

Decision No. 72

Pieter Buyten,  
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 28, 1987, by Pieter Buyten, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on April 6, 1988.

The relevant facts:

2. On September 23, 1983 the Applicant was offered a regular appointment as a Personnel Officer, level L, in the Bank's Personnel Management Department (PMD). On October 18, 1983 he officially took up his appointment and was given the responsibilities of a Personnel Officer for the then Economics and Research Department (ERS) and the then Treasurer's Department (TRE).

3. On May 24, 1984 the Applicant's Team Manager in an interim evaluation of his performance indicated some shortcomings in the Applicant's relationships with client unit managers, in utilizing his staff, in understanding Bank policy and procedures, and in writing English. On June 15, 1984 the Assistant Director, PMD, discussed the interim evaluation with the Applicant and encouraged him to focus on the improvement of these shortcomings in the months ahead.

4. In October 1984 at the time of the Applicant's Annual Evaluation Review (AER), his Team Manager noted that the quality of the Applicant's work had been improving consistently since his interim review, recorded that he had made good progress in many areas, evaluated his overall performance as being "satisfactory", recommended the Applicant's confirmation and proposed to enlarge his responsibilities for the future. The Applicant's Assistant Director, PMD, concurred with the Team Manager's recommendation noting that he considered the Applicant a "fine addition" to PMD and the Bank, and that he was pleased with the proposal to enlarge the Applicant's area of responsibility.

5. In January 1985 the Applicant approached his Team Manager for the additional assignments that had been indicated would be given to him, but he was told that his Team Manager had changed his mind about giving him such assignments.

6. In February 1985 the Vice President, ERS, complained to the Applicant's Team Manager that the Applicant had criticized staff performance evaluations prepared by ERS managers as being too negative, and that the Applicant had decided to leave out of the personnel file of a staff member a negative performance evaluation. In a memorandum dated April 9, 1985 the Applicant's Team Manager replied that, while he did not consider himself in a position to assess the validity of the critical remarks contained in the performance evaluations prepared by ERS managers, he had decided to restore to the relevant personnel file the negative performance evaluation and had requested the Applicant to consult with him in the future before giving specific advice to ERS managers on such issues.

7. On April 11, 1985 the Applicant in a memorandum to the Director, PMD, stated, inter alia, that it was

regrettable that a “memo of this content and tone was sent to the Vice President of ERS”; that his Team Manager had misrepresented certain facts and positions that the Applicant took in his dealings with ERS managers; that “curbing publicly” a Personnel officer in his/her dealings with client managers was “contrary to expectations and counterproductive”; and that “if ‘specific advice’ can be given only after consultation with the Team Manager, the independence, integrity and professionalism of the staff becomes questionable.”

8. In the Performance Review (PPR) covering the period July 1, 1984 through June 30, 1985 his Team Manager stated that the Applicant had made good progress, that his communications skills had improved and that he had provided good services to one of his two client groups, TRE. He noted, however, that the situation with regard to the Applicant’s other and major client group, ERS, was different and in particular that the Applicant had failed to establish himself as a fully credible and effective human resources advisor; ERS senior managers continued to rely on the team manager’s guidance on more complex issues. The Team Manager also noted that the Applicant had shown little interest in team projects and activities and that his work habits, specifically management of his own time and setting of priorities, needed improvement. He concluded that the Applicant’s performance and behaviour could not be evaluated as fully satisfactory, and on the basis of this assessment he indicated that he would propose to the Applicant “a systematic improvement program for the next six months, with detailed written specifications of the objectives and standards that will need to be met to warrant a satisfactory evaluation at the end of this period.” The Applicant disagreed with this assessment of his performance and declined to complete and sign the PPR. On the basis of the Team Manager’s assessment, the Applicant’s performance was rated 2+ (less than satisfactory) for the purpose of the FY 1985 salary review exercise.

9. On June 25, 1985 the Applicant took up the issue of his FY 1985 PPR in a memorandum to the Director, PMD, in which he stated, inter alia, that he sharply disagreed with the assessment; that he had been given no indication of a less-than-fully-satisfactory performance when in March/April 1985 he discussed the interim evaluation of the PPR with his Team Manager and that he wondered what had caused the situation to change in such a short period of time. The Applicant concluded by requesting the opportunity to meet and discuss with the Director, PMD, the issues of his PPR, his work with ERS, and his working relationship with his Team Manager.

10. On July 18, 1985 the Applicant met with the Director, PMD. On July 23 the Director in a memorandum written for the record stated that at their meeting the Applicant had expressed his unhappiness with a number of points, including the negative feedback he had received, the perceived lack of direction/guidance and the failure to extend his portfolio of clients. The Applicant had recognized that the situation with ERS was not good and attributed that mainly to the management style prevailing in that Vice Presidency, but had agreed to try again to improve his relations with ERS. To this end the Applicant and the Director agreed upon a specific program for a trial period of six or seven months during which the Applicant would remain in his current assignment; at the end of that period the situation would be reviewed again; satisfactory performance would result in the Applicant continuing in said assignment and being considered in due course for other assignments; but unsatisfactory performance would lead to choosing between a further trial period for the Applicant and termination of his employment. It was also understood that, should a second trial period result in unsatisfactory performance, the Bank would initiate the Applicant’s separation. Finally, the Director, PMD, agreed that the Applicant was entitled to place on the record the fact that he did not agree to the 2+ performance rating that he had received, but that he was willing not to pursue this matter any further at the present time, although he reserved the right to reopen the matter later if necessary.

11. On February 20, 1986 in a memorandum to files the Applicant’s Team Manager gave an interim evaluation of his performance for the period July through December 1985, stating that the Applicant’s performance with the TRE client was satisfactory but fell short with the ERS client and with his special project activities.

12. On May 22, 1986 the Manager of PMD Team 1, where the Applicant had been transferred, evaluated the latter’s performance for the period January 1986 through March 1986. He noted that the Applicant’s performance “despite several achievements has not been judged by three of the four managers in ERS from their perspective to be satisfactory” and that they did not have confidence in him; at the same time he recorded

that one Director saw the Applicant as “fully satisfactory”.

13. On May 30, 1986 the Director, PMD, in response to the Applicant’s oral request for administrative review of his FY 1985 2+ merit rating and salary increase, stated that he had concluded that the decision taken by the PMD management at that time was correct and should not be changed. On June 2, 1986 the Applicant wrote to the Vice President, Personnel and Administration (PA), requesting him to review the decision of the Director, PMD. The Applicant expressed his disappointment not only with the outcome of the administrative review but also with the way the review process worked in PMD. On July 14, 1986 the Vice President, PA, informed the Applicant that he had asked the newly appointed Director, PMD, to carry out a further review of the circumstances of the Applicant’s case and of the decision reached on his FY 1985 merit rating.

14. In a memorandum to files dated July 28, 1986 the Assistant Director, PMD, recorded a meeting he had had with the Applicant on June 10, 1986 concerning the 2+ rating of his performance for FY 1986 and stated that that rating was based on the assessment of the Applicant’s performance by his two consecutive Team Managers as well as independent interviews that the Assistant Director had had with 10 Directors and the Vice Presidents in ERS and TRE. The Assistant Director further noted that the Applicant had disagreed with this assessment and that a specific action plan should be prepared for the next six months in the event that the Applicant wished to continue in the service of the Bank for that period.

15. On October 16, 1986 the Director, PMD, advised the Applicant that a review had been conducted at the Director’s request and that he had concluded that he saw no basis for changing the FY 1985 merit rating. In particular, he stated that:

There is no evidence to suggest that the decision taken on your performance was arbitrary or capricious. The rating was a relative one; your performance fell below that of your peers in two respects:

- (a) the expressed dissatisfaction by certain client managers with your service, and
- (b) less-than-satisfactory relationships with the team.

16. On the same day, the Director, PMD, sent to the Applicant a memo entitled “Review of 1986 Merit Review,” in which he stated:

While I found no basis for changing the 1985 merit rating, I believe that the strained inter-personal relationship between you and [your Team Manager], precluded a fair assessment of your performance during the period that followed. It is my view that you should have been tested under a new manager once the difficulties of the relationship were known. The PMD Management Review Group has agreed with this assessment and, accordingly, has recommended that the 1986 merit rating be changed to reward category 3. I am pleased to advise you that I have approved this change and have authorized a merit increase of \$720 retroactive to May 1, 1986.

17. On November 20, 1986 the Applicant requested the Vice President, PA, to “find a reasonable solution to the 1985 performance rating.” In particular, he stated:

I certainly have appreciated the way in which [the Director, PMD,] has reversed the performance rating for the Year Merit Review 1986 (YMR) which was essentially based on the same unfounded bias against me as was the case in 1985. That decision has strengthened my hopes that reason will start to prevail and that it might be possible for me to experience working relationships in PMD that are stimulating rather than belittling. I have already indicated that I am willing to consider a settlement in the 1985 case, instead of escalating it further to an appeals procedure. Until this moment, I have not received a positive response.

18. On December 12, 1986 the Vice President, PA, replied to the Applicant that, since the Director, PMD, had found no evidence that the Year Merit Review 1985 decision had been taken in an arbitrary manner, this finding would have to stand.

19. On the same day the Applicant filed a Statement of Appeal with the Appeals Committee against the decision to give him a less-than-satisfactory (2+) performance rating for purposes of the 1985 salary review. On October 13, 1987 the Appeals Committee rendered its Report and recommended that the Applicant’s merit

rating be changed to reward category 3 for purposes of the 1985 salary review and that he be given the benefits consequential upon that change dating back to May 1, 1985. In particular, the Appeals Committee stated:

As a new staff member, Appellant may have made a tentative start in the Bank (judging from the May 1984 interim review), but as a fully operational Personnel Officer with a year's standing, his performance was considered "satisfactory" and he was confirmed. At the time of his confirmation, Appellant continued to experience a "few difficulties", but his superiors, including [his Team Manager] were confident that he would overcome these and perform up to his "potential" which was "considerable" .... All the prognostications were in favor of Appellant. The change that followed in the form of the June 1985 performance review was, therefore, hard to explain or predict. The Vice President's, ERS, opposition, which was given as a reason for the change, was not a new factor. This was, however, given more weight than before, and tipped the scales against Appellant. It was for [his Team Manager] to give whatever weight was due to this, as indeed any other relevant factor, in assessing Applicant's performance. However, as personal relations between Appellant and [his Team Manager] were strained at the time, this raises a doubt as to the fairness of the evaluation of the relevant factors, and in turn, as to the fairness of the assessment itself. The Committee feels that Appellant should have the benefit of that doubt.

20. On October 15, 1987 the Senior Vice President, Administration, informed the Applicant that he could not concur in the conclusions of the Committee. In particular, he stated that:

While I share the sentiments of the Committee in wishing to extend the benefit of the doubt to staff members, I cannot agree that such doubt arises in your case. The Committee has not, in a way satisfactory to me, put in question the conclusions of the senior managers who carefully reviewed your case. Therefore, I cannot accept the recommendations of the Committee and cannot grant the relief you seek.

21. On October 21, 1987 the Applicant, who had not been selected for a position during the Reorganization, accepted Package B under the terms of a separation agreement.

#### The Applicant's main contentions:

22. The decision to rate the Applicant's performance as less-than-satisfactory for the 1985 salary review exercise did not meet the requirements of Principle of Employment 2.1 of fairness, impartiality and due process.

23. The strained interpersonal relationship between the Applicant and his Team Manager, who rated his performance for FY 1985 and FY 1986 as less-than-satisfactory, precluded a fair assessment of the Applicant's performance in both years. However, the Director, PMD, conceded that this was the case only for the FY 1986 evaluation of performance, and consequently, changed only that rating from reward category 2+ to 3.

24. The FY 1985 performance rating might have aggravated the already strained interpersonal relationship between the Applicant and his Team Manager but as the Appeals Committee found it was not the source of that strain.

25. Several significant events predated the impugned decision. In January 1985 the Team Manager refused, without stating any reason for his change of mind, to give the Applicant additional responsibilities which had been promised in the Applicant's AER dated October 31, 1984. Subsequently, several major confrontations took place between the Applicant and his Team Manager, primarily concerning the latter's management style.

26. The record did indicate that when, for the first quarter of 1986, the Applicant had worked under another Team Manager, his performance appraisals improved drastically in tone, save in the area of the Applicant's relations with ERS management which was an exceedingly difficult client.

27. To set performance expectations beyond what can reasonably be achieved by a competent individual was an abuse of discretion. A competent Personnel Officer level L could not reasonably be expected to have total control over the attitudes toward the personnel function held by a few high level managers in a vice-presidential unit.

28. The Applicant's Team Manager conceded in the Appeals Committee hearing that replacing the Applicant as Personnel Officer for ERS was not contemplated by PMD since the Applicant was considered the best available Personnel Officer for the job.

29. The FY 1985 performance rating was arbitrary and therefore an abuse of managerial discretion. Furthermore, it was inconsistent with past decisions and could not have reasonably been expected by the Applicant based on the past actions of the Respondent.

30. The finding of the Appeals Committee that the change in the form of the June 1985 performance review was hard to explain or predict was correct.

31. The Respondent should pay the Applicant's legal costs since its treatment of the Applicant had fallen short of appropriate standards of justice. The history of the Respondent's procedural response to the Applicant's quest for relief has been replete with delay, characterized by summary judgments and marred by efforts at intimidation and reprisal. Consequently, retention of outside counsel by the Applicant was indispensable for the pursuit of a just resolution of his grievance.

32. The dictum in Harrison should not be applied in this case since the Applicant is pursuing a pre-existing claim and also because he could not have been separated under the redundancy terms of Staff Rule 7.01, Sect. 8.

33. The Applicant requested the following:

- Rescission of the refusal to follow the recommendation of the Administrative Appeals Committee that the Applicant's merit rating for 1985 be changed to reward category 3 and that he be given the benefits consequential upon that change dating back to May 1, 1985;
- Compensation in the amount which would result from the application of a salary increase appropriate to a performance rating of satisfactory (3) for the Salary Review Increase of 1985 retroactive to May 1, 1985, including a commensurate increase in the Applicant's Separation Package Benefits;
- A reasonable amount of compensation for all additional injuries suffered by the Applicant as a result of Respondent's violation of his condition of employment. These include anguish and his loss of time outside of official office hours in seeking relief through the unusually extended administrative process within the Bank;
- Restoration of the Applicant's performance rating to a satisfactory (3) level for FY1985;
- All attorneys' fees and associated costs.

The Respondent's main contentions:

34. The Applicant's FY 1985 salary rating resulted from a proper exercise of management discretion.

35. The Applicant's Team Manager's decision, which was confirmed by the then senior PMD managers, to rate the Applicant's performance 2+ was not arbitrary and the Applicant was not denied due process. The record shows only that the Applicant was unhappy with his Team Manager.

36. Since the evaluation of the Applicant's performance does not constitute an abuse of discretion – not being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure – the Tribunal in accordance with its own jurisprudence should not review the impugned discretionary decision.

37. The Applicant had performance difficulties from the beginning of his service with the Bank and not only with one of his two client groups, namely ERS. He was also made fully aware of such performance defects as his lack of contribution to team projects and activities, his poor work habits, his preference for working independently, his rejection of guidance offered, and his resentment to negative feedback. The Applicant should



have anticipated the comments made in his 1984-85 Performance Evaluation. Moreover, he himself had indicated (in June 1985) to the Director, PMD, that he and his Team Manager had had a number of encounters during the 1984-85 period where he had not been in agreement with the views of his Team Manager.

38. The Director, PMD, reversed the Applicant's FY 1986 performance rating 2+ to 3 because he felt that the strained relationship between the Applicant and his Team Manager had precluded a fair assessment of the former's performance during the period that followed the FY 1985 merit rating. However, he found no basis for making a like judgment for FY 1985 of the Applicant's performance rating.

39. The rejection by the Senior Vice President, Administration (SVPA), of the Appeals Committee recommendation does not constitute nonobservance of the Applicant's contract of employment or terms of appointment.

40. The Applicant is not entitled to compensation, not only because there has been no violation of his contract of employment or terms of appointment, but also, because even if he were found to be entitled to compensation, he has failed, pursuant to Harrison, to show that the compensation he seeks exceeds the difference between what he received under Package B and what he would have received under the redundancy provisions of Staff Rule 7.01, Section 8.

41. The Applicant's assertion that the limitation of damage in Harrison is inapplicable to his case because he could not be separated under Section 8 of Staff Rule 7.01 rests on the erroneous assumption that positions were available for which he was qualified. Furthermore, the change in compensation, had the Applicant received a fully satisfactory performance rating, was many times less than the differential between what he received under Package B and what he would have received under Section 8 of Rule 7.01. It should be shown that the damage that he had suffered exceeded \$78,000 which is the difference between what he had received under Package B and what he would ordinarily have received under Staff Rule 7.01, Section 8.

42. The Applicant's request for attorney's fees and associated costs should be denied, since the Applicant's complaint was reviewed numerous times by various managers and because the treatment of the Applicant had not fallen short of appropriate standards of justice.

#### Considerations:

43. The principal issue in this case is whether the Applicant has been treated unfairly, arbitrarily, in a manner falling short of due process or involving an abuse of managerial discretion. The issue arises out of the determination by the Bank that for the purpose of the 1985 Salary Review Increase the Applicant's performance should be rated as 2+ (less than satisfactory).

44. Although in reviewing the treatment of the Applicant it is not for the Tribunal to substitute its own view of the performance of the Applicant for that reached by the Bank, the Tribunal can assess whether there has been an abuse of discretion.

45. The case turns, of course, on its facts, which have to a large extent already been set out in paragraphs 2 to 21 above. Nonetheless, by way of explanation of the conclusion that the Tribunal reaches, the following important elements must be recalled.

46. The Interim Performance Evaluation of the Applicant, prepared in May 1984, seven months after he joined the Bank and was assigned to PMD, found that his understanding of Bank policies and procedures was not yet strong enough and that his performance was "not yet conclusive". It also indicated that an agreement was necessary on "performance and development objectives for the rest of his probationary year". The points on which the Applicant was to focus particularly were precisely identified by his Assistant Director, who expressed his confidence that the Applicant "with success in these areas", would establish himself very well as a Bank human resources professional.

47. The Applicant's progress was confirmed in October 1984 when, in his Anniversary Evaluation, his Manager, Mr. Karp, recorded that the quality of the Applicant's work "has been improving consistently since his interim review". He continued: "He has made special efforts in this area and received considerable guidance from me. There is a strong positive trend in the overall quality of Mr. Buyten's work." Nonetheless, while noting that the process of establishing effective working relationships with his clients in TRE had moved "quickly", it was observed that "in ERS this process took somewhat longer but has been proceeding with my support". "Overall the Applicant's progress since October 1983 was rated "satisfactory".

48. These views were endorsed by the Applicant's Assistant Director, who confirmed that the Applicant had "established himself as a competent human resources specialist within the Bank", though at the same time echoing the reservation about the relationship between the Applicant and ERS made in the Manager's report.

49. By February 1985, however, the relationship between the Applicant and ERS, or at any rate its Vice President seems to have deteriorated. The memorandum of complaint sent by the Vice President to the Director, PMD, on February 25, 1985, has not been placed before the Tribunal, but it would appear from the memorandum of April 9, 1985, sent by Mr. Karp to the Vice President, ERS, that the Applicant had on two occasions criticized directly to ERS performance evaluations prepared by an officer of ERS as being "too negative" and had decided that the interim performance evaluation of a new officer should not be included in his official personnel file. These actions of the Applicant were evidently seen by his supervisor as extending seriously beyond the proper performance of the Applicant's duties.

50. Mr. Karp, after speaking with the Applicant, told the Vice President, ERS, in the Memorandum just referred to, that the interim evaluation would be included in the relevant file and that the Applicant "will consult me in the future before giving specific advice to ERS managers on such issues".

51. This led the Applicant to send a rather strongly worded memorandum, dated April 11, to the Director, PMD, complaining that Mr. Karp's memorandum to the Vice President, ERS, was "regrettable" both in content and form and also that it misrepresented certain aspects of what the Applicant had done in his relations with ERS. The Applicant observed that being thus curbed "publicly" "is contrary to expectations and is counter-productive".

52. Two months later in his Performance Review of the Applicant for FY 1985, Mr. Karp, while acknowledging that the Applicant's performance vis-à-vis TRE was satisfactory, noted that the situation between the Applicant and ERS "has been deteriorating". The Applicant had "failed to establish himself as a fully credible and effective human resources advisor" and there had "in some instances . . . been complaints about Mr. Buyten's responsiveness and reliability in providing client advice and policy advice." Mr. Karp also recorded the Applicant's limited interest and effort in relation to team projects and activities and observed that there was room for improvement in the Applicant's work habits. He concluded that the Applicant's "performance and behavior to date cannot be evaluated as fully satisfactory" and noted that, after discussing matters with the Applicant for four hours, he had proposed an improvement program. The Applicant found Mr. Karp's assessment "unacceptable", rejected his proposals and declined to sign the review.

53. A week later, on June 25, the Applicant sent his Director, Mr. Williams, a memorandum observing that his most recent meeting with Mr. Karp "was the latest in a sequence of at least five major confrontations we had during the past year". The Memorandum then disagreed in some detail with Mr. Karp's review.

54. The Director, PMD, saw the Applicant on July 18, 1985 and on July 23, 1985 noted for the record that "after much discussion he and the Applicant agreed on a program". The details of this program are not relevant now, but a performance plan was worked out between the Applicant and Mr. Karp in October 1985. Because there was a change in Personnel Management Team 3, Mr. Karp prepared on February 20, 1986 an interim performance review on the Applicant covering the period July 1-December 31, 1985. He noted that overall the Applicant's support and service to TRE was highly appreciated. As to the Applicant's involvement in ERS matters, Mr. Karp noted, in some detail, what the Applicant had been doing so that "this interim review should be used as input for the more comprehensive evaluation.... scheduled for end of March, early April".

55. A Performance Review for the period January-March 1986 was prepared on May 22, 1986 by Mr. Mossop, the Manager of PMD Team 1. This Report noted that the Vice President and two Directors of ERS were dissatisfied with the Applicant, but one Director saw him as fully satisfactory. Moreover, Mr. Mossop observed that "these serious criticisms should be seen in the context that ERS is a difficult client group".

56. Soon afterwards the Applicant received a brief memorandum from the Director, PMD, of May 30, 1986 which informed him that his request for an administrative review of his 1985 performance rating had been considered and that the Director had "concluded that the decision taken by the PMD management at that time was correct and should not be changed". On June 2, 1986 the Applicant requested the Vice President, PA, to review the decision of May 30, saying that he considered it "capricious for it does not reflect my level of performance during that previous year". The Applicant also stated that his "then manager failed to come up with an explanation for the assessment". The Vice President, PA, on July 14, 1986, informed the Applicant that he had asked Mr. Cosgrove, Director, PMD, to carry out a further review.

57. Three months later, on October 16, 1986, Mr. Cosgrove informed the Applicant that he saw no basis for changing the 1985 rating. There was, said Mr. Cosgrove, no evidence to suggest that the decision taken on the Applicant's performance was arbitrary or capricious. He explained that the rating was a relative one and that the Applicant's performance fell below that of his peers in two respects: the expressed dissatisfaction by certain client managers with the applicant's service and the less than satisfactory relationship within the team.

58. On the same day, Mr. Cosgrove wrote to the Applicant about his 1986 Merit Review. Mr. Cosgrove stated that, though he had found no basis for changing the 1985 merit rating, he believed that "the strained interpersonal relationship" between the Applicant and Mr. Karp "precluded a fair assessment" of the Applicant's performance during the period that followed. In Mr. Cosgrove's view, the Applicant "should have been tested under a new manager once the difficulties of the relationship were known". Accordingly, the 1986 merit rating was changed to reward category 3 with effect from May 1, 1986.

59. The Applicant thereupon (November 20, 1986) requested the Vice President, PA, to review his 1985 performance rating on the ground that "Mr. Cosgrove had reversed the performance rating for the YMR 1986 which was essentially based on the same unfounded bias against me as was the case in 1985". The Vice President, PA, replied on December 12, 1985 that, as Mr. Cosgrove had "not found any evidence that the 1985 YMR decision would have been taken in an arbitrary manner", the finding would have to stand.

60. The Applicant then appealed to the Appeals Committee which found that the change in the assessment of the Applicant's performance between his 1984 interim review and his 1985 review was "difficult to explain" except in terms of "the strained inter-personal relationship" between the Applicant and Mr. Karp. This strain raised "a doubt as to the fairness of the assessment in 1985 just as it raised a doubt as to the fairness of the assessment in 1986". The Committee felt that the Applicant should have the benefit of that doubt.

61. The Tribunal accepts that there was a sufficient degree of doubt regarding the 1986 assessment to warrant modifying the performance rating for that year. The Tribunal notes that the rating was founded on an assessment by Mr. Mossop based on contact with the Applicant going no further back than January 1, 1986 and extending no later than April 1, 1986. It was clearly affected by Mr. Karp's "critical review" (to use Mr. Mossop's language) of February 20, 1986.

62. But the fact that the Bank may have recognized that the 1986 assessment should be changed does not mean that such doubt as there may be about the 1985 assessment is sufficient to justify its invalidation. For one thing, the period of strained relations between the Applicant and Mr. Karp was not so extended between April and June 1985 (the date of the 1985 assessment) as it obviously became by February 1986 (the date of Mr. Karp's interim review for use in the 1986 assessment).

63. For another, in contrast with the 1986 assessment which was reviewed, and changed, only by Mr. Cosgrove, the 1985 assessment was reviewed by Mr. Williams (in July 1985 and May 1986) and by Mr.



Cosgrove (in October 1986). Mr. Cosgrove delegated the review to Carol Word who, amongst other things, interviewed Messrs. Williams, Dyck, Karp, Manickavasagam, Mossop and Rosenfeld, identified the fact that the decision to rate the Applicant at level 2+ was taken jointly by Messrs. Kaji, Ritchie and Dyck, with input from Mr. Karp, and noted that the decision had taken into account the fact that the Applicant had been assigned to an extremely difficult client area, ERS.

64. The Tribunal considers that these factors, especially the identification of the participants in the joint decision to rate the Applicant at level 2+ in 1985, are sufficient to reduce the element of doubt in respect of that assessment effectively to the point of disappearance. There does not seem to be doubt of a sufficient degree to warrant giving the Applicant the benefit of it. Nor does the Tribunal perceive any such discrepancy between the facts stated in the relevant documents and the conclusions reached by the Bank as to establish that those conclusions so lacked justification that they were unreasonable and therefore invalid.

65. The application thus fails on its merits. Accordingly, the remaining two issues – of the applicability of the Harrison case and of the award of costs to the Applicant – do not arise.

Decision:

For these 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, November 7, 1988