

Decision No. 198

Paul Andrew Baartz,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on October 14, 1997, by Paul Andrew Baartz against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Francisco Orrego Vicuña (a Vice President of the Tribunal) as President, Thio Su Mien (a Vice President of the Tribunal) and Prosper Weil, Judges. The usual exchange of pleadings took place. The Applicant's request for permission to file an additional written statement and to submit additional evidence was denied by the President of the Tribunal pursuant to Rule 11 of the Rules of the Tribunal. The case was listed on September 21, 1998.

2. In essence, the Applicant, who was under a three-year fixed-term appointment, requests the correction of two Performance Review Records (PRRs) and the rescission of his removal from his position to another position within the Bank, along with compensation and costs.

3. In his pleadings the Applicant made requests for the production of various documents. Some of these requests were granted by the President of the Tribunal, and the Applicant was given the opportunity to comment on the documents produced by the Respondent pursuant to the President's Order.

I. THE RELEVANT FACTS

4. The Applicant joined the Bank in September 1994 on a three-year fixed-term appointment as an Information Officer, level 21, in the Cash Management Department (CSH), Services and Support Division (CSHSS) in the Treasury Vice-Presidency (TRE). His letter of appointment stated, inter alia, that "[a] fixed-term appointment is not subject to automatic extension" and that "[i]n accordance with World Bank policy, [the Applicant's] appointment will be probationary for the first year and will normally be subject to confirmation on the first anniversary of [his] reporting for duty."

5. While he was in CSHSS, the Applicant's duties included information technology security functions. The Applicant reported to the Division Chief, Mr. X, from whom he received consistently favorable performance evaluations. In the PRR covering the period from September 1994 to March 1995, Mr. X wrote that the Applicant had exceeded his performance objectives for his probationary period and recommended that he be granted an early confirmation effective March 13, 1995. The Management Review Group (MRG) endorsed this recommendation.

6. Around March 1995, the four departments of the Treasury Vice-Presidency (TRE) – Cash Management, Investment, Financial Operations and Pension – were consolidated into a new, single division called Information Services Division (TREIS), with Mr. Y as Division Chief. The Applicant, however, did not join immediately the new division and continued to report to his former supervisor, Mr. X. It was only on November 7, 1995 that he was notified by Mr. Y that he had been "selected to a position as an Information Officer (Security) in the Systems Operations Team in TREIS." In this new position the Applicant reported to Mr. Y through the end of 1995, after which his direct supervisor became Ms. Z, who assumed the position of Manager of the Systems Operations Team as of January 1, 1996.

7. After having joined TREIS, the Applicant repeatedly expressed his concerns regarding the new

organizational structure and the way his supervisors approached the security issues. His disagreement with the managers of TREIS became so acute that on February 6, 1996 he advised the Ombudsman of his belief that “pressure ha[d] been applied to limit [his] reporting functions” but that he “ignored the pressures applied as [he] consider[ed] [his] ethical responsibility to both the Bank and [him]self to be a far greater issue.” He asked the Ombudsman to “keep this on record as [he] expect[ed] unfavorable comments to be made during [his] next review.” In subsequent messages, he informed the Ombudsman of his growing disagreement with his supervisors on security matters. On March 11, 1996, for instance, he advised the Ombudsman that although “it was pointed out that TREIS management control[ed] [his] fate within the Bank and it [might] be in [his] interest not to upset them,” he had “absolutely no intention of lowering his standards when security issues [were] involved.” On March 21, 1996, he wrote to the Ombudsman that he was “the subject of criticism on the grounds of not being a team player” and that in his view “these comments [were] the result of [his] independent and lone stance on the security issues which were not being addressed adequately.” The following day, i.e., on March 22, 1996, he conveyed to the Ombudsman his disappointment “in the position taken by management which [he] believe[d] ha[d] now been clearly identified as one of ‘keep the peace at all costs,’” and he repeated his concern that “management’s position may not be in the interest of the Bank.”

8. In the PRR covering the year 1995, dated March 25, 1996, Ms. Z wrote as follows:

I look forward to Paul establishing as a priority this year, the fostering of teamwork among his peers. As security officer, it is essential to build and sustain effective working relationships which will ensure cooperation and collaboration. Towards this end, I would recommend Paul enrolling in a Bank-sponsored course: ‘Improving Communication by Understanding Personal Styles.’

In this PRR was included a Supplementary PRR, dated April 10, 1996, by Mr. X, who, as already noted, had been the Applicant’s direct supervisor during the period under review. Mr. X stressed the Applicant’s “key role” in security matters as well as his “technical and people leadership skills.” Among the numerous competencies in which the Applicant was described as having been “exceptionally effective,” Mr. X listed “team collaboration.”

9. The Management Review was held on April 16, 1996. The Management Review Group included Mr. Y (the Division Chief of TREIS) and Ms. Z (the Applicant’s supervisor as from January 1, 1996); it did not include Mr. X, who had been the actual direct supervisor of the Applicant during the period under review. The Management Review concluded as follows:

The Management Review concurred with the assessment. It was noted that Paul does not appear to be a ‘team player’ and therefore is less effective than he might otherwise be.

Consequently, the Group recommended training in interpersonal skills and a formal six-month review.

10. At the time of the 1996 salary review the Applicant was given a rating of “satisfactory” for his 1995 performance and was placed in salary zone 3. He received a 3% salary increase, which was 0.6% above the minimum increase for fully satisfactory performance.

11. During the course of 1996 disagreements between the Applicant and his supervisors regarding security policy became ever more acute. The Applicant complained, in particular, that TREIS management was not “serious about security”; that he was excluded from important meetings related to security; that his security position within the Bank had become nothing more than “a token one.” The situation became so tense that on June 13, 1996 the Ombudsman wrote to the Director of TREIS as follows:

I am concerned about Paul’s personal situation and health. He is under a lot of stress and no one is talking to him. Any chance of putting him on Administrative Leave until things are sorted out?

12. On, or around, this date of June 13, 1996, the decision was made to place the Applicant on administrative leave pending his reassignment outside TREIS. The circumstances of this decision are not clear. Was it a decision made on the Applicant’s initiative, or agreed to by him, or imposed upon him? Was it prompted by the Respondent’s wish to take account of the Applicant’s discontent and of the stress put upon him by his situation, or was it prompted by the managers’ wish to get rid of a staff member whom they perceived as a troublemaker or even as a security risk? Who made the decision? When was it made? Did it materialize in any formal

document? Was it notified to the Applicant, and if so when? On all of these matters, the record, replete as it is with memoranda and emails, does not allow the Tribunal to reach a conclusion.

13. However this may be, it appears from the record that a reassignment was discussed with the Applicant as one of the options for resolving the situation and that on July 22, 1996 the Applicant informed the Respondent that “[w]hile [he] believe[d] that the Bank ha[d] not fulfilled the terms of [his] employment, [he] [would] however agree to the reassignment to ITS.” Pursuant to a Memorandum of Understanding dated August 2, 1996, the Applicant was reassigned to the Information Engineering Unit (ITSIE) in the Information Technology & Services Department (ITS) as of August 5, 1996 for the remainder of his fixed-term appointment, *i.e.*, through September 11, 1997.

14. In the meantime, on July 11, 1996, the Applicant had requested from the Vice President, TRE, administrative review of his PRR for 1995. He had requested that the comment in the Management Review Record stating that he was not a team player be removed; that his salary increase for 1995 be reviewed; that the security position be reviewed so as to avoid any conflict of interest; and that, should this latter request be granted, he be reinstated to his position.

15. On August 22, 1996, the Vice President, TRE, responded to this request. Regarding, in particular, the Applicant’s PRR for 1995, the Vice President found no reason to alter the conclusion reached by TREIS managers that the Applicant’s ability to work as a team member needed improvement.

16. On September 9, 1996, the Applicant filed an appeal with the Appeals Committee. On May 14, 1997, the Applicant requested that the Committee review, in connection with his appeal of September 9, 1996, the content of the 1996 Supplementary PRR covering the year 1996 which had been completed by Ms. Z on April 30, 1997.

This Record stated, *inter alia*, as follows:

During this period [the first months of 1996] Paul raised some important security issues which needed to be addressed by TREIS. The management team acknowledged these concerns and consolidated them into a work plan for the department. This set of activities did not satisfy Mr. Baartz either due to the content or speed of implementation. It was clear that Mr. Baartz was disillusioned with the management in TREIS and thus began a period where he did not respond to management’s direction with regard to security.

It is this situation which led management to look for a more suitable assignment for Paul outside of TRE. On 8/5/96, Paul was assigned to ITSIE... to develop Bank-wide security policies and procedures for the balance of his fixed term contract (9/97). TRE does not intend to renew Mr. Baartz’s contract in September, 1997.

The Appeals Committee decided to review this 1996 Supplementary PRR in connection with the other requests submitted to it by the Applicant. Accordingly, the Appeals Committee examined the Applicant’s requests for “(i) an adjustment of his merit salary increase to accurately reflect his achievements in 1995; (ii) a review of his achievements with a view towards increasing [his] present grade level; (iii) elimination of the ‘Management Review Record’ from the 1995 PMP; (iv) elimination of a comment in section 3.b of the 1995 PMP; and (v) elimination of ‘incorrect and misleading’ statements from the Supplemental Performance Review Record for 1996.”

17. In its Report dated June 23, 1997, the Appeals Committee recommended that the Applicant’s requests be denied and, on July 14, 1997, the Vice President, Human Resources, accepted these recommendations.

18. On September 12, 1997, the Applicant’s fixed-term appointment expired by its own terms.

19. On October 14, 1997, the Applicant filed an application with the Tribunal. Under the heading “[d]ecisions contested by the Applicant and whose rescission is requested,” the application lists three decisions: (i) the 1995 Management Review Group Record; (ii) the 1996 Supplementary PRR; and (iii) the Applicant’s removal from

the security position. No request is made regarding either the merit salary increase or the non-renewal or non-conversion of his fixed-term appointment at its expiration in September 1997.

20. The relief requested in the application consists of the following: three years' net salary or approximately \$200,000; legal costs; correction of the Applicant's employment record; elimination of the "1995 March Review" and of paragraph 3(b) of the 1995 PRR; and removal of the 1996 Supplementary PRR.

21. As recently as on September 10, 1998, when commenting on the documents produced by the Respondent pursuant to the President's Order, the Applicant informed the Tribunal of the current status of his employment with the Bank. At the expiration of a one-year contract, so the Tribunal is advised, the Applicant was offered and accepted a new three-year contract with Information Solutions Group Information Department (ISGIS) as an Information Security Officer. He remains on fixed-term and is now at level 22. Thus, so the Applicant states, "he secured the promotion claimed in 1996" but he "has... no reasonable expectation of being converted to Regular Staff." He adds that "[d]espite the new three-year term of employment with the Bank [he] has suffered significant financial losses" resulting from changes in the Bank's benefits policy in April 1998, and he appears to claim compensation for these losses.

II. THE DECISIONS DESCRIBED IN THE APPLICATION AS THE "DECISIONS CONTESTED BY THE APPLICANT AND WHOSE RESCISSION IS REQUESTED"

1. The 1995 Management Review Group Record and the 1996 Supplementary Performance Review Record

22. Insofar as the application is directed against these two evaluations, no question of admissibility arises. Regarding both, the internal remedies have been exhausted. The 1995 Management Review Group Record has been contested in the Applicant's request for administrative review of July 11, 1996 and, subsequently, before the Appeals Committee. As to the 1996 Supplementary PRR, submitted to the Appeals Committee as soon as it had been received by the Applicant, the Appeals Committee reviewed it in connection with the other items and made a recommendation in its respect.

23. Regarding, first, the *1995 Management Review Group Record*, the Applicant takes issue with the Group's conclusion that it "concurred with the assessment" by Ms. Z that the Applicant should improve his working relationship and foster his teamwork. The Applicant also takes issue with the Group's conclusion that the Applicant "does not appear to be a 'team player' and therefore is less effective than he might otherwise be." He requests that this comment be removed from the Record.

24. On the substance, the Applicant levels a number of criticisms against this evaluation. While he had been rated as exceptionally effective prior to the formation of TREIS, so he argues, after his transfer to this division he was placed in a difficult situation of conflict of interests. It was his duty to report security violations by all staff, including management, in accordance with the procedures defined in the "Cash Management Procedures Manual." This, however, led him more than once to expose his professional opposition to decisions by his supervisors and managers which, in his view, were in violation of the applicable rules or endangered the institution. This also led him to sometimes report breaches and potential risks reflecting adversely on his managers. In other words, he was placed in a situation where he could not carry out his obligations as a security officer because those whom he had to monitor or investigate were those who controlled his fate within the organization. The Management Review Group's assertion that the Applicant was not a team player, so the Applicant concludes, failed to take account of the nature of his functions and was improper; it constituted an abuse of discretion.

25. As to the procedure, the Applicant maintains that it is flawed because the negative assessment with which the Management Review Group concurred was made by Ms. Z, who had not supervised him during the period under review, *i.e.*, the year 1995. It is also flawed, so he maintains, because the Group did not include Mr. X, who had been his only actual supervisor during that year, but was comprised of managers who had no direct

knowledge of his performance; the only pertinent evaluation, so he asserts, was that by Mr. X, and this evaluation was utterly positive.

26. The Tribunal has repeatedly stated that the Respondent's decisions on the evaluation of staff members' performance are not reviewed by it unless they constitute an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure. The record in the instant case does not evidence any abuse of discretion, either substantively or procedurally.

27. No doubt, as already noted, disagreements had arisen between the Applicant and the managers of TREIS regarding security. It was certainly the Applicant's right, and even his duty, to alert his supervisors to the security problems he had become aware of and to make suggestions as to their possible resolution. To the extent that management did not share the Applicant's views or follow his suggestions, the Applicant's discontent, understandable as it is, created an uneasy atmosphere within TREIS. This is evidenced by the Applicant's own witnesses before the Appeals Committee, who testified, according to the Committee's Report, that the Applicant "had difficulty accepting management's judgment on these issues." Management's assessment that the Applicant was not much of a team player thus rested not only on a proper motive but also on indisputable facts; in no way did it constitute an abuse of discretion.

28. No more is there an abuse of discretion in what the Applicant regards as an inconsistency between the Management Review Group's assessment that the Applicant was not a team player and Mr. X's assessment in his attached Supplementary PRR that "team collaboration" was one of the competencies in which the Applicant had been "exceptionally effective." There exists, in effect, no inconsistency whatsoever between these two evaluations. In the Performance Effectiveness Plan Section of the 1995 PRR, Ms. Z endorsed Mr. X's positive evaluation. It is only when she came to listing "those competencies where [she] agreed on actions to increase the [Applicant's] effectiveness" (*i.e.*, for 1996) that Ms. Z "look[ed] forward to Paul establishing as a priority this year the fostering of teamwork among his peers" and recommended that the Applicant enroll in a course to that effect. It is with this assessment, which related to the current year 1996 and in no way contradicted the positive evaluation by Mr. X for the previous year 1995, that the Management Review Group "concurred" when it noted that the Applicant would be more effective if he were more of a team player.

29. As to the composition of the Management Review Group, the Tribunal is unable to regard as improper a Group composed, as it was, of members of the TREIS management team who were in charge at the time of the completion of the performance record and who could base their judgment for the current year not only on information gathered from former supervisors but also on their own experience during the first months of that year. Moreover, the supervisor in charge at the time of the drafting of the record, Ms. Z, explicitly wrote that because of the recent changes in management she would "refer this section to Paul's previous manager." Mr. X's Supplementary PRR covering the year 1995 was indeed attached to, and included in, the PRR contested by the Applicant. The Applicant's allegation that the PRR for 1995 was not based on, and did not take account of, the views of Mr. X, who had been his sole actual supervisor during that year, is, therefore, baseless.

30. The Applicant sees another procedural flaw in the fact that he had not been warned that his performance was deficient with respect to teamwork and that, consequently, he was given no opportunity to defend himself. True, the Tribunal has previously ruled:

First, the staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached. Second, the staff member must be given adequate opportunities to defend himself.

(*Samuel-Thambiah*, Decision No. 133 [1993], para. 32.) It appears, however, from the record that the Applicant was perfectly aware of the fact that his managers were not happy with his way of understanding his duties and of the risks that his attitude created to his career. No further, more explicit, warning was thus warranted. To confront his managers' displeasure was the Applicant's personal decision, and there is no evidence of a procedural flaw in this respect.

31. Regarding, secondly, the *1996 Supplementary PRR*, the Applicant maintains that insofar as it referred to

the fact that because of his disillusionment he did not “respond to management’s direction with regard to security,” it amounted to an allegation of insubordination, *i.e.*, misconduct. Consequently, so the Applicant argues, this Review is flawed because it contained an allegation of misconduct against which the Applicant was not given the possibility to defend himself. The Tribunal is unable to share this view. A negative assessment in a performance review may precede a disciplinary measure; it is not in itself a disciplinary measure. As an evaluation of the staff member’s performance, a negative assessment is within the Respondent’s discretion, and, unless it rests on non-existent facts or is otherwise arbitrary, it is not reviewed by the Tribunal. In the present case, the disagreement between the Applicant and his managers regarding security is an undisputed fact, and the record does not substantiate any other claim of arbitrariness.

2. The Applicant’s removal from his security position in TREIS

32. As noted above, the Applicant requests the rescission of his “removal from security position.” The Tribunal understands this request as covering both the Respondent’s decision, made some time in June 1996, to place the Applicant on administrative leave pending his reassignment outside TREIS and the decision of August 5, 1996 to reassign him to another division in the Bank for the remainder of his three-year appointment. The Applicant argues that his removal from his security position in TREIS, *i.e.*, his placement on administrative leave and his reassignment to another position outside TREIS, are of a disciplinary nature because they rest on an allegation implying misconduct. It should therefore, so he maintains, have complied with the requirements of due process in accordance with the provisions in Staff Rule 8.01. Since he had neither been warned nor been given the possibility to defend himself, his “abrupt” and “summary” removal from his position, which, in his view, was no more than an “act of retaliation,” should be quashed by the Tribunal.

33. To this request the Respondent raises an objection of inadmissibility. The Applicant, so the Respondent argues, did not challenge these decisions through the administrative review and Appeals Committee processes and, thus, did not comply with the statutory requirement of exhaustion of internal remedies laid out in Article II, paragraph 2(i), of the Statute of the Tribunal. The Applicant’s request should therefore, so the Respondent concludes, be held inadmissible.

34. The Tribunal cannot but uphold this objection. The record shows that the Applicant knew about the decision to place him on administrative leave and to reassign him outside TREIS at the latest on June 17 or June 24, 1996, when he conveyed to his Director his misgivings regarding this decision. No more did the Applicant’s appeal to the Appeals Committee include any specific claim concerning his being placed on administrative leave and reassigned outside TREIS; consequently, the Appeals Committee’s Report did not review this decision or make any recommendation in its respect. In requesting for the first time in his application to the Tribunal the rescission of the decision to place him on administrative leave and to reassign him outside TREIS, the Applicant did not satisfy the statutory requirement of exhaustion of internal remedies. His request, therefore, is inadmissible.

III. THE QUESTION OF NON-RENEWAL OR NON-CONVERSION TO A REGULAR APPOINTMENT OF THE APPLICANT’S THREE-YEAR APPOINTMENT AT ITS EXPIRATION IN SEPTEMBER 1997

35. The Tribunal has some difficulty in ascertaining whether the Applicant actually complains of the fact that the Respondent let his three-year contract expire by its own terms in September 1997, without renewing or converting it into a regular appointment. True, the Applicant complains at the end of his application that his removal from his security position in TREIS “destroyed any opportunity for [him] to benefit from the career opportunity offered to him at recruitment, *i.e.*, the renewal of his three-year contract and possible regularization.” The Respondent’s non-renewal or non-conversion to a regular appointment of the Applicant’s three-year appointment at its expiration in September 1997 is, however, not listed in the application among “[d]ecisions contested by the Applicant and whose rescission is requested.” Likewise, the Applicant argues in his Reply that the non-renewal or non-conversion of his appointment to a regular appointment at its expiration was in violation of his “expectations and assurances given to him.” Again, however, he does not go so far as to explicitly request the rescission of the Respondent’s decision to let his appointment expire by its own terms.

36. The Applicant's attitude in this regard is consistent with his attitude during his exchanges with his supervisors in 1996, when he repeatedly referred to the Bank's duty to let him complete his three-year appointment, without referring to an obligation of the Respondent to renew his contract at its expiration or to convert it to a regular appointment. On June 13, 1996, for instance, he wrote to the Director of TREIS that he expected to be "compensated for the FULL term of [his] contract," because he had "entered into this contract for a three-year term and [had] based [his] financial position on this fact." The Applicant repeated this request for the completion of the "full terms" of his contract on June 17 and June 24, 1996. To a renewal or conversion of his appointment there was no reference.

37. However this may be, the Respondent objects to the admissibility of the Applicant's claim regarding the non-renewal or non-conversion of his fixed-term appointment at its expiration in September 1997. The Appeals Committee, so the Respondent argues, while considering the requests submitted by the Appellant, did not consider whether the fixed-term contract should be renewed or converted, because this issue had not been raised by the Appellant. The Applicant's claim, so the Respondent concludes, is inadmissible because it fails to comply with the statutory requirement of exhaustion of internal remedies.

38. This objection is, quite obviously, baseless regarding the Applicant's request for administrative review because at the time this request was made (*i.e.*, on July 11, 1996) no decision on a possible renewal or conversion of the fixed-term contract had been made. The Applicant was content with stating that should the security position in TREIS be reviewed and should he be reinstated in this position, he would then request that his status be adjusted from fixed-term to regular staff. He was simply not in a position to go any further and to challenge a decision due only in September 1997, *i.e.*, more than one year later.

39. Regarding the appeal to the Appeals Committee, the situation is quite different. The 1996 Supplementary PRR, which was completed on April 30, 1997 and which the Committee, at the Applicant's request, considered along with his pending appeal, included a sentence stating that "TRE does not intend to renew Mr. Baartz's contract in September, 1997." It follows that as early as in April 1997 the Applicant was on notice that his three-year appointment would not be renewed in September. Nevertheless, he did not raise any challenge against this forthcoming decision before the Appeals Committee, nor did the Committee examine this matter or make any recommendation in its respect. No more did the Applicant go through the internal review channels once his appointment lapsed by its own terms in September 1997.

40. To the extent that the Applicant's briefs are to be construed as requesting the rescission of the Respondent's decision to let the Applicant's appointment expire by its own terms in September 1997 without renewing or converting it into a regular appointment, the Tribunal concludes that this request is inadmissible.

DECISION

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

Francisco Orrego Vicuña

/S/ Francisco Orrego Vicuña
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé

Executive Secretary

At Washington, D.C., October 19, 1998