

Decision No. 165

William Brannigan,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of E. Lauterpacht, President, R.A. Gorman and F. Orrego Vicuña, Vice Presidents and P. Weil, A.K. Abul-Magd, Thio Su Mien and Bola A. Ajibola, Judges, has been seized of an application, received on April 26, 1996, by William Brannigan against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on May 16, 1997.

2. The Applicant complains that his position as Senior Public Information Officer in the External Affairs Department (EXT) was declared redundant in violation of Staff Rule 7.01, paragraphs 8.02 and 8.03. He contends that the newly created position of External Affairs Counsellor in the same Department (to which he was not appointed) was in essence identical to the one the Applicant had previously occupied and that his position was abolished by the Respondent not in the interests of efficient administration but in order to allow the recruitment of a younger staff member.

### **THE RELEVANT FACTS**

3. The duties of the Applicant in the Media Division of the External Affairs Department (EXTME) at the time his position was declared redundant included liaising with correspondents and producers of major television and radio news programs, planning and implementing press promotion for major Bank publications, preparing and operating the press rooms for the Spring and Annual Meetings of the Bank and the International Monetary Fund, summarizing news articles for the Daily Development News, liaising with the Office of the Vice President, Development Economics and Chief Economist (VPDEC) and handling day-to-day media inquiries.

4. In September 1994 a new Director, EXT, was appointed. At that time, the various functions and staffing levels in the Department were reviewed in conjunction with the fiscal year 1996-97 budget guidelines for reductions in the Bank's administrative budget. On January 10, 1995 the Applicant was informed that his position had been declared redundant as of February 6, 1995. This redundancy was based on a redefinition of the role of the Department, as a consequence of which there would be a need for "someone with 1995 state-of-the-art television skills." Among other things, interviews for Bank staff on television and radio programs would be arranged by a junior consultant recently recruited from a broadcasting organization. In addition, the Daily Development News would be mostly produced in Paris by a trilingual editor and liaison with VPDEC would be transferred to another team. Day-to-day media inquiries would be handled by several people. In the light of these developments, it was concluded that the Applicant's skills were no longer relevant to the work program in EXTME.

5. On March 27, 1995 the Applicant requested administrative review of the decision to declare his position redundant stating, among other things, that his skills and experience matched the qualifications sought by EXT and that age discrimination was involved in the decision to make him redundant. However, he was informed that the decision to make him redundant had been taken in accordance with Staff Rule 7.01, paragraph 8.02(b), as there was an abolition of position, that the required process had been followed, and that the relevant Vice President agreed with the decision under review.



6. The Applicant applied for other Bank positions within EXT but was not selected for any of them. The Applicant remained in regular pay status through October 5, 1995 and was then placed on special leave through March 12, 1997, thus ending his employment with the Bank some ten and a half months before the date on which he would have become entitled to full pension and other retirement benefits under the Staff Rules governing termination. The Applicant filed an appeal with the Appeals Committee against the decision to declare his position redundant. The Committee recommended that his request for relief be denied. This recommendation was accepted by the Respondent.

### **THE APPLICANT'S MAIN CONTENTIONS**

7. The Respondent abused its power under Staff Rule 7.01, paragraphs 8.01-8.03, by declaring the Applicant redundant for improper reasons.

8. The duties of the Applicant were reassigned only on paper and some of them were redistributed with the creation of the new EXTME position of External Affairs Counsellor.

9. The Applicant's application for the position of External Affairs Counsellor was inappropriately rejected from the Internal Selection Process consideration by the same manager who had earlier declared the Applicant's position redundant.

10. The redundancy was poorly planned and executed, as there was no new, redefined, position description, as there was a lack of proper definition of the nature of the redundancy, and as there was precipitate action leaving important functions uncovered.

11. Age was a primary factor in declaring the Applicant redundant. This is not a valid factor and is a forbidden basis for an employment decision.

12. The Respondent violated the Staff Rule on redundancy in failing to take positive steps to assist the Applicant in reassignment to a vacant position for which the Applicant was qualified.

13. The Applicant's services could have been effectively utilized for an additional ten and a half months, until he could be bridged to the mandatory retirement age of 62.

14. The process by which many of the redundancy/separation arrangements of other staff members in EXT were concluded was characterized by negotiation. However, the Applicant was not given a similar opportunity.

15. The Applicant seeks:

(i) reinstatement; or

(ii) payment of compensation in an amount not less than \$130,000 based on loss of annual income of \$40,000 and loss of pension income of \$4,500 per annum after age 62; and

(iii) payment of attorney's costs in an amount of \$5,500.

### **THE RESPONDENT'S MAIN CONTENTIONS**

16. The Respondent's decision to abolish the Applicant's former position was not an abuse of discretion. Changes in the work program, a need for greater efficiency and the lesser relevance of the Applicant's skills led to the proposal to abolish the Applicant's former position.

17. The Respondent has stated all along that the Applicant's specific position was abolished under Staff Rule 7.01, paragraph 8.02(b). The Applicant's redundancy did not result from a redesign of the Applicant's former position under paragraph 8.02(c) of Staff Rule 7.01, or a reduction in the number of positions of the same type



under paragraph 8.02(d).

18. The Applicant's contention that his redundancy was the result of age discrimination is without basis.

19. The Bank, through the Job Search Center, assisted the Applicant in his search for another position, but there is no obligation on the part of the Bank to select the Applicant for a specific position intended to be filled on a competitive basis.

20. The Respondent was not obliged to continue the Applicant's employment or special leave until he reached the point of being entitled to a full pension and other benefits. The Respondent has no policy of delaying the effective date of redundancy to enable a staff member to reach such a point or a mandatory retirement age.

21. The Applicant is not entitled to the remedies he requests.

## CONSIDERATIONS

22. The essential question for the Tribunal is whether the position that the Applicant held was properly abolished in the exercise by the Bank of its discretionary power to decide the best organizational arrangements in the interests of efficient administration. This criterion is laid down by Staff Rule 7.01, paragraph 8.02, which provides

Employment may become redundant when the Bank Group determines in the interests of efficient administration that:

- (a) An entire organizational unit must be abolished;
- (b) A specific position in an organizational unit must be abolished;
- (c) A position description has been revised, or the application of an occupational standard to the job has been changed, to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position; or
- (d) Specific types or levels of positions must be reduced in number.

23. On the assumption that the purported abolition of a position can properly be justified in the interests of efficient administration, the question still remains whether it has been truly abolished so as to warrant the application of Staff Rule 7.01, paragraph 8.02(b). This is a matter of comparing the "old" position with any relevant "new" position. To demonstrate the abolition of a position it is not enough that there may be some differences between the old and new positions; the differences must be ones of substance. The Tribunal has emphasized in this respect the need for the Bank to show a clear material difference between the new position and the position that was made redundant (*Fabara-Núñez*, Decision No. 101 [1991], para. 44; *Arellano*, Decision No. 161 [1997], para. 33).

24. In the present case, EXT was indeed subject to a process of reorganization in order to provide a new approach to media relations and to adjust to the introduction of new technologies. This reorganization entailed a number of changes, including the mutually agreed separation of some existing staff members and the recruitment of some new ones. However, in the judgment of the Tribunal, the changes that were effected in the Applicant's position were not material.

25. If the substantive work of the Senior Public Information Officer position originally held by the Applicant before redundancy is compared with the new position of External Affairs Counsellor, or even with some of the other positions that became available, a striking similarity can be noted. Many of the responsibilities are substantially the same, particularly as to the requirements of contact and liaison with the media. Although the Bank emphasizes the need in the new position for familiarity with new broadcasting technologies, particularly in the television field, it does not explain how this familiarity necessarily extends beyond the requirements of the



Applicant's position that he deal with television and radio broadcasters and journalists.

26. Nor is the Tribunal persuaded that the transfer of certain functions to other staff positions materially altered the position previously held by the Applicant. Much of the Respondent's justification of the "abolition" of the Applicant's position relates to the transfer to Paris of the production of the Daily Development News. However, this particular change does not appear to be significant for several reasons: this assignment had only recently been added to the Applicant's usual duties as an ad hoc task; part of the production of this service remained in Washington; and the Applicant had devoted only a limited proportion of his time to that task. The addition of a foreign language ability to the new position in connection with the production of the Daily Development News does not appear to be an element which significantly changed the content of the position held by the Applicant. Similarly, the elimination of the responsibility to liaise with the Vice President and the reassignment to others of specific minor tasks did not change the essence of the work of the Senior Public Information Officer.

27. The Tribunal concludes that the decision of the Respondent to declare the Applicant redundant on the basis of the abolition of his position is invalid and must be quashed. Consequently, there is no need for the Tribunal to address the Applicant's further contention that his position was abolished for an improper motive.

28. Remedies must also be provided to redress the situation affecting the Applicant by reason of his having been made redundant ten and a half months before the point in time at which he would have become entitled to receive a full pension and other related benefits.

### **DECISION**

For the above reasons, the Tribunal unanimously decides:

(i) to quash the Respondent's decision of January 10, 1995;

(ii) should the President of the Bank decide not to reinstate the Applicant, he shall be compensated by bridging him from the end of his remunerated employment to such point in time as would enable him to receive a full pension and corresponding benefits. Such calculations must include the salary lost by the Applicant during such period, less any income net after tax received from other employment; and

(iii) the Respondent shall pay legal costs in the sum of \$5,000.

Elihu Lauterpacht

/S/ Elihu Lauterpacht  
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé  
Executive Secretary



At London, England, June 10, 1997

**LETTER RELATING TO DECISION NO. 165**

The following letter was addressed by the Executive Secretary of the Tribunal to the parties on December 4, 1997:

Dear Sirs,

With reference to the Applicant's letter to the President of September 11, 1997 and the Respondent's comments thereon of October 6, 1997, I am directed by the President to reply as follows:

The language of the Tribunal's decision of June 10, 1997 requires that the Applicant be paid compensation calculated by reference to all factors that might become effective prior to the date of his retirement insofar as these could affect the salary that he was receiving prior to his position being declared redundant and the pension dependent thereon. As the Applicant is due to retire on January 12, 1998, this would include the salary increase that became effective on May 1, 1996 and the salary increase that became effective on May 1, 1997.

The Tribunal appreciates that a salary increase does not operate automatically to give every staff member an increase of the stated percentage without reference to the quality of the staff member's performance during the previous period. But the uncertainty in that regard in relation to someone no longer on active duty in the Bank by reason of his wrongful exclusion should be resolved equitably by awarding him the same percentage increase as he had received at the time of the previous salary increase.

Yours truly,

/S/ Nassib G. Ziadé  
Nassib G. Ziadé  
Executive Secretary