

Decision No. 197

Margot Rendall-Speranza,
Applicant

v.

International Finance Corporation,
Respondent

1. The World Bank Administrative Tribunal, composed of Robert A. Gorman, President, Francisco Orrego Vicuña and Thio Su Mien, Vice Presidents and Prosper Weil, A. Kamal Abul-Magd, Bola A. Ajibola and Elizabeth Evatt, Judges, has been seized of an application, received on September 2, 1997, by Margot Rendall-Speranza against the International Finance Corporation. The case was listed on September 21, 1998.

2. In her Application, the Applicant accuses the Bank of failing to observe her conditions of employment and terms of appointment by:

(i) failing to provide her with a work environment free of sexual harassment; and

(ii) failing to protect her and to act in a fair and unbiased manner once incidents of sexual harassment were raised by her and, thus, brought to the attention of the Management of the Respondent.

On this basis, the Applicant contests the decision of the Respondent that there was no evidence of misconduct on the part of the Director of her Department warranting discipline under Staff Rule 8.01 in respect of the Applicant's complaint of sexual harassment.

3. In its Answer to the Applicant, the Respondent linked the issue of alleged sexual harassment to the non-confirmation of the Applicant in her position at the IFC. In her subsequent pleadings, the Applicant stated that the Bank's decision not to confirm her in her probationary position was vitiated by the Bank's contribution to the continuing hostile work environment and by certain other procedural irregularities that made the decision not to confirm her an abuse of discretion.

RELEVANT FACTS

4. On September 26, 1992, the Applicant accepted an appointment as a level 23 Investment Officer with Division I of the International Finance Corporation's (IFC) Corporate Finance Services Department (CFS) and began to work under the supervision of the Manager of Division I on October 12, 1992. Pursuant to the Staff Rules, the Applicant's appointment was subject to a probationary period.

5. Upon joining CFS, the Applicant was assigned to work on an advisory mandate in Slovenia, which included work on the Tomos project. The Applicant began to complain in late 1992 that she was not being given interesting assignments, that her competence was not being recognized and that the work she was being asked to perform was beneath her level. The Applicant thereafter discussed reassignment opportunities with the Director, Personnel and Administration for the IFC (CPA), at which time, according to the Director of CPA and others, the Applicant expressed a preference for her transfer to the Europe Department in IFC (CEM).

6. In an initial interim evaluation of the Applicant's performance dated May 26, 1993 the Applicant's supervisor in CFS (the Manager of Division I) indicated that the Applicant's assignment on the Tomos project "did not go smoothly." The Applicant's supervisor was critical of the Applicant's interpersonal, analytical and computer skills. The Applicant challenged the initial interim evaluation of her performance asserting that it was "totally biased and unfair." Following a meeting with the Applicant, the Manager of Division I submitted, on June 11, 1993, a revised interim evaluation of the Applicant's performance. While this evaluation was less critical of specific aspects of the Applicant's performance, it was still noted:

Unfortunately, the assignment did not go as smoothly as hoped. Margot felt that she needed more clarification on her responsibilities than I had considered necessary for someone of her age and experience The first assignment therefore raised certain questions about her ability to perform but gave her insufficient opportunity to demonstrate performance.

7. In early May 1993, the Applicant had been assigned to work on the "CBS Baya" project in the Europe Department, although she remained administratively a member of CFS. The Applicant was subsequently transferred to Division 1 of CEM (CEMD1) effective July 28, 1993 and her probationary period was extended to June 30, 1994.

8. By a note to the Applicant dated January 3, 1994, the Division Manager of CEMD1 referred to two attached draft interim evaluations of the Applicant's performance, one of which was for the Personnel Department and the other for the Applicant so that she would have "a more accurate and complete sense" of his views and concerns. In the evaluation intended for the Personnel Department, the Division Manager was less critical of the Applicant's performance and he noted that he had not yet seen enough of the Applicant's work to make a recommendation that she be confirmed at that time. In a much more detailed and longer interim evaluation for the Applicant, the Division Manager was critical of the Applicant's performance and of her interpersonal relations.

9. In a note to the Director of CEM dated May 13, 1994, the Division Manager of CEMD1 complained about the Applicant's delay in completing an assignment. He further suggested that the Applicant be told by the end of May that she would not be confirmed.

10. In a letter to the Executive Vice President of the IFC dated June 9, 1994, the Applicant requested an appointment "at the suggestion of the Ombudsman" to "describe a sequence of unprofessional behaviors," which, she claimed, had jeopardized her "professional and personal objectives in IFC."

11. By a memorandum to the Director of CEM dated June 20, 1994, the Division Manager of CEMD1 provided a detailed and highly critical final appraisal of the Applicant's performance. His evaluation consisted of a critique of the Applicant's assignments in CEM and a negative assessment of the Applicant's professional and interpersonal skills. It was again his recommendation that the Applicant not be confirmed.

12. On June 24, 1994, pursuant to the Applicant's request of June 9, 1994, the Executive Vice President of the IFC met with the Applicant to discuss her allegations of unprofessional behavior. At that time, the Applicant described purported instances of sexual harassment on the part of the Director of CEM. Also on June 24, 1994, the Applicant met with the Ethics Officer, with whom she met again on July 6, 1994, to discuss her complaint.

13. By a memorandum to the Ethics Officer dated July 7, 1994, the Applicant indicated that she wished "to file an official complaint of sexual harassment of a serious nature against my Department Director ... and of the professional repercussions of such harassment." She further stated that she wished to withhold details of the allegations while attempting to reach a mutually agreed settlement through the Executive Vice President of the IFC.

14. On July 15, 1994, the Executive Vice President of the IFC requested that the Ethics Officer "undertake as soon as possible an investigation into the allegations of sexual harassment made by Ms. Rendall-Speranza." Also on July 15, 1994, the Applicant met with the Ethics Officer to further discuss her complaint against the Director of CEM.

15. In the light of the Applicant's allegations of sexual harassment, no final decision was taken on the Applicant's confirmation pending completion of an investigation. Further, pursuant to a request made by the Applicant, efforts were made to reassign her out of the Director's, CEM, Department. On August 16, 1994, the Director of CPA informed the Applicant that, effective August 17, 1994, she would be assigned to work on the

“Egypt Special Steel Project” in Central Asia, Middle East and North Africa Department (CAMENA). The assignment was to run “at a minimum ... until a decision [was] made” on the Applicant’s complaint of sexual harassment. The Applicant ultimately chose not to accept the assignment in CAMENA and she remained in CEM.

16. On July 27, 1994, the Applicant submitted to the Ethics Officer a formal complaint of sexual harassment, “including physical assault and battery,” against the Director of CEM. In her complaint, the Applicant presented a detailed chronology of events from early 1992 to May 1994, in which she included allegations of inappropriate behavior and comments and instances of alleged sexual harassment all on the part of the Director of CEM, beginning with the recruitment process. An underlying theme of her complaint was that the decision not to confirm her was a product of the Director’s, CEM, adverse reaction to her denial of his advances. Among other things, the Applicant asserted that the Director of CEM had arranged for her to be transferred to his Department. She further described many lunch, dinner and other social outings with the Director of CEM during which time the Director of CEM had allegedly prompted personal discussions, pursued her and made unwanted and forcible sexual advances. In explaining why she had continued to accede to requests of the Director of CEM to accompany him on such outings, the Applicant stated that the Director of CEM generally presented a business excuse and that, because the Director of CEM was her Department Director, the refusal of such “overtures” might have affected her career. Throughout her complaint, she listed dates, places and times to corroborate her allegations and indicated that there were a number of different witnesses to the social outings, the phone calls and to the Director’s pursuit of her. In that respect, she provided a suggested list of 12 witnesses and a list of questions to ask the witnesses.

17. On the night of August 25, 1994, an incident occurred between the Applicant and the Director of CEM, the facts of which are in dispute. The parties agree that the Applicant entered the office of the Director of CEM after hours and without authorization and that the Director of CEM by chance came by the office. However, there is disagreement as to the surroundings events. The Applicant asserts in her pleadings that she had gone to the Director’s office in order to check his calendar to see if he had arranged to meet with her attorney, that the Director had walked by when she was leaving the office and that he thereafter committed assault and battery on her, causing shoulder and back injuries and bruises. For its part, the Respondent contends in its pleadings that the Director found the Applicant going through his papers and that, as the Applicant was attempting to leave the scene, the Director “momentarily tried to detain her so that a security guard could be called.” According to a Security Operations Journal, security was called and the incident was investigated.

18. On August 26, 1994, the Applicant’s attorney wrote to the Executive Vice President of the IFC to request that “immediate action” be taken to transfer the Applicant away from the Director of CEM. On August 30, 1994, as the result of the August 25th incident, both the Applicant and the Director were placed on paid administrative leave.

19. On September 6, 1994, the Director of CEM submitted a formal written response to the Applicant’s complaint of sexual harassment. In his response, the Director denied the Applicant’s allegations of sexual harassment, pursuit and retaliation, but acknowledged that he had engaged in personal discussions with her and that the two had met outside of the office on a number of occasions, both professionally and socially.

20. By a memorandum to the Applicant dated September 14, 1994, the Senior Vice President of Management and Personnel Services (MPS) informed her that, effective September 16, 1994, she would return to active work status at which time her period of administrative leave would terminate. Thereafter, effective September 16, 1994, the Applicant was assigned to an Investment Officer position in the Latin America and Caribbean Department (LAC) where she was to report to the Division 2 Manager and, through him, to the Director of LAC. On September 19, 1994, the Applicant reported to LAC.

21. By a letter to the Applicant dated September 20, 1994, the Senior Vice President, MPS, informed her that he had appointed an independent investigator to investigate the Applicant’s allegations of sexual harassment against the Director of CEM. Attached to this letter was a copy of the independent investigator’s terms of reference, which specified:

The purpose of this review is to examine Mrs. Margot Rendall -Speranza's complaint of sexual harassment against her manager [the Director of CEM] as well as matters that are related to the complaint, including the incident on the evening of August 25, 1994. The review should look into the facts and circumstances of the matters with the objective of making findings, including whether sexual harassment occurred. This investigation is to be carried out in light of World Bank Group policies and procedures including the Principles of Staff Employment and Staff Rules. You will have access to all World Bank Group records which you deem relevant. World Bank Group staff members will be asked to cooperate fully in the investigation and to be available for interviews. If you should request, the World Bank Group would also seek the cooperation of any other individual whom you should wish to contact in the course of the review.

It was requested in the terms of reference that a written report be submitted to the Senior Vice President, MPS, if possible by October 21, 1994.

22. By letters to the Applicant and the Director of CEM dated September 23, 1994, the independent investigator set forth the standards and procedures by which she intended to conduct the investigation. She indicated that she would apply the Bank's standard for sexual harassment and emphasized the Bank's policy to "adhere to stringent standards of due process as it conducts its investigations into possible misconduct." She further stated: (i) that she would not permit *ex parte* communications between herself and either of the two parties or their attorneys; (ii) that all communications should be in writing; (iii) that she intended to "compile a comprehensive written record of information ... to ensure a complete airing of pertinent issues"; (iv) that she would neither inquire into the Applicant's professional capabilities nor question the Bank's discretion in its personnel decisions, except as they related to "the issue of sexual harassment"; (v) that she planned to conduct transcribed interviews of the Applicant, the Director of CEM and of "other persons with relevant information"; and (vi) that transcripts of her interviews would be "made and copies of those transcripts as well as documents" she collected would be "available to both parties for review upon request."

23. In additional correspondence to the Applicant and her Director, the independent investigator emphasized the confidential nature of the proceedings, stated that neither the Applicant nor the Director would be allowed to attend any interview other than their own, and indicated that questioning would not be permitted by anyone other than the investigator or counsel for the witness.

24. By a letter to the Vice President of Operations of IFC dated October 4, 1994, the Applicant's attorney requested that the Applicant be placed on administrative leave due to stress. The Senior Vice President, MPS, thereafter placed the Applicant on paid administrative leave effective October 6, 1994, until such time as a decision could be made on the Applicant's claim of sexual harassment.

25. On October 14 and 20, 1994, the independent investigator interviewed the Applicant in the presence of her attorney; on October 19, 1994, the Director of CEM was interviewed by the independent investigator in the presence of his attorney.

26. On October 27, 1994, the Applicant's attorney provided to the independent investigator a list of an additional 17 suggested witnesses. The independent investigator thereafter interviewed 33 non-party witnesses in October, November and December 1994.

27. On December 23, 1994, the independent investigator submitted to the Senior Vice President, MPS, her report on the Applicant's allegations. In the report, the independent investigator concluded that sexual harassment had not taken place. She concluded that she

was unable to corroborate Ms. Rendall's allegations in material detail. In the search for corroboration, I found (i) substantial corroboration for [the Director of CEM's] factual assertions; (ii) substantial reasons to discredit Ms. Rendall's version; and (iii) substantial reason to question Ms. Rendall's overall credibility and/or perceptions.

When I reassembled the individual facts to look at the whole, I found that the picture I had was one in which – even if much of the detail provided by Ms. Rendall were true – it would be difficult to conclude that they constitute sexual harassment. To do so would require a finding that Ms. Rendall promptly and consistently believed and articulated to [the Director of CEM] that she was not interested in a relationship with him that had a social – or at least special access – component. I cannot make such a finding. To the contrary, it appears that Ms. Rendall wanted the benefit of access to [the Director of CEM] and – even by her own account – chose not to say a meaningful ‘don’t’ to his alleged advances.

The investigator explained that, in reaching the above conclusion, she had applied the standard for sexual harassment included in the Bank’s publication entitled *Preventing and Stopping Sexual Harassment in the Workplace*.

28. On January 6, 1995, the Applicant’s attorney provided, pursuant to a request by the Acting Senior Vice President, MPS, a detailed response to the independent investigator’s report. In the response, the Applicant’s attorney asserted that the report was superficial and one-sided and “far from a persuasive or analytical legal document.” In particular, he listed what he termed as the following “grave procedural defects”:

(i) the outside investigator did not have the complete testimony of key witnesses; (ii) the outside investigator declined to interview a number of key witnesses identified by Ms. Rendall as persons to whom she contemporaneously complained of sexual harassment by [the Director of CEM], including her husband, her close friends, and a psychologist; (iii) the outside investigator applied unrealistic standards and was wrong in determining that Ms. Rendall did not demonstrate to [the Director of CEM] that his sexual advances and sexual assaults were unwanted; (iv) the outside investigator failed to find key facts, such as whether [the Director of CEM] pursued Ms. Rendall for his sexual purposes; (v) we have not been permitted to cross-examine witnesses or review the testimony of witnesses (other than that of Ms. Rendall and [the Director of CEM]); and (vi) witnesses have been subject to improper influences in this case.

29. The Applicant’s attorney thereafter addressed each of the above points and argued that the evidence supported the Applicant’s claim that she had been a victim of sexual harassment. He asserted that three witnesses who had been contacted had stated that their testimony was incomplete. He further provided a list of 16 suggested eyewitnesses and witnesses who, he claimed, had been told by the Applicant of sexual harassment at the time it was occurring.

30. By a letter to the Applicant dated January 10, 1995, the Acting Senior Vice President, MPS, stated that, based on his “review of the findings in [the independent investigator’s] report,” he had decided that “the evidence [did] not warrant a finding of misconduct on [the Director of CEM’s] part.”

31. In a letter to the Applicant dated January 12, 1995, the Director of CPA outlined the steps that needed to be taken with respect to the performance evaluation process that had been forestalled by her allegations against the Director of CEM. With the letter, the Director of CPA provided to the Applicant copies of her interim and final performance evaluations that had been earlier prepared by the Division Manager of CEMD1. On January 18, 1995, the Applicant submitted written comments on the evaluations.

32. On January 26, 1995, a management review meeting took place to discuss the Applicant’s confirmation. The management review group consisted of the Vice President of Operations of IFC, the Division Manager of CEMD1, and the Director of CPA. A staff member of CFS also attended to comment on certain aspects of the Applicant’s response. The substance of the review was included in a memorandum to the Applicant dated March 13, 1995. According to this memorandum, the review members had undertaken a detailed discussion of the Applicant’s performance and experience and had concluded, without dissent, that the Applicant’s confirmation should be denied.

33. Thereafter, by a letter dated February 3, 1995, the Vice President of Operations of IFC informed the Applicant that her performance did not warrant confirmation of her appointment to the IFC and that her employment would be terminated effective April 4, 1995.

34. On March 28, 1995, the Applicant requested an administrative review of the following five decisions: (i) not to confirm her in her appointment and to separate her from employment; (ii) acceptance of the report of the independent investigator and the rejection of her claim of sexual harassment; (iii) not to reopen the sexual harassment investigation to hear relevant testimony to establish her credibility; (iv) not to provide her and her attorneys with all of the transcripts taken by the independent investigator; and (v) not to reimburse her for attorney's costs.

35. By a letter dated April 27, 1995, the Executive Vice President of the IFC explained to the Applicant that, with respect to non-confirmation, based on his review of the records, there was no evidence of abuse of discretion. Regarding the sexual harassment investigation, he stated that the allegations of sexual harassment had been "the subject of a thorough and impartial investigation, and that the investigator's report and [the Acting Senior Vice President's, MPS] decision constitute[d] a reasonable and fair outcome in the matter." Her other requests were likewise denied.

36. On June 27, 1995, the Applicant filed an Appeal with the Appeals Committee in which she challenged the same five decisions as in her request for administrative review. In a report dated June 28, 1996, the Appeals Committee reached the following conclusions: (i) while there had been no abuse of discretion with respect to the decision not to confirm the Applicant, the conduct of the Director of CEM could "only be characterized as one unbecoming a manager" and was at odds with Bank Group policy embodied in the document *Preventing and Stopping Sexual Harassment in the Workplace*; and (ii) the acceptance by the Respondent of the independent investigator's report "only four days after receiving the Rebuttal was unreasonable [and] arbitrary and constituted an abuse of discretion." It added that in accepting the report, the Respondent had acted arbitrarily and imprudently. In the light of its conclusions, the Committee recommended that the sexual harassment investigation be reopened in order to hear testimony relevant to the Applicant's credibility and that all other requests made by the Applicant be denied.

37. On July 25, 1996, the Vice President of Human Resources accepted the Committee's recommendations and requested the independent investigator to reopen the investigation into the Applicant's complaint of sexual harassment against the Director of CEM. The Vice President of Human Resources requested the independent investigator to interview the 16 witnesses identified by the Applicant's attorney. She further provided the independent investigator with the earlier terms of reference and with the pertinent portions of the Applicant's attorney's letter of January 6, 1995.

38. Notwithstanding objections raised by the Applicant regarding the proposed procedure, the independent investigator conducted a subsequent investigation in which she interviewed 14 witnesses. In a supplemental report submitted on December 23, 1996, she concluded: (i) "certain credibility issues were not affected by the additional witnesses"; (ii) "no new witness rehabilitated" the Applicant's credibility on events and the evidence referenced in the first report demonstrated "an intent to fabricate on her part"; (iii) the initial report had "accurately recounted witness testimony"; and (iv) the additional witnesses "undercut" rather than corroborated the Applicant's testimony.

39. On January 21, 1997, the Vice President of Human Resources provided the Applicant with a copy of the independent investigator's supplemental report. In a letter to the Vice President of Human Resources dated March 6, 1997, the Applicant's attorney attacked the independent investigator's competence and integrity and challenged the supplemental investigation as well as the findings of the investigation.

40. On June 3, 1997, the Vice President of Human Resources informed the Applicant that, after having considered "both the original and supplemental reports and the comments received," she found no basis for disturbing the Acting Senior Vice President's, MPS, conclusion of January 10, 1995 that the evidence did not warrant a finding of misconduct on the part of the Director of CEM.

41. As mentioned in the opening paragraph, the Applicant submitted her Application to this Tribunal on September 2, 1997. The Applicant made requests for oral hearings, for anonymity, for the production of certain

documents and for the production of the transcripts of interviews made by the investigator during her two investigations. The Tribunal denied the Applicant's request for oral hearings. It denied the Applicant's request for anonymity on the ground that it was not satisfied that the publication of her name was highly likely to result in grave personal hardship to her. The Tribunal ordered the Respondent to provide for its review *in camera* the transcripts of 2,300 pages of interviews made by the investigator during the two investigations. It further ordered the Respondent to provide the Applicant with a copy of the transcripts of the interviews of both her and the Director, and allowed the Applicant to file comments on such interviews and the Respondent to file observations on such comments, which both parties did. The Tribunal denied the Applicant's request for a copy of the interviews of non-party witnesses examined by the investigator as well as the Applicant's other requests for documents.

CONSIDERATIONS

I. Overview

42. The central issue in this case is the Applicant's complaint that she was subjected to sexual harassment by her Director in IFC, and that the Respondent failed to discharge its obligation to protect her from such harassment. This alleged failure was principally, according to the Applicant, through the Bank's acceptance of the findings and recommendations of an outside investigator, who interviewed witnesses and produced two reports that concluded that sexual harassment had not taken place, and through the Bank's resulting decision not to impose disciplinary measures against the Director.

43. The Bank has made the prevention and eradication of sexual harassment of its staff members an important part of its personnel policy. In a Bank document issued in September 1994, and entitled *Preventing and Stopping Sexual Harassment in the Workplace*, sexual harassment is 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."

44. Although this definition was promulgated after the incidents under consideration in this case, the definition is consistent with similar definitions adopted in both international (*see, e.g., Belas-Gianou v. Secretary-General of the United Nations*, Judgement U.N. Admin. Trib. No. 707, at 33-34, U.N. Doc. AT/DEC/707 (July 28, 1995) (referring to *Procedures for Dealing with Sexual Harassment*, U.N. Doc. ST/AI/379 (Oct. 29, 1992)); and *In re Abreu de Oliveira Souza*, ILOAT Judgement No. 1609 (Jan. 30, 1997), at pp. 6 and 13 (referring to *Sexual Harassment Policy and Procedures*, ILO Circular No. 543, November 2, 1995)) and domestic jurisprudence and all parties have presented their case on the assumption that the definition is appropriate. The Tribunal finds that this definition provides a reasonable criterion for the purpose of deciding this case.

45. Since the Bank clearly acknowledges that it has an obligation to protect its staff members from harassment, this protection becomes a part of the staff members' conditions of employment and terms of appointment, which is thus enforceable by this Tribunal. The Bank has, within its discretion, concluded that the appropriate way by which to implement its obligations is to afford certain procedures to its staff members who complain about the harassing behavior of other staff members. The mechanism provided by the Bank is the mechanism that is provided more generally in the Staff Rules relating to disciplinary measures. These Rules provide for the filing of a formal complaint on the basis of which an investigation is to be undertaken into the alleged misconduct.

46. The Applicant availed herself of this disciplinary procedure by filing with the Ethics Officer a complaint of sexual harassment directed against her Director. It is her main contention, however, that the Bank failed in this case to implement its declared policies and, in particular, that it abused its discretion in deciding that her complaint was without basis and that no sexual harassment had been proven, especially on account of the failure to conclude that, in the language of the Bank's policy, the improper advances by her Director had been "unwelcome."

47. The Applicant makes the following specific contentions in support of her claim of an abuse of discretion on

the part of the Respondent. She asserts that the Bank improperly took certain actions in connection with the initiation of the disciplinary investigation; that the conduct of the investigation was flawed by serious procedural irregularities; and that the Bank acted improperly in adopting the investigator's findings that no sexual harassment had taken place. Moreover, the Applicant contends that the Bank abused its discretion by its decision not to confirm her in her position. These contentions will be examined by the Tribunal in that order.

II. Alleged pre-investigation abuses by the Bank

48. The Applicant contends that the Bank failed to respond in a timely fashion after she brought her complaint to the attention of her superiors. The Tribunal concludes that this contention is unsupportable.

49. The record shows that the Applicant raised the issue of sexual harassment for the first time by a letter to the Executive Vice President of IFC dated June 9, 1994, requesting an appointment with him "to describe a sequence of unprofessional behaviors, which has jeopardized my professional and personal objectives in IFC." The requested meeting took place on June 24, 1994, and ended with the Executive Vice President confirming that the correct mechanism for dealing with her allegations was through the Ethics Officer. On June 24 and July 6, 1994, the Applicant met with the Ethics Officer who explained to her the procedures followed by the Bank for investigating claims of sexual harassment and similar complaints. It was the Applicant's suggestion that the investigation be carried out by an outside investigator specialized in the field of sexual harassment. In a letter to the Ethics Officer dated July 7, 1994, the Applicant filed a complaint of sexual harassment against her Department Director, alleging that her rejection of the Director's advances resulted in retaliatory measures taken by the Director against her. However, instead of requesting immediate action on her complaint, the Applicant withheld the details of the alleged harassment pending an attempt to reach a mutual agreement between her and the Respondent.

50. The Executive Vice President of IFC, by a letter to the Ethics Officer dated July 15, 1994, asked the Ethics Officer "to undertake as soon as possible an investigation into the allegations of sexual harassment made by Ms. Rendall-Speranza." Because Staff Rule 8.01, paragraph 5.02, required the provision of "supporting evidence of the alleged behavior" before starting a formal investigation, the Ethics Officer asked the Applicant to provide him with the details relating to her complaint of sexual harassment.

51. Once the Bank obtained the required evidence, the Senior Vice President, MPS, selected an independent investigator to investigate the Applicant's charges against her Director. The Applicant was so informed on September 20, 1994 less than two months after she had filed a formal and particularized complaint with the Ethics Officer.

52. The above sequence of events does not lend support to the Applicant's contention that "the Respondent was slow to react to the complaint made by the Applicant."

53. The Applicant also places heavy emphasis upon her contention that the Bank acted improperly in designating as outside investigator an individual lacking in experience, competence and integrity. The Tribunal concludes that this contention is speculative and without foundation in the factual record. The Tribunal notes at the outset that the Staff Rules have no provision for the identification of any particular person to serve as investigator in disciplinary proceedings. In this respect, Staff Rule 8.01, paragraph 5.02, provided:

Where a staff member is alleged to have engaged in conduct for which disciplinary measures may be imposed, an investigation to determine the substance and circumstances of the matter will take place. When supporting evidence of the alleged behavior has been obtained, the staff member's manager or the Ethics Officer shall notify the staff member that the matter is being investigated and the allegations warrant an explanation from the staff member. The Vice President, Personnel and Administration or the Director, Personnel Management Department may place a staff member on administrative leave for a period not to exceed six months, pending completion of the investigation. The Ethics Officer will notify the staff member in writing that he is being placed on administrative leave, when it commences, and when it ends.

Although it is usually the Ethics Officer who conducts such an investigation, the Bank considered that this

particularly sensitive matter required the designation of a qualified independent person from outside of the Bank. Such an appointment was in fact sought by the Applicant. The person selected by the Bank was reasonably regarded by the Bank as highly experienced and qualified in the skills needed to conduct a thorough investigation. Perusal of the independent investigator's curriculum vitae clearly demonstrates that she possessed those qualities. Among her more significant accomplishments, she held a number of responsible supervisory positions in the office of the U.S. Attorney in the District of Columbia, where she conducted more than 100 criminal trials; she was Chief Litigation Counsel for the Securities and Exchange Commission; and she was appointed as Independent Counsel charged with the investigation of a former official of the U.S. Department of Justice, and successfully argued a related case before the United States Supreme Court.

54. The Applicant contends that the choice of the independent investigator was "questionable" because of potential contacts between the Respondent's managers and the law firm of which the investigator is a partner. To this complaint, which is highly conjectural, the Respondent answered by stating that the investigator's only prior contact with the Bank Group involved representing one staff member against the World Bank in a personal matter, a number of years earlier, and that the Respondent had not retained the investigator or her law firm for any work other than for the investigation of the Applicant's allegations. The Applicant does not present any evidence contradicting the Respondent's assertion nor any other evidence to support her criticism of the investigator's selection. The Tribunal concludes that there is no evidence to support the Applicant's criticism of selecting the investigator to carry out the investigation.

55. The Applicant also complains that the investigator operated under the control of the Bank. The Applicant again relies on speculation and fails to refer to any specific power or control that the Bank had over the investigator. The record shows that the Bank's role was only to select the investigator and to determine the terms of reference for the requested investigation. In his letter of September 20, 1994 to the investigator informing her of her selection to undertake the review of the Applicant's allegation, the Senior Vice President, MPS, enclosed a one page annex entitled "Terms of Reference." The parts of said document relevant to the Applicant's allegation are the following:

- (i) that the review "should look into the facts and circumstances of the matters with the objective of making findings, including whether sexual harassment occurred";
- (ii) that the investigation "is to be carried out in light of the World Bank Group policies and procedures including the Principles of Staff Employment and Staff Rules"; and
- (iii) that the review should result in a written report to the Vice President, Management and Personnel Services, if possible by October 21, 1994.

The Tribunal cannot find in these terms of reference any indication that the investigator operated under the control of the Bank nor does the Applicant give any evidence of the existence of, or exercise by the Bank of, any control over the investigator.

56. On the complaint by the Applicant that the Respondent failed to protect her from the harasser, the Tribunal notes that once the Respondent became aware of the Applicant's allegation of sexual harassment and the need to keep the Applicant away from her alleged harasser, the Respondent informed the Applicant on August 16, 1994 that she was to be assigned to work on the "Egypt Special Steel Project" in the Central Asia, Middle East and North Africa Department. It was the Applicant who chose not to accept the assignment and to remain in the same Department where her alleged harasser was Director. The Applicant, therefore, shares a large responsibility in the incident that occurred on August 25, 1994, the more so since the record indicates that she had entered the Director's office after hours without authorization, as, according to a witness, the Applicant had done a number of times before.

III. Alleged procedural irregularities during the investigation

57. In order to assess whether the investigation was carried out fairly, it is necessary to appreciate the nature of the investigation and its role within the context of disciplinary proceedings. After a complaint of misconduct is

filed, an investigation is to be undertaken in order to develop a factual record on which the Bank might choose to implement disciplinary measures. The investigation is of an administrative, and not an adjudicatory, nature. It is part of the grievance system internal to the Bank. The purpose is to gather information, and to establish and find facts, so that the Bank can decide whether to impose disciplinary measures or to take any other action pursuant to the Staff Rules. The concerns for due process in such a context relate to the development of a fair and full record of facts, and to the conduct of the investigation in a fair and impartial manner. They do not necessarily require conformity to all the technicalities of judicial proceedings.

58. The Bank set down the investigator's terms of reference in detail; on her part, the investigator sent a letter to the parties so informing them, and informing them as well of the general procedures by which the investigation was to be conducted.

59. The record shows that the investigator gave both sides, the Applicant and her Director, ample opportunity to be heard, and an equally ample opportunity to try to corroborate their respective versions of the events by proposing large numbers of witnesses whom they believed would support and lend credibility to their conflicting interpretations of the facts. The Applicant contends that the investigator chose not to call most of the Applicant's witnesses. This contention, however, is not supported by the evidence. Between both the initial and the supplemental investigations, the Applicant suggested that 36 different witnesses be interviewed. Of these, the investigator interviewed 26. Of the 10 that were not interviewed, two either could not be contacted or were not willing to testify and one was not interviewed because the facts that were to be corroborated by this witness were not in dispute. When the Applicant complained that during the first investigation certain witnesses suggested by her were not heard, the Bank, on recommendation of the Appeals Committee, directed the independent investigator to reopen the investigation in order to hear those witnesses and to further assess the credibility of the Applicant.

60. The Applicant and her Director had access to each other's transcript but the Applicant complains of lack of comparable access to the transcripts of the other interviewed witnesses. Staff Rule 8.01 ("Disciplinary Measures") does not obligate the Bank to provide staff members with such transcripts. It was partly on this basis, and in order to maintain the confidentiality of the testimonies provided by the Bank, that the Tribunal, on May 15, 1998, denied the Applicant's request for the transcripts of the witnesses.

61. The Tribunal, therefore, concludes that denying the Applicant her request to be provided with the transcripts of the testimony of all the witnesses interviewed by the investigator did not deprive her of a fair opportunity to put forward her evidence and her arguments and to have them properly considered.

62. For similar reasons, the fact that the independent investigator did not allow either party to be present when the witnesses were interviewed, and to examine and cross-examine them, does not, in the Tribunal's view, violate any basic right of the parties, nor does it justify the contention that the conclusions drawn from such testimonies were necessarily procedurally defective.

63. Nor does the Tribunal consider that the value and weight of such testimonies were diminished because they were not given under oath. As already noted, an investigation taking place within the Bank, even when carried out by an independent investigator, remains administrative in nature. It is only in some judicial proceedings that witnesses must give their testimonies under oath.

64. The Applicant and her attorney direct strong criticism at the investigator's recording and analysis of the testimonies, including the testimonies of both the Applicant and her Director. They claim that the investigator omitted certain portions of the testimonies, referred to them out of context and misquoted them in her reports. They claim, moreover, that she used them in a selective manner, highlighting those testimonies that cast doubt on the credibility of the Applicant, while overlooking other parts of the testimonies that contradicted the Director's version of the whole scenario. Testimonies of many of the witnesses were summarized and analyzed in the two reports submitted by the investigator. The Tribunal's perusal of the transcripts incorporating these testimonies does not reveal signs of any lack of objectivity on the part of the investigator in examining the witnesses and in analyzing their testimony. The Tribunal concludes that the Applicant's allegations in this

respect are not supported by the record.

65. The Tribunal, moreover, does not give much weight in the circumstances to the fact that after the release of the second report, a number of witnesses interviewed by the investigator claimed to have been misquoted or misinterpreted, and that they corrected the investigator in writing. The Tribunal notes the Applicant's admission that she did get in touch with those witnesses to discuss with them the statements attributed to them in the transcripts. By comparing the statements of these witnesses appearing in the transcripts to the subsequent proffered corrections, the Tribunal does not find the discrepancy between them to justify the claim that the investigator had misquoted them.

IV. Alleged abuses of discretion in accepting the findings and conclusion of the reports

66. The Applicant contends that the Bank abused its discretion when it accepted the two reports of the outside investigator and endorsed her conclusion that there was inadequate proof of sexual harassment, principally because of the Applicant's failure to show that her Director's sexual overtures had been unwelcome. The Tribunal will consider separately each of the two reports filed by the investigator.

67. The Applicant criticizes the Bank's hasty decision of January 10, 1995 to accept the investigator's first report, only four days – including a weekend – after receiving a 42-page rebuttal of the report by the Applicant's then attorney. It will be recalled that the Appeals Committee concluded that the Respondent's action "was unreasonable, arbitrary and constituted an abuse of discretion" and that, rather than accept the report at face value, further inquiry should have been undertaken by the Bank. The Vice President, Human Resources, did indeed agree to "give effect to the Committee's recommendation as expeditiously as possible," and the investigator thereupon undertook an extended set of additional interviews and prepared a second report.

68. The Tribunal shares the view of the Appeals Committee that the Bank's initial endorsement of the first report was indeed hasty. The Bank purports to place very high priority upon the elimination of sexual harassment and the protection of its staff members from such harassment. Because the criticisms directed by the Applicant's attorney against the first report were extensive and detailed, it was incumbent upon the Respondent to give such criticisms its most serious consideration. It should have shown more diligence before reaching a decision affecting the important rights of its staff members – both the Applicant and her Director. Its hasty disposition may have sent a signal to its staff that the Bank lacked a full commitment to implement its policy on sexual harassment.

69. The Tribunal concludes, however, that this shortcoming was remedied by the Bank's acceptance of the Appeals Committee recommendation that the investigation should be reopened "in order to hear testimony relevant to establishing Appellant's credibility." The Applicant contended that the Bank should have appointed a new person to undertake the investigation, in order to assure an altogether open mind as to the issues and personalities presented. The Tribunal concludes that the Bank acted within its discretion in having the revived investigation conducted by the same individual who had done the initial investigation and was already familiar with the intricate factual issues, and whose credentials, as indicated above, were impressive and whose first report was meticulously prepared. Moreover, had the Bank appointed a new person to oversee the reopening of the investigation, this would have prolonged the process further. When the supplemental report was finally submitted, the Bank accepted it only after there had been sufficient time to allow for proper consideration both of the report and of the comments of the Applicant's attorney.

70. The fact that the investigation was reopened and supplemented only upon the recommendation of the Appeals Committee does not, however, alter the inconsistency noted between the policy forbidding sexual harassment and the actual implementation of that policy in this case, which, among other things, caused unnecessary delay to the Applicant in the resolution of the matter.

71. Principal attention is given by the Applicant to the Bank's acceptance of the conclusion reached, reflected in both reports, that there was no proof of sexual harassment. The question for the Tribunal is whether the Bank failed properly to protect the Applicant against such harassment, and abused its discretion by accepting the

findings and conclusion of the independent investigator.

72. It is undisputed that the Applicant's Director had engaged in a number of social behaviors of a questionable character toward the Applicant, including dinner invitations, discussions of his personal and marital problems, visits to her home and to the countryside, and personal touching (which the Director characterized as minor and innocent); these attentions toward her began as early as the time of her recruitment and continued over a period of several months. The principal conflict in the Applicant's and Director's versions of the events relates to such matters as the frequency of the meetings, the intensity of the personal discussions, the frequency and nature of the physical contacts, her resistance to his advances, and the like.

73. It is the conclusion of the Tribunal that there was clearly sufficient evidence to substantiate the findings of the investigator, so that it was not an abuse of discretion for the Bank to endorse those findings.

74. The conclusions of the investigator were set forth in two reports in a manner that was detailed and thorough. To some extent they were based upon a general sense on the part of the investigator that the Applicant was not a credible person and that she was given to exaggeration and even to fabrication. But her resolution of these conflicts of credibility was based on much more particularized circumstances and inferences. These include: internal inconsistencies within the Applicant's own testimony, the failure of third-party witnesses (typically named by the Applicant as presumably favorable to her) to corroborate her version of important events, contrary and factually precise testimony by the Director, the testimony of fellow staff members that they had encouraged the Applicant to distance herself from the Director and his advances but that she belittled their advice and stated her disinclination to do so, and on the fact that the Applicant insisted on continuing to work in the Director's Department even when she was given an opportunity to transfer elsewhere.

75. The investigator, in doubting the Applicant's claim of sexual harassment, placed weight on the fact that the Applicant failed to protest to the Bank about any such harassment for nearly two years after it had allegedly begun and then only after the Applicant first learned of the imminent negative performance evaluations and of the recommendation that her appointment not be confirmed. This obviously suggested to the investigator that the harassment charges were pretextual. Supporting this inference, in the view of the investigator, was the Applicant's initial proposal for discussions of a financial settlement. The Tribunal 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. The fact that the investigator treated the Applicant's delay in calling the matter to her superiors' attention as a relevant matter does not, however, vitiate her overall conclusion. It was not unreasonable for her to treat it as a part of a larger picture pointing toward doubt about the Applicant's credibility.

76. Even apart from any conflict in the testimonies, which were resolved by the investigator adversely to the Applicant, if the testimony of the Applicant is accepted as fully credible it still fails to show that she unequivocally rejected the advances of her Director. Even according to the Applicant's own version of the facts, she did not give an unmistakable signal that those advances were unwelcome. The record in fact shows that:

(i) The Applicant continued to call upon her Director and to receive his calls on several occasions followed by accepting his invitations to go outside the Bank for drinks, lunches, dinners and other meetings of a social nature, totally unrelated to her work with the IFC.

(ii) Her expressions of rejection and unwelcomeness were limited to those advances that were of a clear physical and sexual nature. This behavior could create an impression that the Applicant was receptive to advances of lesser degree. Typical of this ambivalent expression of non-acceptance was her reaction to an incident that took place, according to her, on June 28, 1993, when her Director allegedly kissed her forcibly while outside her house waiting for a taxi to take him to his home. When he called her the next day to thank her for the dinner, he invited her to lunch – and she accepted. Again in July 1993, that is less than a month

after the June 28th incident, she claims that he kissed her forcibly while they were in her car, and that her only response was to say that she was “really not in a frame of mind for this.” Such ambivalent reactions, coupled with continued acceptance of an intimate social relationship unrelated to their work, does not support the claim that the Director’s advances were completely unwelcome and that a clear message of rejection was conveyed to the alleged harasser.

(iii) According to the record, the Applicant either asked to be transferred, or did not raise an objection to being transferred, to the Europe Department where her new Director was none other than her alleged harasser. This casts doubt on the seriousness of the Applicant’s efforts to put an end to the intimate social relationship between her and her Director.

77. It should be recalled that the Bank’s definition of “sexual harassment” is as follows: “[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.” The independent investigator concluded that whatever the nature of the advances on the part of her Director, the Applicant did not make it clear that they were unwelcome and that the Director did not commit sexual harassment. The Bank endorsed these conclusions. The Tribunal concludes that the evidence justifies the Bank’s decision.

78. The Tribunal also concludes, however, that this determination by the Bank, that no sexual harassment had been committed, should not have been regarded by the Bank as putting an end to the matter. There are forms of improper behavior, even though falling short of sexual harassment, that should engage the attention of the Bank and require action on the part of its management. The Tribunal is troubled by the inappropriate conduct acknowledged by the Director and the failure of the Bank to react to such behavior described by the Appeals Committee as “unbecoming a manager.” In the publication entitled *Preventing and Stopping Sexual Harassment in the Workplace*, the Bank emphasized that managers have a primary responsibility in “establishing the tone for a healthy working environment.” Among the steps outlined by the Bank to achieve this goal is included: “setting a good example – avoiding even the appearance of improper conduct ...”

79. The record indicates that the Director not only failed to avoid “the appearance of improper conduct” but indeed actively engaged in conduct falling short of what is expected and required from a manager responsible for the implementation of the Bank’s policies. Examples of such behavior include frequently meeting with the Applicant outside the office, engaging in – many times at his own initiative – an intimate social relationship and raising sensitive personal issues with the Applicant. Also of concern is the extent to which such improper relationship was known to other staff members.

80. It is not, by any means, the intention of the Tribunal to inhibit healthy personal and professional relationships among staff members and the promotion of a congenial atmosphere in the workplace. The Tribunal is of the view, however, that the conduct of the Applicant’s Director crossed the line separating friendly congenial relationships from improper behavior thereby subjecting the Applicant to stress, confusion and other intangible injury. The Tribunal finds that the Bank’s failure to recognize the impropriety of such behavior and the need to protect the Applicant from the negative impact resulting therefrom, entitles the Applicant to compensation. The assessment of such compensation must, however, take into account the fact that the Applicant herself contributed to the continuation of the Director’s conduct of which she is complaining.

V. Alleged abuses of discretion in not confirming the Applicant in her position

81. As to the Applicant’s contention that the Bank’s decision not to confirm her in her position was an abuse of discretion, the Tribunal, in assessing the Bank’s decision, refers to Staff Rule 4.02, dealing with “Probation.” Paragraph 3.01 of that Rule, as it was then in effect, stipulated that “[i]f a staff member is considered not suitable for continued employment with the Bank Group, the manager responsible for the position shall recommend to the management review group that the staff member’s appointment not be confirmed and that his employment be ended. The management review group shall, after reviewing the manager’s recommendations, submit its recommendation to the staff member’s department director or vice president.”

82. The same Rule is confirmed by Staff Rule 7.01 on “Ending Employment” which provided in paragraph 6.02 that “[t]he Bank Group may terminate the appointment of a staff member which has not been confirmed, during or at the end of probation as provided in Rule 4.02, ‘Probation.’”

83. The Tribunal turns now to the examination of the Applicant’s record of performance in order to find out whether said record supports the Bank’s decision not to confirm the Applicant’s employment. In so doing, the Tribunal adheres to its previous ruling to the effect that the determination of whether a staff member’s performance is satisfactory is a matter for the Respondent to decide, and that the Tribunal will not substitute its own judgment in this respect for that of the Respondent but will examine only whether there has been arbitrary, unreasonable or discriminatory actions. (*Saberi*, Decision No. 5 [1981], para. 24; *Suntharalingam*, Decision No. 6.[1981], para. 27.)

84. The first interim evaluation of the Applicant’s performance was made on May 26, 1993, some six months after she had joined the IFC. Evaluation in this first review centered around her performance as a team member carrying out a strategy review in Slovenia. The report records that “[c]ertain tensions developed between [the Applicant] and the other two team members, who felt that she did not sufficiently understand the type of company analysis CFS was to perform ... and that she was not participating as fully in the team’s work as hoped.” In conclusion to this interim evaluation the evaluating manager stated that “she will have much to learn to perform as a fully functioning investment officer either in CFS or an investment department. She has had little prior experience with project finance or analysis of company intrinsics, and it has been several years since she has prepared financial projections and computer-generated spreadsheets.”

85. In a revised evaluation dated June 11, 1993, less critical remarks concerning her performance were made. The evaluating manager stated, however, that “[t]his first assignment ... raised certain questions about her ability to perform but gave her insufficient opportunity to demonstrate performance.”

86. On January 3, 1994, the Applicant’s Manager in the Europe Department sent to the Applicant two drafts of an interim performance evaluation, one to be given to the Personnel Department for the record, and the second for the Applicant so that she would “have a more accurate and complete sense of my views and concerns.” In the draft interim evaluation for the Applicant, the Manager was critical of the Applicant’s ability to do financial modeling and he indicated that the Applicant was behind in, and did not take seriously, her work. He further expressed concern about a number of “personal clashes” the Applicant had had within the division and other departments.

87. On May 13, 1994, the same Manager wrote to the Director (the same one accused by the Applicant) strongly criticizing the Applicant’s failure to perform satisfactorily, referring particularly to the fact that despite repeated requests from him to have the first draft of her report on “Medya,” he had received nothing at all. He went on to state: “Frankly, if it were my decision, I would tell her by the end of May that we do not intend to confirm her.” He went even further to state: “[W]hile I would not ‘bad mouth’ her to prospective employers, I would find it very difficult to say anything positive about her.”

88. Finally, on June 20, 1994, the same Manager provided to the Director of CEM (the same accused Director) a performance appraisal of the Applicant in which he stated unequivocally that “[a]fter having worked with her for more than 12 months, I cannot recommend that she be confirmed in IFC I do not think that she has the financial analytical skills or understanding required for the work done by IFC.” He further wrote: “Both IFC and Margot made a mistake in assuming that her previous background would enable her to fit into IFC without too much difficulty.”

89. On her relations with colleagues and supervisors he stated that “[o]n a number of occasions and in a number of areas I and others seem to have had considerable difficulty in achieving a real understanding with Margot.” In discussing one of the Applicant’s assignments (“CBS Paints”), the Manager further stated that the Applicant’s “biggest problems seemed to be in developing the financial model and in understanding the financial logic required for project finance. By her own admission, [she] had not had occasion to develop either of these skills in her previous jobs While [she] had a great deal of difficulty in becoming familiar with spreadsheet

programs (Lotus 1-2-3) the level of misunderstanding was not simply lack of familiarity with the computer program.” He continued: “I have not encountered similar, basic misunderstandings among any of the MBAs in IFC or even Investment Assistants.” In addressing similar problems with respect to another assignment (“Medya IAR”), the Manager added: “This inexperience goes far deeper than simply a lack of familiarity with Lotus 1-2-3. From what I have seen of her work I do not believe that [she] would be able to develop a working financial model for Medya, even without a computer.”

90. After the Applicant’s filing of a formal complaint alleging sexual harassment, no final decision was made on her probation and she was assigned to work on the Egypt Special Steel Project, effective August 17, 1994. The Applicant chose not to accept this assignment and after a period of administrative leave was, on September 16, 1994, assigned to an Investment Officer position in the Latin America and Caribbean Department.

91. On January 26, 1995, a Management Review Group met to pass an overall evaluation of the Applicant’s performance. The Management Review Group was constituted in conformity with Staff Rule 4.02, paragraph 1.03(d), which read: “Management Review Group means a group, consisting of a unit manager, the senior manager, and a personnel officer, organized to discuss performance evaluations, proposed actions and developmental needs of unit staff members.” The discussions that took place in that meeting concerning the quality of the Applicant’s performance and the decision not to confirm her probationary employment were all recorded in a note to the Applicant of March 13, 1995. The meeting was attended by the Vice President of Operations of IFC, the Division Manager of CEMD1, and the Director of CPA; the Director of the Applicant’s Department did not attend. After long discussions, the Group decided unanimously that the Applicant’s confirmation be denied.

92. Based on the decision of the Management Review Group, the Vice President of Operations of IFC informed the Applicant by a letter dated February 3, 1995 of the decision to terminate her employment with IFC because her “performance [did] not warrant confirmation of [her] appointment to the staff of the Corporation.” He added that the “decision to terminate [her] appointment is based on a determination that, despite being given ample opportunity and guidance, you were not able to perform satisfactorily in your position.”

93. It is evident from the above series of evaluations of the Applicant’s performance that several weaknesses were consistently identified and brought to her attention both before and after she filed her complaint of sexual harassment in June 1994. It may be true, as the Applicant contends, that the kind of work assigned to her in CFS had not been a good choice for her, taking into consideration the nature of her previous experience in the private sector, and that there had not been enough work for her to do in CFS. The fact remains, however, that she was given more than one opportunity to improve her performance and to prove her ability to produce satisfactory work in two other departments. Against such record of unsatisfactory performance, it can hardly be alleged that the decision of the Respondent to deny the Applicant’s confirmation in her employment constituted an abuse of discretion. Such allegation is unsubstantiated by the record, and the Respondent’s decision not to confirm the Applicant in her position should therefore stand.

94. The Applicant further contends that the alleged harasser played a role in the evaluation of her performance in a manner leading to the decision not to confirm her. The record, however, shows that the only incident referred to by the Applicant relates to the evaluation report by the Division Manager where a copy of the draft was sent to the Director and where the latter made certain comments. Examination of said comments does not reveal any attempt to influence the decision of the Manager nor do they contain any negative elements of assessment. There appears to be no other incident to substantiate the Applicant’s claim. This contention, therefore, is unfounded.

95. One important contention made by the Applicant remains to be examined, namely that the work environment created by the improper behavior of her Director, and his repeated advances to her, created a hostile work environment, thus impeding her ability to perform in a satisfactory manner.

96. The Tribunal finds, in the light of the consistently unsatisfactory performance of the Applicant, that there is no support for the contention that had it not been for the unhealthy working atmosphere resulting from the

improper behavior of her Director, she could have produced satisfactory work. Her performance shortcomings as shown by the evaluations derived essentially from her lacking certain basic skills and experience. The Tribunal therefore rejects the Applicant's contention.

97. In the light of the above, the Tribunal finds that there is no justification to rescind the decision of the Vice President, Human Resources, dated June 3, 1997 as requested by the Applicant since there has been no abuse of discretion. The Tribunal, however, finds that harm has resulted to the Applicant for which she must be compensated.

DECISION

For the above reasons, the Tribunal unanimously decides:

- (i) that the request to rescind the decision of the Vice President, Human Resources, dated June 3, 1997, concerning misconduct under Staff Rule 8.01 in respect of sexual harassment be denied;
- (ii) that the Respondent pay to the Applicant \$50,000 net of taxes;
- (iii) that the Respondent pay to the Applicant legal costs in the amount of \$10,000; and
- (iv) that all other pleas be dismissed.

Robert A. Gorman

/S/ Robert A. Gorman
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At Washington, D.C., October 19, 1998

