

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 58
(8 August 2003)**

**Ms. C.
v.
Asian Development Bank**

**Robert A. Gorman, President
Martti Koskenniemi, Vice-President
Shinya Murase**

1. The Applicant joined the Bank in 1996 on a regular appointment as an Administrative Assistant, level 4, in Programs Department (West) ("PWD"). The Applicant contests the disciplinary action taken by the Respondent, which found the former to have forged documents and fraudulently obtained money to which she was not entitled. The Applicant rejects this finding and contends that the Respondent acted in violation and disregard of its own policies and procedures on disciplinary measures. The Applicant seeks remedies including compensation from the Respondent in the amount of US\$200,000 on the ground that the Respondent allegedly violated her right to due process. The Respondent asserts that the Applicant's claim is without merit and should be dismissed. The Tribunal determines *sua sponte*, in light of the circumstances of the case, that the identity of the Applicant should be kept confidential for the purposes of this judgment.

2. When the alleged incident of forgery occurred, the Applicant was acting as secretary for a Senior Programs Officer, (Programs Department (West), Division 3) ("PW3") (hereafter referred to as the Applicant's "supervisor"), from 18 June to 1 July 1999. The Applicant had previously acted as his secretary between 1996 and 1998, but this time she was temporarily filling the vacancy created by the absence from work of his secretary who was attending to her sick child at a hospital.

3. The Treasury Service Division of the Treasurer's Department ("TDTS") sent the Applicant's supervisor on 18 June 1999 an Advice of Payment notifying him that the Check for the expenses incurred on his mission travel in the amount of US\$849.08 was available for collection. However, the supervisor never received this document and so initiated an inquiry in mid-July. It was revealed that in the morning of 23 June 1999 the Check had been encashed at the Metrobank Cash Room located inside ADB, and that US\$300 had been exchanged to pesos in the name of the supervisor on the following day, 24 June 1999, at the Metrobank Main Counter located opposite the Cash Room. Neither transaction was conducted with the knowledge or authorization of the supervisor. He asked a Senior Administrative Assistant, PW3, to look for any records of the Check that may have been left around the Division. The search led to a discovery on the Applicant's desk of a Metrobank document called "Exchange Bought Ticket" dated 24 June 1999, which indicated that US\$300 had been exchanged on behalf of the supervisor, with payment received by the Applicant.

4. Throughout the ensuing internal investigation by the Respondent, the Applicant maintained that the supervisor had given her the Advice of Payment asking her to collect the Check and that she had given him the Check, which were wholly denied by the supervisor. The Applicant denied any knowledge of the Exchange Bought Ticket, suggesting the possibility of a setup or frame-up. Following the internal investigation into the matter, the Respondent, on 21 October

1999, decided, in view of the evidence acquired by that time, to initiate formal disciplinary procedures against the Applicant under Administrative Order ("A.O.") No. 2.04, para. 9.2.

5. In the course of these formal disciplinary procedures, the Review Committee, set up on 10 July 2000, proposed to have the signatures on the relevant documents examined by a specialist on handwriting and asked the Applicant to select a firm from a list of five certified document examiners. The Applicant selected one of them, while she sought to reserve the right to have the documents examined by a handwriting expert from the Philippine National Bureau of Investigation ("NBI"). The Review Committee was not willing to accept the Applicant's proposal regarding NBI, because it considered it best to engage one handwriting analyst acceptable to both parties. The Review Committee informed the Applicant on 28 September 2000 that the firm selected by the Applicant had been engaged for the handwriting analysis, and also asked her to sign a "Global Settlement Agreement", with the Review Committee, the supervisor and the Applicant as parties. Under the Agreement, all three parties would accept that the findings of the examiner would be used as the basis on which the Review Committee would proceed to a speedy completion of its investigation, and the parties "shall each accept fully and finally the independent analysis and the findings of [the examiner] and shall not challenge or seek to have the findings reviewed by any other third party." After a week of her review and consideration, the Applicant signed and returned the Agreement on 4 October 2000.

6. Upon receipt of the final report from the document examiner dated 27 November 2000, the Review Committee stated in its report to the President dated 19 December 2000 as follows:

The Committee believes that the certified document examiner selected by [the Applicant] has provided an analysis that is clear, definite and unbiased, with the conclusion that [the Applicant] had signed all the documents. The Committee further believes that, based on the facts of the case, the weight of the evidence, and the analysis of [the examiner], which all parties agreed to accept in the Global Settlement Agreement dated 4 October 2000, [the Applicant] did forge [the supervisor's] signature in an attempt to obtain a financial benefit which was not due to her.

Both the examiner's report and the Review Committee's report were promptly shared with the Applicant.

7. Considering the gravity of the matter, the Review Committee recommended that the Applicant be dismissed for serious misconduct, and that the Applicant return to the Respondent the sum of US\$849.08 plus interest at Ordinary Capital Resources ("OCR") rate from the date that the Check was collected and cashed. The President, after reviewing the Review Committee's report, stated in his memorandum to the Director, BPMSD dated 25 April 2001 that, "considering such factors as her past satisfactory performance, that this is her first offense, and that she has not been previously reprimanded, I have decided to impose on [the Applicant] a less severe disciplinary measure", as follows: (a) suspension from work without pay for a period of six months; (b) demotion by one level, from level 4 to level 3; and (c) return of the amount of US\$849.08. The Applicant filed an appeal with the Appeals Committee on 29 July 2001, challenging the above decision by the President. The Appeals Committee rejected the appeal on 3 April 2002.

8. On 17 July 2002, the Applicant filed this Application with the Tribunal. The Applicant indicated that the issues raised in this case are as follows: (a) The Global Settlement Agreement is without force and effect, such Agreement having been secured in denial of due process and the same being contrary to public policy; (b) The Exchange Bought Ticket was improperly acquired; (c) Metrobank was never made a party by virtue of its gross negligence; and (d) The Advice of

Payment appears to be tampered. The relief sought by the Applicant included: (1) US\$200,000 as compensation for moral injury, social humiliation, besmirched reputation, wounded feelings, mental stress, anxiety and anguish; (2) The payment of backwages, reimbursement of all applicable monetary penalties and the reversion of the Applicant to a level 4 position; (3) The issuance of a public apology by ADB; and (4) US\$20,000 as legal and other costs.

9. The Respondent submitted its Answer on 21 October 2002. The Applicant did not file a Reply, as a result of which the written proceedings were closed. Whereas the gist of this case is whether the Applicant forged the signatures and fraudulently obtained the money to which she was not entitled, the Applicant's major contentions before the Tribunal remain focused on other points of secondary importance such as the alleged validity of the Global Settlement Agreement and the alleged negligence of a third party, i.e., the Metrobank. Since the Respondent in its Answer had condemned the Applicant for her series of actions as dishonest and fraudulent, the Tribunal is puzzled that she did not avail herself of the opportunity to submit her Reply, as provided by the Rules of Procedure and despite the assistance of counsel, to defend herself against the Respondent's allegations.

10. The Tribunal concludes from all the evidence produced in this case that it has been convincingly established that the Applicant engaged in the following acts of forgery and fraud: The Applicant forged the supervisor's signature on the Advice of Payment and again on the back of the Check for endorsement. She forged what appeared to be the signature of the supervisor's secretary on the Request for Payment card. The signature on the Exchange Bought Ticket was definitely the Applicant's by which she exchanged US\$300 to pesos "on behalf of the supervisor."

11. The Tribunal finds that the Respondent's initial assessment of the situation and preliminary inquiry into the matter were conducted in a reasonable and unprejudiced manner. Throughout the internal investigation, the Respondent maintained strict confidentiality and observed due process to a maximum degree. The Applicant was fully apprised of the charges as well as the individual testimonies against her. The Office of General Auditor ("OGA") asked a handwriting analyst who is highly regarded in Asia and the Pacific to conduct the examination of the questioned signatures. Such an examination by a competent document expert was also the Applicant's request. The report of the analyst concluded that the Applicant had forged the signatures and encashed the Check. Based on the evidence obtained by the preliminary inquiry, the Tribunal observes, the Respondent properly proceeded with the formal disciplinary procedures, in which the Review Committee played a central role.

12. The Applicant contests the validity of the Global Settlement Agreement concluded with the Review Committee, asserting that the Agreement was "in denial of due process" and "contrary to public policy." The Tribunal concludes that such an agreement is valid, and therefore binding, among the parties, as long as it has been entered into voluntarily and in good faith, and that concluding such an agreement for speedy completion of investigation does not conflict with public policy. (See, for example, the decision of the World Bank Administrative Tribunal in Kirk, WBAT Reports 1986, Decision No. 29, para. 36). The Tribunal notes that the Applicant signed the Agreement only after her initial reservations and concerns had been cleared, and that she had sufficient time during that full week to review and consider its meaning and effects and to appraise her own situation. To reiterate, the handwriting examiner identified in the Settlement Agreement was the one selected by the Applicant herself, and was an analyst of apparently outstanding credentials; and the Applicant carefully made a counterproposal that she be present when the materials were mailed to the examiner, to which the Respondent agreed. The Respondent's staff who packaged the materials understood from the conversation with the

Applicant that she had sought legal counsel before signing the Agreement. All these facts point to a fully informed agreement, and there is no evidence of coercion whatever. Thus, the findings by the handwriting examiner should no doubt be deemed conclusive under the Agreement.

13. Regarding the Applicant's claim that the Exchange Bought Ticket was improperly acquired, when retrieved from the Applicant's desk by another staff of the Respondent, the Tribunal notes the conclusion of the Appeals Committee that, under the circumstances of the case, the scrutiny of the Applicant's workstation was not improper. The Applicant also claims that one of the documents sent to the examiner for handwriting analysis, namely, the Advice of Payment form, appears to have been tampered, because the copy attached on the memo of Manager, Human Resources Division ("BPHR") addressed to the Applicant dated 17 August 1999 did not have a date under the Applicant's signature, whereas the copy given to the examiner was stamped with the date "JUN 23 1999." The Tribunal notes that, although not without slight dubiousness as to why that date was stamped afterwards, the issue at hand is not the date of that transaction but the authenticity of the supervisor's signature, and that no evidence of tampering is found with the said document.

14. The Applicant asserts that Metrobank's alleged "negligence" was consistently overlooked by the Respondent because the Metrobank should not have allowed the Check, being a "crossed check", to be encashed but only to be deposited in the payee's account. However, the Tribunal notes that encashing crossed checks up to US\$1000 has been an accepted practise of the Metrobank Cash Room located inside the Bank with a view to facilitating the best possible service to its staff. The Applicant also pointed out that the Metrobank official failed to take note of the serial numbers of the dollar notes when exchanged to pesos. The Tribunal observes that recording serial numbers is sometimes omitted to speed up service at the Metrobank counter, because the risk of counterfeit bills is deemed minimal among the Bank's own staff members. While these Metrobank practices are based on the trust given to the staff members, the offense in the present case was committed by taking advantage of the very trust given by the Metrobank tellers to the staff. The Tribunal in any event concurs with the Appeals Committee in that "the issue at hand relates to a misconduct of staff where potential fraud was detected, not Metrobank's actions or business practices."

15. It is the view of the Tribunal that the protection of the rights of a staff member suspected of misconduct should be of prime concern in the disciplinary procedure. The Tribunal observes that in the present case the Respondent conducted the investigation in a fair and non-prejudicial manner and that there is no evidence to suggest that due process was violated. Thus, the Tribunal rejects all the Applicant's claims.

Decision

For these reasons, the Tribunal unanimously decides to dismiss the Application.