

Decision No. 205

H. Paul Crevier,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of Robert A. Gorman, President, Francisco Orrego Vicuña and Thio Su Mien, Vice Presidents and A. Kamal Abul-Magd, Bola A. Ajibola and Elizabeth Evatt, Judges, has been seized of an application, received on May 18, 1998, by H. Paul Crevier against the International Bank for Reconstruction and Development. In addition to the usual exchange of pleadings, a filing by the World Bank Staff Association of a Statement Amicus Curiae was accepted by the President and the Respondent replied to this Statement. The case was listed on November 12, 1998.

Subject matter of the application

2. This case concerns the implementation of a new rule of the Staff Retirement Plan (SRP), which allows for early retirement at age 50, in conjunction with the provisions of the Staff Rules governing severance payments in situations of redundancy. The Applicant claims that because he has not been allowed to draw unreduced benefits from the SRP as well as severance pay under the Staff Rules he has been discriminated against, retroactively deprived of compensation for services rendered and denied equitable treatment. The decision denying these benefits, it is further argued, violates the Applicant's conditions of employment and other essential rights established in the Principles of Staff Employment by being arbitrary, discriminatory and unfair and involving an abuse of power and discretion.

Applicant's redundancy

3. The Applicant joined the Bank in 1973 and made his career in the Corporate Secretariat. His employment was made redundant with effect on August 15, 1997. Under the terms and conditions of his redundancy, as explained in a memorandum from the Manager of Human Resource, Team 2, on November 24, 1997, the Applicant was to continue in regular work and pay status through May 15, 1998, and, on his last day of service, he was to receive a lump sum severance payment equivalent to 22.5 months of his net monthly pay in accordance with Staff Rule 7.01, paragraph 8.08. Other related benefits were also explained to the Applicant. Although the memorandum did not address the question of pension entitlement, it went without saying that he would receive the pension to which he was entitled under the SRP. Such pension would have been calculated according to the so-called Rule of 75, to be described below.

The Human Resources Policy Reform

4. On April 15, 1998, important amendments to the SRP came into effect with the prior approval of the Board of Directors of the Bank, in the context of a broad reorientation of compensation policy covered by a policy document entitled *Human Resources Policy Reform*. The reforms had been discussed with staff for many months and had been duly communicated to staff members in general and to the Staff Association in particular.

5. A central feature of the reform undertaken was to change the characteristics of the pension system in force, which was described as a "traditional 'defined benefit' plan, designed for staff who spend the majority of their careers at the Bank." (*Human Resources Policy Reform*, March 5, 1998, para. 74.) Under such system,

benefits did not depend on asset returns but rather on the staff member's length of service, age, highest three-year average salary and other factors. Because such benefits were, in the Bank's terminology, "backloaded," staff members did not have an incentive to leave the Bank's service and were even penalized for doing so early by receiving a reduced pension. The new approach devised by the Bank pursued the introduction of a pension that would be more flexible and portable, that would not penalize staff for early retirement and that would facilitate the mobility of staff members. This was done, in part, by incorporating a "defined contribution" component into the SRP to supplement the "defined benefit" component. The intended goal of this approach was the revitalization of the staff in order to better achieve the Bank's contemplated improvements.

The Rule of 50

6. The key provision of the amended SRP, as it concerns the present case, is Article 3.3 which provides for a new benefit under the so-called Rule of 50. This Rule reflects the new approach explained above by providing that a staff member in the service of the Bank on April 14, 1998 may elect to retire on an unreduced early retirement pension if he or she "is at least fifty years old or has at least 1,095 days of service" and "has not received a severance payment from the Employer (and has waived any right that may exist thereto) upon termination of employment." (Staff Retirement Plan, Article 3.3(a) (as amended effective April 15, 1998).) The pertinent example of a staff member entitled to such severance pay is one, like the Applicant, whose employment with the Bank is involuntarily ended by virtue of a declaration of redundancy.

Retirement options and conditions

7. Staff members who satisfy the requirements of the Rule of 50 are provided with a new retirement option in addition to those options that existed before the amendments to the SRP and which remain in the current SRP. Those other options consist of: (i) normal retirement benefits at age 62; (ii) early retirement commencing at or after age 55 with a pension reduced according to factors specified in the SRP; (iii) the Rule of 75, which allows for retirement prior to age 55 with an immediate reduced pension if the sum of the staff member's age plus years of service upon retirement is at least 75; and (iv) the Rule of 85, which allows for retirement prior to age 62 with an immediate unreduced pension if the sum of the staff member's age plus years of service is at least 85. It should be noted that both the Rule of 85, introduced in 1990, and the new Rule of 50 allow for early retirement with unreduced pensions. However, while both encourage early retirement, only the Rule of 85 allows a staff member made redundant to receive severance payments in addition to an unreduced pension. The Rule of 50, as explained above, does not.

Grandfathering prior benefits and rights

8. As is usually the case with the reform of social security and pension systems, staff members under an existing plan are "grandfathered" so as to keep all the benefits and rights to which they were previously entitled under such plan. Newly recruited staff members begin their service under the amended plan and there are provisions for the transition between one plan and the other. The Bank decided during its pension reform to grandfather staff members employed by it on April 14, 1998, so as not to alter any of the benefits available to such staff members.

Waiving severance payments under the Rule of 50

9. However, grandfathering was perceived by the Bank as perpetuating a lack of mobility and an incentive to remain in the employment of the Bank until normal retirement age. The Rule of 50 was therefore devised as a new benefit for those staff members who, in spite of their grandfathered rights, would be willing to choose a different form of retirement, with an unreduced pension, if this would be to their advantage. As noted above, however, a requirement of the Rule of 50 is the non-receipt of severance payments and the waiver of any right thereto.

10. The reason for this last restriction was explained in the following terms:

The reason is because the incentive [under the Rule of 50] is intended to induce eligible staff to retire early on a voluntary basis, while severance is compensation for involuntary or negotiated mutually agreed separation. Accordingly, we propose that staff whose employment has been declared redundant, or who have signed mutually agreed separations, or who otherwise are to receive severance payments, be given a choice between retaining their severance benefit eligibility or the enhanced early retirement (accrued pension at age 50). This choice will apply regardless of whether the severance is payable in lump sum or, in exceptional cases, during special leave. Under this proposal, such staff members will receive the full severance and pension benefits to which they are currently entitled, unless they elect to take advantage of the new plan provision allowing for an unreduced pension.

(*Human Resources Policy Reform*, March 5, 1998, para. 85.)

Applicant's entitlement under the Rule of 75

11. At the time of the declaration of his redundancy, the Applicant was entitled to an immediate pension benefit under the Rule of 75, and, because of being close to attaining an unreduced pension under the Rule of 85, the reduction to his pension was not severe. The record indicates that the Applicant's selection of the Rule of 75 pension resulted in a pension reduction of approximately 11%, or an annual pension in the amount of \$87,373 rather than the unreduced amount of \$98,393. In addition, the Applicant was entitled to and accepted full severance payments in compensation for redundancy, equivalent to a maximum of 22.5 months of his final monthly net salary, or \$216,881.25. Prior to opting for the Rule of 75 and redundancy severance payments, it had been confirmed to the Applicant by management that he would not be entitled to receive an unreduced Rule of 50 pension if he also collected severance payments. The Applicant requested an administrative review of this decision and in its response the Respondent reiterated its position. The Respondent also noted that because in its view neither the Bank management, the Appeals Committee nor the Pension Benefits Administration Committee would have any discretion under the terms of the SRP to grant the Applicant an unreduced pension, he could proceed directly to the Administrative Tribunal, which he did.

The link between pension rights and severance payments

12. The Tribunal has examined each and every argument made by the parties and it is also grateful to the Staff Association for having introduced an *amicus curiae* brief which further elaborates on a number of relevant aspects and which clarifies the various policy options that were present in the pension reform undertaken. The Tribunal notes that in this case there is no real dispute about the terms and interpretation of Article 3.3 of the SRP. The contention relates rather to the "linkage" between the provisions relating to pension entitlement and those relating to the payment of severance in the case of redundancy. While the Applicant regards these two matters as entirely separate and distinct, the Bank considers that both form an integral part of the compensation policy of the Bank.

Purpose and linkages between pension and severance

13. It follows that the first question the Tribunal must address is whether it was an abuse of discretion for the Bank to link the pension entitlement of a staff member with his or her severance entitlement or whether such matters are entirely unrelated. The pertinent purposes of each such mechanism must therefore be examined.

14. Under Principle 6.2(d) of the Principles of Staff Employment, the pension system is part of the programs of compensation designed in part to "promote the health and well-being of staff members and to provide financial protection and assistance for staff members and their families." While the basic purpose of the pension system is to provide a staff member with appropriate income upon retirement, it also meets other objectives of the Bank's overall compensation policy, such as to "enable the Organizations to recruit staff members of the highest caliber appropriate to job requirements and to retain them so long as there is reasonable coherence between their career interests and the evolving mission and circumstances of the Organizations." (Principle 6.1(a) of the Principles of Staff Employment.)

15. Severance, on the other hand, is not defined by the Principles of Staff Employment, but rather is related to

separation from service under Principle 7.1. This Principle provides that if separation is at the initiative of the Bank, a staff member “shall receive financial and/or other assistance on conditions and within limits established by the Organizations, which shall include consideration of the reason for such decision, the length of service, as well as other relevant factors.” Staff Rule 7.01, paragraphs 8.08 through 8.10, provides for the specific implementation of this assistance. In the previous version of Staff Rule 7.01, i.e., the July 1997 version, only paragraph 8.08 governed severance; the provisions of that paragraph are included in the current version of Staff Rule 7.01. While the main purpose of severance is therefore to provide assistance for staff members made redundant so that they can better adjust to career changes and to the expenditures that this can involve, the purpose is also related to other objectives of management. For example, severance in the form of special leave has often been allowed by the Bank in order to help staff members to overcome situations of hardship, and, particularly, in order to help staff members to reach a given pension-benefit level, such as the Rule of 75 or the Rule of 85. In this context, severance is used not only to help redundant staff members to start new careers, but also to compensate for situations that could otherwise result in a loss of pension benefits, education grants, visa privileges and the like.

16. While it is true, as argued by the Applicant, that pensions and severance payments are governed by different Principles of Staff Employment and that pension funds are kept and managed separately from the Bank’s administrative budget – from which severance compensation is paid – it should not pass unnoticed that it is the objective of both mechanisms to provide financial protection and assistance to staff members upon their separation from the Bank. In this respect, they can rightly be regarded as complementary components of an overall employment policy. This link is not just a matter of theory but one found in the Staff Rules themselves. Indeed, Staff Rule 7.01, paragraph 8.10 (formerly part of paragraph 8.08), provides that “Severance payments may not exceed net pay for the number of months remaining until a staff member’s mandatory retirement date” Where this applies, severance payments serve as a bridge to the moment at which a staff member obtains a full pension, with the exception that will be discussed further below under the Rule of 85. It must also be noted that while the severance benefits of a staff member – who is eligible both for such benefits as well as for a reduced pension prior to mandatory age – would not be reduced by the Bank, the pension benefits would be less than a full pension thereby justifying the additional compensation received by way of severance. Under the Rule of 50, the same reasoning applies in that a staff member who opts for an unreduced pension under the Rule of 50 cannot also claim severance.

Alternatives considered during preparation of reform

17. During the discussion and preparation of the pension reform, a number of alternatives were considered instead of the Rule of 50, including an early retirement window that would have allowed for staff members to retire on an unreduced pension during a limited period of time. This alternative was favored by the Staff Association but was not retained because it was believed by management that it would encourage a number of valuable staff members to retire early in order to take advantage of this limited opportunity. It is not within the competence of the Tribunal to consider which alternative would have been best or more effective to attain the desired objectives of the reform. This is a matter that is solely within the discretion of the Board of Directors. The Tribunal is empowered only to decide whether the solution retained in Article 3.3 of the SRP can be applied lawfully to the Applicant in the light of his rights as a staff member.

Acquired rights, contingent benefits and the issue of retroactivity

18. The Tribunal now turns to the argument that in denying the Applicant the combination of an unreduced Rule of 50 pension and severance payments, the Bank has retroactively changed the terms and conditions of employment, a decision which, it is further argued, amounts to a violation of essential terms and conditions of the Applicant’s employment. At this point, a technical explanation is in order. Pension contributions by a staff member accrue in the sense that they are deducted from the staff member’s paychecks and accumulate together with the contributions made by the Bank. There is undoubtedly a right to benefit from the pension payable on separation in accordance with the terms and conditions of the SRP. However, severance does not “accrue” as the Applicant argues since no deductions or contributions are made to this end. Rather, severance is a benefit that is governed by paragraphs 8.08 through 8.10 of Staff Rule 7.01 (formerly just paragraph 8.08),

and is contingent upon employment being terminated by a decision of the Bank and upon the satisfying of other conditions that are set out in Section 8 of Staff Rule 7.01. The calculation of severance benefits is made according to age and the number of years the staff member has been employed. Only when the conditions of Section 8 of Staff Rule 7.01 are satisfied does an expectation of severance pay materialize into a right. But severance does not “accrue” as pension contributions do; there is no right to severance in the same sense that there is a right to a pension entitlement. It is precisely because of this characteristic that severance payments are made from the Bank’s administrative budget.

19. In the context of the pension reform, the Bank did not reduce the existing rights of staff members, which was the basic consideration underlying the grandfathering. In this respect, every staff member continues to have every right that he or she had before April 15, 1998. In the Applicant’s case, he received a pension under the Rule of 75 to which he had a right, and, in addition, because of having been made redundant he was entitled to the maximum severance payments, which he also received. No retroactive change in the Applicant’s terms and conditions of employment has intervened in this case and, consequently, no retroactive deprivation of compensation for services already rendered can be found, a situation which, if existing, would be contrary to Principle 2.1(c) of the Principles of Staff Employment and a well-established line of decisions of this Tribunal. (*See de Merode*, Decision No. 1 [1981], paras. 45-48.)

20. A related argument is that the Applicant’s terms and conditions of redundancy of November 24, 1997 did not include any limitation on the pension benefits he could select upon separation and that, therefore, the restriction introduced a few months later under the Rule of 50 amounts to a retroactive change of such terms and conditions. This argument is not tenable because those terms and conditions referred only to severance and other related benefits and did not address the question of pension benefits, which are solely governed by the SRP.

21. The Rule of 50 was defined as a new benefit, which indeed it is for it provides an increased pension with the objective of staff mobility. As such, there is no preexisting right to it until the moment at which a staff member becomes eligible on or after April 15, 1998. This is clearly expressed in Article 3.3(c) of the SRP, which provides:

No participant shall be entitled to or otherwise accrue a right to an unreduced early retirement pension prior to the later of the day on which participation ceases or the day on which a participant is both eligible for and elects to receive this benefit. The unreduced early retirement pension shall be in lieu of any other pension provided under the Plan.

It follows that under this provision it cannot be argued that there is a retroactive deprivation of any right, because such a right did not exist beforehand. If it had existed, it would also presumably have been grandfathered.

Conditioning eligibility under the Rule of 50

22. The Bank has made eligibility for an unreduced pension under the Rule of 50 conditional upon the non-receipt of severance payments, a policy which the Applicant considers unreasonable and unfair. The Tribunal must therefore examine whether the Bank has acted reasonably and fairly in this respect. Entitlement to severance payments is part of the terms and conditions of employment and the Bank’s practice up to now has been that persons made redundant are entitled to both severance payments and the same pension to which they would have been entitled as voluntary retirees. Therefore, at first sight, the requirement that severance be waived as a condition of eligibility for a pension under the Rule of 50 might be seen as departing from the standards of reasonableness and fairness. However, on closer examination this conclusion cannot be substantiated.

23. Indeed, as explained above, both entitlement to a pension under the SRP and the rules governing severance payments are an integral part of the Bank’s employment policy. To make one such element conditional upon the other cannot be regarded as unreasonable per se. Every amendment to the SRP over the years and every one of its benefits are made conditional upon meeting certain requirements. Moreover, the unreduced pension provided under the Rule of 50 is a considerable benefit that was introduced to maximize

mobility and flexibility for staff members, a benefit that was also made available to grandfathered staff members. In cases of redundancy similar to those of the Applicant, making the entitlement to an unreduced pension conditional on the waiver or non-receipt of severance reflects the fact that the unreduced pension meets to a large extent the need for financial assistance to which severance pay is mainly directed. In addition, the Applicant was given the choice of receiving either the enhanced pension or his full severance pay together with the Rule of 75 pension to which he was entitled, thus maximizing the benefits available to him. In the light of the above, it was not unreasonable for the Bank to have conditioned the entitlement to unreduced Rule of 50 pension benefits upon the non-receipt of severance.

The issue of equivalent treatment of different situations

24. The argument has also been made that the Bank has treated redundant staff equivalently to staff members who voluntarily resign, while the policy within the Bank has been to treat more favorably those who have to leave involuntarily. To the extent that both redundant and non-redundant staff members are entitled to an unreduced pension under the Rule of 50 this argument is true. However, it ignores the fact that a number of benefits separate from severance are still available to redundant staff members who elect an unreduced pension under the Rule of 50. The Respondent has explained in this respect that benefits such as periods of notice, job placement assistance and training and receipt of cash in lieu of notice periods, are available to staff members made redundant even if they choose the Rule of 50 and waive the severance that would otherwise correspond. The Tribunal also notes that while Principle 7.1(c) of the Principles of Staff Employment provides for financial assistance to staff members who are terminated at the initiative of the Organizations but not to those who resign voluntarily, this does not in any way affect the right of a terminated staff member to waive severance if he or she estimates that an unreduced pension under the Rule of 50 would be more consonant with his or her interests. Conversely, such terminated staff member would be entitled to severance payments as a form of assistance if severance were not waived.

The issue of discrimination

25. The argument that the Rule of 50 entails discrimination between groups within the staff in violation of Principle 2.1 of the Principles of Staff Employment has also been made. The Applicant asserts in this respect that even if he had opted for an unreduced pension in lieu of severance payments he would still have been required to leave the Bank involuntarily, as opposed to other staff members who can make this choice whenever it suits them. The Tribunal must note that this is not the meaning of discrimination, because staff members in different situations will normally be governed by different rules or provisions; the SRP and the Staff Rules are full of such examples. Rather, discrimination takes place where staff who are in basically similar situations are treated differently. As an example, discrimination would occur if only some, but not all, members of a group of eligible redundant staff members were allowed to opt for an unreduced pension under the Rule of 50. This situation has obviously not happened. In any event, it is not the linkage challenged here that accounts for the seemingly harsher treatment of staff members, such as the Applicant, who leave their employment involuntarily. It is rather the fact that their positions have been deemed superfluous under the altogether independent Staff Rules governing redundancy.

The particular situation of the Rule of 85

26. The Tribunal has also examined the argument that the Rule of 50 is discriminatory because, unlike the Rule of 85, the Rule of 50 does not allow staff members to receive both an unreduced pension and severance payments. The Tribunal notes in this respect that it is legitimate for a pension system to differentiate between groups of beneficiaries that are at different stages of their careers. While Principle 2.1 of the Principles of Staff Employment forbids unjustifiable differentiation, differentiation that results in additional benefits for a different group is justified in the context of a pension and compensation system. It is a common feature of such systems that staff members who are closer to the end of their careers will receive greater benefits than staff members who are not, presumably because of the greater likelihood of reemployment of the latter, a situation which justifies the different treatment under the Rule of 85. To conclude otherwise could result in adverse discrimination against staff members who have been in the system longer. The Tribunal also notes that the

Rule of 50 will normally result in a far greater enhancement of pension benefits than occurs under the Rule of 85. Allowing the retention of severance payments under the Rule of 85 may be justified also on that basis. It must also be noted that the Rule of 85 has helped the Applicant to obtain a larger pension because had it not been in existence reductions to his pension would have been greater.

Consistency with Staff Rule 7.01 on severance pay

27. Another related contention on behalf of the Applicant that must be considered is that since Staff Rule 7.01, paragraph 8.10 (formerly part of paragraph 8.08), does not condition severance entitlement upon the pension choice of a staff member, any such conditioning is in violation of Staff Rule 7.01. It is true that Staff Rule 7.01 makes no express reference to pension benefits as a possible limitation on severance payments. But neither does that Staff Rule exclude a linkage to pensions; indeed, the Rule says little as to the range of circumstances in which severance can and cannot be paid. Under Principle 7.1(c) of the Principles of Staff Employment, severance is allowed “on conditions and within limits established by the Organizations, which shall include consideration of the reason for such decision [on separation], the length of service, as well as *other relevant factors*” (emphasis added). The practice of the Bank shows that the other relevant factors are many. Consistent with recognized canons of construction, the Bank may lawfully qualify a staff member’s entitlement to severance pay by restrictions that are reasonable when tested against the objectives of the severance-pay program and that are not otherwise inconsistent with the terms of the Staff Rules. It was therefore consistent with Staff Rule 7.01 for the Bank to declare that redundant staff members should, in effect, be treated as having waived their rights to severance pay if they elect to take the unreduced pension benefits under the Rule of 50.

The use of pension funds

28. The Tribunal must next consider the Applicant’s contention that the Bank is using SRP assets for a purpose other than for the payment of retirement benefits, and that this, consequently, is an abuse of discretion and a *détournement de pouvoir* and *de procédure*. As argued by the Staff Association, the Rule of 50 was devised only after the Executive Directors expressed concern about the cost of severance benefits and was conceived as a vehicle to reduce the burden of severance on the administrative budget since the optional unreduced pension benefits would be paid from the pension fund.

29. This argument is not tenable for two reasons. First, as explained by the Respondent, the Rule of 50 is available to all staff members and not only to those made redundant, who will likely constitute only a small proportion of those leaving Bank employment. Therefore, the administrative budget will not be significantly affected by those staff members who meet the requirements of the Rule and voluntarily retire. Second, and most important, the pension fund is used only to pay for retirement benefits and for no other purpose. If, as a consequence, there is an incidental reduction of budgetary expenses deriving from pension payments, this does not mean that the pension fund is paying for something other than retirement benefits. Any such incidental reduction of administrative expenses is not, in itself, an abuse of discretion or otherwise an improper use of the Bank’s assets.

The issue of “double dipping”

30. All arguments considered, the essential point before the Tribunal in this case is whether the receipt of both severance payments and an unreduced pension under the Rule of 50 should be considered an entitlement and be appropriately reflected in the SRP and the Staff Rules. The question can also be phrased in another manner: Is it permissible to provide special incentives for staff mobility that will be available only on some conditions to qualifying staff members?

31. Such “double dipping” has been expressly ruled out in the current reform of the pension and compensation systems of the Bank. Besides the unequivocal terms of the Rule of 50, the document on reform submitted to the Executive Directors explains that since the rationale for liberalizing the early retirement provisions of the SRP is to strengthen mobility incentives, “this incentive is not appropriate for staff who are eligible for

severance benefits” for the reasons already discussed above. (See *Human Resources Policy Reform*, March 5, 1998, para. 85.) As also discussed above, while pension benefits and severance payments are designed to serve different purposes, they are complementary and may properly be integrated in a comprehensive policy of compensation.

32. To the extent that existing rights are not affected, as they have not been affected in this reform, it is permissible for the Bank to provide incentives for staff mobility such as those embodied in the Rule of 50. In 1990, the Rule of 85 was also conceived as such an incentive, as was the Rule of 75. Different conditions will of course apply to each incentive. Moreover, eligible staff members are now provided with the option of retiring under the Rule of 50 even if having been declared redundant. Which alternative is more convenient to each staff member is something to be decided individually, as was decided by the Applicant when he opted for severance pay along with a pension under the Rule of 75.

Other criticisms of the Rule of 50

33. The fact that the Rule of 50 has been made available to both staff members retiring voluntarily and to staff members made redundant if waiving severance payments has been criticized as being over-inclusive. However, there is nothing arbitrary with this policy. On the contrary, staff members can hardly complain that the Bank offered the option of an unreduced Rule of 50 pension to eligible redundant staff members, as a Rule of 50 pension could only possibly result in greater benefits. Similarly, the Rule of 50 has been criticized for encouraging staff to leave the Bank not just during a limited period of time but into perpetuity. The Tribunal, however, finds nothing arbitrary in providing for a continuing incentive for staff mobility. Other options, such as an early retirement window and mutually agreed separations – which the Applicant merely contends would have “better” achieved the Bank’s objectives – were possible but they were not implemented and this is indeed a decision belonging within the discretion of the policymakers. Similarly, additional benefits for staff made redundant can always be considered, but this is a matter of policy that only the management of the Bank can decide in the context of compensation objectives and standards.

The issue of devalued pension contributions

34. Intertwined with the many arguments made in this case, it has been asserted on behalf of the Applicant that by increasing the pension benefits available to some groups of staff members, the Applicant’s contributions to the SRP and the value of his services have been devalued. If the pension system had been organized on individual capital accumulation accounts – as will now be in part the case as a result of the pension reforms – that argument would make sense if similarly-situated staff members were also affected. But under the system in force for grandfathered staff members, the benefits are unrelated to their capital accumulation and respond, instead, to other factors. There can be no devaluation of contributions or services in this context. Consequently, the choice that the Applicant had between the Rule of 50 and the Rule of 75 had no relationship to his contributions in either case. It was simply a matter of convenience since it cannot be said that his contributions bought a pension of lesser value.

The principle of parallelism revisited

35. The Tribunal shall now examine the principle of parallelism in the light of the present case. As laid down in *von Stauffenberg* (Decision No. 38 [1987]), parallelism entails a process of consultations with the International Monetary Fund (IMF), a business rationale for any differentiation in benefits and, if it is the case, to consider whether the IMF’s decisions should be followed by the Bank. As explained by the Respondent, the first condition has been met through consultations. The last condition is inapplicable in this case. The question then is whether there is a justification for a different business rationale on the part of the Bank.

36. The Tribunal finds that there is such a justification. First, the reform has increased the benefits available to staff members by introducing the Rule of 50, and it may be for the IMF to consider the convenience of a similar benefit. A strict adherence to parallelism, as the Applicant proposes, would mean that the Bank would have to withhold the enhanced pension benefits under the Rule of 50, which is exactly the opposite of what the

Applicant would have the Tribunal require. Second, parallelism does not mean that the Bank is tied to IMF policies but rather that it should consider them as a reference point. And third, the size and mission of the Bank is entirely different today from that of the IMF. The Bank has asserted a need to provide for mobility of its staff and this is justified, not by comparison with the IMF, but in consideration of its own reality. This is precisely the setting for the long and detailed preparation of the human resources policy reform.

Decision

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

Robert A. Gorman

President

Nassib G. Ziadé

Executive Secretary

At London, England, February 3, 1999