

Decision No. 128

Charles Starr Atwood,
Applicant

v.

International Finance corporation,
Respondent

1. The World Bank Administrative Tribunal, composed of A.K. Abul-Magd, President, E. Lauterpacht and R.A. Gorman, Vice Presidents, and F.K. Apaloo, F. Orrego Vicuña, Tun M. Suffian and P. Weil, Judges, has been seized of an application, received January 14, 1993 by Charles Starr Atwood, against the International Finance Corporation. The Tribunal rejected the Applicant's requests for preliminary measures and oral proceedings as unnecessary. The usual exchange of pleadings took place and the case was listed on October 7, 1993. Thereafter the Applicant filed additional written statements on October 11 and another on November 8, 1993. Since the two additional written statements were filed after the listing of the case, the Tribunal decided not to make them part of the record in accordance with Rule 12, paragraph 1.

The relevant facts:

2. The Applicant joined the Engineering Department (ED), of the International Finance Corporation (IFC), effective April 20, 1987 on a two-year fixed-term appointment as a Project officer, level 23. His appointment was confirmed on April 20, 1988.

3. By memorandum dated October 19, 1988, to the Manager, Personnel and Administration (PA), the Applicant's supervisor requested the extension of the Applicant's appointment for another two years, to April 20, 1991, stating that the Applicant had worked effectively and had handled a heavy project workload.

4. When the Applicant began his employment with IFC, his responsibilities and qualifications were consistent with the ED's 1986 job description for a Senior Hotel and Tourism Specialist. The responsibilities of his position were to evaluate and provide judgments on the technical, organizational, market and business aspects of Hotel and Tourism projects. The qualification requirements for his position were a basic undergraduate degree in engineering, business school or hotel school discipline, a basic knowledge of construction techniques, practices, and cost determination, as well as at least 15 years of experience in the hotel industry in hotel operations, market and income forecasting, and project implementation.

5. In the Applicant's Performance Review (PPR) covering the period of May 1, 1988 to April 30, 1989, his supervisor stated that, although the Applicant had handled a large number of projects and that his dedication to his work had been unquestionable, he lacked strength in engineering matters and his appraisals at times lacked depth.

6. In the Applicant's PPR covering the period of May 1, 1989 to April 30, 1990, his supervisor stated that in the area of project specifics the Applicant had been making special efforts to provide in depth analysis, and that he hoped that the Applicant would do even better in the future. His next-in-line supervisor stated that the Applicant had progressed very well and that he had handled a large and diversified workload.

7. In 1989 the ED issued a new job description for a Hotel Specialist. The responsibilities of the 1989 job description were similar to those of the 1986 job description. However, the qualifications and requirements of the 1989 job description were different for those of the 1986 job description. In the 1989 job description, a degree in civil engineering and substantial experience in design and construction were required, with a

requirement of only 2-5 years experience in market evaluation and project planning. In the 1986 job description, a basic degree in engineering, business school, or hotel school, and basic knowledge of construction were sufficient, but at least 15 years in the hotel industry, hotel operations, market and income forecasting were required.

8. Early in 1990 the ED hired a second Hotel Specialist, who was an architect with hotel construction expertise to fit the requirements and qualifications of the 1989 job description.

9. In the Applicant's PPR for the period of May 1, 1990 to April 30, 1991, his supervisor stated that, although the Applicant's contribution to the work of the ED had been serious and substantive, being a lawyer by training, his reports lacked depth and precision of analysis. He concluded stating that "the work demands of the next few years will continue to place a premium on the technical and analytical aspect of project work..." and that the ED had decided to renew the Applicant's fixed-term contract only for one year, to April 1992, giving the Applicant an opportunity to find another job outside the IFC.

10. By memorandum dated October 14, 1991, to the Manager, PA, the Applicant requested confirmation of whether he would be entitled to redundancy benefits upon termination of his employment. In response, by memorandum dated October 18, 1991, the Manager, PA, stated that the Applicant's termination of employment was in the context of the expiration of his fixed-term contract and thus the provisions of Staff Rule 7.01 did not at all apply to him.

11. By memorandum dated January 9, 1992 to the Director, PA, the Applicant filed a request for an administrative review of the decision denying him redundancy benefits, on the grounds that the IFC based the termination of his employment on the expiration of his fixed-term contract as a substitute for the provisions applied on redundancy, which redundancy had been established de facto in his case. In response, by memorandum dated January 27, 1993 the Vice President, Corporate Business Development, informed the Applicant that there was no basis on which to accede to his request.

12. On February 28, 1992, the Applicant filed an appeal with the Appeals Committee, and on September 29, 1992 the Committee heard the Applicant's case.

13. By letter, dated October 6, 1992, to the Chairman of the Appeals Committee, the Applicant requested a re-opening of the Appeals Committee proceedings on the grounds that he had learnt that the IFC had offered employment to an individual on the basis of the 1987 (sic) job description. In response, by letter, dated October 26, 1992, the Panel Chairman of the Appeals Committee informed the Applicant that there were no valid grounds for reopening the hearing of the Committee.

14. On November 4, 1992 the Appeals Committee rendered its report recommending to the Vice President, PA, that the Applicant's appeal be denied. By letter, dated November 5, 1992, to the Applicant, the Vice President, PA, informed the Applicant that he had accepted the Committee's recommendation.

The Applicant's main contentions:

15. The failure of the Vice President to declare the Applicant's position redundant was arbitrary and constituted a détournement de pouvoir.

16. The IFC, by indicating that the termination of the Applicant's employment was in the context of the expiration of his fixed-term contract, prejudicially substituted criteria relating to fixed-term contracts, in order to conceal redundancy.

17. The Applicant became redundant when the IFC issued the 1989 job description for Hotel Specialist. The 1989 job description was a patent and substantive revision of the 1987 (sic) job description to the extent that the Applicant was no longer qualified for his position.

18. The revised 1989 job description was not issued for an additional position. It was a replacement of the

1987 (sic) job description and the Hotel Specialist hired in 1990 did not “work together” with the Applicant. The Applicant did not review his work nor did he submit his work to him.

19. The Respondent’s failure fairly to consider the Applicant’s request for conversion of his fixed-term appointment to a permanent one constituted a breach of the Applicant’s contract of employment and will have a lasting and materially detrimental effect on the Applicant’s ability to earn income for the foreseeable future.

20. The Applicant’s performance was satisfactory in every respect. His supervisor’s evaluation that the Applicant “made a serious and substantial contribution to the work of the Department” and that he lacked “depth and precision of analysis” are conflicting in meaning and, therefore, lack any probative value whatsoever. If his supervisor thought that the Applicant had not the ability to provide the kind of analysis needed, he should have notified the Applicant and provide him with training.

21. The Applicant made the following pleas:

A. rescission of the following decisions:

1. the decision to terminate his employment in the context of the expiration of his fixed-term contract;
2. the decision to refuse to declare him redundant; and
3. the decision to recommend denial of the relief requested in his statement of appeal before the Appeals Committee;

B. compensation for:

1. failure to provide training;
2. failure to assign him elsewhere in the Bank Group;
3. breach of contract and consequential damages in the amount of \$445,817; and
4. attorney’s fees in the amount of \$16,000.

The Respondent’s main contentions:

22. The Applicant’s position did not become redundant when in 1989 the IFC issued a new job description for Hotel Specialist.

23. The 1989 job description was not intended to replace the 1986 job description and was not applicable to the position held by the Applicant.

24. The 1989 job description was issued in order to hire an additional Hotel Specialist who would work alongside the Applicant and who would complement the Applicant’s skills.

25. Early in 1990 the ED hired that Hotel Specialist who was a qualified architect and who filled the need for hotel construction expertise. He and the Applicant worked together, applying their respective areas of expertise to the appraisals, up until the time the Applicant left the employment of the IFC.

26. The ED had a continuing need for a Hotel Specialist and it replaced the Applicant with someone having precisely the Applicant’s expertise.

27. The Respondent’s decision not to continue to hire the Applicant beyond the expiration of his fixed-term appointment was within the Respondent’s discretion.

28. The Applicant had no right to have his fixed-term appointment converted to a regular one, and even more so, since his performance was less than fully satisfactory.

29. The Applicant was accorded due process and was treated fairly. He was given a year’s notice to seek job

opportunities outside the IFC.

30. No basis exists to award the Applicant any of the relief he requests, monetary or otherwise. Similarly, the Applicant should not be awarded costs not only because he has no cause of action, but also because he did not submit an itemized statement of costs.

Considerations:

31. The Applicant contends that the decision not to declare him redundant was unlawful; he impugns the recommendation of the Appeals Committee that his appeal be dismissed; and attacks the legality of the decision of the Vice President, Personnel and Administration, accepting that recommendation.

32. The issue is whether before he left the IFC's service the IFC was obliged to convert his fixed-term appointment to a regular one, declare him redundant and pay him redundancy benefits as he claims.

33. Although the Applicant bases his claim on three different grounds, namely, arbitrariness, redundancy and breach of contract, it is best to deal with all three together.

34. In essence, the Applicant argues as follows. The failure of the Vice President to declare the Applicant's position redundant was arbitrary and constituted a détournement de pouvoir. By saying that the Applicant's employment had ended because its fixed term had expired, the IFC had wrongfully, in order to conceal redundancy, based its decision not to renew the Applicant's contract on the ground that it had expired by its own terms. The Applicant submits that he became redundant as soon as the IFC issued the 1989 job description for Hotel Specialist. He argues that this description clearly and substantially revised the earlier description to the extent that it made the Applicant no longer qualified for his position; that the revised description was not issued for an additional position, but that it rather replaced the earlier description; and that the Hotel Specialist hired in 1990 did not work together with the Applicant.

35. The Tribunal does not accept the Applicant's argument that his Bank service was terminated by virtue of redundancy. There are two kinds of appointments: one for an indefinite term and the other for a definite term. In the case of an appointment for a definite term, Staff Rule 7.01, paragraph 3.01, provides that it shall expire on the completion of the term, as specified in the staff member's letter of appointment, as possibly amended. The Applicant's letter of appointment, dated March 1, 1987, made him a "formal offer of a fixed-term appointment for a period of two (2) years" and explicitly stated in the very first paragraph that "A fixed-term contract is not subject to automatic extension". In Mr. X, Decision No. 16 [1984], paragraph 35, the Tribunal stated that

A fixed-term contract is just what the expression says: it is a contract for a fixed period of time..... Whatever may be the character of the work which a member of the staff performs, his legal position is controlled by the terms of his appointment.....

The Applicant's contract as extended gave him an appointment until April 19, 1992. Accordingly, as provided by the above-quoted Staff Rule, his appointment simply ended on that date. Redundancy could only be invoked had it impeded the completion of the fixed-term contract.

36. As also stated by the Tribunal in Mr. X, Decision No. 16 [1984], paragraph 38:

The possibility exists.... that there may be something in the surrounding circumstances which creates a right to the conversion of a fixed-term appointment to a permanent one.... [But] it is necessary to stress that this possibility [is] clearly subject to conditions. One such condition [is] that the fixed-term staff member should meet the requirements of the position.

Although the Applicant contends that the Vice President of his department had promised him that his appointment would be converted to a permanent one, there is nothing in the record to support this contention, nor is there any evidence that the IFC's judgment that his performance was unsatisfactory was an abuse of discretion.

37. Moreover, as regards redundancy, the Applicant claims that the description of the job which he obtained in 1987 had in 1989 been revised to the extent that his qualifications no longer met the requirements of the redesigned position. Therefore, he says, by virtue of Staff Rule 7.01, paragraph 8.02, his employment had become redundant. That rule provides

Employment may become redundant when [the employer] determines in the interests of efficient administration that a position description has been revised to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position....

38. In 1989, the IFC formulated a job description for a new position as Hotel Specialist; this required a strong background in engineering, construction and technical aspects of hotel industry investment analysis, areas in which the Applicant was weakest. The IFC did indeed hire a second Hotel Specialist early in 1990 to work alongside the Applicant and to complement his expertise. When the Applicant left the service of the Bank, his position was not abolished but rather was offered to another person who had the same qualifications as the Applicant. The Tribunal is satisfied that the position created in 1989 was not intended to replace the position held by the Applicant. Therefore, Rule 7.01, paragraph 8.02, does not apply at all.

Decision:

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

A. K. Abul-Magd

/S/ A. K. Abul Magd
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington, D.C., December 10, 1993