD or INT, or even searched for. Had ACT and GSD been consulted, not to mention the Applicant himself, any doubts about perceived irregularities would have been dissipated at the very outset. The negligence is thus compounded, as IAD's referral of the Applicant's case to INT was based on inaccurate, incomplete and unchecked information. The Tribunal must inevitably conclude that this failure by IAD is irreconcilable with the rightful exercise of managerial discretion.

20. Nor was the handling of the Applicant's case by INT proper, notwithstanding that INT was to a certain extent misled by the inaccurate information it received from IAD. On 20 June 2005, the Acting Director of INT informed the President of the Bank about the outcome of the IAD audit and the actions taken by INT in respect of the various cases referred to it. He explained in that communication that INT had extended the period of review in respect of six cases and built on IAD's audit work by conducting a line-by-line examination of the staff members' statements of expenses and related documentation, "including supporting receipts, trip approval histories, and leave records." Formal Staff Rule 8.01 investigations were initiated thereafter.

21. Had any of this actually been true, any doubts about the Applicant's alleged abuses would have vanished. But it was not so. The relevant information was not available to INT, just as it had not been available to IAD. A line-by-line examination of expenses, supporting receipts, trip approvals and leave records could simply not have been conducted without consulting the records in the Country Office, or the Applicant himself. Neither IAD nor INT did this.

22. It is therefore unacceptable to argue that staff members in the Country Office were not consulted in order to avoid a needless alert, especially in view of the convincing evidence supplied by the Applicant to the effect that such clarifications are routinely sought by the Bank all over the world without any question of a referral to INT

or the conduct of a preliminary inquiry. An annex to the Applicant's Reply offers 92 pages of examples of such clarifications having been requested by the Bank in the context of its Quality Assurance Review process for the Africa Region in fiscal year 2005.

23. While it may be correct to argue that staff members are not normally consulted during the preliminary inquiry because this stage of the investigative process involves the gathering of sufficient evidence, the Applicant pertinently relies on INT's own "Staff Guide to INT," which explicitly allows interviews of accused staff members in the context of a preliminary inquiry. The Tribunal can readily understand that this would be especially appropriate when the ability to gather information from other sources is not clear, sufficient or likely to result in accurate findings. The Tribunal indeed addressed this issue in *D*, Decision No. 304 [2003], para. 65, where it stated that "a staff member who is the subject of a preliminary inquiry should be informed of that fact at the earliest reasonable moment," and that "[e]arly notice – short of a formal Notification of Misconduct – can provide an opportunity to the subject to respond to the charges, to explain his suspect behavior, to inform the investigators, and so better to focus and expedite (and perhaps conclude) the preliminary inquiry." It is therefore wrong for the Bank to argue that it can contact the accused staff member only after issuing a Notice of Alleged Misconduct and launching a formal investigation.

24. Moreover, the information required after the preliminary inquiry has been completed is intended, in INT's own words, "to determine more fully the facts and circumstances surrounding these exceptions." This assumes that there is already sufficient evidence available and that additional clarifications are required, which was manifestly not the case in the preliminary inquiry conducted in respect of the Applicant.

25. The fact that the Notice of Alleged Misconduct given to the Applicant states that the information "appear[s] to indicate a pattern of abuse," and that this is an "allegation, not proven facts," does not diminish the seriousness of such allegations, which ought to be supported by evidence. It is intolerable for such allegations to be based instead on unverified inference or suppositions. Indeed, as the Tribunal has concluded in another case, "[t]he initiation of investigations, preliminary or otherwise, on the basis of rumors and allegations by questionable sources, clearly does not comport with the basic elements of due process." (*Koudogbo*, Decision No. 246 [2001], para. 43.) The Bank insists that the Applicant was properly asked to respond to the allegations as required under the Staff Rules. But this does not excuse the embarrassment and anxiety caused to the Applicant which could readily have been avoided by elementary verification.

26. Notwithstanding INT's affirmation in its e-mail to the Applicant dated 22 July 2005 that it "is not in a position to 'dismiss' a case" and that "[it] is required under Staff Rule 8.01 to prepare a report" for submission to the Vice President of Human Resources, INT discontinued the case against the Applicant without the submission of such a report. The Tribunal is concerned that INT's retreat from its assertion of 22 July 2005 might not be unconnected to the fact that the Applicant had just a few days previously filed a Statement of Appeal with the Appeals Committee.

27. In sum, due process was compromised by the handling of this case. The allegations were based on insufficient information and a negligent failure to verify essential data. Moreover, as the Applicant convincingly argues, the burden of proof was effectively shifted from the Bank to him.

28. A Notice of Alleged Misconduct cannot be based on allegations alone. This much is stated by the standard Notice letter, and the Bank itself correctly accepts this point. A Notice is to be issued only when there is sufficient evidence to warrant an investigation. In the present case, the Notice issued did not rely on such evidence, but instead on excessively broad, computer-generated "red flags" that were objectively wrong. The available evidence was not properly sought or even requested from the appropriate Bank departments, the Applicant or the Country Office.

29. The Memorandum from the Acting Director of INT to the Bank President, mentioned above in paragraph 13, described IAD's audit as a "data mining" exercise that resulted in "red flags" about exceptions to travel policies. The Bank's duty was to make sure that the "flags" were indeed "red" before taking the serious initiative of a Notice of Alleged Misconduct. As with any mining operation, the ore has first to be separated from the slag, and

then evaluated for quality. Only then can it be pronounced to be of merchantable quality. No such quality control was conducted by the Bank in this case, and it instead fell on the Applicant to do it, resulting in the injustice that the Tribunal must now redress.

30. The due process violations generated by these strikingly negligent administrative actions are incompatible with the Bank's duties under Principles of Staff Employment 2.1 and 9.1, and the pertinent precedents of the Tribunal (See *G*, Decision No. 340 [2005], para. 78; *D*, Decision No. 304 [2003], paras. 61 and 65; and *Rendall-Speranza*, Decision No. 197 [1998], para. 57), just as they are at odds with the TOR issued to IAD and the more general rules and instructions governing INT investigations.

31. The Tribunal turns now to the question of damages. The Applicant argues that four kinds of damage have been caused to him in consequence of the Bank's acts: (i) damage to his reputation and career prospects; (ii) damage to his professional work; (iii) damage to his family life; and (iv) damage to his mental and physical health.

32. The Tribunal is not persuaded that damage to the Applicant's reputation or career prospects has occurred, as no specifics have been proven. And, as noted, the Tribunal has also granted anonymity to the Applicant as a safeguard to prevent any damage of this kind.

33. The Tribunal is also unconvinced that damage to the Applicant's professional work has taken place. Inconvenience and unpleasantness may occur in such a disquieting situation, but they do not appear to have affected the quality of the Applicant's work, and certainly no evidence to that effect has been presented by him.

34. The Tribunal has no doubt, however, about the likely distress caused to the Applicant. The level of anxiety, stress and disruption that a wrongful accusation can cause to an innocent person and a responsible professional is indeed a matter of legal concern, even if no medical treatment is required for such a condition.

35. The Applicant's case is strengthened by the fact that his efforts to find a reasonable and informal resolution of his case were repeatedly rebuffed by the Bank. Most notable of these were his initiative to request the Ombudsman's intervention and his request that the explanations which he had provided in his written response to the Notice of Alleged Misconduct be considered as part of the preliminary inquiry rather than after a formal accusation. This latter attempt was particularly important given INT's duty during the fact-gathering stage of the investigation to "collect evidence that is both *exculpatory and inculpatory*, and takes into account potentially mitigating factors, as appropriate," as is described in its own "Staff Guide to INT." (Emphasis in original.) The fact that the Applicant is a staff member who resides at a post far away from Headquarters is an aggravating factor, since the Country Office's isolation increased the Applicant's uncertainty and his difficulties in seeking advice.

36. The Tribunal will accordingly grant compensation for the procedural and due process violations found, as well as for the ensuing moral damage, anxiety and stress. This the Tribunal fixes at an amount equal to 12 months' current net salary.

37. In a judgment involving the suspension from duty of a staff member on the ground that he had committed theft, and a subsequent investigation into those allegations, the Asian Development Bank Administrative Tribunal noted:

Irrespective of whether a decision is valid, just as it is implicit in every contract of service that the staff member shall be loyal, shall treat his superiors with due respect, and shall guard the reputation of the employer, so it is implicit that the employer in its treatment of staff members shall have a care for their dignity and reputation and shall not cause them unnecessary personal distress. Often distress and disappointment cannot be avoided, but, where it can be, it should be. (*Galang*, ADBAT Decision No. 55 [2002], para. 46).

The World Bank's leaders have frequently commended the dedication and passion shown by the staff at large.

There is no reason to consider that the Applicant himself does not fit this description. The treatment he received in this instance stands in stark contrast to the loyalty that an employer owes to valued staff.

38. Particularly regrettable is the Bank's suggestion before this Tribunal that the Applicant somehow brought this misery upon himself because of trivial inaccuracies and omissions in his statements of expenses. This is wholly unacceptable. The amount of the compensation granted is intended to ensure, in the interests of all staff members and the Bank, that the handling of investigations at least meets minimum standards.

Decision

For the reasons stated above, the Tribunal hereby orders that:

- (i) the Respondent shall pay the Applicant compensation in the amount equivalent to 12 months' current net salary;
- (ii) the Respondent shall pay the Applicant costs in the amount of \$24,000; and
- (iii) all other pleas are dismissed.

/S/ Jan Paulsson
Jan Paulsson
President

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

At Washington, DC, 28 March 2007