APPLICATION No. 2018/09

B. M., applicant
African Development Bank, respondent

Judgment No. 133 of the Administrative Tribunal, delivered on 24 July 2020

I. FACTS

1. The applicant joined the African Development Bank (Bank), South Africa Office, as a Senior Statistician in the Department of Statistics (ECST) on 12th December 2007.

2. In 2015, the applicant was the Task Manager of the Bank’s Statistical Capacity Building (SCB) IV Training Programme in Southern Africa.

3. In November 2017, the Office of Integrity and Anti-Corruption (PIAC) commenced an investigation into allegations of fraud and forgery against the applicant, which was concluded in February 2018.

4. On 17th May 2018, the Director of Human Resource Management (CHHR) notified the applicant of the charges and requested a formal written response from him. The letter stated:

   “As you are aware, the Bank, through the Office of the Integrity and Anti-Corruption (PIAC) has been conducting an investigation into fraudulent activities allegedly committed by you whilst discharging your duties as the Task Manager of all SCB IV Training Programmes in Southern Africa. The alleged fraudulent activities are in relation to the use of the Bank funds provided to you for the purposes of covering the costs of participants and other costs of different workshops organized by the Bank.”

5. The letter further stated that the applicant had fraudulently diverted USD 58,689 of Bank funds by submitting fraudulent documentation to justify expenses spent on training workshops in Geneva, Switzerland in 2015, Dar-es-Salaam, Tanzania in 2015, Harare, Zimbabwe in 2016, Port Louis, Mauritius in 2016, and three Multiple Consultancy contracts under Statistical Capacity Building.

6. On 5th June 2018, the applicant responded to the allegations of fraud and forgery. He admitted the charges and stated:

   “I would like to start by sincerely apologizing for my conduct towards justifying the expenses for the four workshops where I was the Task Manager. However, I would like to put it on record I did not intentionally plan to commit the forgery and fraud from the beginning but was forced to do so under extreme pressure to justify.”

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The applicant gave explanations regarding the four workshops and the three consultancy contracts in an attempt to exculpate himself. However, he concluded his defense by stating:

“In conclusion I would like to sincerely apologize once again for my misconduct. It was bad judgement on my part, and I take responsibility for this behavior which is not appropriate for an international civil servant entrusted with Bank resources. My appeal to you sir, is not to terminate my services and give me a second chance.”

On 22nd June 2018, the respondent summarily dismissed the applicant on the ground of serious misconduct touching on the financial and other interests of the Bank.

On 10th September 2018, the applicant filed an application with the Tribunal challenging the respondent’s decision of summary dismissal.

II. ARGUMENTS OF THE PARTIES

The applicant

10. The applicant claims that deductions from his salary constituted a disciplinary measure, especially in light of the fact that the deductions were made on a 100% basis. In support of his claim, the applicant states that the deductions from his salary commenced in June 2017 up to the time he was dismissed on 22nd June 2018. He further states that although the investigations were only concluded in February 2018, the deductions started nine months earlier in June 2017. He claims that he was subjected to a 100% deduction for a year in violation of Staff Rule 53:03 which stipulates that any deduction shall not exceed 50% of the member’s salary.

11. The applicant submits that he was unfairly treated by his supervisor. In support of this allegation, he states that at one point a deduction of USD 6,926 regarding a World Statistics Congress (WSC) workshop in Brazil was made to his salary that would not have been deducted had the supervisor treated him fairly. He alleges that he was not treated the same as other people in the department who had more substantial expenditure to justify. He states that he was not given an opportunity to explain at departmental level and further that, in violation of Staff Rule 103:01(b), his case was never referred to administrative channels like the Staff Appeals Committee.

12. The applicant further submits that his acts of fraud and forgery were not intentional and deliberate. He asserts that he was under pressure to justify the expenditures because of the threat by Administrative Expenses Division of the Financial Control Department (FIFC2) not to approve any expenditures for the Department of Statistics. He states that he had justified the expenditure and sent the original documents, which were lost in transit between Pretoria and Abidjan. He also mentions that the main reason for his delay in justifying the expenditure was that he was not given sufficient administrative support for the workshops, as was the case in relation to previous workshops involving Task Managers based at Headquarters (HQ) in Abidjan.

13. The applicant argues that the respondent exaggerated the charges of fraud and forgery against him. As a result, he submits that the Bank improperly deducted from his salary USD 15,510 for the Mauritius workshop, 3,417 euros for the Geneva workshop and USD 6,926 for the WSC workshop.

14. The applicant claims that the respondent did not prove serious misconduct. He asserts that his letter dated 5th June 2018 provided a plausible defence to the allegations of forgery and fraud and that the
The applicant submits that he was not afforded due process by the respondent and that his summary dismissal was disproportionate to his misconduct. In support of his claim, he states that the respondent did not comply with Staff Rule 101.02, Staff Rule 101.03 and Staff Rule 101.04 as a whole. He claims that the respondent violated Staff Rule 101.04 as demonstrated below:

a. The applicant claims that the integrity and reputation of the Bank was not affected as all mandatory payments related to the workshops were made but there were funds which remained as contingency.

b. The applicant maintains that there was no intention to defraud the Bank from the beginning. He avers that the issue only came about when he was required to justify the apparent expenditure of funds he was left with after the workshops were conducted because the contingency funds were not utilized.

c. The applicant explains that he took time to provide justification because he was not given administrative support and that some documents and invoices went missing due to passage of time.

d. The applicant claims that he conducted similar workshops while at Head Office for a period of five years from 2008 to 2012 without any issues as he was accorded the administrative and financial support he required to run the workshops.

e. The applicant also notes, as an extenuating circumstance, the fact that that despite not receiving a salary for close to a year, he continued working for projects, including: the Malawi economic census, Swaziland capacity building project, Botswana capacity building project, and the Zambia Gross Domestic Product (GDP) rebasing of National Accounts and GDP compiling in African countries. He further claims that he is a first offender.

The Respondent

The respondent submits that serious misconduct on the part of the applicant was established. It states that the decision of the President was based on the findings of the Office of Integrity and Anti-Corruption, the applicant’s failure to rebut these findings, and his actual admission and apology. It submits that nowhere in his application does the applicant dispute the facts in the letter informing him of his summary dismissal. It further submits that notwithstanding the fact that he had been given the opportunity to provide a response and explanation at the time, in his application the applicant belatedly attempts to:

a. make excuses;

b. provide reasons for his actions, such as the fact that he was under “pressure to justify the expenditures because of the threat by FIFC2 not to approve any expenditures for ECST and not intentional and deliberate acts of fraud and forgery”;

c. argue that his misconduct was caused by the fact that there was “no mechanism at the Regional Office to deposit unused funds like at the Headquarters” and lastly that he was the victim of “unfair treatment” by his supervisor who did not intervene to stop the PIAC
investigation and resolve matters at the departmental level, but instead allowed the matter to proceed to a full PIAC investigation.

17. The respondent claims that there are contradictions between the application and the applicant’s response to the Director of CHHR’s request for an explanation. First, the respondent submits that there are conflicting statements regarding the applicant’s use of various amounts of money at the various workshops in question and the justifications he provided for the expenditure of the funds he had received. Secondly, the respondent has inquired as to why the applicant did not provide these explanations when he was initially given the opportunity to do so by the Director of CHHR. Consequently, the respondent submits that the applicant’s arguments in this application are unconvincing.

18. The respondent contends that the onus rests on the applicant to provide a credible and logical explanation as to what he used the funds for, and to show that the funds were used for the purposes for which they were given to him. It notes that the applicant does not deny the allegations of serious misconduct against him and argues that the explanations and excuses the applicant seeks to give are inconsistent and rebuttable. It states that it has established the facts relating to the applicant’s misconduct with reliable, corroborating and convincing proof and therefore submits that it has discharged its burden of proof and established a prima facie case against the applicant. As for the burden and standard of proof that ought to be applied in disciplinary proceedings, the respondent relies on M. X-D-P v the African Development Bank where the Tribunal stated as follows:

“The burden of proof in disciplinary proceedings rests on the respondent to prove the charges leveled against a staff member to the required standard. The standard of proof is not beyond reasonable doubt as in criminal cases but is on a balance of probabilities. Where serious misconduct is alleged, the proof must be cogent to satisfy the Tribunal that such serious misconduct has been committed”. ¹

19. The respondent submits that in accordance with the requirements of the Bank’s recourse mechanism, the applicant was given an opportunity, through the Director of CHHR’s letter, to exculpate himself, but instead of exculpating himself, he admitted his culpability. Moreover, the fact that he was found guilty of serious misconduct does not negate that due process was extended to him. In support of its argument, the respondent relies on CG V. International Bank for Reconstruction and Development.²

20. The respondent submits that the sanction of summary dismissal was proportionate to the serious misconduct committed by the applicant. It further submits that actions by a staff member that bring the organization into disrepute constitute “serious misconduct”. It relies on the decision of Derrick Jenkins-Johnston v African Development Bank³, where the Tribunal stated:

“Indeed there is a vast difference between acts of corruption capable of politically and morally threatening the Bank’s prestige, its credibility before its shareholders, foreign States, public opinion and the international press, acts that could at worst threaten the Bank’s very existence and legitimacy and that to all intents and purposes constitute serious misconduct pursuant to Regulation 10.2 of the Staff Regulations, and irregularities, neglect, even fraud involving the Bank’s internal management and operations.”

² Decision No. 487 of World Bank Administrative Tribunal (WBAT).
21. The respondent claims that the applicant forged invoices, receipts and the contracts of three consultants. It states that the conduct of the applicant in this case brought the respondent into disrepute in the relevant members countries and further claims that the sanction of summary dismissal was proportionate to the level of misconduct. In support of the argument, it relies on *Ikegame v Secretary-General of the United Nations* in which the Tribunal indicated that, in view of the applicant’s level of seniority and twenty years of experience, summary dismissal would be proportional to the serious misconduct of the applicant. ⁴ In further support of its argument that the sanction of summary dismissal is proportionate to the serious misconduct of the applicant, the respondent draws the Tribunal’s attention to the judgment of *Ikegame* cited above and *Othigo v. Secretary-General*. ⁵

III. **RELIEF SOUGHT**

22. The applicant requests that the Tribunal:

   a. Reinstathe him and order the bank to reimburse him all the amounts of money that he alleges were wrongly deducted from his salary.

   b. Order the Bank to pay 50% of his salary for the period from June 2017 to June 2018 and payment of his salary for the remaining period of his contract (that is, from July 2018 to December 2018) and to reinstate him as a member of the staff retirement plan that he was compelled to withdraw from.

   c. Order the Bank to refund his legal and other costs incidental to his application, which currently stand at USD 15,000.

23. The respondent requests that the applicant’s claim be dismissed in its entirety for lack of merit.

IV. **LAW**

24. This application raises the following issues for determination:

   (1) Whether serious misconduct that led to applicant’s summary dismissal was proven;

   (2) Whether the applicant was afforded due process;

   (3) Whether the sanction of summary dismissal was proportionate to the misconduct; and

   (4) Whether the Bank breached Staff Rule 53.03(b) related to deductions from salary and Staff Rule 103.01(b) related to the Staff Appeals Committee.

25. It is trite law that the Tribunal’s role in reviewing the President’s decision of summary dismissal is limited to determining whether the decision is flawed by a mistake of fact, an error of law, or the absence of due process or is vitiating by extraneous or prejudicial factors. ⁶ The Tribunal does not substitute its judgment for that of the President either in respect of the determination as to whether misconduct has occurred or the appropriate disciplinary sanction. ⁷

26. The burden of proof in applications of this nature was set out by this Tribunal in *E.O v African Development Bank*. ⁸

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⁴ Judgment No. 1175 of United Nations Administrative Tribunal (UNAT) at para XV.
⁵ Judgment No. 1222 of UNAT.
⁷ See for example *Liu v Secretary General of United Nations*, Judgment No. 490 of UNAT.
“78. Insofar as the burden of proof is concerned, the burden will generally be on an applicant to establish the merits of his or her application. However, where the application involves the termination of the employment of a Bank employee, the burden will be on the Bank to establish a prima facie case that the employee committed misconduct justifying dismissal, following which the burden shifts to the employee to rebut the evidence against him or her: N.O. v African Development Bank, Application No.2007/04.

79. With respect to the standard of proof, the parties agree this is not a criminal proceeding and that the Bank does not have to establish the Applicant’s guilt beyond all reasonable doubt. It is sufficient if the Bank can establish, on a balance of probabilities, that it had just cause to terminate the applicant’s employment. While mere suspicion or speculation will not be enough, direct evidence of misconduct is not required. Cogent circumstantial evidence that reasonably leads to a conclusion of guilt may be sufficient to establish misconduct justifying the termination of the employment of a Bank employee.”

27. It is now pertinent to consider whether the burden of proof was discharged on each of the above issues:

    **Was serious misconduct proved?**

28. The first issue is whether serious misconduct was proved. In order to answer this issue, the Tribunal will consider: whether the applicant committed misconduct and if yes, whether the applicant’s misconduct was serious.

    **Did the applicant commit misconduct?**

29. Staff Rule 101.00 defines misconduct as the failure by a staff member to comply with his or her obligations under the Agreement establishing the Bank, or Regulations and Rules of the Bank. It is therefore imperative to understand the nature of the obligations under Staff Regulation and Bank’s Code of Conduct, the applicant as a staff member, was required to comply with, in order to determine if his conduct constituted misconduct.

30. According to the letter dated 17th May 2018 the applicant was charged with violating Staff Regulation 3.11, 3.2, 3.5 and clauses 2.1.1, 2.2.1 and 2.2.2 of the Bank’s Code of Conduct.

31. Staff Regulation 3.11, which provides for the Oath of service, states as follows:

    “Every staff member shall subscribe the following Oath or declaration within two weeks of his assumption of duty.

        (i) I … Solemnly declare that I will in all loyalty, discretion and conscience and to the best of my ability carry out my responsibilities in a manner that will further the ideals, objectives and goals of the African Development Bank.

        ...

        (iv) I undertake to uphold the honour, prestige and integrity of the Bank and to do everything in my power to enhance the image of the institution in the conduct of my public and private affairs by observing the provision of the Agreement
establishing the African Development Bank, the Staff Regulations and the Staff Rules.”

32. The Code of Conduct provides in clauses 2.1.1, 2.2.1 and 2.2.2 as follows:

“2.1.1. Demonstrate Personal Integrity: Staff members are expected to act with integrity, honesty, probity and loyalty. In the discharge of their functions and private affairs, they are to avoid any action which may reflect unfavorably upon their position as employees of an international organization either in their own country or elsewhere.

... 2.2.1. Staff Members of the Bank, are international civil servants and, thus hold their positions as a public trust. They are required under the ADB Agreement and the Staff Regulations to owe their duty entirely to the Bank, and to no other authority. They should thus place their loyalty to the Bank above private gain and help maintain the reputation of the Bank as the premier development and finance institution in Africa.

2.2.2. To this end, it is important that staff members demonstrate and maintain the highest standards of honesty, integrity and impartiality and conduct themselves, in their official and personal relationships, in a manner, which commands respect and confidence in their status as public servants.”

33. The Staff Rules provide in Regulations in 3.2 and 3.5 as follows:

“3.2. By accepting appointment, staff members pledge themselves to discharge their functions and conduct themselves in the Bank’s best interest. Consequently, their first loyalty is to the Bank and to no other authority. They shall respect and do their utmost to maintain the international character of their position and refrain from any action or conduct likely to compromise them or the Bank, whose reputation and prestige they must seek to maintain and enhance.

... 3.5. Staff Members shall conduct themselves at all times in a manner befitting their status as employees of an international Institution. They shall not engage in any activity that is incompatible with the proper discharge of their duties and shall avoid any action in particular any kind of public pronouncement, which may adversely reflect on the bank or on their status, integrity, independence, or impartially and neutrality.”

34. It is clear that in accordance with Staff Regulation 3.11 and clause 2.1.1 of the Bank’s Code of Conduct, the applicant was required to act with integrity, honesty, probity and loyalty when discharging his functions. Under Clause 2.2.1 he was obliged to place his loyalty to the Bank above his private gain and to help maintain the reputation of the Bank. Under Clause 2.2.2 he was required to demonstrate high standards of honesty, integrity and impartiality. Under Staff Regulation 3.2, he should have refrained from engaging in any action or conduct likely to compromise the Bank, whose reputation he must seek to maintain. Under Staff Regulation 3.5, he was required to avoid any action which might adversely reflect on the Bank’s integrity.

35. The Tribunal will now examine the available evidence in order to ascertain whether the applicant committed misconduct and therefore breached the above-mentioned obligations.
36. In the letter dated 17\textsuperscript{th} May 2018, the applicant was notified of the charge that he had fraudulently diverted a sum of USD 58,689 of Bank funds for personal use by submitting fraudulent documentation as justification for certain training workshops and consultancy contracts. The total sum comprised the following amounts:

i. USD 14,640 in respect of the 2015 Training of Trainers Pilot Workshop in Geneva, Switzerland (Geneva workshop);
ii. USD 6,329 in respect of the 2015 Joint Statistical Workshop in Dar-es-Salaam, Tanzania (Tanzania workshop);
iii. USD 13,900 in respect of the 2016 Training Workshop in Harare, Zimbabwe (Zimbabwe workshop);
iv. USD 11,820 in respect of the 2016 Training Workshop in Port Louis, Mauritius (Mauritius workshop); and
v. USD 12,000 in respect of three Multiple Consultancy Contracts under the SCB 1C Programme.

37. In a letter dated 15\textsuperscript{th} June 2018, the applicant apologized for his misconduct, acknowledged that it had been bad judgment on his part and offered an explanation in respect of each of the charges.

38. With regard to the ILO Training in Geneva, the applicant stated that he paid 3470 euros to the hotel where participants stayed and the PIAC investigators verified this. He went on to state:

\begin{quote}
\textquote{FIFC2 will proceed to deduct the whole amount from my salary. Ideally I should have taken the balances back to the cashiers if I was in the Headquarters but being in the regional office I could only deposit it on my account. However, the blame falls squarely on me as I should have asked FIFC2 for another mechanism of reworking the balance since there was no cashier office at the regional office”}
\end{quote}

The applicant thus admits the charge.

39. In respect of the Dar-es Salaam, Tanzania Workshop, the applicant states:

\begin{quote}
\textquote{The Truth is all participants were paid. The contention was on two invoices for supply of printing and Stationery serves and Transport of the participants to the airport amounting to USD 6.329. I had misplaced the original invoices because of passage of time.”}
\end{quote}

The applicant claimed to have lost the invoices and was therefore unable to justify the expenses allegedly incurred by him.

40. With regard to the Harare Training Workshop, it was alleged that the applicant claimed USD 13,900 by using receipts from Mirror Media Company. He claims that in reality the total amount was USD 3900 for transport and stationery expenses. The USD 10,000 for facilitators at the workshop was actually per diem. He states that he had given this information to the investigators and his expectation was to have the money deducted from his salary. FIFC2 has received the amount from his salary. Here again the applicant fails to explain convincingly how he spent the advance.

41. In respect of the Mauritius Workshop, the applicant stated that 50\% of the cost was paid directly by FIFC2 to the hotel, and he paid the 50\% balance from the advance of USD 27,330 that he had received. He also paid the participants and facilitators. He stated that the disputed amounts were for
transportation to the hotel, printing and stationery services. He further stated that the services were provided but he lost the original invoices. However, he also stated that FIFC2 deducted the whole advance of USD 27,330. He alleged that there was an over-deduction in that USD 15,510 was deducted when in fact only USD 11,820 should have been deducted. This presentation of the facts is corroborated by the respondent’s letter of 17 May 2018 notifying the charges to the applicant. This is a credible claim for reimbursement for the over deduction in respect of the Mauritius workshop and the amount of USD 15,510 should be refunded to applicant.

42. In respect of the Three Multiple Consultancy contracts, the applicant submits that in his initial justification he did not submit the contract to account for the professional fees and workshop advances paid to consultants. He claims that he created the fictitious short-term contracts after pressure from FIFC2 to provide the contracts. This is not a credible defense to the charge.

43. Accordingly, the Tribunal finds that the applicant’s acts of submitting fraudulent documentation as justification for retaining Bank funds not owed to him constituted misconduct in that he breached his obligation of being loyal, honest and acting with integrity contrary to Clause 2.1.1, 2.2.1 and 2.2.2 of the Bank’s Code of Conduct and Staff Regulations 3.2, 3.4 and 3.11. The Tribunal also notes the Bank’s wrongful deduction in respect of the Mauritius workshop from his salary.

Was the applicant’s misconduct serious?

44. Staff Rule 101.04(a) provides that in determining the seriousness of the misconduct the following factors may be considered:

   i. The nature of the misconduct and the circumstances in which it occurred;
   ii. The extent to which the misconduct adversely reflects upon the integrity, reputation or interests of the Bank;
   iii. The extent to which the misconduct involves intentional actions or negligence;
   iv. Whether the misconduct involves repeated actions or behavior;
   v. The prior conduct of the staff member; and
   vi. Any extenuating circumstances.

45. The evidence shows that the applicant was a Task Manager of the Statistical Capacity Building Training Programme of the Bank in Southern Africa. He submitted fraudulent documents to justify training workshops he conducted in Mauritius, Geneva, Zimbabwe, and Tanzania. His misconduct was criminal in nature and touched on the integrity and reputation of the Bank. It is an aggravating factor that the misconduct was repeated over a period of time. The Tribunal finds that the applicant’s misconduct was serious and grave and therefore that his summary dismissal for serious misconduct was justified.

Was the applicant afforded due process?

46. Staff Regulation 10.1 of the African Development Bank states as follows:

“The President may impose disciplinary measures on staff members whose conduct is unsatisfactory or prejudicial to the interest of the Bank or falls seriously short of the norms and standards established by the Bank. Such measures shall be imposed in conformity with the disciplinary process provided for in Regulation 10.2.” (emphasis added)
47. Staff Regulation 10.2 of the African Development Bank states as follows:

“The President shall establish administrative machinery which, with staff participation, shall deal with disciplinary matters, but without prejudice to his powers to dismiss a staff member summarily without notice or benefits for serious misconduct.”

48. The Bank has not established procedure to be followed for summary dismissal. However, the Tribunal through its jurisprudence has provided some guidance in relation to summary dismissals. In Derris Jenkins-Johnson v African Development Bank:

“45. Furthermore, the Tribunal shares the respondent’s submission that it is not in every instance that such characterization must be made in accordance with the Staff Rules cited by the Applicant. The two procedures are distinct. Therefore, Rules 102.00 and 101.04 of the Staff Rules are not applicable in the event of recourse to the summary dismissal procedure.

...”

54. While understanding the highly appreciable and morally respectable reasons for Bank Management to severely reprimand punishable offences in order to prevent misconduct detrimental to the Bank’s interests and the integrity of its staff, the Tribunal raises to an even higher level the principle of right to due process that fully guarantees the right to defense. It is also in the Bank’s interest and good name to show its willingness to respect this fundamental right to the highest extent possible. Pursuant to the said Regulation 10.2 of the Staff Regulations, summary dismissal is an exception to the usual disciplinary procedure set forth under Rules 101.02 (a) and 101.02 (b) of the Staff Rules and enforced only exceptionally in the event of gross misconduct. Where such gross misconduct is not established, the ordinary disciplinary procedure must be followed. When, taking the specific circumstances of each case into account, the Tribunal considers that a clear mistake was made in the characterization of the offence committed or its gravity, it must nullify the summary dismissal decision.”

49. In C.G.S. v the African Development Bank, the Tribunal stated as follows:

“There are two types of disciplinary procedure. There is a procedure under Regulation 10.2 for serious misconduct which includes gross misconduct. The second type of disciplinary procedure is provided for under Regulation 10.2 and Rule 101.02 where due process is guaranteed. The summary dismissal procedure is distinct and does not derogate from due process. The requirements that the Bank has been expected to observe derive from the principles of natural justice as evolved in the jurisprudence of international administrative tribunal. In observing these principles, a member staff must be unequivocally be put on notice of the charges laid against him. He must also be given an unrestricted opportunity to exonerate himself on charges laid against him.”

50. In CG v International Bank for Reconstruction and Development, the World Bank Administrative Tribunal emphasized the importance of due process in decisions for summary dismissal, stating that:

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11 WBAT, Decision No. 487 of 2014, 28 February 2014 at para 83.
“...affected staff members must be appraised of the charges being investigated with reasonable clarity; they must be given a reasonably full account of the allegations and evidence brought against them; and they must be given a reasonable opportunity to respond and explain.”

51. In view of this jurisprudence, the summary dismissal procedure does not require a staff disciplinary panel (in terms of Staff Rule 102), the submission of charges to the Disciplinary panel is not required (Staff Rule 101.02(a)) and the right to consult and obtain assistance of another staff member or retired staff member in his or her defense is not available (Staff Rule 101.02(b)). The only due process requirements for summary dismissal are:

i. A staff member must unequivocally be put on notice of the charges laid against him. As accepted by the international administrative tribunals and illustrated in the case of CG v International Bank of Reconstruction, (supra) the staff member must be given a reasonably full account of the allegations and evidence brought against him.

ii. A staff member must also be given an unrestricted opportunity to exonerate himself on charges laid against him.

52. On 17th May 2018, the applicant was notified of his charges and on 5th June 2018 the applicant responded to the charges. On 22nd June 2018, the applicant was summarily dismissed.

53. Staff Rule 103.01(b) provides as follows:

“Except where the Bank and a staff member agree to direct submission to the Administrative Tribunal, in matters where only issues of law are in controversy, all appeals by staff members against administrative decisions shall be subject to prior review by the Staff Appeals Committee.”

54. Staff Rule 102.09 states as follows:

“A staff member against whom a disciplinary measure has been imposed shall have the right to appeal such a measure, and may lodge his/her appeal with the Administrative Tribunal within sixty (60) days of the date of the letter of notification of the disciplinary measure.”

55. Staff Rule 103.01(c)(iii) provides that Staff Appeals Committee is not competent to consider an appeal against the imposition of disciplinary measures, including summary dismissal. The summary dismissal letter dated 22 June 2018 shows that the applicant was summarily dismissed because of fraud and forgery. In accordance with Staff Rule 103.01(c), read with Staff Rule 102.09, it would not have been appropriate to refer this matter to the Staff Appeals Committee. The Tribunal therefore rejects the applicant’s assertion that his matter should have first been handled by the Staff Appeals Committee.

56. For the foregoing reasons, the Tribunal is satisfied that the applicant was accorded due process.
Was the sanction of summary dismissal proportionate to the misconduct?

57. Staff Rule 101.02(c) provides as follows:

“Summary dismissal shall be imposed only upon determination by the President that the staff member concerned is guilty of serious misconduct, touching upon the financial or other important interest of the Bank.”

58. Staff Rule 101.04(b)(v) provides as follows:

“... (b) Disciplinary measures resulting from disciplinary proceedings for misconduct may, depending on the gravity of the misconduct, take one or more of the following forms: (v) dismissal.”

59. In Derris Jenkins-Johnson v African Development Bank, the Tribunal stated as follows:

“44. The Tribunal accedes to the respondent’s argument according to which Regulation 10.2 of the Staff Regulations grants the President wide discretion to characterize conduct, depending on his assessment of the facts. Indeed, Regulation 10.2 grants the President the “powers to dismiss a staff member summarily without notice or benefits for serious misconduct.” That is the very essence of discretionary powers which grants the legal faculty to take an administrative measure based on the assessment of facts, their nature, seriousness and severity. It is not within the province of a tribunal to substitute its assessment to that of the competent authority, subject to destroying the discretionary powers granted and exceeding the limits of the Tribunal’s jurisdictional competence.”

“46. On the other hand, however, the Tribunal must underscore the fact that discretionary powers cannot be based on an erroneous characterization of facts, a mistake of facts, grounds outside the interest of the Institution and a patent disproportion between the facts and the sanction. This principle is especially paramount with regard to disciplinary measures. As the Applicant rightly maintains, discretionary power is by no means absolute power.”

“53 Within the framework of minimum control, it is incumbent first on the Tribunal to specifically review the characterization of facts, followed by consideration as to whether there is no error in the legal characterization of the facts of serious misconduct, which in turn relates closely to the issue as to whether the disciplinary measure is not manifestly disproportionate to the offence committed, and lastly whether the decision is not based on an erroneous or tendentious motive or reason, amounting to abuse of power. Where the Tribunal doubts that these precautions in the use of discretionary power were taken, the measure in question becomes illegal and must be rescinded, pursuant to Article XIII of the Statute of the Tribunal.”

60. Considering the evidence and arguments from both parties, the Tribunal is of the view that the applicant’s misconduct was serious and grave and warranted summary dismissal for the following reasons:

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i. The applicant occupied a senior and responsible position within the Bank.

ii. The applicant submitted fraudulent documents to justify training workshops he conducted in Mauritius, Geneva, Zimbabwe, and Tanzania. His misconduct was criminal in nature and even touched on the integrity and reputation of the Bank.

iii. The applicant did not give reasonable explanations for his grave misconduct and hence the gravity of the conduct cannot be understated.

61. The sanction of summary dismissal imposed on the applicant was therefore proportionate to his serious misconduct.

Did the Bank breach Staff Rule 53.03(b)?

62. The applicant alleges that he was subjected to 100% deductions from his salary for one-year in violation of Staff Rule 53:03.

63. Staff Rule 53.03(b) provides as follows:

“The President shall prescribe the maximum total amount that may be deducted for the above deductions in any pay period provided that the total deduction from the staff member’s salary, excluding medical, educational and travel expenses, shall not exceed fifty percent (50%) of the staff member’s salary.”

64. Staff Rule 101.04(d) states that the recovery from staff members of monies owed by them to the Bank shall not constitute a disciplinary measure. Staff Rule 53.03(b) provides that total deduction from the staff member’s salary, excluding medical, educational and travel, shall not exceed fifty percent (50%) of the staff member’s salary.

65. It was not disputed that the respondent made 100% deductions from the applicant’s salary for almost one year. The respondent was entitled to deduct moneys owed to it by the applicant through debts or other liabilities in terms of Staff Rule 53.03(a)(iii). However, the respondent breached the rule by deducting more than 50% of the applicants’ salary.

Relief

66. The Tribunal recognizes the principle that an applicant who seeks equity must approach the Tribunal with clean hands. In principle, the wrongful conduct of the applicant will be considered when determining appropriate relief. In this case, the applicant committed serious misconduct by submitting fraudulent documentation to justify alleged expenses spent on training workshops. However, the Bank breached Staff Rule 53.03(b) by over deducting salary from the applicant. Therefore, in light of the circumstances of the case, the Tribunal considers it appropriate to award the applicant compensation for violation by the respondent of its internal rules.

67. The applicant claims payment of his legal and other costs incidental to his appeal, which currently stand at USD 15,000. The Tribunal may in its discretion award applicant a reasonable amount for his legal costs. In this case the application has partially succeeded, and therefore the Tribunal considers an amount of USD 5,000 in respect of his reasonable legal costs to be appropriate in the circumstances of this case.
V. THE DECISION

68. For these reasons, the Tribunal decides:

(a) The applicant’s summary dismissal for serious misconduct was justified and is upheld.
(b) The Bank is directed to pay the applicant compensation of USD 5,000 for breaching Staff Rule 53.03.
(c) The Bank is directed to reimburse the applicant USD 15,510, which was wrongly deducted for the Mauritius workshop.
(d) The applicant is awarded USD 5,000 as reimbursement for legal costs.
(e) All other claims are rejected.

Justice Leona Valerie THERON                                President

Abdoulkader DILEITA                                         Executive Secretary

COUNSEL FOR THE APPLICANT

Paul Mulenga

COUNSEL FOR THE RESPONDENT

Souley AMADOU                                              Ag. General Counsel
Omesiri AKPOFURE-IDRIS                                       Division Manager