

Decision No. 83

Stavros Apergis,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and A. K. Abul-Magd, Vice Presidents, and R. A. Gorman, E. Lauterpacht, C. D. Onyeama and Tun Suffian, Judges, has been seized of an application, received October 31, 1988, by Stavros Apergis, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on August 11, 1989.

The relevant facts:

(a) The Reorganization

2. The general facts relating to the 1987 Reorganization are as stated in paragraphs 5 to 40 of Decision No. 40.

(b) The particular facts of the case

3. The Applicant joined the Bank on September 27, 1979, as an Education Economist, level L, (which is approximately equivalent to level 23 in the present grade structure) in the Education Division of the Latin America and Caribbean Projects Department (LAC). On September 1, 1981 he was promoted to level M which is approximately equivalent to level 24 in the present grade structure. On July 8, 1985 the Applicant transferred to a Senior Loan Officer position, level 24, in the South Asia Country Programs Department.

4. On October 29, 1985 in the Applicant's Annual Performance Review (APR) for the year July 1984-June 1985 his former Division Chief in LAC noted:

[I]n recognition of the [Applicant's] steady, high level performance over the years, a level-25 position was prepared for him during the job grading exercise. In this position he would inter alia, have overseen all economic and sector (and related) work in the Division. In the event, he succeeded in transferring before the job-grading exercise was completed; and this position is currently unfilled.

5. On May 1, 1986 the Applicant was recommended by the South Asia Country Department for promotion to grade 25 as a Senior Country Program officer (SCPO). On September 23, 1986 in the Applicant's APR for the period July 1985-June 1986 his Division Chief stated:

[I]t was felt by the Director's Committee that with only one year in Programs, he [the Applicant] did not have the full opportunity to demonstrate his capacity to motivate, organize and manage his colleagues in the accomplishment of major tasks.

On November 6, 1986 the Applicant's Director in a memorandum to the Personnel Department confirmed that an SCPO position level 25 had been created and that the Applicant had been placed in that position as a "filled vacancy" with a view to being cleared for an SCPO position. On May 11, 1987 in the Applicant's APR for the period July 1985-June 1986, his Director stated:

[T]he SCPO Committee decided that Mr. Apergis has not had adequate opportunity in his one year Programs assignment to demonstrate his capacity to develop country strategies or the managerial and leadership capacities required at the SCPO level.

6. On the occasion of the Applicant's APR for the period July 86-June 87 his Division Chief on May 19, 1987 noted that the Applicant's SCPO assignment demanded the application of not only technical skills but demonstration of leadership and management skills in an environment of a much more intensive degree of staff interaction and more consensus-building needs and that the Applicant should invest additional effort and time in these areas in order to maximize his effectiveness at that level. In June 1987 the Applicant stated in his APR that he found unjustified his Division Chief's abrupt shift in the evaluation of his performance, since in May 1986 the latter recommended the Applicant's promotion to SCPO, apparently without reservations about the Applicant's leadership and management skills. Finally the Applicant's Director who apparently due to an oversight did not sign his comments until August 1988 stated:

The Management Review affirmed [Applicant's Division Chief's] evaluation of Mr. Apergis' performance. While Mr. Apergis has exhibited many qualities, the general feeling is that he has not met the expectations for leadership and for consensus-building that the SCPO job requires. The Management Review agreed that Mr. Apergis would need to work on these areas further if he were to be a successful SCPO candidate.

7. Meanwhile the reorganization had begun. The newly appointed Vice President, East Asia and Pacific, wrote to all Asia Region staff, including the Applicant, outlining the procedures and schedule of the staff selection process. Furthermore, he invited them to express their assignment preferences on the Staff Assignment Preference Forms he had also provided. On June 22, 1987 the Applicant's Acting Vice President for the Asia Region addressed a Memorandum to all staff providing further information on the Staff selection process as well as staffing tables for the Asia Region in order to help the staff to determine their future assignment preferences.

8. At the end of Round 1, on July 15, 1987 the Applicant applied for a Standard Separation Package A in accordance with Staff Rule 5.09, para. 9.03 which states:

Applications for voluntary separation may be denied if (a) the staff member has been offered a position and his skills are determined by the Vice President, Personnel, to be essential to the effective functioning of the Bank, or (b) approval of the application would cause the number of voluntary separations added to the expected number of separations under the Enhanced Separation Package to exceed the aggregate budgetary provision for such separations or the related number of such separations. Should it appear that approval of all applications may result in exceeding the budgetary provision or the related number of separations, the Vice President, Personnel shall give priority to applications by staff who have not been offered a position and shall also consider the relative supply of and demand of the staff member's skills in the staff member's occupational stream, the staff member's performance, and the impact on the nationality and gender mix.

9. On July 18, 1987 the Applicant wrote to the Department's Personnel Officer to let him know that he was going to be on home leave until September 1, 1987 in Greece and asked him to explain to potential "suitors" that his family situation obliged him to move back to Greece and, therefore, any attempt to recruit him was pointless since he could not accept any kind of offer. On July 20, 1987 the Applicant left on home leave for Greece.

10. On July 22, 1987 the Applicant's Division Chief informed the Department's Senior Personnel Officer that the Applicant was not selected during Round 1 and that the main reason he was not selected was that he was considering the possibility of leaving the Bank for personal reasons.

11. The Vice President, Personnel, in his memorandum dated July 30, 1987, addressed to all those who had applied for the Standard Separation Package (Package A), noted that based on the number of applications for Package A, he had to assign priorities among Package A applicants and that lower priority would be given to those selected for same level jobs.

12. During Round 2 in August 1987 and while the Applicant was on home leave in Greece he received an offer for a position in his grade level 24 in the education sector which was first conveyed to him in writing on August 10, 1987 by the selecting Division Chief, and then, on August 25, 1987 by telex at his home address in Greece. On August 27 the Personnel Department received the Applicant's telex informing them that he could not accept

the job offer. In his testimony before the Appeals Committee the Applicant stated that he had made the decision to move from the education sector in 1985, and he felt that accepting that offer would mean a regression in his career growth.

13. Meanwhile, on August 21 the Vice President, Personnel, informed the Applicant that he could not approve his application for Package A because of budgetary constraints, but if in Round 2 more staff were selected for positions than anticipated, he might be able to award more Packages A at a later date and in accordance with the criteria stated in Staff Rule 5.09 para. 9.03.

14. In September 1987 upon his return from home leave the Applicant received over the telephone an offer for a position at level 24 from the Division Chief, Country Operations, for the Central Africa Department in the Africa Region, but the Applicant informed him that he was not interested in the position. Nonetheless on September 15, 1987 the same offer was conveyed to the Applicant in writing.

15. In response to the Vice President's memorandum of August 21, 1987 the Applicant on September 22, 1987 requested to be granted Separation Package A, since he was not offered any position during Round 1 and financial constraints had recently been lifted.

16. On September 24, 1987 the Vice President, Personnel, informed the Applicant that, since he had been offered but had not accepted a position at his current level, he was not eligible to receive the Enhanced Separation Package (Package B) and unless he accepted an outstanding job offer, or agreed to be placed in some other position, his appointment would be terminated in accordance with the provisions of Staff Rule 7.01.

17. The Vice President, Personnel, wrote again to the Applicant on September 29, 1987 to inform him that his request for Package A could not be granted due to budget pressures as well as the need to keep highly skilled people in the Bank.

18. On September 30, 1987 the Director, Compensation, presented to the Applicant a separation agreement. However, since the Applicant insisted on receiving 2 years of education benefits for his children and two years continued participation in the Medical Insurance Plan and the Bank did not accede to his requests, on October 23, 1987 the Applicant resigned. His resignation was effective December 7, 1987.

19. On November 16, 1987 the Applicant filed an appeal with the Appeals Committee requesting as relief (a) Package B or (b) Package A or (c) the opportunity to negotiate the terms of a separation package appropriate to the circumstances of his own case. The Appeals Committee Report dated July 15, 1988 concluded that: (i) the Bank acted in accordance with the provisions of para. 9 of Staff Rule 5.09 in denying the Applicant Package A; (ii) the Applicant was not in any case eligible for Package B as he had applied for Package A and had received two job offers at his current level; and (iii) there was no evidence that the Bank had acted capriciously, or that there had been an abuse of discretion in the offer of a mutually agreed separation under Staff Rule 7.01. Accordingly, the Committee recommended that the Applicant's requests for Packages A and B be denied, but given the unfortunate circumstances of this case and the value of the Applicant's service to the Bank, the latter should offer the Applicant benefits in line with those offered to him in September 30, 1987 by the Director, Compensation, with a lump sum payment equivalent to eight to ten months of net pay, instead of the six months originally offered.

20. On July 28, 1988 the Senior Vice President, External Affairs and Administration informed the Applicant that he could not accept the Committee's recommendation to provide relief under Staff Rule 7.01 since he had already been offered negotiated terms of separation under this Rule, but he chose to resign and retain his right of appeal.

The Applicant's main contentions:

21. The Bank by denying the Applicant a separation package attempted to oblige him to accept selection to a position at level 24, notwithstanding the fact that at least one year immediately prior to the reorganization he

occupied and performed the functions of a level 25 position. Consequently, the Bank violated Staff Rule 5.09, para. 1.06 (c), which states "No staff member shall be obliged to accept a position at a level lower than the position he currently occupies." By attempting to oblige the Applicant to accept a position with a level lower than his previous position, the Bank also sought to deprive him of value he had already earned by virtue of his often commended service to the Bank and his service of over a year in the position of SCPO.

22. The Bank used the voluntary separation provisions as a means to reduce the cost of the Package B, awarding the Standard Separation Package only to staff members who had received no job offers during the reorganization and who, therefore, would have been entitled to the more generous Package B for redundancy. In addition, the Bank never requested funding for the voluntary separation program apart from general redundancy funding, never considered the individual circumstances of each applicant and never used the program as a means for allowing voluntary departure from the Bank.

23. The job offers made to the Applicant should be discounted because they were not bona fide and did not conform to Bank policy and practice. They were made pursuant to procedures conflicting with fundamental elements of the Applicant's conditions of employment, including the Bank's duty to secure the highest standards of efficiency and to afford staff members security in their employment. The selection process used in the 1987 reorganization was, therefore, an illegal exercise of the Bank's discretion in the making of employment decisions and the injurious decisions which resulted from this process are irrevocably tainted. Consequently, the Applicant should not be made to suffer because he refused to accept these two job offers.

24. The Applicant was eligible for the Package B, because he was not offered a position at the same level as the position he occupied. The principle that it is the level of the staff member's position which must be considered in determining the appropriateness of a reassignment, and not his personal salary level, should prevail in the Applicant's case.

25. The Bank violated the Applicant's right to security in his employment during the 1987 reorganization and discarded established procedures to replace them by a system in which a manager unknown to the staff member could compel the staff member to move to another career stream in a matter of seconds merely by signing his name to a single piece of paper.

26. These procedures, which profoundly affected fundamental elements of the conditions of staff employment, were adopted without adequate staff consultations in violation of the Staff Rules and Principles of Staff Employment.

27. The provisions of Staff Rule 5.09, to the extent that they are ambiguous or have resulted in undue harm to the Applicant, should not be enforced against the Applicant, because that Staff Rule was adopted without the required consultation with the Staff Association and its provisions departed significantly from the proposals upon which the Staff Association had been consulted and which had been approved by the Executive Directors.

28. Under the terms of established reorganization procedures approved by the Executive Directors the Applicant should have been allowed to leave the Bank with Package A after Round 1, since he was not offered a position during Round 1 and had applied for Package A.

29. In the light of the lack of consultations on Staff Rule 5.09, the variance of the terms of the Rule from those approved by the Executive Directors and the sham implementation of the so-called voluntary separation option, the Respondent should be estopped from using the Applicant's good faith application for voluntary separation as a disqualification for eligibility for Package B.

30. Because the Respondent attempted to assign the Applicant to two lower level positions in clear violation of the law and previous practice of the Bank, the Applicant properly declined the demotions and return to an occupational stream which he had left years before with the Respondent's approval and the Respondent thereafter refused to approve the Applicant's separation under either of the two appropriate separation packages but offered him eight months salary on the condition that he release all claims he had against the

Bank, the Applicant was confronted with a situation in which he had been given no productive work commensurate with his skills and abilities and possible termination for abandonment of office for not accepting the positions unlawfully offered him. Therefore, in that context of extreme duress the Applicant "chose" to resign and preserve his right of appeal.

31. The Applicant requested the following relief:

- (i) Rescission of the decision to oblige the Applicant to accept selection to a position at a level lower than the position he occupied prior to the reorganization;
- (ii) Rescission of the Respondent's attempt to impose as a non-negotiable condition of separation by mutual agreement a release of claims subsequently found to be invalid by this Tribunal in cases where there had not been individualized negotiations;
- (iii) An order that the Respondent offer the Applicant separation from the Bank under the terms of a separation package established for individuals in his circumstances;
- (iv) Compensation in the amount of the difference between the terms of Package B and the terms of separation he actually received, plus interest thereon at the rate of ten percent per annum or, alternatively, in an amount according to the terms of the separation agreement he was offered by the Bank on September 30, 1987 after substituting for the original six months net salary the eight to ten months net salary recommended by the Appeals Committee; and
- (v) Reimbursement of all expenses in the pursuit of relief, attorney's fees and costs.

The Respondent's main contentions:

32. The decision to deny the Applicant's request for Package A, did not constitute an abuse of discretion and is consistent with the criteria set forth in Staff Rule 5.09. Because the Applicant was offered two positions at his grade 24 and his skills and experience were given a very high priority and were in extremely short supply in the Bank, the Vice President, Personnel, had ample justification for denying the Applicant's request for voluntary separation.

33. The Applicant, prior to the reorganization and up to the time of the termination of his appointment, remained a grade 24 Senior Loan Officer and occupied a grade 24 position. He was never promoted to the grade 25 SCPO position he claims to have occupied. It was absurd to conclude that, simply because the Applicant was under consideration for promotion and had been given a trial assignment to enable him to gain the approval of the SCPO Appointment Committee, he had been ipso facto promoted.

34. The representatives of the Staff Association were well aware that voluntary separation would not be automatic but rather would be subject to the Bank's agreement. Hence, it could not be said that there had been no consultation with the Staff Association on this matter.

35. It was appropriate to deny the Applicant's request for voluntary separation because of limitations imposed by Staff Rule 5.09 relating to aggregate budgetary provisions and the related number of separations. Moreover, given the Applicant's educational background and professional experience, both of which were in such short supply within the Bank, it would have been self-defeating to have granted him voluntary separation at the end of Round 1.

36. The Applicant was not eligible for Package B because he had received two job offers at his grade level and had applied for voluntary separation. The job offers which the Applicant declined to accept were bona fide and the defects in the selection process complained of were attributable to his own decision to leave the Bank and return to Greece and to the fact that he chose to go on home leave during the height of the selection process.

37. The Applicant has no standing to challenge the terms of the mutually agreed separation offered to him and rejected by him, because he chose to resign from the service of the Bank. The agreement tendered to him was not the only set of terms to which the Bank could accede nor was it the product of an inflexible rule of general

applicability. The Applicant insisted in amending the Bank's initial offer by requesting extended medical insurance and education benefits to which, however, the Bank could not accede. As an alternative he was offered an increase in the severance pay by two months.

38. The Applicant had no entitlement to a mutually agreed separation and, if later he considered his decision not to accept the Bank's offer to be a mistake, this does not now entitle him to win through litigation what was offered to him in an effort to settle his case and avoid litigation.

39. The consultation process for Staff Rule 5.09 was fair, reasonable in the circumstances and consistent with the provisions of the Staff Rules.

40. Staff Rule 5.09 is unambiguous and internally consistent. The Bank's refusal to grant Package A to those who possessed skills that were in short supply and that the Bank needed was not a matter of bad faith but of common sense. Furthermore, Staff Rule 5.09, para. 7.06, provided that Package B would not be available to staff who had been offered a position at their current or a higher grade.

41. The selection procedures in the course of the reorganization were transparent and fair and the policies reflected in Staff Rule 5.09 were formulated after a lengthy review process with representatives of the staff.

42. The Applicant was offered the opportunity to state a job preference and he was informed of the options, counselling and assistance available to him. Nonetheless, he elected to go on home leave to Greece during the height of the selection process perhaps because he was not interested in receiving a job offer, since he had stated that any attempt to recruit him was fruitless because he could not accept any kind of offer.

43. The Applicant was treated fairly, compassionately and in accordance with the Staff Rules, therefore, he should not be awarded costs or Attorneys' fees, because there are no circumstances in this case that would warrant an exception to the Tribunal's normal policy of leaving the parties to bear their own costs.

Considerations:

44. The Applicant claims compensation in the amount of the difference between the terms of the Enhanced Separation Package (Package B) and the terms of the separation he actually received, plus interest and attorney's fees. His main contention is that he is entitled to receive the Enhanced Separation Package established by Staff Rule 5.09, para. 9.03.

45. Staff Rule 5.09 provides, in para. 9.03, that "eligible staff may apply to the Vice President, Personnel, for voluntary separation under the terms of the Standard Separation Package described in this Section". The Staff Rule further provides:

Application for voluntary separation may be denied if (a) the Staff member has been offered a position and his skills are determined by the Vice President, Personnel, to be essential to the effective functioning of the Bank, or (b) approval of the application would cause the number of voluntary separations under the Enhanced Separation Package to exceed the aggregate budgetary provision for such separations or the related number of such separations. Should it appear that approval of all applications may result in exceeding the budgetary provision or the related number of separations, the Vice President, Personnel, shall give priority to applications by staff who have not been offered a position and shall also consider the relative supply and demand for the staff member's skills in the staff member occupational stream, the staff member's performance, and the impact on the nationality and gender mix.

46. During Round 1 of the 1987 Reorganization the Applicant was not selected for any position within his department. On July 15, 1987 he applied for voluntary separation from the Bank requesting a Standard Separation Package (Package A) under Staff Rule 5.09, para. 9.03.

47. On August 10, 1987 the Division Chief of the Asian Region's Population and Human Resources Technical Division offered the Applicant a job as a Senior Economist, grade 24. As the Applicant had gone to Greece on

home leave, the offer was transmitted by telex on August 25, 1987. The job offer was turned down by the Applicant.

48. By a memorandum dated August 21, 1987 the Vice President, Personnel, denied the Applicant's request for Package A for the following reasons:

Staff Rule 5.09 provides that applications for voluntary separation may be denied, among other reasons, if approval of the application would cause the number of voluntary separations added to the expected number of separations under the Enhanced Separation Package to exceed the aggregate budgetary provision for such separations or the related number of such separations. As was to be done in such an eventuality, I have proceeded with the award of Package A, giving priority to applications by staff who have not been offered a position to date. I regret to advise you that it currently appears that the granting of further Package A at this time to staff who have been offered positions will result in both the budget for and total number of separations being exceeded. Accordingly, I have decided that your application for Package A cannot be approved at this time.

49. When the Applicant returned from leave in September 1987, another offer of a level 24 position was made to him by the Division Chief, Country operations, Central Africa Department in the African Region. The Applicant replied that he was not interested in the position.

50. In the light of the foregoing the decision of the Respondent to deny the Applicant's request for Package A was fully consistent with the provisions of Staff Rule 5.09, being based on both grounds (a) and (b) which justify the denial of such benefit.

51. The Applicant, however, contends that the two job offers he received corresponded to a level 24 position, below his personal grade and on that account he was not bound to accept them. He contends that during the job grading exercise conducted in 1985, in recognition of his steady, high level of performance over the years, a level 25 position in his career stream was prepared for him within his division. He adds that on May 1, 1986, he was recommended for promotion to a Senior Country Program Officer (SCPO), a grade 25 position, by the South Asia Country Department. On November 6, 1986, the Applicant's Director in a memorandum to the Personnel Department confirmed that a SCPO position had been created and that the Applicant had been placed in that position as a "filled vacancy" with a view to the Applicant being cleared for an SCPO position.

52. This was, however, followed by two less than enthusiastic comments on the Applicant's suitability for the SCPO position: On May 11, 1987 the Applicant's Director stated in the Applicant's APR for July 1985-June 1986 that the SCPO Committee decided that the Applicant had not had adequate opportunity in his one year Programmes assignment to demonstrate his capacity to develop country strategies or the managerial and leadership capacities required at the SCPO level.

53. On May 19, 1987 the Division Chief noted that the Applicant had to invest "additional effort and time in the area of leadership management skills in an environment of a much more intensive degree of staff-interaction and more consensus-building needs and that the Applicant should invest additional effort and time in those areas in order to maximize his effectiveness at that level."

54. The Applicant found this comment unjustified and in June 1987 protested that the Division Chief had as recently as May of the preceding year recommended his promotion to SCPO without any reference to the Applicant's leadership and management skills.

55. Finally the Applicant's Director stated:

The Management Review affirmed [Applicant's Division Chief's] evaluation of Mr. Apergis' performance. While Mr. Apergis has exhibited many qualities, the general feeling is that he has not met the expectations for leadership and for consensus-building that the SCPO job requires. The Management Review agreed that Mr. Apergis would need to work on these areas further if he were to be a successful SCPO candidate.

56. The relief requested by the Applicant appears to imply that the job offers made would, if accepted by him,

have meant his demotion to a level 24 position, while he occupied a level 25 position.

57. The Tribunal cannot accept this view of the matter since the Applicant was never promoted to a level 25 position and was a level 24 officer at the time the offers were made. The proposed formal increase in the Applicant's grade level was denied in June 1986. He was assigned to a level 25 position in order to test his suitability for promotion to that position. In the event, the Respondent's officers who were charged with the duty of deciding on the Applicant's fitness for promotion, noted that: "The Applicant would need to work on the areas of leadership and management if he were to be a successful SCPO candidate". The Applicant was never graded at level 25, notwithstanding the recommendations and favorable reports made on his work. The Tribunal will not interfere with the decision not to promote him in the absence of evidence of abuse of discretion. No abuse of discretion has been shown in this case.

58. On September 30, 1987 the Applicant was informed of the terms proposed by the Respondent for an agreed separation from the service of the Bank. These terms included special leave through November 30, 1987, the lump sum equivalent of six months net pay, and a release of claims provision. On October 9, 1987 the Applicant maintained his claim to a Standard Separation Package or alternatively to reach an agreement under the terms of an Enhanced Separation Package, on the ground that he had not been offered a position comparable to his former position. He proposed certain amendments to the separation terms concerning educational benefits and medical insurance. The Respondent did not accept these amendments.

59. On November 16, 1987 the Applicant filed an appeal with the Appeals Committee requesting as relief (a) Package B or (b) Package A or (c) the opportunity to negotiate the terms of a separation package "appropriate to the circumstances of his own case".

60. The Appeals Committee dismissed the appeal in respect of (a) and (b) and in respect of (c) recommended that the Bank make a more generous offer than those made to the Applicant on September 30, 1987. The Senior Vice President, External Affairs and Administration, indicated that he could not accept the Appeal Committee's recommendation on a more generous offer, since the Applicant had already been offered negotiated terms of separation but chose to resign and retain his right of appeal.

61. The decision of the Respondent to deny the Applicant's request for Package A was, for the reasons given, consistent with the provisions of Staff Rule 5.09.

62. As the Applicant had unsuccessfully applied for Package A and had been offered two positions at his current level, he could not subsequently apply for Package B, and it is, therefore, difficult to see how he can base his claim for compensation on Package B. As he had rejected the terms of the separation agreement he was offered by the Bank on September 30, 1987, he cannot now get the Tribunal to order the Bank to accept amended terms put forward by him.

Decision:

For the above reasons the Tribunal unanimously decides to dismiss the application.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At London, England, September 22, 1989