

Decision No. 144

John M. Courtney,  
Applicant

v.

International Bank for Reconstruction and Development,  
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, Thio Su Mien and P. Weil, Judges, has been seized of an application, received June 30, 1993, by John M. Courtney, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. Subsequent to the filing of the Rejoinder the Applicant sought to file additional statements. The additional statements filed by the parties as a result were rejected by the Tribunal under Rule 11, paragraph 1, because no exceptional circumstances were shown. A request by the Applicant for production of documents was denied. An amicus curiae brief filed by the Staff Association and another additional statement filed by the Applicant after the listing of the case were rejected by the Tribunal under Rule 12, paragraph 1. The case was listed on November 1, 1994.

**The relevant facts:**

2. The Applicant, who had joined the World Bank in 1976, started working on September 1, 1987, as a Senior Planning Officer, Level 24, on developing policy and strategy for the Bank's Main Complex facilities with the Policy and Strategy Staff of the Information Technology and Facilities Department (ITFPS). In regard to the Main Complex Rehabilitation Program (MCRP), the Applicant in 1987 made certain proposals to his Division Chief on the "retrofit" component, among other things, and in 1988 he submitted documents and conclusions based on his professional assessments of the alternative strategies for the Bank's Headquarters Facilities. Some of these conclusions were taken into account by the Director, ITF, in formulating the final MCRP. In 1990 the Applicant warned that the cost of the MCRP had been underestimated and made some suggestions concerning a review and a realistic budget. In 1993 the President of the Bank confirmed to the staff by memorandum that, among other things, there had been a mis-estimate of the total cost of the project by 50%.

3. In the Applicant's Performance Planning Reviews (PPRs) from 1987 to 1991 the Applicant's supervisor commended him for his good work. However, in the Applicant's PPR for 1989-1990 the Applicant's Division Chief also noted that because the Applicant's projects had progressed to a point where he had achieved what he had come to do, he should be reassigned to an appropriate position in Operations or in the Policy, Research and External Affairs Vice Presidency (PRE). The Applicant commented in the PPR that his contributions to the MCRP deserved promotion to Level 25 and appropriate assistance in arranging a transfer to Operations or PRE early in Fiscal Year (FY) 1991. The Director of ITF agreed with the evaluation and recommendations of the Applicant's supervisor.

4. By memorandum dated December 18, 1990 the Vice President, Personnel and Administration (VPPAA), informed the Applicant that, with effect from January 1, 1991 it was proposed to reassign him to PRE to work in the Infrastructure and Urban Development Department (INU) on the United Nations Development Program (UNDP)-funded Urban Management program. This was to be a two-year assignment in which the Applicant's level would be 24 and his title that of Senior Urban Planner. The Applicant was offered a re-entry guarantee thereafter into the Personnel and Administration (PAA) Complex in a position the duties of which would be commensurate with his qualifications and which was at a grade equal to that which he would then hold or at a lower grade if acceptable to him. If such a position could not be identified within six months after the termination of his assignment in PRE, or if there was no agreement as to the suitability of any identified

position, the Applicant would leave the service of the Bank under a mutually agreed separation pursuant to Staff Rule 7.01, Section 5. There were also provisions for outplacement assistance. The Applicant was asked to agree to this proposal and sign the agreement, if he accepted its terms, in order for the VPPAA to issue the necessary authorization for his assignment to PRE.

5. By memorandum, dated January 15, 1991 to the VPPAA, the Applicant thanked the VPPAA for his offer and stated that he was comfortable with the terms and conditions contained in the latter's memorandum, but that outstanding issues would have to be resolved before he signed the agreement.

6. In response to the Applicant's memorandum of January 15, 1991, the VPPAA, by memorandum, dated February 14, 1991, to the Applicant expressed his surprise at the Applicant's belief that there were further issues to be resolved, since the VPPAA had thought that his December 18, 1990 memorandum to the Applicant represented a meeting of the minds after discussions among the Applicant, the VPPAA and members of the Personnel Team. The VPPAA also noted that he had agreed to the Applicant's reassignment to PRE on that basis.

7. The Chief of the Urban Development Division, Infrastructure and Urban Development Department (INURD), in a supplemental review of the Applicant's performance for the first six months of 1991, acknowledged the Applicant's substantive input and, describing him as an asset, expressed his willingness to have the Applicant as a full-time staff member in his Division. By June 1991 the Applicant was in fact formally working in INURD.

8. By memorandum, dated October 10, 1991, to the new Director, Information Technology and Facilities Department (ITF), the Applicant filed for administrative review of various decisions relating to his reassignment and in particular: (a) the denial of promotion to level 25, (b) conduct of ITF managers resulting in high levels of stress and mental anguish, (c) a pattern of merit increases which failed to reward acknowledged outstanding performance, and (d) failure to finalize a reassignment agreement with adequate protection for his career in the Bank.

9. In a memorandum, dated November 22, 1991, to the Applicant the VPPAA proposed the terms of an agreement between the Applicant and the Bank. This agreement provided mainly for the following: a) the Applicant would be reassigned to the PRE Vice Presidency as of January 1, 1991 until December 31, 1992; his title would be Senior Urban Planner and he would work on a UNDP-funded Urban Management Program in INU; any decision for extension of this assignment would rest entirely with the PRE management; b) the Applicant would have a re-entry guarantee into the PAA complex at the end of the PRE assignment; c) prior to the expiration of his assignment in the PRE on or after December 31, 1992, the VPPAA would seek to place him in a position in the PAA complex at a grade equivalent to that which he would then hold, and to assign him duties commensurate with his qualifications; in the event a position acceptable to the Applicant could not be found within six months of termination of the Applicant's assignment in the PRE, or if the Applicant and the VPPAA did not agree as to the suitability of any identified position, the Applicant would leave the service of the Bank under a mutually agreed separation (MAS) agreement pursuant to Staff Rule 7.01, Section 5; and his severance payments would be fully equivalent to those authorized under Staff Rule 7.01, paragraph 8.08. In the proposed agreement there were also provisions relating to outplacement assistance, to travel for job/home search, to the rights of the Applicant to invoke the mutually agreed separation, to separation payments and to the abrogation of the agreement.

10. By memorandum, dated December 27, 1991, the VPPAA made some clarifications to the proposed November 22, 1991 agreement as requested by the Applicant in his memorandum of December 13, 1991. The VPPAA reassured the Applicant that, at the end of his assignment with INURD, efforts would be made to locate a position for the Applicant suited to his qualifications at his then-grade level. But he did not accede to the Applicant's request for an additional notice period in the event no suitable position could be found at the end of his assignment in INU, nor the request to benefit from improved separation programs that might be implemented. The VPPAA informed the Applicant that if the Applicant did not sign the proposed agreement by January 15, 1992, the Bank would have to enforce the redundancy provisions of Staff Rule 7.01.

11. The Applicant signed the MAS agreement on January 16, 1992.

12. By memorandum, dated February 4, 1992, to the Applicant the new Director, ITF, responded to the Applicant's memorandum of October 10, 1991, requesting administrative review. He observed, first, that the time limit within which the Applicant could ask for administrative review of his 1988, 1989, 1990 merit increases and his non-promotion had long passed, and questioned whether the alleged managerial conduct of which the Applicant complained constituted an administrative decision as defined under Staff Rule 9.01. Regarding the substance of his complaint on failure to promote, the Director, ITF, noted that there was never a promise made by the Applicant's supervisor and that a recommendation for promotion was included in the Applicant's PPRs of 1988 and 1989; his then Director had not acted upon this recommendation as was well within his discretionary power to do. The Director, ITFDR, also found no support for the Applicant's complaint that the conduct of ITF managers had resulted in high levels of stress and mental anguish, and he remarked that the Applicant's conduct had contributed to these difficulties. As to the merit increases of 1988, 1989 and 1990, the Director, ITFDR, concurred with the Applicant's supervisor's and Management Review Group's assessments that his increases were compatible with the PPRs.

13. The Applicant on May 3, 1992 filed claims, in regard to personal injury he had suffered in his employment, with the Bank's Workers' Compensation Administration. The Applicant also filed an appeal with the Appeals Committee on April 3, 1992 challenging the decision of the Bank not to promote him to Level 25, not to give him higher merit increases, and to coerce him into a mutually agreed separation agreement.

14. By memorandum to the Applicant, dated December 29, 1992, the Chief Personnel Officer (CPO), Personnel Management Department, Institutional Team (PMDIN), informed the Applicant that his services would still be requested for the period during which he was to have been placed on administrative leave, if necessary funding was provided. The CPO also offered the Applicant two options: i) administrative leave for six months, starting January 1, 1993, with the purpose of locating a suitable position or ii) extension of his assignment for up to six months in INURD. In case no suitable position was found by June 30, 1993, the Applicant would have to leave the service of the Bank according to the terms of the MAS agreement. By memorandum, dated December 31, 1992, the Applicant chose the second option.

15. By memoranda, dated February 10 and March 3, 1993, the CPO and another Personnel Officer, PMDIN, informed the Applicant of vacancies and requested his reply within certain time limits. By memorandum, dated March 8, 1993, to the VPPAA the Applicant stated, among other things, that the job search for a position at his level was not being given appropriate importance and he suggested where he would fit in and what could be done.

16. In its report, dated March 18, 1993, the Appeals Committee concluded that the decision not to recommend the Applicant for clearance to Level 25 did not constitute an abuse of managerial discretion. As to the merit increase awarded the Applicant for the year 1989, the Appeals Committee found that it constituted an abuse of discretion and that the Applicant should receive an increase for that year based on a "4" rating. As to the MAS agreement, the Committee saw no reason why it was not binding since the Applicant had signed it, after negotiations with the Bank, indicating his acceptance of its terms. The Appeals Committee commented that it would be regrettable if the Applicant's skills were lost to the Bank and it therefore urged that arrangements be made, possibly through a "T" slot, whereby the Applicant could be offered the next position which would become available in the Department in which he was currently working.

17. By memorandum, dated April 1, 1993, to the Applicant the Managing Director of the World Bank concurred with all but one of the conclusions and recommendations of the Appeals Committee and, consequently, stated that the provisions of the separation agreement should be implemented. The recommendation which he rejected related to reappointment.

### **The Applicant's main contentions:**

18. The Respondent abused, in the Applicant's case, its procedures for termination of service of staff, including using such procedures to force him to sign a termination agreement in the form of a so-called mutually agreed separation, which was really a "Reassignment" agreement including provisions relating to possible severance from the Bank.
19. The Respondent failed to respect the agreement it made with the Applicant to use diligent and good faith efforts to find him a position in the Bank.
20. The Respondent's claim that the Applicant was redundant was not supported by valid evidence.
21. The Respondent induced the Applicant to accept an assignment with a promise of promotion on satisfactory performance and then failed to apply its procedures for a growth promotion. There was also clear evidence of prejudice on the part of the Director, ITF.
22. The issue of promotion can be raised at any time as the basis for an administrative decision and an appeal. The Respondent took a decision on the issue of promotion and the Applicant took the matter to administrative review and to the Appeals Committee so that it is now rightly before the Tribunal.
23. The Respondent abused managerial discretion by consistently, generally and over a period of three years from 1988 to 1990, refusing to recognize in connection with his merit increases the Applicant's outstanding services to the institution.
24. The Respondent accepted adjustment of the merit award for 1989 as the Appeals Committee had recommended and cannot now say that it does not accept having all elements of the case, as submitted to the Appeals Committee, adjudicated by the Tribunal.
25. The Respondent abused its authority and damaged the Applicant's career in the Bank resulting in high levels of stress injurious to his health in many respects. The work- related stress and its impact on the Applicant's health had inevitable, severe repercussions on his family life.
26. The manner in which the Applicant has been treated by ITF management has reflected adversely on his professional reputation.
27. The Respondent's agent for Workers' Compensation has not made a determination on the Applicant's claim. The Applicant is prepared to withdraw his claim for damages on grounds of injury to his health as soon as the Respondent accepts liability under the Staff Rule pertaining to Workers' Compensation.
28. The Applicant made the following pleas:
  - (i) annulment of the MAS Agreement because of the improper pressures placed by the Respondent on the Applicant to sign it with the consequence that it is unenforceable against the Applicant and he should be reinstated. Alternatively, granting of full retirement benefits at age 55, as if he had retired at age 62;
  - (ii) grant of a growth promotion to Level 25 with retroactive effect to March 1989;
  - (iii) grant of a salary increase calculated to reward the Applicant for exceptional services to the Bank to compensate for past inadequate merit awards. Alternatively, increase of the Applicant's merit awards for 1988 and 1990 to the level of the reward received for 1989 as a result of the recommendation of the Appeals Committee;
  - (iv) award of compensation for damages in the amount of five years' adjusted net salary on the ground of exceptional circumstances, i.e., approximately \$500,000, for damage to professional reputation, career prospects and earnings potential, damage to health and family stress;

(v) making of restitution to the Applicant for damage to his reputation by publishing an article in Bank's World to give due credit to his contribution to the MCRP and placing a special commendation for his services in the Applicant's personnel file; and

(vi) payment of legal costs estimated at \$ 50,060.

**The Respondent's main contentions:**

29. The pleas regarding merit awards for 1988, 1989, and 1990 should be held inadmissible as untimely and for failure to exhaust other remedies available within the Bank Group. The pleas regarding denial of promotion in 1988 and 1989 from level 24 to level 25 should be held inadmissible on the same grounds.

30. The entire Application may not have been timely filed with the Tribunal, since it was originally filed on June 30, 1993 but was received by the Tribunal forty-two days later "after corrections".

31. The Applicant's claim concerning his ill health is not properly before this Tribunal at this time because it is currently under review in another forum in connection with the Applicant's request for Workers' Compensation benefits, and, as such, it should be held inadmissible. The Respondent is not delaying the processing of the Applicant's amended claim in this respect. In any event there does not exist any basis for holding that stress was responsible for the Applicant's health problems.

32. The fact that the Bank agreed to a generous separation package does not in itself violate the Applicant's terms of appointment. The MAS agreement was both an agreement on possible avenues for reassignment and – in the event that was not possible – an agreement on terms of separation from the Bank.

33. It was not improper nor duress for the VPPAA to point out to the Applicant the alternative of possible separation on grounds of redundancy, in the event he did not wish to sign the agreement, which he had ample time to contemplate, about which he had advice of counsel, and under which he is currently drawing benefits.

34. The Respondent only undertook to use best efforts to find him a position and no more. This it had done.

35. The ITF Director did not promote the Applicant to Level 25 within ITF because of the Applicant's problems with inter-personal relationships and other performance problems and because ITF did not have a level 25 complement available. Further, for this purpose the Applicant would have been subject to clearance by the Technical Panel established in mid-1988.

36. There was no arbitrariness in the award of the Applicant's salary increases for 1988 and 1990 which were for fully satisfactory performance.

37. The Respondent is aware of no representations to third parties of incompetence on the Applicant's part which, as he alleges, were damaging to his professional reputation.

38. No basis exists for the award of \$500,000 as damages, as the Applicant requests on the ground of exceptional circumstances.

39. No basis exists for the Tribunal to order publication of an article in the Bank's World magazine or the placing of a special commendation in his Personnel File.

40. In the event the Tribunal should find the MAS agreement invalid, it should at the same time require restitution to or permit offset by the Respondent of the value of any and all benefits paid to the Applicant by the Respondent under the MAS arrangements.

41. The Applicant has failed to show that his application has merit or any exceptional circumstances exist that



would warrant an award of costs. Further, in any event the Applicant should not be allowed to recover costs and fees related to Appeal No. 309 currently before the Appeals Committee and to his Workers' Compensation claim.

### **Considerations:**

42. The main issue in this case is whether the MAS agreement reached between the Applicant and the Bank and signed by the Applicant on January 16, 1992 is valid and binding, and whether the Bank has fulfilled its obligations thereunder. The Bank contends that the MAS agreement is valid and enforceable and that the Applicant should be held to its terms, whereas the Applicant contends that he signed the MAS agreement under duress and that in any case the Bank did not fulfill its obligation thereunder. The Applicant also accuses the Bank of abusing its managerial discretion by refusing, for a period of three years, to recognize the Applicant's outstanding services to the Bank, particularly his input in improving and correcting certain aspects of the Main Complex Rehabilitation Program (MCRP). He also accuses the Bank of wrongfully denying him a fully justified professional growth promotion he was promised at the time of his appointment in ITF.

43. Once the outcome of the investigation carried out by the Respondent on the MCRP's cost and budget overrun became known to the Applicant in December 1993, he directed his pleadings in this case towards showing that the real motivation behind terminating his employment with the Bank was to get rid of him because of his constant and strong criticism of the way the Respondent was carrying out the MCRP and of certain managers working on that project who were at the same time his supervisors. According to the Applicant, "termination under these circumstances constitutes an abuse of procedure". He also claims that the Bank should compensate him for job-related damage to his health.

44. The Respondent, on the other hand, raises an issue of timeliness with respect to two of the Applicant's pleas, namely, those relating to alleged unfair merit awards and failure to promote the Applicant.

45. The Tribunal will first deal with this issue. In his application, the Applicant challenges the merit increases for years 1988, 1989 and 1990. However, he did not seek administrative review of these increases until October 10, 1991. The Respondent contends that such delay in seeking administrative review was noticed by the Applicant's reviewer who advised the Applicant that his complaint was out of time under Staff Rule 9.01 which stipulates that "if a staff member wants an administrative review of an administrative decision, he shall request the review in writing no later than 90 calendar days after being notified of the decision in writing."

46. Article II, para. 2 of the Statute of the Tribunal provides that:

No application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

(i) the applicant has exhausted all other remedies available with the Bank Group, except if the applicant and respondent institution have agreed to submit the application directly to the Tribunal.

The Tribunal has ruled in previous cases that, if an Applicant has failed to observe the time limits for the submission of an internal complaint or appeal, he must be regarded as not having complied with the statutory requirement of exhaustion of internal remedies. (Dhillon Decision No. 75 (1989), paras. 23-25; Steinke, Decision No. 79 (1989), paras. 16-17)

47. Neither exceptional circumstances nor an agreement to submit the application directly to the Tribunal has been shown or claimed. The Tribunal, therefore, concludes that the Applicant's pleas relating to merit awards and promotion are inadmissible.

48. Turning now to the issue of the validity of the MAS agreement dated November 22, 1991 and signed by the Applicant on January 16, 1992, what is before the Tribunal is whether the terms of the MAS agreement should be enforced or whether they should be invalidated for absence of genuine consent because of the

Applicant's being coerced therein by the Respondent and whether the Respondent had fulfilled its obligation under the MAS agreement.

49. The Applicant contends that the MAS agreement is not enforceable by the Respondent because it was obtained under duress and by improper methods. He maintains that he signed the MAS agreement only after he had been twice threatened that if he did not sign it he would be denied a new assignment and then that he would be terminated forthwith on grounds of redundancy. He maintains that the first threat was in a memorandum of February 14, 1991 by the Vice President, Personnel Administration (VPPAA), and that the second came in the Vice President's letter of December 27, 1991. On examination of the two documents the Tribunal cannot subscribe to the Applicant's interpretation of the facts. The two documents are but two links in a chain of correspondence exchanged between the Applicant and the Bank's management dealing with his reassignment and possible separation from the Bank and they cannot be read or interpreted in isolation from the other links. It is helpful in evaluating the Applicant's allegation of duress to refer to the following memoranda and letters exchanged between the Applicant and the Bank's management:

(a) On December 18, 1990, the VPPAA sent a memorandum to the Applicant informing him of his reassignment to PRE to work on INU's UNDP funded Urban Management Program. This was a two-year assignment ending on December 31, 1992. The VPPAA gave the Applicant a re-entry guarantee into the PAA complex according to certain terms agreed upon between the Applicant and the Chief Personnel Officer and the Senior Personnel Officer on December 5, 1990. The memorandum also provided that prior to the expiration of the two-year assignment the Vice President would seek to place the Applicant in a position in the PAA Complex, the duties of which were commensurate with the Applicant's qualifications. Finally, the memorandum provided that "in the event that such a position cannot be identified within six months after the termination of (the Applicant's) assignment in PRE .... (the Applicant) will leave the service of the Bank under a mutually agreed separation pursuant to Staff Rule 7.01, Section 5."

(b) On January 15, 1991, the Applicant sent his reply to the Vice President, thanking him for his memorandum of December 18, 1990 and stating that he was "looking forward to the PRE/INU-Infrastructure/Urban Department assignment and growth promotion opportunities" and that he was "comfortable with the terms and conditions contained in your memorandum of December 18, 1990". The only reservation he expressed was that his legal counsel "strongly suggests that I sign the agreement after resolving the remaining outstanding issues."

(c) On February 14, 1991, the Vice President responded to the Applicant's memorandum of January 15, 1991 expressing his surprise at learning that the Applicant believed there were further issues to be resolved. He reminded the Applicant of the Applicant's memorandum of January 15 in which the Applicant indicated that he was comfortable with the terms and conditions set out in his (the Vice President's) memorandum of December 18, 1990. The closing paragraph of the letter stated that the Vice President expects "to see, and shortly I hope, a memorandum to which you have concurred in writing. Otherwise, consideration may have to be given to revisiting your new assignment in PRE, pending resolution."

(d) On December 27, 1991, in response to a memorandum by the Applicant in which he asked for clarification of certain points of the MAS agreement, the Vice President assured the Applicant "that at the end of your assignment with INU diligent and good faith efforts will be made to locate a position ... at your then grade level, suited to your qualifications." It is the closing paragraph of this letter that the Applicant reads as a threat and exercise of coercion. It provides: "Discussions on this matter have been extensive. I very much hope, therefore, that you will find yourself able to sign the MAS agreement sent to you on November 22 by no later than close of business on January 15, 1992. If this turns out not to be the case, the only remaining course of action will be for the Bank to proceed under the redundancy provisions of Staff Rule 7.01."

50. Read within the context of these exchanged letters and memoranda, the two documents referred to by the Applicant do not, in the Tribunal's opinion, constitute a threat amounting to the exercise of coercion. The letter of February 14, 1991 does nothing more than remind the Applicant of the need to take a decision on the proposed agreement. The last paragraph is a reminder that the proposed agreement was a package and

that the new assignment of the Applicant in PRE was one item of that package and that it would not stand alone if the Applicant did not opt to take the proposed package in its totality. The reference in the letter of December 27, 1991, to the only remaining course of action as being for the Bank to proceed under the redundancy provision cannot be read as a threat. It was a mere statement of fact reminding the Applicant of the alternatives available to him and to the Bank. The Tribunal reads it as an argument to induce and convince rather than as a pressure meant to coerce. The fact of the matter is that the Applicant, having considered with the help of counsel the benefits and advantages he would draw from each of the two options available to him, finally decided to take the option of which the terms and conditions were incorporated in the agreement he signed on January 16, 1992. As the Tribunal decided in Gamble, Decision No. 35 (1987): "That .... is the kind of balancing of priorities that inheres in every settlement and it cannot properly be regarded as duress".

51. In order to substantiate his allegation of duress the Applicant argues that reference by the Respondent to the alternative of terminating the Applicant's employment for redundancy was not proper, because according to the Applicant the conditions required for such termination were not fulfilled in his case. This, however, is irrelevant. Presented with the two options, the Applicant could have refused to sign the proposed agreement and could have fought his case on the ground of the invalidity of a termination for redundancy, particularly in the light of the fact that he was assisted by legal counsel who could have advised him on this matter.

52. The Tribunal takes particular note of the fact that on several occasions the Applicant expressed his satisfaction with the terms and conditions incorporated in the MAS agreement. In his memorandum of January 15, 1991 to the Vice President, he stated that he was "comfortable" with the terms and conditions of the Vice President's memorandum of December 18, 1990. The Tribunal also notes that the negotiations over the terms of the agreement lasted more than a year, during which the Applicant discussed at length the terms of the MAS agreement, assisted throughout by his legal counsel. The fact that the Applicant continued, before finally signing the MAS agreement, to ask for more benefits than those incorporated therein, and that the Respondent did not agree to most of such additional benefits, does not detract from the fact that the Applicant had decided to agree to the separation package as offered by the Respondent. Such bargaining between the parties to a negotiated settlement is inherent in the process of negotiation and cannot subsequently be invoked in support of a claim of duress.

53. The Tribunal concludes, therefore, that the MAS agreement was freely signed by the Applicant and that its terms and conditions are binding on both the Applicant and the Respondent. The Applicant contends that the separation agreement was from the beginning a part of a design by the Respondent to get rid of him because of his strong criticism of the managers in charge of the MCRP. He tries to substantiate this allegation by referring to the fact that the managers disciplined for mismanagement and misconduct as a result of the investigation carried out by the Respondent were the same managers he criticized, thus giving them a motive not to make any diligent effort to reassign and keep him in the employment of the Bank. Although the Tribunal cannot conclusively dismiss the possibility of an existing link between a hostile attitude by those managers towards the Applicant and his unrelenting and harsh criticism of their management, the Tribunal does not find evidence that such was the case.

54. The Applicant contends, moreover, that the Bank has failed to fulfill its obligations under the separation agreement. He refers specifically to the Respondent's undertaking to seek to place him in a position of which the duties are commensurate with the Applicant's qualifications. He contends that the Respondent made absolutely no effort to find him a position as promised. The obligation of the Respondent to which the Applicant refers is embodied in the separation agreement and in a letter to the Applicant by the VPPAA, dated December 27, 1991.

55. The MAS agreement itself provided that the Applicant was reassigned to PRE as of January 1, 1991 and that said assignment was expected to end on December 31, 1992, with a guarantee of re-entry into the PAA Complex. The MAS agreement went on to explain the meaning of such guarantee. It stated that prior to the expiration of the Applicant's assignment in PRE, the Vice President (VPPAA) "will seek to place you in a position in the PAA Complex, the duties of which are commensurate with your qualifications and which is at a



grade equal to that of which you then hold". This commitment was emphatically made in a letter to the Applicant by the VPPAA, dated December 27, 1991, which read:

Please be assured that at the end of your assignment with INU, diligent and good faith efforts will be made to locate a position for you at your then grade level, suited to your qualifications. (emphasis added)

56. The Respondent contends that the Bank only undertook to use best efforts to find the Applicant a position within the Bank and that "at no time did the Respondent obligate itself to force-place Applicant or to transfer him to a position from PAA to another complex in the Bank or to conduct an institution-wide search."

57. The issue before the Tribunal is, therefore, whether the Respondent made diligent and good faith efforts to locate a position for the Applicant at the end of his assignment with INU. In a letter dated March 8, 1993 to the VPPAA, the Applicant expressed his doubts as to the seriousness with which the Respondent was handling the search for a position as promised in the MAS agreement. He noted that the Chief Personnel Officer (CPO) had delegated the job search to an Assistant Personnel Officer who called the Applicant's attention only to inappropriate positions which were publicly known and that "this is not the way to resolve issues of placing senior staff." By letter dated February 10, 1993, the CPO informed the Applicant that, through the Internal Staffing Process (ISP), a position matching the Applicant's skills had been identified. It was a Municipal Engineer position. By a second note dated March 3, 1993, the Assistant Personnel Officer informed the Applicant that the ISP data base had matched the Applicant's skills to two available vacancies; one as Urban Economist/Planner - Level 23-24; and the other as Urban Planner/Municipal Engineer - Level 23-24. Finally, by a note to the CPO dated May 14, 1993, the Assistant Personnel Officer reported that she had asked the Personnel Officers representing the various departments of PAA to check whether there were any vacancies for the rest of the fiscal year that would match the Applicant's profile and that all of them had confirmed to her that no suitable position existed. She also stated that a memorandum from ITF equally confirmed that no position existed in that Department.

58. Examination of the record leads the Tribunal to conclude that, although the Respondent had in fact made some effort to find a position for the Applicant matching his qualifications, that effort did not, in the circumstances of the case, match the strong commitment, both in the MAS agreement and in the Vice President's letter of December 27, 1991, to make diligent and good faith efforts to locate such a position. The whole effort was delegated to a junior officer and none of the senior officers initiated contacts with fellow senior managers to recommend the Applicant's reassignment. The Respondent only utilized the computerized Internal Staffing Process and ended up offering the Applicant positions that did not match his qualifications. Taking into account the fact, substantiated by the Applicant's exceptionally good PPRs, that he was a very good performer, and that his input contributed considerably to the improvement and correction of certain aspects of the MCRP, the Tribunal finds that much more should have been done by the Respondent to locate a position for the Applicant. This failure to make diligent and good faith efforts to locate a position for the Applicant has caused him injury. Taking into account this fact and the financial benefits he is drawing under the MAS agreement, the Tribunal decides to award compensation in an amount equivalent to one year's net salary.

59. The Tribunal does not deal with the Applicant's contention that his treatment by the Bank caused him significant health problems because his request for compensation on this ground is presently pending before another forum, namely, the Workers' Compensation Office, and no formal decision has yet been taken on his claim.

### **Decision:**

For the above reasons, the Tribunal unanimously decides that:

- (i) the Respondent pay to the Applicant an amount equivalent to one year's net salary;
- (ii) the Respondent pay the Applicant \$5,000.00 in costs; and

(iii) all other pleas are dismissed.

A.K. Abul-Magd

/S/ A.K. Abul-Magd  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary

At London, May 19, 1995