# ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 17**
**(13 August 1996)**

**Sadiq Hussain Zaidi**
**v.**
**Asian Development Bank**

**Mark Fernando, President**
**R. Gorman, Vice-President**
**T. Sawada**

1. The Applicant challenges a decision by the Respondent to defer his 1994 overall pay increase (OPI) as a disciplinary measure for what was concluded by the Bank to have been fraudulent misrepresentations and claims regarding telephone calls made by the Applicant in January 1993. He contends that he did not make any such fraudulent representations, that the internal investigatory procedures utilized by the Bank and culminating in his discipline were seriously flawed and lacking in due process, and that the discipline imposed was disproportionate to any possible misconduct on his part. The Applicant seeks compensatory damages in the amount of $1,000,000 for personal and economic injuries, as well as "exemplary damages" and reimbursement of legal costs.

**The Factual Background**

2. The Applicant joined the Bank in January 1980 and now serves as a Senior Project Engineer in the Industrial and Minerals Division (EIIM). From 7 to 24 January 1993, the Applicant was on a programming mission to the People's Republic of China (PRC), along with his supervisor, 4the Manager, EIIM. Between 10 and 21 January, he placed 12 long-distance telephone calls from the Palace Hotel Beijing to the telephone operator at the Bank's Headquarters in Mandaluyong, Metro Manila. Almost every such call was at either 6 or 7 a.m. or after 7:30 p.m. (and some were as late as 10:30 p.m. and after midnight). He also placed other calls directly to Pakistan and to the United States.

3. The press of work upon his return to Manila delayed the Applicant's filing a Request for Reimbursement -- Business Travel (RRBT) until 23 February 1993, on the eve of his departure for his next mission. In his RRBT, he claimed reimbursement for 12 telephone calls as "official," 11 being from among those placed through the Bank operator; these 12 "official" calls totalled Y2,332.80 (US$409.08). On the same date, the Applicant sent a memorandum to the Manager, EIIM, stating:

> Your endorsement is kindly requested for the expenses incurred during the Mission in January 1993, in making official telephone calls (Y2,332.80) from the Palace Hotel in Beijing, for finalizing the engagement of two consultants from HIID (Prof. Theodore Panayotou and Prof. Clifford Zinnes) for the proposed Tangshan and Chengde Environmental Improvement Project.

That request was endorsed by the Manager, EIIM on the same day. It ultimately came to light, through proceedings to be described below, that only one telephone call, in the amount of Y63.80, was in fact made in connection with the hiring of consultants, and that the remaining Y2,269.00 of telephone calls claimed were for the most part routed to the Applicant's home allegedly in connection with a number of family medical emergencies.

4. Some two months later, on 23 April 1993, the Control Officer, Administrative Expense Section (CTEX), by memorandum asked the Applicant to explain certain of the claimed telephone expenses, in order to complete the reimbursement process:

> We note that out of 17 overseas calls from the Palace Hotel Beijing, 12 totalling Y2,192.90 ($384.70) were through ADB operator No. 632-4444. From the communication records maintained by the Bank, it was found out that the Bank operator number was used to route your calls to destinations (e.g. to your residence and other private residence) which appear not related to official business. To enable us to finalize your claim, we would appreciate your explanation [sic] the calls you made thru ADB operator.

5. By memorandum of 26 April to the Control Officer, CTEX, the Applicant explained that, apart from one call to EIIM secretaries on office business and one call to his wife to relay a message to the wife of a Mission member suddenly admitted to the hospital, two urgent calls were for "handling the processing of my Mercedes Benz car" (which the Applicant regarded as official), and several were to his residence "due to emergency situations in the family." Concerning the latter, the Applicant stated that his wife and three sons were all in need of emergency medical attention during the Mission, and that "With the understanding that the Bank always extended its full support under emergencies, particularly to the staff on Mission, I considered that since these telephone calls were official, these should be placed through the Bank operator." The Applicant closed his memorandum by acknowledging:

> I may have been wrong in predetermining the official nature of the calls and placing them through the Bank operator. If these calls are not considered as official calls, please charge them to my personal account and finalize the claim accordingly.

6. The Controller despatched a letter dated 5 May 1993 to the Director, Budget, Personnel and Management Services Department (BPMSD), the Department primarily responsible for dealing with disciplinary matters. The Controller mentioned "apparent abuses by some staff in connection with telecommunication expenses" and that "apparent attempts by two professional staff to make incorrect claims had come to light." One of those was the Applicant, and the other was another staff member whose resulting challenge to the Bank's subsequent investigatory procedures is also currently before the Tribunal. The Controller's letter questioned the Applicant's explanations in light of their inconsistency with his earlier claim to his Manager that the telephone calls charged as official all related to the recruitment of consultants.

7. Following a further examination within the Controller's Department (CTL), the Manager, Human Resources Division (BPHR), sent to the Applicant on 27 May 1993 a memorandum titled "Show Cause Notice." The Notice requested that the Applicant provide explanations concerning telephone calls "unrelated to official purposes" which had been claimed by him as being official, noted that his case was under review for the purpose of disciplinary measures under Administrative Order (AO) No. 2.07, and asked him to "show cause within 15 working days of the receipt of this notice as to why disciplinary measures should not be initiated against him." In his reply dated 16 June 1993, the Applicant denied having made any misrepresentation, stated that his 23 February RRBT and accompanying memorandum to his Manager were necessarily prepared in great haste and without attention to detail, and reiterated that the challenged telephone calls were placed through the Bank operator because of the Applicant's belief that, as they related to family medical emergencies, the Bank would regard them as official.

8. Once again, on 8 July 1993, through a memorandum from the Manager, BPHR, the Applicant was given another chance to respond to questions surrounding the 12 disputed telephone calls, totalling Y2,192.90 (US$384.70), which the Applicant had by then admitted to have been routed by him through the ADB telephone operator to private numbers including his residence. In particular, he was asked why he had not informed his Manager of those calls but had told him instead that all were official calls for finalizing the engagement of consultants; and he was also asked why those personal calls were not made directly but were rather routed through the ADB operator. The Applicant's reply of 16 July stated once again that his 23 February note to his Manager and reimbursement claim lacked the full details because of the "maelstrom of events" of that day and the "extreme pressure" under which he had been working since his return the month before from the PRC. He referred to his 26 April 1993 memorandum to the Controller's Department for full details of the circumstances surrounding the disputed calls.

9. A sequence of events then occurred, leading to a full third-party investigation by a Committee of Inquiry (COI) of charges against the Applicant and the ultimate imposition of discipline by the President of the Bank based upon a full report by the COI; the discipline imposed was a three-month deferment of the Applicant's 1994 salary increase. Those events will be recounted in greater detail below in connection with the Tribunal's consideration of the Applicant's contentions relating to procedural defects and lack of due process.

10. As was recently stated by the World Bank Administrative Tribunal, in Carew, WBAT Reports 1995, Decision No. 142, para. 32:

> In [disciplinary] cases the Tribunal examines (i) the existence of the facts, (ii) whether they legally amount to misconduct, (iii) whether the sanction imposed is provided for in the law of the Bank, (iv) whether the sanction is not significantly disproportionate to the offence, and (v) whether the requirements of due process were observed.

In the instant case, there are three principal issues before the Tribunal: whether there is sufficient proof of the Applicant's misconduct, whether the sanction imposed was within the Bank's discretion and proportionate, and whether the procedures utilized by the Bank were proper and in accordance with due process.

**The Applicant's Alleged Wrongdoing**

11. As to the first issue, the Tribunal concludes that there was more than adequate proof that the Applicant had intentionally misrepresented personal telephone calls as official, and thus sought reimbursement for nearly US$400 to which he was not entitled. It was therefore proper for the Bank to conclude that the Applicant was responsible for "unsatisfactory conduct" for which discipline is appropriate. The Applicant violated Section 2.12 of A.O. No. 2.02 as it was then written:

> The Bank has the right to require staff members to conduct themselves at all times in a manner befitting their status as employees of an international organization. They are expected to maintain a high degree of integrity and concern for the Bank's interests and to avoid situations and activities which may reflect adversely on the institution, compromise its operations, or lead to conflicts of interest.

The Applicant also disregarded the administrative order that deals with reimbursement of expenses; Section 4.3 of A.O. No. 4.01 provides:

> (b) Incidental expenses incurred abroad by staff on official Bank business such as communication charges, transportation and other reasonable expenses related to official business, are reimbursable upon submission of a Request for Reimbursement - Business Travel (RRBT) and receipts.
>
> (c) For every seven (7) day period that a staff member is away from the duty station on official mission, such staff member is entitled to claim the reimbursement for a personal telephone call to or from the duty station. . . . The duration of each telephone call is not expected to exceed six minutes.

Although the Applicant contends that this language is ambiguous and can reasonably be interpreted to allow reimbursement of exigent family phone calls, the Tribunal disagrees. The quoted language in Section 4.3(b) clearly allows for reimbursement of communication charges only when "related to official business." Personal telephone calls while away on mission are treated separately in Section 4.3(c) which limits them to one each week and to six minutes in length. Obviously, those latter limitations were exceeded by the Applicant.

12. The facts that support the finding of wrongdoing by the Applicant are undisputed. The Applicant on 23 February 1993 claimed reimbursement for telephone calls totalling Y2,332.80 and stated in his memorandum to his Manager that this precise amount of telephone expenses was for the engagement of consultants. In fact, the Applicant subsequently acknowledged, that only one of those calls was for that purpose, and only in the amount of Y63.80. What is disputed is the Applicant's state of mind accompanying that misrepresentation; the Respondent claims that it was knowing and with a purpose to defraud the Bank, while the Applicant claims that it was the inadvertent result of severe pressures at work and the need to save time in the preparation of the reimbursement documentation. It is the conclusion of the Tribunal that the inferences to be drawn from the undisputed facts are consistent only with the conclusion of intentional misrepresentation.

13. Even crediting the Applicant's claim of limited time for the preparation of his RRBT and memorandum -- even though a month had gone by since his return from Beijing at the end of his January 1993 mission -- it is extremely unlikely, particularly for a seasoned and senior staff member, that it was merely a careless oversight to aggregate, under the obviously official category of hiring consultants, 11 telephone calls made for other purposes. As the COI concluded in its report, "[A]n error of this magnitude cannot be regarded merely as a mistake. . . . Nor could Mr. Zaidi explain properly why the 23 February Memorandum referred only to 'consultants' when this was such a small fraction of the total ADB operator assisted calls."

14. In addition to his claim of hurried carelessness the Applicant asserts that he did reflect on the emergency nature of his family telephone calls and readily concluded, as he had in the past, that such calls while away on mission were properly claimed as official calls and thus fully reimbursable. There are several weaknesses in such a contention.

15. First, and sufficient to defeat it, is the fact that regardless of the Applicant's belief that his family calls were official, he made no mention of them in the 23 February memorandum to his Manager, which rather asserted that all of the calls claimed as official were for the purpose of engaging consultants. If the Applicant had indeed regarded the calls as official, there is no reason why he would not have referred to them in the memorandum, particularly since they comprised the overwhelming majority of the calls that he made. The clear impression is left that the Applicant at least doubted (or knew to the contrary) that he could be reimbursed for the family calls, so that he simply decided not to refer to them in his memorandum. Although the

Applicant contends that, at the time he asked his Manager, EIIM, to endorse the 23 February memorandum referring to consultants, the Applicant mentioned his having telephoned his family and thus dispelled any misrepresentation, the record does not support this contention.

16. Second, the Applicant asserts that he, and other staff members, have in the past claimed and secured reimbursement for personal calls in emergency situations, so that the Bank can be understood to have condoned such a practice. In rejecting this assertion, the Tribunal gives considerable weight to the fact that the Appeals Committee, was made up of staff members who would likely be sensitive to and aware of colleagues' practices of treating as official any telephone calls made while on mission to deal with family emergencies; nonetheless the Appeals Committee unanimously concluded: "[T]he Committee could not accept that the Appellant did not know that a telephone call to his family was a personal call." As for the Applicant's allegation that he had in the past claimed and been reimbursed by the Bank for such family calls, he was unable to identify instances in which his reimbursement claim had expressly adverted to family calls, so there was thus no way that the Bank could have ever reflected upon whether such calls fell within A.O. No. 4.1, let alone approved of such an interpretation.

17. Third, even were there to be some doubt as to whether telephone calls to or about sick family members could properly be characterized as official, surely it cannot be claimed that the Applicant's sale of a motor vehicle was the kind of "emergency" that justified his claim for reimbursement. His claim in this regard reinforces the conclusion that charging of his family calls was also in knowing disregard of the Bank's reimbursement policies.

18. A fourth, and particularly compelling, reason for rejecting the Applicant's contentions regarding the reimbursement of family telephone calls is the fact that he made them all (and the motor-vehicle calls as well) by way of the Bank operator at Headquarters in Manila. It is not disputed that any telephone call, whether official or personal, could have been placed by the Applicant using the direct dialing facilities of the Beijing Palace Hotel, and that the Bank would have reimbursed for any such official calls. Despite a number of efforts by the Bank to have the Applicant explain why so many family calls -- made before and after normal working hours -- were routed through the Bank operator rather than made directly to his home, even if they were properly deemed "official," the Applicant never responded to these inquiries. Nor was he able to explain that to the satisfaction of the COI. The Tribunal thus concludes that the COI was justified in holding that the calls were placed with the Bank operator so that the telephone records would show calls that would appear to relate to Bank business, so that claims for reimbursement of such "official" calls would routinely be made by the Controller's Office.

19. The Tribunal therefore concludes that the record presents overwhelming and uncontroverted evidence to support the Respondent's conclusions that the Applicant misrepresented claims for reimbursement of personal telephone calls during his January 1993 mission in Beijing, and that these misrepresentations were intentional and in knowing disregard of the Bank's policies governing staff members.

**The Sanction Imposed by the Bank**

20. It is also necessary to determine, under the standard quoted above from the decision of the World Bank Administrative Tribunal in Carew, and endorsed by this Tribunal, whether the sanction imposed by the Bank -- a three-month deferment of the Applicant's 1994 overall pay increase (OPI) -- was provided for in the law of the Bank and was not significantly disproportionate to the Applicant's offence.

21. There is no doubt that the sanction of salary deferment is one which, in terms of the Bank's rules and regulations, is within the powers of the Bank. Section 2.01 of A.O. No. 2.07, as it read at the time of the Applicant's wrongdoing and of the proceedings against him, specifically contemplated a range of disciplinary measures; it provided, in increasing order of severity, for verbal reprimand, written reprimand, deferment of salary increase, demotion with or without salary change, termination of appointment and summary dismissal.

22. The Applicant's principal contention as relates to the discipline imposed by the Bank is that the deferment of his 1994 salary increase, even if listed in A.O. No. 2.07, must be set aside as disproportionate to the severity of his offense. As the World Bank Administrative Tribunal has recently stated:

> The Tribunal has dealt with aspects of proportionality in prior cases in order to determine whether there is "some reasonable relationship between the staff member's delinquency and the severity of the discipline imposed by the Bank" and "to determine whether a sanction imposed by the Bank upon a staff member is significantly disproportionate to the staff member's offense, for if the Bank were so to act, its action would properly be deemed arbitrary or discriminatory." Planthara, WBAT Reports 1995, Decision No. 143, para. 37.

The Tribunal in that case took into account, inter alia, as provided by the written staff rules, the seriousness of the matter, the situation of the staff member, extenuating circumstances, and the frequency of conduct for which the disciplinary measures were imposed; in quashing the Bank's decision to terminate the services of a 24-year staff member for filing excessive overtime claims, the Tribunal gave weight to his long service, positive performance evaluations, diligent performance of duties, the modest amount of money involved, and the fact that the applicant's employment was not one involving higher management responsibilities. This Tribunal agrees.

23. The Applicant asserts that his alleged fraudulently claimed telephone calls involved the "paltry sum" of US$384.00. The Respondent, on the other hand, adverts to decisions of other administrative tribunals which sustained as severe a discipline as termination of employment for fraudulently claiming amounts of money far less than that claimed by the Applicant here.

24. The Tribunal is of the view that intentionally misrepresenting reimbursement claims in order to secure undeserved moneys from the Bank is by no means a trivial offense. It constitutes a lack of honesty and integrity in dealing with the Bank. Moreover, in determining whether a discipline is disproportionate and thus an abuse of discretion, it is obviously necessary to consider not only the gravity of the staff member's wrongdoing but also the severity of the sanction imposed. Here, that was not termination of employment or even a reduction in rank or salary. Rather, it was a brief postponement of the Applicant's salary increase. It should be noted that unlike a reduction in rank or salary, the postponement would appear to have no continuing impact on salary calculations and increases in subsequent years.

25. In imposing this disciplinary measure, the Bank properly considered such factors as the Applicant's seniority within the Bank and the fact that the offense was his first (at least the first that came to light and was provable to the Respondent's satisfaction). The Respondent cannot be found to have acted beyond its allowable range of discretion when it concluded that the Applicant's seniority, although weighing to some extent in his favor, also weighed against him in light of his enhanced responsibility as a high-ranking staff member.

26. In sum, with respect to the Applicant's substantive claims directed against the Respondent's disciplinary action, the Tribunal concludes that the Applicant intentionally made misrepresentations designed to secure undeserved moneys from the Bank, and that the disciplinary measure taken by the Respondent was proportionate to the offense committed by the Applicant.

**The Alleged Procedural Flaws and Denial of Due Process**

27. As already noted, the Tribunal in addition may consider, in a disciplinary case, "whether the requirements of due process were observed." The Applicant has set forth numerous contentions that the investigation undertaken by BPMSD and the inquiry undertaken by the COI were tainted by a significant number of serious procedural flaws and denials of due process. In order to address those contentions, it is necessary for the Tribunal to summarize the pertinent facts in some detail.

28. It will be recalled that on 5 May 1993, the Controller informed the Director, BPMSD, of "apparent abuses" in connection with telecommunications expenses, "apparent attempts" by two staff members to make incorrect claims, and their proffering of explanations that were deemed unsatisfactory. This led to the BPMSD memorandum titled Show Cause Notice, which asked the Applicant to explain the apparent irregularities in his claimed telephone expenses. The Applicant's responses of 12 June and 16 July denied wrongdoing, reiterated his belief that the emergency family telephone calls were properly chargeable as official, and referred to the great rush in which his reimbursement documents had been prepared.

29. On 3 August, the Staff Relations Officer, BPMSD, sent a memorandum to the Director, stating that "[t]his matter of using the ADB operator for personal telephone calls falls within the purview of A.O. No. 2.07 and has to be dealt with accordingly." That administrative order set forth penalties and procedures in disciplinary cases concerning unsatisfactory conduct by staff members. The Staff Relations Officer noted two situations within the year in which discipline had been imposed upon members of the supporting staff for "conduct unbecoming," and he further stated that "Many staff members already know about this case [of telephone overcharges by professional staff] and the Bank must be seen as taking appropriate action in the matter." He also observed that the existence of the Administrative Tribunal "requires BPMSD to proceed with caution and only when convinced of the facts beyond a reasonable doubt."

30. Several weeks later, on 21 October 1993, the Director, BPMSD, sent a memorandum to the President of the Bank. After noting that the Applicant and another staff member had made several private telephone calls through the Bank operator and had sought reimbursement for them as official calls, the Director proposed that the President initiate disciplinary measures by appointing a committee "under Section 4.1(d) of the A.O. No. 2.07," which committee would "conduct an inquiry into the charges of the Bank and recommend its findings to the President for appropriate action." In addition, the Director, BPMSD, proposed a change of policy for future disciplinary cases. He urged that -- although Section 4.1(d) of A.O. No. 2.07 provided for the appointment of a Committee of Inquiry only in the most serious disciplinary cases, i.e., those in which termination of appointment or summary dismissal was a proper discipline -- such committees should be appointed in all cases involving unsatisfactory conduct by staff possibly warranting even less severe disciplinary measures, i.e., reprimand, deferment of salary increase, and demotion with or without salary change (as itemized in Section 2.1(b), (c) and (d) of A.O. No. 2.07). He observed: "We are proposing to ensure due process in the handling of all disciplinary matters which require imposition of disciplinary measures. We believe that this approach will enhance fairness and transparency in our dealings with staff."

31. The Director, BPMSD, on 2 November 1993, sent the Applicant a memorandum entitled "Disciplinary Procedure--Notice of Charge and Inquiry." This document recounted the alleged misrepresentations relating to telephone expenses, and concluded by stating:

> [W]e are of the opinion that you have violated Sections 2.12 and 5 of the Administrative Order No. 2.02 by:
>
> a. misrepresenting private telephone calls as official business calls in your expense statement for the 7-24 January 1993 mission to China;
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> b. misrepresented your private telephone calls to your Manager as official telephone calls for finalizing the engagement of two consultants . . . ; and
>
> c. exhibiting total disregard and ignorance of the Bank's established regulations and procedures on business trips and use of telecommunication facilities.
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> In order to provide you with a fair opportunity to explain your case, it is imperative to hold this Inquiry. The proceedings of the Committee [of] Inquiry will be held in camera and you will be provided with a full opportunity to defend your position, examine documents and cross-examine witnesses, if any, in accordance with the provisions contained in the Administrative Order No. 2.07.

Shortly thereafter, the three members of the Committee of Inquiry were designated.

32. During the next several weeks, efforts were made by the COI and others to determine more precisely the COI's terms of reference and procedures. In particular, there was a felt need to clarify how this COI compared with the committee expressly contemplated in A.O. No. 2.07 for serious misconduct leading potentially to termination or summary dismissal.

33. For example, after being informed of the similar charges directed against the Applicant and another professional staff member, their two Directors -- in the Energy and Industry Department (EID) and the Private Sector Department (PSC) -- promptly expressed concern that a COI had been established under A.O. No. 2.07 for charges that "would appear to be of a minor nature." In response to that concern, the Director, BPMSD, wrote on 10 November:

> You are correct in pointing out that under Section 4.1(d) of Administrative Order (AO) No. 2.07, the establishment of a committee is envisaged for misconduct which would, if proven, warrant . . . termination of appointment or summary dismissal . . . . In the wake of the Lindsey case, however, we have come to the conclusion that a committee of inquiry should be established in all cases in accordance with the established practice of international organizations, and the revision of AO No. 2.07 is currently under way in conjunction with the comprehensive revision of Administrative Orders and Circulars.

The Lindsey decision was the first decision of the Tribunal, which articulated requirements of due process in the course of the Bank's deciding whether or not to renew or extend the appointment of a staff member initially appointed for only a fixed term. The Respondent asserts that, after the decision in that case, the Bank had concerns about reposing in BPMSD both the power to formulate disciplinary charges and the power to investigate those charges. (Subsequently, A.O. No. 2.07 was comprehensively revised to provide for third-party investigation of disciplinary charges for almost all degrees of misconduct by staff members; the

revised administrative order was renumbered 2.04 and was issued to staff in January 1994 and made effective as of 1 November 1993.)

34. On 15 November 1993, some two weeks after the issuance by BPMSD of the Notice of Charge and Inquiry, the COI had an informal meeting with the Applicant and explained, among other things, that they were an ad hoc committee appointed by the President to investigate and provide advice to him and that their authority was not formally derived from A.O. No. 2.07 and therefore was not confined to dealing only with dischargeable misconduct. At roughly the same time, the COI adopted Indicative Rules of Procedure, which were furnished, apparently orally, to the Applicant.

35. The first formal meeting of the COI with the Applicant took place on 6 January 1994, at which time the Applicant offered testimony; and his Manager, EIIM, offered testimony on 12 January. On 4 February 1994, the Applicant asked that the Director and Deputy Director, BPMSD, and the Controller be called by the COI to testify; but the COI declined this request, stating that the documents earlier written by these persons were already available to the Committee and to the Applicant, so that their testimony was unnecessary. The Applicant on 7 February requested a meeting and stated that he wished to be represented by counsel; such a meeting was held on 28 February, at which time the Applicant was represented by two attorneys. The COI on 2 March denied as "unnecessary" the Applicant's request to present evidence consisting of information about telephone-expense claims made earlier by other staff members. On 3 March, counsel for the Applicant wrote to the President objecting to the proceedings and requesting the appointment of a new COI.

36. The report of the COI on "Allegations of Misuse of Telecommunications Facilities," bearing the date 7 March 1994, was submitted to the President. The COI found that it had been proved beyond a reasonable doubt that the Applicant in his 23 February 1993 memorandum had misrepresented, fraudulently and with intent to deceive the Manager, EIIM, that certain telephone calls from his Beijing hotel were official calls in connection with the engagement of named consultants; that he had, in his RRBT of the same date, made the same misrepresentation to the Bank, fraudulently and with the intent to deceive; and that he had disregarded the Bank's regulations and procedures on the use of telecommunications facilities for the purpose of personal gain. The COI concluded that the Applicant's fraudulent misrepresentation to the Bank violated A.O. No. 2.02 in that he had failed to conduct himself in a manner befitting an employee of an international organization and had failed to exercise a high degree of integrity in the submission of travel reimbursement claims. The COI therefore found no need to determine whether the misrepresentation to his Manager also constituted a violation of administrative orders.

37. The COI Report was followed three days later by the Committee's Observations on the Conduct of Disciplinary Investigations, which was also transmitted to the President. These Observations were critical in several respects of the disciplinary proceedings for the Applicant, particularly those preceding the appointment of the COI, and made suggestions for future disciplinary cases. A response was prepared by an Assistant General Counsel, OGC, and forwarded to the President on 17 March 1994. Neither the COI Report nor its Observations (and the OGC response) was given to the Applicant until 15 June 1994 and 4 July 1994 respectively, despite requests therefor by the Applicant's counsel.

38. In the meantime, on 12 April 1994, the Applicant was informed by the Director, BPMSD, that the President had determined, on the basis of the COI Report, that the Applicant's 1994 overall pay increase should be deferred for three months; reference was made to A.O. No. 2.07 as the

source of that disciplinary measure. In the BPMSD notification, the full conclusions reached by the COI regarding the Applicant's fraudulent misrepresentations and his resulting violation of administrative orders and staff regulations were set forth verbatim.

39. The Applicant filed a timely appeal with the Appeals Committee, which convened in November and December 1994 and decided on 2 February 1995, among other things, that: the procedures before BPMSD and the COI were regular and fair, that there was no basis for disagreeing with the inculpatory findings of the COI, and that the President did not act in excess of his powers or abuse his discretion in deferring the Applicant's OPI for three months.

**(i) The BPMSD Investigation**

40. First, the Tribunal will consider the principal contentions of the Applicant regarding alleged improprieties in the BPMSD investigation leading to the Notice of Charge and Inquiry. At the threshold, the Respondent contends that any procedural flaws or lack of due process in the BPMSD investigation are immaterial and should be disregarded by the Tribunal, because the COI conducted an altogether independent investigation and made altogether independent findings, purposefully ignoring any fruits of the antecedent BPMSD investigation. The COI did indeed express concerns about the fairness of the BPMSD investigation following upon the issuance of the Show Cause Notice on 27 May 1993, and concluded: "[T]he Committee decided that it was unsafe to rely on any documentary evidence provided by Mr. Zaidi after 27 May. . . . Rather, the Committee focused on the alleged misrepresentations in the 23 February Memorandum and the RRBT, respectively, and sought to establish the facts by independent Inquiry."

41. The contention of the Respondent on this issue cannot be sustained. It may well be that neither the COI nor the President in later imposing discipline was tainted by any alleged procedural improprieties in the antecedent investigation by BPMSD, and that their conclusions with respect to fraudulent misrepresentations are substantively unassailable. Nonetheless, it is conceivable that there might have been antecedent procedural shortcomings that were so unfair to the Applicant, and that so disadvantaged him in responding to the Show Cause Notice, that it would be proper for the Tribunal to provide him with a remedy -- perhaps short of vacating the disciplinary withholding of his salary increase -- in order both to rectify tangible or intangible injury and to serve as a deterrent to the Respondent in comparable future cases. For those shortcomings may constitute a breach of the terms and conditions of his employment -- which, as the Tribunal has held, encompass inter alia general principles of law, Staff Rules and Regulations of the Bank, Personnel Handbooks for professional and support staff, and Administrative Orders and Circulars (Lindsey, Decision No. 1 [1992], para. 4). If so, then the Tribunal has the power to issue an appropriate remedy.

42. The Applicant contends, among other things, that BPMSD and other departments involved in investigating the telephone charges were improperly motivated, were biased against him, and had predetermined his guilt; that there were improper breaches of confidentiality; and that the Show Cause Notice went beyond the Bank's authority as set forth in A.O. No. 2.07.

43. When the Control Officer, CTEX, on 23 April 1993 asked the Applicant to explain the telephone calls made to the Bank's telephone operator, and when -- after the Applicant provided what was deemed an unsatisfactory response -- the Controller on 5 May informed BPMSD, of "apparent abuses" by some staff of the Bank's telecommunications reimbursement policies and the "apparent attempts" by two staff members to make incorrect claims, this was in no way improper. These were not prejudgments of the Applicant's and his colleague's culpability, but

rather no more than the identification of an irregularity -- indeed, the Applicant himself had acknowledged that his claim in the 23 February Memorandum regarding all "official" calls as having been made in order to engage consultants was not true.

44. For similar reasons, the Tribunal rejects the Applicant's contention that the issuance of the Show Cause Notice of 27 May 1993 reflected prejudice on the part of BPMSD. That notice constituted no more than an assertion that, on the evidence at hand, there was a reasonable basis to believe -- absent further explanation or justification from the Applicant --that he had improperly claimed reimbursement for telephone calls and that a third-party investigatory body would have to investigate further and draw conclusions about that matter. BPMSD was in effect declaring that it had no authority to make a dispositive determination of the Applicant's culpability vel non, and that such authority reposed only in a separate and independent body. This was also the message underlying the Notice of Charge and Inquiry, communicated by the Director, BPMSD, on 2 November 1993; and it too cannot be regarded as providing evidence of bias or prejudgment by the Respondent.

45. The Applicant also alleges bias and prejudgment in the dealings between BPMSD and an Assistant General Counsel from the OGC. The Tribunal is satisfied that these communications did not reflect "collusion," as the Applicant contends, but rather appropriate inquiries and responses concerning the propriety of initiating disciplinary proceedings, the preparation of the Show Cause Notice, and the weighing of potential disciplinary measures. Particularly pertinent is A.O. No. 1.02, which sets forth as one of the principal responsibilities of the OGC to "advise the President, Departments and Offices of the Bank . . . on legal questions relating to the organization, structure, administration, policies or operations of the Bank and on the legal aspects of any such matters on which the office is consulted."

46. The Applicant contends, for a number of reasons, that BPMSD acted in excess of its proper authority when it issued a Show Cause Notice. The principal assertions are that A.O. No. 2.07 made no provision whatever for the issuance of such a Notice, and that that administrative order reposed power to discipline in department heads and not in the BPMSD.

47. It is true that A.O. No. 2.07 made no express provision for the issuance by BPMSD of a Show Cause Notice. Yet it is the conclusion of the Tribunal that even though the Show Cause Notice was not required or even provided for in that administrative order, it was within the implied authority of BPMSD to issue such a Notice. A.O. No. 2.07 gave to BPMSD a central role in the implementation of disciplinary measures for unsatisfactory performance, including providing written charges and conducting a hearing. It would be undesirable for charges and an investigation to follow immediately upon allegations or suspicions of wrongdoing; rather, it is reasonable to assume that A.O. No. 2.07 contemplated that BPMSD would first assure itself that charges were warranted. To do this, it was within its authority to hold a preliminary investigation, including the affording of an opportunity to the suspected staff member to proffer evidence or explanation. That was the purpose of the Show Cause Notice. Surely no staff member can reasonably question this procedure, which is intended to assure due process.

48. What has just been stated refutes as well the Applicant's assertion that the Head of his Department was the only "competent authority" authorized by A.O. No. 2.07 to initiate proceedings and to impose disciplinary measures upon him. That administrative order does provide, in Section 6.1, that "Heads of Departments/Offices are responsible for maintaining discipline of all staff members under their general supervision." But it must also be noted that Section 4.1 of A.O. No. 2.07 expressly empowers BPMSD to assure that "[t]he staff member will be acquainted in writing with the nature of the charges against him." It therefore cannot

reasonably be maintained that BPMSD was not the competent authority to issue the Notice of Charge and Inquiry. Moreover, A.O. No. 2.07 provided that it was only for verbal or written reprimands that the Head of Department was empowered to take effective action without the President's authorization, and even then Section 3.1(c) required that there be consultation with the Director, BPMSD. More severe discipline, such as deferment of salary or demotion in rank, did not contemplate unilateral decision making by a staff member's Head of Department.

49. In any event, A.O. No. 2.07 reiterates that it is the President who has the power to administer discipline -- a power earlier granted under the higher authority of Article 34 of the Charter of the Bank and Section 24 of the Staff Regulations -- and the administrative order purports simply to declare the manner in which the President delegates that power regarding stipulated disciplinary measures. The administrative order does not purport to declare that the President cannot in particular cases choose to exercise, in effect to re-claim, that power himself.

50. The Applicant also asserts that the Show Cause Notice was defective for the reason that it placed the burden upon him to explain or justify his behavior, i.e., to prove absence of culpability, and that it thereby violated his right to remain silent in the face of accusations and to rely upon a presumption of innocence. To the extent that the Applicant means to suggest that it was improper for BPMSD to issue the Show Cause Notice until it was convinced of the Applicant's culpability beyond a reasonable doubt, that misconceives the respective responsibilities of BPMSD and the COI; it was for the COI, not BPMSD, to reach adjudicatory-like conclusions about culpability. To the extent the Applicant means to suggest that no adverse implication could properly be drawn by BPMSD from his failure adequately to respond (or to respond at all) to the Show Cause Notice, this too represents an improper transfer of criminal law precepts into internal Bank procedures designed to assess possible disciplinary measures. The Respondent has made convincing reference to staff rules and Tribunal decisions of other international organizations to support the principle that staff members may be required to cooperate in a disciplinary inquiry and that failure or refusal to do so may at the least give rise to an adverse inference and may indeed constitute independent grounds for disciplinary action. See, e.g., World Bank Staff Rule 8.01; In re Saunoi (No. 4), ILOAT Judgment No. 1085 (1991), para. 3; Wallach, UNAT Judgment No. 53 (1994), para. 7.

51. The Applicant's contentions relating to the breach of the confidentiality of Bank documents in his case are, in the view of the Tribunal, more troubling. The Applicant claims that, despite the Bank's acknowledgment at every stage that all communications and proceedings were to be strictly confidential, there was wide and careless disclosure that caused direct injury to the Applicant and that influenced the decisions made by BPMSD and by the COI. It is indisputable that the disciplinary procedures contemplated by the Bank's pertinent instruments are to be carried out with the utmost discretion and attention to confidentiality. That is particularly true in a case such as this, in which there are charges of serious ethical wrongdoing and in which those charges have been contested and remain technically unproven until the end of a lengthy process of investigation.

52. The record shows that one document setting forth the allegations and proceedings against the Applicant was intentionally distributed at least to the following: the President, the Vice President (Finance and Administration), the OGC, BPMSD, the Controller's Department, the Office of Administrative Services (OAS), and the Heads of Departments in which worked the Applicant, his accused fellow staff member, and each of the three members of the COI. It is contended by the Bank, however, that each of these individuals or departments was necessarily involved or directly interested in the Applicant's disciplinary proceeding and that it was essential

that they be contacted at one or another stage of that proceeding. Beyond that, pertinent documents were marked "Strictly Confidential."

53. The Tribunal concludes that, by and large, the Respondent made reasonable attempts to keep communications and proceedings relating to the Applicant's case confidential. It is indeed inevitable that various persons within the Bank will be involved in, and can reasonably be kept informed about the course of, disciplinary proceedings. But it is important that the Bank, rather than relying on past practice and a generalized claim of "need to know," identify with care the precise need of particular Bank officials to know of the details of particular disciplinary proceedings. For example, it is not obvious to the Tribunal why the Heads of Departments in which COI members are employed must, or should, know of anything more than that those three persons have been appointed to a committee of inquiry in an unspecified disciplinary matter; identification of the charged staff member, and details of the charges against him, seem to be altogether unnecessary. Similarly, the Tribunal expresses its concern that information about both the Applicant and his accused fellow staff member were too often disseminated in a single document, so that, for example, each Department Head knew of the accusations against a staff member who was not in his Department. This was unnecessary, and impaired the Applicant's right to confidentiality.

54. The Applicant asserts that members of the support staff learned of the BPMSD investigation at an early stage, and exerted pressure to take stern disciplinary action. The record clearly shows that the support staff did get wind of an investigation into improper telephone claims by some professional staff members. But it has not been established that the Applicant or his colleague was personally identified as a person under investigation, or that responsible Bank authorities were responsible for any such disclosures, or that any such disclosures to the support staff improperly influenced the investigation or the outcome of the Applicant's case. The fact that two support staff members had recently been discharged, for more serious offenses (including the submission of fraudulent medical claims), in all likelihood did induce the Bank to pursue the Applicant's case with particular seriousness of purpose. But that alone cannot be regarded as arbitrary, discriminatory or an abuse of discretion by the Bank; indeed, had the Bank been markedly less thorough in the proceeding here than it had been in the earlier cases of support staff, such behavior could well have been condemned as discriminatory.

**(ii) The Creation of the COI**

55. Related to the question of the authority of BPMSD to issue a Show Cause Notice, already discussed, is the very central claim of the Applicant that BPMSD had no authority under A.O. No. 2.07 to appoint a COI either. As already noted, Section 4.1(d) of that administrative order required that a COI be appointed only "where the case involves misconduct which, if proven, will be a ground" for termination or summary dismissal. At all times in this case, however, BPMSD acknowledged that the issue of sanction was not meant to be foreclosed, and that the COI was not "strictly" based upon A.O. No. 2.07 but was merely "similar to" the kind of Committee contemplated in that administrative order. The Respondent has explained its creation of a COI as a proper, if not a required, response to the Tribunal's decision in Lindsey, Decision No. 1 [1992], which emphasized the need for due process by the Bank when refusing to extend a fixed-term appointment on account of poor performance. The Bank inferred that it should have an independent third-party investigation of essentially all disciplinary charges and not merely those likely to culminate in termination or summary dismissal. The Bank concluded, among other things, that there should be a separation of functions between the accusatory, as reflected in the Notice of Charge and Inquiry filed here by BPMSD, and the investigatory.

56. The Tribunal has no doubt that, as a general matter, the President has the institutional authority to create committees of inquiry to assist in investigating and making recommendations concerning disciplinary matters, even when those might not be specifically mentioned in an administrative order. Apart from anything in A.O. No. 2.07, there are more authoritative Bank instruments which furnish such a source of Presidential authority. Article 34, Section 5 of the Agreement Establishing the Asian Development Bank (the Charter) expressly provides that "The President shall be chief of the staff of the Bank . . . [and] shall be responsible for the organization, appointment and dismissal of the officers and staff in accordance with regulations adopted by the Board of Directors." Section 24 of the Staff Regulations also provides that "The President may impose disciplinary measures on staff members whose conduct is unsatisfactory." The power to impose discipline must include the power to determine the facts upon which disciplinary action is to rest, and the creation of a committee of inquiry -- accompanied by assurances of due process -- is a reasonable method for the exercise of this power. The Tribunal therefore concludes that, simply because the COI that was created to investigate the Applicant's alleged wrongdoing was not expressly contemplated by A.O. No. 2.07, that alone did not render the appointment of such a committee beyond the powers of the President. Even if a COI was not required under that administrative order, neither was it prohibited.

57. But the creation of a COI under the specific facts and circumstances of a given case might properly be challenged as an abuse of the Bank's discretion. It has been argued that the creation of the COI in the instant case was an unwarranted formality, because the issue was focused, the facts were essentially undisputed, the alleged wrongdoing was not egregious, and the likely discipline was modest. Indeed, after considering the two cases assigned to it regarding misrepresented telephone expenses, the COI itself so asserted in its Observations on the Conduct of Disciplinary Investigations, dated 10 March 1994:

> The facts of the two cases were quite straightforward, they were reasonably well documented and involved claims for relatively small amounts of money. Such relatively simple cases should have been decided quickly, but fairly and, arguably, need not have been considered by a formal inquiry. BPMSD seems to believe, or has been advised, that the only way to ensure fairness is for virtually all allegations of misconduct to be referred to Committees of Inquiry before disciplinary action is instigated.
>
> We do not agree with this view.
>
> The Bank should have fair, transparent and equitable procedures, which enjoy the confidence of staff, for dealing with disciplinary matters. If such procedures were in place and properly administered, only the most serious allegations would need to be referred to formal inquiries; the rest could be handled in a confident, discreet and professional manner by executive action.

The COI, in effect, concluded that this was a minor case in which its own establishment constituted an excess of due process.

58. The fullest response provided by the Bank in the record of this case is in the 17 March 1994 memorandum to the President drafted by an Assistant General Counsel, OGC, which was designed to rebut many of the criticisms set forth by the COI in its Observations memorandum. There, the Assistant General Counsel explained the reasons for creating a COI in all cases except those involving the most minor wrongdoing:

> . . . The old A.O. [No. 2.07], under which the initial investigator of the alleged misconduct, the initiator of disciplinary proceedings and the final recommender of disciplinary action were the same, would not withstand the review and scrutiny of the Administrative Tribunal. We have to have a formal third party fact-finding body to determine whether BPMSD's charge is accurate or not. This requirement of "due process" is independent of how small the staff member's monetary gains were. A "verbal reprimand" and "warning" are excluded from disciplinary measures. They are treated as part of normal supervisory functions to be exercised by the supervisors concerned.
>
> . . . [T]he establishment of a third party committee to ascertain facts concerning the alleged misconduct and to provide appropriate procedures, in which the right of the staff member concerned to answer the allegation is properly safeguarded, is "a general practice accepted as law" in the areas of disciplinary proceedings to fulfill due process. [Reference is made to the Tribunal decision in Lindsey.] . . .
>
> It is correct that under Section 4.1(d) of old A.O. 2.07, the establishment of a Committee was envisaged for the misconduct which would, if proven, warrant the termination of appointment for misconduct or summary dismissal for serious misconduct . . . . In the wake of the Lindsey case, however, we concluded that a committee of inquiry should be established in all cases except summary dismissal for serious misconduct in accordance with the established practice of international organizations. . . .

The Reply of the Assistant General Counsel indicates his view that any such investigatory committee should be sensitive to the "degree of economy and selectivity" warranted in the particular circumstances of the case, the need for maximum dispatch, the brevity of statements and rebuttals, and the desirability of forwarding recommendations within two weeks after being convened.

59. The Tribunal concurs in what it perceives to be common ground between the COI Observations and the Reply of the Assistant General Counsel: that there are certain cases in which the alleged offense is so trivial, the likely discipline so minor, and the facts so straightforward, that it might reasonably be viewed as an abuse of discretion for the Bank to initiate an elaborate investigatory proceeding. In those circumstances, what might be regarded as due process could otherwise be viewed as an unreasonable exhaustion of the resources and energies of the accused staff member as well as of those sitting in judgment, as well as of the Bank and of its staff who participate in the disciplinary proceedings. In other words, the principle of proportionality may sometimes apply not only to the substantive sanction but also to the disciplinary procedures themselves.

60. The Tribunal concludes, however, that the present case does not involve such disproportionality. Here, although most of the facts were undisputed, there was an issue relating to the Applicant's state of mind when he made the misrepresentations concerning telephone charges -- a matter about which he was persistent in his defense and to some extent evasive. Moreover, when the proceedings before the COI were initiated, the nature and quantum of the Applicant's wrongdoing could not have been regarded as clearly trivial, and the discipline that was contemplated, although not at the level of termination of employment, was such as possibly to have resulted in considerable monetary and reputational harm to the Applicant. In all of these circumstances, it cannot be said that the Bank acted arbitrarily or abused its discretion in conducting its investigation with the assistance of the COI. It should be pointed out, moreover, that the COI held very limited hearings and heard only two witnesses; indeed, in the interests of expediting proceedings and avoiding duplication, it denied the Applicant's requests for further

taking of testimony and production of documents (rulings that the Applicant has in fact challenged before the Tribunal). It can therefore be said that the COI acted with reasonable dispatch and economy of proceedings.

61. Related to the contention just discussed is the Applicant's further contention that A.O. No. 2.04 -- announced in January 1994 as a replacement for old A.O. No. 2.07 -- was improperly applied to him retroactively, in violation of the principle articulated in such decisions as that of the World Bank Administrative Tribunal in de Merode, World Bank Reports 1981, Decision No. 1. To apply to disciplinary proceedings conducted in November 1993 procedures incorporated in an administrative order not adopted until January 1994 would indeed raise the most serious questions of retroactivity in violation of a staff member's terms of appointment.

62. The Tribunal is, however, satisfied that all of the proceedings in this matter were conducted under the terms, express and implied, of the "old" A.O. No. 2.07, as in operation at the time of those proceedings. Indeed, when this COI was appointed, there were many references to A.O. No. 2.07, so that a number of parties (particularly the Heads of Departments in which the two accused staff members were employed) expressed misgivings about the severe sanctions apparently contemplated under that provision. Several documents to reach the Applicant, including the 2 November 1993 Notice of Charge and Inquiry itself, expressly referred to A.O. No. 2.07. The COI stated in the first footnote to its 7 March 1994 report: "In accordance with the accepted convention that penal regulations should not have retroactive effect, the Committee has based its proceedings on Administrative Order No. 2.07 which was in effect at the time of the allege commission of the violations, namely January 1993. This is the A.O. referred to in the BPMSD documentation." There was thus no improper retroactive application of the Bank's administrative orders.

**(iii) The COI Proceedings**

63. The remaining claims of procedural error and lack of due process that are presented by the Applicant relate to the proceedings before the Committee of Inquiry. He claims, among other things, that the COI was biased and prejudged him; that the COI improperly dissuaded him from securing counsel; that the COI prevented him from introducing certain documents and calling certain witnesses; that the COI failed to make a verbatim transcript of its hearings with the Applicant; and that he was not given a copy of the COI report, and an opportunity to comment upon it, prior to its submission to and consideration by the President.

64. The Tribunal concludes that there is no evidence whatever to support the assertion that the COI was biased against the Applicant and had prejudged him. From the first informal meeting with the Applicant on 15 November 1993, the COI emphasized that it would take pains to make future proceedings clear and that he could state his case, defend himself, and be represented by counsel; the COI explained to him in detail the so-called Indicative Rules of Procedure that it had recently drafted, which provided among other things that "all elements of each charge against the person under inquiry, including the necessary wrongful intent, must be proven beyond reasonable doubt and not merely on the balance of probabilities"; at the first formal meeting of the Applicant with the COI, he was told that he was presumed innocent, that hearsay evidence would be inadmissible; that he would be accorded the privilege against self-incrimination, and that any adverse finding would have to be made beyond any reasonable doubt.

65. These assurances, and the COI's subsequent conformity to them, conclusively demonstrate both the freedom from bias of the COI and the fairness and due process accorded the

Applicant. This conclusion is reinforced by the refusal by the COI to take into account any evidence generated during the antecedent BPMSD investigation based on its Show Cause Notice, and by the COI's outspoken criticism of that investigation in its Observations filed with the President on 10 March 1994.

66. Although the record shows the objectivity of the COI, it also shows that it was quite unsure through November and December 1993 of its terms of reference from the President and to some extent of the applicable procedures and the contemplated disciplinary sanctions. By referring to Section 4.1(d) of A.O. No. 2.07 in a number of communications, BPMSD did -- as the Applicant contends -- contribute to that uncertainty. That was surely regrettable. The Tribunal notes, however, that more or less contemporaneously there were further communications that made clear to both the Applicant and the Committee that the contemplated COI was only "similar to" one appointed under Section 4.1(d), that it was created ad hoc to deal with the two instances of telephone overcharges, that the contemplated discipline was within a flexible range and not necessarily termination or summary dismissal, and that in the interests of due process the appointment of a COI was in the future to be made in almost all disciplinary cases. Moreover, the procedural rules to be used by the COI were rather firmly in place and explained to the Applicant within two weeks of the COI's appointment. Nor is it likely that any uncertainty about the relationship between the COI and the President materially disadvantaged the Applicant.

67. Although the Applicant has attempted to raise doubts about his knowledge of his right to representation by counsel before the COI, the record is clear that he was promptly informed of that right in November 1993, that he chose not to exercise that right immediately, that he was told that he could reconsider later, and that he in fact did so in February 1994, when he appointed two attorneys to represent him. It should be noted that, in the contemporaneous COI proceeding arising from similar charges against a fellow staff member, the latter exercised his right to counsel promptly and he was represented by an attorney throughout the COI proceeding. This confirms that the Applicant here was clearly and promptly apprised of his rights in that regard.

68. The Applicant also contends that due process was denied because he was not provided with a verbatim transcript of the COI proceedings. Instead, the COI informed the Applicant that he could be present during the taking of all testimony and that the COI would keep a non-verbatim written record, which it did. The Applicant was also told that he could make a tape recording of the proceedings, and he thereafter did so and developed a full written transcript of his own, to which he or his counsel made reference in the pleadings here as well as in communications with the President of the Bank. A.O. No. 2.07 makes no provision for verbatim transcripts of disciplinary proceedings, and it appears not to be a uniform practice in other international organizations in what is formally a non-penal investigation. Under the circumstances of this case, the Tribunal concludes that not providing a verbatim transcript was not an arbitrary or unfair decision by the Respondent, and that no material injustice was done.

69. The Applicant also claims that the COI unfairly denied him the opportunity to call certain witnesses and to secure certain documents from the Bank. The COI declined to grant the Applicant's requests only after determining that those documents and witnesses were not pertinent to the precise issues in dispute, i.e., the alleged fraudulent misrepresentations, and that they dealt rather with such irrelevant matters as the telephone calls that were made to the Bank on concededly official business. The COI made explicit to the Applicant and his attorneys that witnesses would not be called unless they would be able to provide probative and relevant evidence; neither the Applicant or his attorneys explained to the satisfaction of the COI that the

requested witnesses would satisfy that standard. The Tribunal concludes that neither that standard, nor its application by the COI in the proceeding before it, was improper, irregular or unfair.

70. The Tribunal is, however, troubled by the fact that a copy of the 7 March 1994 COI Report and its 10 March 1994 Observations, although requested by the Applicant and his attorney, were not transmitted to him until 15 June and 4 July respectively, more than two months after the President's disciplinary decision of 12 April 1994. That may have been, as the Respondent contends, time enough to allow the Applicant to prepare his case for administrative review and ultimately before the Appeals Committee. But the question remains whether the Respondent was obligated by Bank regulations or otherwise to furnish the Applicant more promptly with copies of the Report and Observations.

71. Section 5 of A.O. No. 2.08, concerning Access to Personal Career Files, provides:

> The contents of all documents and notes which form part of the personal file of a staff member, written by their Managers and other officers in various functions should be divulged to and made known to the staff member concerned at an early stage. It is, therefore, essential that such documents or notes be copied to the concerned staff member upon the completion of said documents in order to avoid misinterpretation and to enable the staff member to comment or take such action as is allowed to rectify any inaccuracy contained in said documents.

The Tribunal concludes that, at least until acted upon by the President, the 7 March Report and the 10 March Observations of the COI were properly treated as internal documents intended for the purpose of advising and making recommendations to the President. Once the President made a formal decision imposing discipline upon the Applicant and reiterating the findings of the COI regarding the Applicant's offense, A.O. No. 2.08 appears to contemplate that the two pertinent COI documents should have been made available to the Applicant, upon request, with reasonable promptness. The delay of more than two months was unnecessarily long, even if the Applicant can point to no precise injury that resulted from such delay.

72. Other, more incidental, contentions of the Applicant regarding procedural flaws in the disciplinary proceedings have been thoroughly considered by the Tribunal and have been found unpersuasive.

**Conclusion**

73. In sum, almost all of the Applicant's contentions -- including his challenge to the Respondent's determination on the merits regarding unsatisfactory performance warranting a three-month deferral of his 1994 pay increase -- must be rejected. There were some respects in which proper procedure was not carefully followed, in particular with regard to the breach of confidentiality of the disciplinary proceedings and the delayed disclosure of the COI Report and Observations. In these latter respects, it is likely that some intangible injury was caused to the Applicant; the extent of that impact cannot be precisely measured, although it is clear to the Tribunal that it did not rise to the level of warranting a rescission of the discipline imposed or a significant compensatory judgment. The Tribunal considers an award of US$ 3,000 to be equitable. Although the Applicant has requested that the Respondent be directed to pay his costs, the Tribunal notes that it would ordinarily be appropriate to make such an award taking into account the proportion of his claims that were ultimately sustained by the Tribunal. Here,

however, in view of the extensive and unwarranted prolixity of the pleadings and annexes proffered by the Applicant, his claim for costs should be denied.

**Decision:**

For these reasons, the Tribunal unanimously decides that the Respondent shall pay the Applicant equitable compensation in a sum of US$ 3,000. In all other respects, the Application is dismissed.