

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 72
(19 August 2005)**

**Daniel M. Shimabuku
v.
Asian Development Bank
(Nos. 1 and 2)**

**Khaja Samdani, Vice-President
Claude Wantiez
Yuji Iwasawa**

Facts

1. On 15 July 2002, Mr. Shimabuku began a three-year fixed-term appointment with a one-year probationary period as Head of Information Technology. In this function, at Level 6, Mr. Shimabuku was responsible for more than 50 people.

2. In January 2003, the Bank provided Mr. Shimabuku with a Performance Evaluation Review (PER) of which conclusions were mixed. In this report, the supervisor and rater of Mr. Shimabuku – the Director, Office of Information Systems and Technology (OIST) – suggested, among others, that he take measures to improve his performance. On 17 January 2003, Mr. Shimabuku agreed with this evaluation and signed the report without any reservation.

3. At the end of the one-year probationary period, a second PER was conducted. In this report, Director, OIST, noted that he “proved to be dedicated, energetic and hard working” but expressed concern that in spite of that, “he appears to have encountered difficulties ... in his abilities to gather the different views from his staff The difficulties he encountered have hampered his effectiveness in spite of the other strong aspects of his performance.” On 15 July 2003, Mr. Shimabuku signed this PER without comment.

4. On 10 September 2003, Principal Director, OIST, provided Mr. Shimabuku, together with the two PERs of January and July 2003, a “draft recommendation” to Director General, Budget Personnel and Management Systems Department (BPMSD), to not confirm the appointment of Mr. Shimabuku. Mr. Shimabuku was invited to “submit [his] comments on the recommendation by 26 September 2003.” In this draft, Principal Director, OIST, set out the reasons for which he recommended the non-confirmation of the appointment of Mr. Shimabuku.

5. On the same day:

a) Principal Director, OIST, met with Mr. Shimabuku to discuss the draft recommendation; and

b) Mr. Shimabuku sent to Principal Director, OIST, the following letter:

Due to personal and professional reasons as we discussed, please accept my resignation ... effective on July 15, 2004.

These next months will provide the time required for me to complete the following vital OIST projects and/or other like assignments

....

... Pam, you can be absolutely sure that I will continue to exercise 110 percent due diligence and focus my energies and talent to achieve the highest quality outcomes of which I have proven to be capable. I remain fully committed to doing what I can to assist the Bank in its mission to reduce poverty in Asia and the Pacific.

6. On 15 September 2003, the Director General, BPMSD, acknowledging receipt of the letter of resignation, wrote to Mr. Shimabuku:

Your letter of resignation ... was submitted to me by Principal Director, OIST for consideration.

As you are aware, a decision has not yet been taken on whether your appointment will be confirmed, not confirmed or extended. If your appointment is not confirmed, your appointment will lapse prior to the date that you propose for your resignation. Although I cannot accept your resignation effective 15 July 2004 at this time, I would be pleased to do so in the event that your appointment is confirmed or extended.

7. On the same day, 15 September 2003, Mr. Shimabuku sent to Principal Director, OIST, an inter-office memorandum containing his comments on the draft recommendation of 10 September 2003 not to confirm his appointment. He wrote:

As you can well imagine, I am deeply troubled and hurt by the recommendation ... for the non-confirmation of my appointment at ADB

....

When I started at ADB on 15 July 2002, it was with the hope of finishing my professional career in information technology ... until my retirement on December 9, 2007. This recommendation for non confirmation will deny me this outcome and may indeed ruin the remainder of what has been an outstanding career....

I respectfully request that instead of recommending non-confirmation you will accept my letter of resignation, dated 10 September 2003 and submitted to you on 11 September 2003 Please note that this will provide time for me to complete my current portfolio of critical OIST projects and time for me and my family to adjust to a change in my employment status with ADB without financial penalty added to sudden financial loss, as I would have completed two years with ADB and my children would have completed their current school year.

....

... I will reserve my comments as to whether or not the draft recommendation to BPMSD was reached by application of due process, or whether or not it is arbitrary,

discriminatory or improperly motivated, or it is one that could or could not reasonably have been taken on the basis of facts accurately gathered and properly weighed.

Mr. Shimabuku enclosed with this inter-office memorandum, among others, his letter of resignation dated 10 September 2003.

8. On 2 October 2003, Officer-in-Charge, OIST, sent a memo to Mr. Shimabuku, with copy to Principal Director, OIST. After noting Principal Director, OIST's memorandum of 10 September 2003, the Applicant's letter of resignation dated 10 September 2003 and the Applicant's memorandum dated 15 September 2003, Principal Director, OIST, wrote:

In view of the above, as Officer in Charge of OIST, I note that you have not yet submitted your comments on Principal Director, OIST's 10 September 2003 memorandum Normally staff members' comments on such recommendations are due within five working days. Please submit your comments prior to meeting with Principal Director, OIST to discuss her recommendation.

9. The day after, on 3 October 2003, Mr. Shimabuku responded to the request of 2 October 2003:

In view of the rejection of my letter of resignation by BPMSD and your instruction for me to submit comments, I provide the following comments

....

... In fact, this statement is ... insulting and I challenge anyone to point out a single specific shortcoming of mine that I can not remedy through training and development.

... I believe that any unprejudiced reader will consider the negative statements made about me as unsubstantiated and my corresponding comments as being reasonable.

A copy of this memorandum was sent to Principal Director, OIST.

10. A meeting was held on 16 October 2003 with Mr. Shimabuku and the Head, Budget, Personnel, Human Resources, Central and Administrative Support Unit (BPHR-CS). According to the 17 October 2003 minutes of this meeting made by the Head, BPHR-CS, (copied to Mr. Shimabuku):

[Head, BPHR-CS] informed Mr. Shimabuku that the responsibility for accepting resignation letters from staff lies with DG, BPMSD. Since no formal decision had been taken as yet ... as regards the non-confirmation of his appointment, or extension of his probationary period, resignation, as proposed in his letter ... dated 10 September 2003, was still a viable option, despite the content of the memo from OIC, OIST dated 2 October 2003 addressed to Mr. Shimabuku which stated that his resignation letter had been rejected.

....

Mr. Shimabuku confirmed his willingness to pursue his intent of resigning on the terms indicated in his letter ... dated 10 September 2003.

11. On 20 October 2003, Director General, BPMSD wrote to Mr. Shimabuku:

This is in reference to your letter of resignation dated 10 September 2003 which you addressed to Principal Director OIST and your discussion with Head, BPHR-CS on 16 October 2003 wherein you confirmed your offer to resign effective 15 July 2004.

... I am formally accepting your resignation effective 15 July 2004.

12. On 7 November 2003, Principal Director and Director, OIST, met with Mr. Shimabuku. His note to file dated 12 November 2003 indicates that during that meeting Principal Director, OIST, clarified that:

there should be no misunderstanding that the performance appraisal after one year raised very serious performance concerns

During this meeting, Mr. Shimabuku indicated "that while he understood the concerns expressed in the PER, he did not understand why they were being expressed."

13. On 14 November 2003, Principal Director, OIST, sent a memorandum to Director General, BPMSD, in which she explained that the difficulties encountered by Mr. Shimabuku had "hampered his effectiveness as Head of IT" but nevertheless, she recommended an extension of his appointment for a period of six months. She further noted that "a work program will be prepared that will be the basis for the evaluation of his performance during the period."

14. On 26 November 2003, Director General, BPMSD, sent a memorandum to the President of the Bank submitting his recommendation for the extension of the probationary period up to 15 July 2004. In this recommendation Director General, BPMSD, noted that "Mr. Shimabuku was not placed on a performance improvement plan (PIP) at the end of his six months ... and hence he was not given the formal opportunity to address concerns regarding his performance." However, Director General, BPMSD, added:

It is also important to note that Mr. Shimabuku submitted a letter of resignation on 10 September 2003, which he later confirmed in his meeting with Head, BPHR-CS on 16 October 2003 Director General, BPMSD accepted Mr. Shimabuku's resignation, to be effective 15 July 2004. In view of the foregoing circumstances, I recommend that Mr. Shimabuku's probationary period be extended up to 15 July 2004 to provide him with sufficient opportunity to wind up his activities at OIST.

This recommendation was discussed by BPMSD with Mr. Shimabuku and he has indicated that he does not have any comments to make.

On 26 November 2003, Mr. Shimabuku sent a mail to the Head, BPHR-CS, in which he wrote:

Thank you for reviewing with me the as yet unsigned memo from BPMSD to the President

I understand that the memo recommends an extension of my probationary period until July 15, 2004.

At this time I have no further comments to make on this subject.

15. On 5 December 2003, Director General, BPMSD, wrote to Mr. Shimabuku:

This is to advise you that the President has approved the extension of your probationary period up to 15 July 2004.

This document was signed by Mr. Shimabuku.

16. On 7 March 2004, Mr. Shimabuku sent the following letter to Principal Director, OIST:

I am writing this to inform you that I no longer intend to resign from ADB as indicated in my letter to you, dated September 10, 2003.

Please be advised that my personal and work situation have changed materially and I will be able to serve out my remaining term; i.e., July 2005.

....

Thank you in advance for your understanding, support and concurrence to my request for withdrawal of my letter of resignation

17. On 11 March 2004, Director General, BPMSD, to whom Principal Director, OIST, had referred the letter of 7 March 2004, replied to Mr. Shimabuku:

On 10 September 2003, you resigned from ADB effective 15 July 2004 On 16 September 2003, in a discussion with Head, BPHR-CS you confirmed that you were willing to resign on the terms indicated in your 10 September 2003 resignation letter.

I then formally accepted your resignation in a memorandum to you dated 20 October 2003. Although normally staff members who encounter performance problems are placed on a Performance Improvement Plan, in view of your resignation letter there was no reason to apply this policy in your case. Instead, your assignments were adjusted so that you could make appropriate contributions to the office workload.

Taking into account the above, I regret to inform you that I find no basis to accept your offer to withdraw your resignation.

18. In an e-mail to Director, OIST, dated 18 March 2004, Mr. Shimabuku asked to be placed on a PIP. He stated "because my letter of resignation was improperly submitted and not properly accepted by ADB, I should be considered an employee on extend[ed] probation without a performance improvement plan with the opportunity to be confirmed." Mr. Shimabuku suggested as a remedy that he "should be provided a performance improvement plan"

19. On 30 March 2004, a meeting was held between Mr. Shimabuku and Director, OIST. According to Director, OIST's note to file of this meeting:

On 10 September 2003, [the Applicant] tendered his resignation effective 15 July 2004. The resignation was then formally accepted by Director General (DG), BPMSD with his memo dated 20 October 2003.

Despite the extension of the probationary period ... it was decided not to apply a performance improvement plan in his case, since his resignation offer dated 10 September 2003 had already been accepted at that time. Instead, his assignments were adjusted

[Director, OIST] then advised to [the Applicant] that in view of the above actions ... he was not in a position to act or decide on the remedy being pursued by [the Applicant]

20. On 1 April 2004, Mr. Shimabuku submitted a request for compulsory conciliation regarding the Bank's decision not to place him on PIP. The request was transmitted to an external conciliator. In a memorandum dated 14 May 2004, the external conciliator informed Mr. Shimabuku that the conciliation "was not successful."

21. On 25 May 2004, Mr. Shimabuku submitted a second request for compulsory conciliation regarding the Bank's decision not to accept the withdrawal of his resignation. On 17 June 2004, an ADB external conciliator informed Mr. Shimabuku that the conciliation "was not successful."

22. On 17 May 2004, Mr. Shimabuku submitted a request seeking review of the denial of his request for a PIP with an opportunity to be confirmed and possible continuation of his employment beyond the 15 July 2004, date of his resignation. This request was rejected on 15 June 2004 by Director General, BPSMD because it was filed out of time and, in any case, it was not justified.

23. On 27 June 2004, Mr. Shimabuku submitted a second request for administrative review challenging the Bank's decision not to accept the withdrawal of his resignation. On 15 July 2004, this request was denied by Director General, BPMSD.

24. On 17 June 2004, Mr. Shimabuku submitted an appeal to the Appeals Committee challenging the denial of his request "to be provided with a fair and impartial performance improvement plan with an opportunity to be confirmed." In a report dated 7 September 2004, the Appeals Committee recommended that the appeal be rejected by the President. On 8 September 2004, Mr. Shimabuku was informed of the President's decision to confirm the recommendation of the Appeals Committee to deny his claim.

25. On 19 July 2004, Mr. Shimabuku submitted a second appeal to the Appeals Committee challenging the decision of the Bank "on 11 March 2004, to not accept the withdrawal of [his] letter of resignation." In a report dated 20 October 2004, the Appeals Committee recommended that the President "reject all of [Mr. Shimabuku's] claims." On 27 October 2004, Mr. Shimabuku was informed of the decision of the President to confirm the Appeals Committee's recommendation to reject his claim.

26. Meanwhile, the employment relationship had ceased on 15 July 2004.

Procedure before the Tribunal

27. In two Applications, the first on 7 December 2004 and the second on 25 January 2005 Mr. Shimabuku challenges the two decisions of the Appeals Committee and requests:

a) In his first Application the Applicant requests:

- i. “Immediate reinstatement of Applicant to a position of the same level as the one he used to hold (Level 6) Thereafter, Applicant should be placed on a performance improvement plan with an opportunity to be confirmed and thereby complete his three-years fixed-term appointment ”;
- ii. “At least \$200,000 for lost salaries, benefits, pension, and subsidies that Applicant would have received if continually employed with ADB from 15 July 2004 ... until the end of his three-year, fixed-term appointment on 11 July 2005”;
- iii. “At least \$50,000 for grief and pain inflicted on the Applicant and his family”;
- iv. “At least \$75,000 for damage to Applicant’s professional reputation ”;
- v. “At least \$25,000 for legal fees and expenses”; and
- vi. “Extraordinary punitive relief of \$10,000,000 to be given to the Roman Catholic Archdiocese of Metro Manila.”

b) In his second Application, the Applicant requests, in addition:

- i. “\$850,000 compensation for lost wages ... that he would have received if he were to be continually employed with ADB until his retirement on 8 December 2007”; and
- ii. “\$6,798 compensation for wages that would have been paid if, upon confirmation, he had been given a reasonable salary increase (6%) retroactive to the end of his probation period on 15 July 2003.

Following a request from the Applicant on 11 February 2005, the Tribunal ordered the consolidation of the two Applications.

The Decision of the Tribunal

28. The Tribunal has to decide:

- a) Whether or not Mr. Shimabuku has regularly resigned;
- b) If the answer to the first question is affirmative:
 - i. Whether or not the decision of resignation was obtained under duress or improper motive; and
 - ii. Eventually, whether or not the Bank had the right to deny the withdrawal of the resignation; and
- c) Whether or not Mr. Shimabuku had the right to be placed on a PIP.

The formal regularity of the resignation

29. a) The texts of the relevant documents

1) According to paragraph 11 of Administrative Order No. 2.01 dated 22 June 2000:

11.1 The purpose of the probationary period is to determine whether the probationer is suitable for service in ADB. Such determination is generally made by ADB on the basis of the staff member's first 12 months of service.

....

11.3 The performance of a staff member is first reviewed after six months of service. A second review is conducted before the end of the 13th month of ... service. On the basis of such second review, the Head of Department/Office concerned shall make a recommendation to the Director, BPMSD, ... concerning confirmation of the staff member's appointment, extension of the staff member's probationary period or termination of the staff member's appointment. Such recommendation shall be copied to the staff member who shall be given the opportunity to submit comments

11.4 ... If after the second review of the staff member's performance ... the decision is taken not to confirm the staff member's appointment, the staff member shall be separated on the day of the month which coincides with the end of the 15th month of his/her service with ADB.

11.5 ADB may extend the probationary period of a staff member by giving notice to this effect. Such notice shall generally be given before the end of the 13th month of the staff member's service. If the staff member's probationary period is extended, a third evaluation of the staff member's performance is carried out before the end of the 18th month of service. If the staff member's appointment is not confirmed at this time, it shall be terminated with effect from the day which coincides with the end of the 21st month of service.

2) The probationary period was foreseen in the offer of appointment dated 24 May 2002:

It is my pleasure to offer you a fixed term appointment ... for three (3) years

....

The effective date of your appointment, which is subject to a one year probationary period, will be determined when you report for duty

3) According to paragraph 4 of Administrative Order No. 2.05 dated 9 July 1998:

Voluntary resignation

4.1 A staff member may resign from service within the Bank upon notice as provided in paragraph 4.5.

4.2 The Bank in its discretion may decline to accept the resignation of a staff member

4.3 A resignation of a staff member which has been accepted may be withdrawn by the staff member only in mutual agreement with the Bank.

4.4 A staff member who wishes to resign shall submit a letter of resignation to the Director, BPMSD through his/her head of Department/Office in the case of professional staff ... indicating the date when the resignation is to take effect.

4.5 The staff member shall give the Bank a minimum of thirty days' notice

b) Application

1) Pursuant to paragraph 11.3 of Administrative Order No. 2.01, the performance of Mr. Shimabuku was reviewed twice: on 17 January 2003, after the first six-month period of probation, and on 15 July 2003, after the twelve-month period. The assessments of each report were mixed; at that time Mr. Shimabuku did not comment on these assessments.

2) On 10 September 2003, Director, OIST, met with Mr. Shimabuku and informed him of his draft recommendation which was to not confirm the appointment. Mr. Shimabuku was invited before sending the recommendation to Director General, BPMSD, to submit his comments by 26 September 2003, and thus had the opportunity to make comments about the recommendation until 26 September 2003.

3) It is true that the letter of resignation was submitted directly to the Director, OIST, and not submitted to the Director, BPMSD, through Principal Director, OIST, as required by paragraph 4.4 of Administrative Order No. 2.05. The consequence of this mistake cannot be that the resignation was null. Indeed, the aim of paragraph 4.4 of Administrative Order No. 2.05 is for Director, BPMSD, to be warned about the resignation of a staff member: Director, OIST, forwarded at once the letter of resignation to Director General, BPMSD, who acknowledged receipt of it on 15 September 2003. Therefore, the letter of resignation was properly submitted.

4) According to paragraph 4.2 of Administrative Order No. 2.05, the Bank had the possibility to decline to accept the resignation. In fact, at first, on 15 September 2003, the Director General, BPMSD, had decided not to accept the resignation. The reason for this decision was found in the rules regarding the decision of non-confirmation as quoted above: in this eventuality, the appointment of Mr. Shimabuku would have been terminated, according to paragraph 11.4 of Administrative Order 2.01 "on the day of the month which coincides with the end of the 15th month of his/her service with ADB", i.e. on 15 October 2003, and therefore prior to the date of the effectiveness of the resignation (15 July 2004). A problem could have resulted if Mr. Shimabuku had withdrawn his resignation at that time since it had not yet been accepted. However, on 20 October 2003, before Mr. Shimabuku expressed his intention to withdraw his resignation, Director General, BPMSD, had written to him formally accepting his resignation. Therefore, the resignation of Mr. Shimabuku was properly admitted.

The lack of consent: the duress

30. a) The principles

First, the Tribunal affirms the following principles:

1) The person who claims lack of consent bears the burden to show it. "In a claim that a resignation was coerced, the burden of proving improper motive or coercion is on the Applicant."

(See *Abbas v. Commissioner General of the United Nations*, UNAT Judgment No. 874 (31 July 1998), para. VII.)

2) In order to ensure the security of the legal acts, not all kinds of pressure can be considered as evidence of duress: as a general principle of law, it cannot be admitted as lack of consent unless proof has been made that the pressures were unfair and illegal.

In the examination of the impact of the pressures, the judge has to take into consideration, among other things, the age of the person, his intellectual level, and the fact that, after the alleged pressures had ceased, he reiterated his decision.

b) Application

1) It is for Mr. Shimabuku to prove that his resignation was invalid because the Bank had brought unfair and illegal pressures to bear upon him.

2) He was an employee of high level; he had been appointed as Head, Information Technology in the OIST, Level 6, and was responsible for more than 50 people. At his age and in those functions, Mr. Shimabuku was able to appreciate the impact of his decision.

3) Mr. Shimabuku contends that his resignation on 10 September 2003 was coerced by the Bank. But, after having taken this decision, he reiterated it:

- On 15 September 2003 in his memo to Principal Director, OIST: "I ... request that instead of recommending non-confirmation you will accept my letter of resignation"; - On 17 October 2003, Mr. Iaksetich provided Mr. Shimabuku with his minutes of their meeting held the day before. In this document, Mr. Iaksetich stated that "Mr. Shimabuku confirmed his willingness to pursue his intent of resigning on the terms indicated in his letter ... dated 10 September 2003." Mr. Shimabuku made no comment on these minutes; - On 5 December 2003, Mr. Shimabuku signed – without any comment – the letter sent to him by Director General, BPMSD: "This is to advise you that the President has approved the extension of your probationary period up to 15 July 2004"; and - In his letter of 7 March 2004, Mr. Shimabuku informed the Director General, OIST, of his intention not to resign anymore, not because this resignation had been coerced by the Bank but just for the reason "that my personal and work situation have changed." 4) Even if, during the meetings held on 10 September 2003 and before with, among others, Director, OIST, it had been suggested to Mr. Shimabuku that resignation was more attractive and less humiliating than the non-confirmation of the appointment, this cannot be considered as an unfair and illegal pressure.

5) The Applicant requests the Tribunal to summon:

a. The Head, Human Resources Division for appropriate examination to confirm the veracity of the Applicant's claim that BPHR was aware prior to the Applicant's resignation of (1) the misuse of a draft recommendation for the Applicant's non-confirmation; (2) the desire of the Principal Director, OIST for the Applicant to resign so as to avoid non-confirmation proceedings; (3) their failure to inform the Applicant of standard procedures regarding recommendation for non-confirmation; and BPHR's failure to inform the Applicant of his rights to a performance improvement plan while on extended probation; b. The Director, OIST, the Applicant's original immediate supervisor during the relevant period, for appropriate examination to confirm the veracity of his words (i.e., whether the Applicant was coerced to resign); c. The Director, OIST, who became the Applicant's immediate supervisor, for appropriate examination to determine the

reason why he denied the Applicant his request to be put on a performance improvement plan; d. The Applicant's designated bank staff representative (or anyone else for that matter who used to be the Applicant's superior, colleague, or subordinate within OIST) for appropriate examination to determine his perspective on why the Applicant was coerced to resign; and e. The former Principal Director, OIST, for appropriate examination to ascertain why she would not support placing the Applicant on a performance improvement plan and if she would admit to having intimidated the Applicant with non-confirmation. The Tribunal denies these requests for the two reasons set forth below: a. On the one hand, as the Tribunal points out at paragraph iv) above, while it is possible that, during the meetings held before the resignation, it was suggested to him to accept this solution, this fact does not prove duress. b. On the other hand, and most importantly, the Tribunal notes that Mr. Shimabuku reiterated his decision; it cannot be supposed that he was, each time, under duress. Therefore, the Tribunal decides that the lack of consent has not been proved by Mr. Shimabuku. The denial to agree to the withdrawal of the resignation 31. According to paragraph 4.3 of Administrative Order. No 2.05, the resignation "which has been accepted may be withdrawn ... only in mutual agreement with the Bank". If the withdrawal has to be agreed to by the Bank, it means necessarily that the Bank has the right not to accept it, which was the case. Moreover, this decision to deny the withdrawal of the resignation was not arbitrary. The Tribunal reminds that in the second PER, Director, OIST recommended not to confirm the appointment for reasons for which Mr. Shimabuku did not make any comment. If Mr. Shimabuku had not resigned, the Bank would have taken the decision not to confirm the appointment: in this eventuality, employment relations would have ceased in October 2003, i.e., eight months before the effective date of the end of the contract. The right of Mr. Shimabuku to be placed on a PIP 32. According to the staff handbook, "Improving Performance: a Guide for Staff", a Performance Improvement Plan is recommended for those probationary staff whose performance is "clearly deficient." On 24 March, 2004, the date Mr. Shimabuku requested to be placed on a PIP, the Bank had approved the extension of his probationary period until 15 July 2004. Thus, Mr. Shimabuku, who was still on probation, could request to be placed on a PIP in order to improve his performance. However, in reality, the extension of the probationary period was the way chosen by the Bank to allow Mr. Shimabuku to remain until 15 July 2004, his effective date of resignation: besides, his workload had been adapted in consideration of the next and final end to his employment. It was, therefore, useless to give to Mr. Shimabuku a new chance to improve his performance. In any case, his appointment would have ceased on 15 July 2004. The decision of the Bank not to agree with the request of Mr. Shimabuku to be placed on PIP was justified and not arbitrary.

Conclusion

For the reasons stated above, the Tribunal decides that:

- a) Mr. Shimabuku has regularly resigned;
- b) His decision was not obtained under duress or improper motive; and
- c) The Bank had the right not to agree to Mr. Shimabuku's request to withdraw his resignation after it had been accepted, and not to place him on a PIP.

All the claims of Mr. Shimabuku have to be rejected because:

- a) His resignation was properly submitted;
- b) His resignation had not been obtained under duress; and

c) It was accepted before he expressed his intention to withdraw it.

Decision:

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