

Decision No. 213

Yves Jean Pierre Degiacomi,
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, Elizabeth Evatt and Jan Paulsson, Judges, has been seized of an application, received on January 25, 1999, by Yves Jean Pierre Degiacomi against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on September 10, 1999.

2. The Applicant contests the decision not to renew his contract. He claims that “[o]ther decisions affecting” him include: (i) an alleged interference in his search for employment within the Bank; (ii) the “Report of the Appeal[s] Committee”; and (iii) rejection by the Vice President of Human Resources Development of a request made by the Applicant “for a mediation.” The Applicant requests fulfillment of the Appeals Committee’s recommendations and financial compensation totaling approximately \$137,000 for the “prejudice” that the Appeals Committee “pointed out” but for which it did not recommend compensation. He also requests costs in the amount of \$1,000.

Relevant facts

3. The Applicant first entered the service of the Bank in 1992 as a short-term consultant with the Infrastructure and Urban Development Department under the supervision of Mr. X. Starting in early 1993, the Applicant began working for the Bank as a Community Water Supply Specialist for the Abidjan-based Regional Water and Sanitation Group for West and Central Africa (RWSG-WCA), of which Mr. X was the Regional Manager. RWSG-WCA was part of the United Nations Development Program (UNDP)-World Bank Water and Sanitation Program (the “UNDP-World Bank Program”). The UNDP-World Bank Program was in turn part of the Bank’s Transportation, Water & Urban Development Department (TWU) Water and Sanitation Division (TWUWS).

4. In November 1995, the Applicant entered into a long-term consultancy contract for an initial duration of 7.5 months for a continuing assignment with RWSG-WCA. In the Applicant’s letter of appointment it was expressly stated that the Bank had no obligation to extend the Applicant’s appointment or to offer a new appointment even if his performance was “outstanding,” but that it could do so “if agreed to in writing at the time of the expiration of the appointment.” The Applicant’s appointment was subsequently extended, so that the expiration of his contract was to be June 30, 1997.

5. The Applicant’s supervisor, Mr. X, left Abidjan in December 1995; an Acting Regional Manager supervised the Applicant from January 1996 through June 1996. On July 1, 1996, Mr. Z became the new Regional Manager for RWSG-WCA, but he did not move to Abidjan or begin working there full time until the beginning of September.

6. Mr. Z and the Applicant quickly developed a tense relationship. Mr. Z expressed dissatisfaction with the Applicant’s performance and interpersonal skills. The Applicant disagreed with Mr. Z’s use of funds and with his prioritizing of work. It was the Applicant’s belief that he was working contrary to his sense of ethics under Mr. Z’s supervision.

7. On February 21, 1997, Mr. Z met with the Applicant to discuss the latter's contract. The substance of this meeting was described in a memorandum of February 24, 1997 from Mr. Z to the Applicant as follows:

This is to reconfirm the agreement and mutual understanding we reached at our meeting held on Friday, February 21, 1997 that your contract will end on June 30, 1997 and it will not be renewed further.

I was pleased to note that you thought that perhaps it was time for you to change jobs or countries after 4 years of work with the program.

8. During the meeting of February 21st, Mr. Z provided the Applicant with a draft copy of his assessment of the Applicant's performance for 1996. In this version of the 1996 performance evaluation (PMP), Mr. Z criticized the quality of the Applicant's output, the Applicant's initiative and drive and his interpersonal skills. He added that his confidence in the Applicant had "continued to diminish through the past 6 months to the extent that now I do not intend to renew his contract when it ends on June 30, 1997."

9. Subsequent to a discussion with the Applicant about the draft PMP, Mr. Z provided a second draft to the Applicant on February 24, 1997. In this second draft, Mr. Z expressly rated the Applicant's overall performance as satisfactory; however, he again criticized the Applicant's initiative, drive and interpersonal skills. After a later meeting with Mr. Z that same day (i.e., February 24, 1997), this second version of the PMP was withdrawn and it was agreed that a third draft would be prepared. In the third draft version of the PMP, Mr. Z reiterated his earlier criticisms of the Applicant and assessed the Applicant's overall performance as unsatisfactory. A management review team concurred with this third assessment of the Applicant's performance.

10. By a memorandum to the Division Chief of TWUWS dated April 2, 1997, the Applicant contested the validity of the third version of the PMP "both as regards the designated supervisor and content of the assessment." In pertinent part, the Applicant stated that it was not his "aim" to "avoid contract termination" in that he had "already decided in January that [he] would not seek renewal of [his] contract ... in Abidjan." What he wanted, he said, was "to have the opportunity to present relevant information to support [his] point of view, to have a fair PMP on file and to have [his] good reputation reestablished."

11. In order to address the Applicant's concerns, a fourth draft version of the 1996 PMP was completed in June 1997. This version included: (i) Mr. Z's assessment of the Applicant's performance as unsatisfactory; (ii) a positive assessment by the Acting Regional Manager who had supervised the Applicant from January 1996 through June 1996; (iii) a strongly supportive supplementary evaluation by a task manager who had supervised the Applicant's work on a community water supply project in Benin; and (iv) an assessment by Mr. Z's supervisor, the Manager of the UNDP-World Bank Program (the "Program Manager"). In this latter assessment, the Program Manager concluded that the Applicant's overall performance was satisfactory.

12. Problems subsequently arose in finalizing the PMP due to miscommunications and concerns raised by the Applicant that certain agreed-upon language had not been incorporated in the staff member's comments section of the PMP. The Applicant ultimately chose not to modify, sign and return to the Program Manager a faxed version of the 1996 PMP, and he did not receive the original of the PMP prior to his departure from Abidjan following the expiration of his contract on June 30, 1997.

13. On September 15, 1997, the Applicant informed the Division Chief of TWUWS that he had "not yet received the original of a revised PMP" and he stated: "I therefore officially request this case to be analyzed by the Appeals Committee." On October 3, 1997, the Applicant sent this request to the Director of TWU as a request for administrative review. In this October 3, 1997 request, the Applicant referred to the "[c]ontestation" of his 1996 PMP, to "[e]vidence of personal bias" and to his letter to the Division Chief of TWUWS of September 15, 1997.

14. In a follow-up memorandum to the Director of TWU dated October 16, 1997, the Applicant asserted that while he had never said that he wanted to quit the UNDP-World Bank Program at the end of his contract, it was "obvious that [he] would not seek contract renewal in Abidjan with RWSG-WCA." He further clarified that he was seeking an administrative review of "the process which has been followed with regards to [his] PMP." He

considered that “the absence of the timely revision – as agreed – of [his] performance has impaired the possibility of renewal of [his] contract in another part of the Program.”

15. The Applicant's claims were addressed by the Director of TWU during an administrative review and were found to be without merit. Notwithstanding this finding, the Director of TWU informed the Applicant that the Program Manager would assist him (the Applicant) in completing the PMP as soon as the Applicant provided the wording he wanted in the staff member's comments section of the PMP. On December 31, 1997, the Applicant filed an appeal with the Appeals Committee against the decision not to renew his consultancy contract. The Respondent objected to the appeal on jurisdictional grounds, arguing that the Applicant had not sought an administrative review of the contested decision. The Committee found that in substance it was the Applicant's belief that the non-renewal of his contract resulted from unfair actions and decisions of Mr. Z and that the Applicant was, therefore, challenging the decisions that allegedly led to the non-renewal of his contract. It was on this basis that the Appeals Committee accepted jurisdiction over the Applicant's claim.

16. Following its review on the merits, the Committee reached the following conclusions: (i) there was no evidence of bias on the part of Mr. Z; (ii) steps taken by TWUWS management resulted in a fair and balanced PMP; (iii) the delays in finalizing the Applicant's PMP were not malicious or deliberate and did not have a direct bearing on the Applicant's job search; and (iv) there was nothing to indicate that any Bank staff member had attempted to interfere with the Applicant's chances of being hired as a consultant. In the light of its conclusions, the Committee recommended: (i) that the Applicant's 1996 PMP be finalized; (ii) that the Applicant's 1995 PMP (signed by Mr. X) be made part of his personnel file; and (iii) that TWU managers confirm in writing that the Applicant may be considered for appointments in the Bank. The Applicant was informed on October 19, 1998 of the Bank's decision to accept these recommendations.

17. The Applicant was of the opinion that the recommendations of the Appeals Committee were unsatisfactory and he wrote to the Vice President of Human Resources Development suggesting that financial compensation was the appropriate remedy. The Vice President informed the Applicant that she saw “no reason for any financial settlement” and the Applicant thereafter submitted his application to the Tribunal on January 25, 1999. The Applicant indicates in his Application that he was twice hired by the Bank as a Consultant (from January 19 through February 9, 1998; and from February 25 through April 22, 1998) subsequent to the expiration of his consultancy appointment on June 30, 1997.

Considerations

18. The Applicant's principal challenge is to the Bank's decision not to renew his consultancy contract when it expired on June 30, 1997. He alleges that such non-renewal resulted from personal bias by his new manager, Mr. Z, in evaluating his performance.

19. The Bank has raised an objection to the jurisdiction of the Tribunal on the same basis as its objection before the Appeals Committee. It argues that the Applicant has failed to exhaust internal remedies, as required by Article II, paragraph 2, of the Statute of the Tribunal. According to the Bank, the Applicant did not challenge the Bank's decision not to renew his consultancy contract in his request for administrative review, and, consequently, his appeal of that decision before the Appeals Committee should have been declared inadmissible for failure to exhaust internal remedies.

20. In order to decide on the Bank's jurisdictional objection, the Tribunal must examine the relevant correspondence exchanged between the Applicant and the Bank's management during the stage of administrative review in order to determine whether the Applicant had, during that stage, raised the issue of non-renewal of his contract.

21. The most relevant source of information, in this respect, is the Applicant's memorandum of October 16, 1997, in which he clarified an earlier request for administrative review. In this memorandum, the Applicant stated:

I never said I wanted to quit the [UNDP-World Bank] Program at the end of my contract. It was however obvious that I would not seek contract renewal in Abidjan with RWSG-WCA. ... I explained to [the Program Manager] when he visited West Africa that I would like to work for the Program in another region (discussion in Abidjan on late afternoon of Tuesday, March 25 and his phone call from Cotonou on Friday, March 28).

He goes on to list the process which had been followed with regard to his PMP, stating: "I consider that the absence of the timely revision – as agreed – of my performance has impaired the possibility of renewal of my contract in another part of the Program."

22. The Tribunal finds that in the presence of such explicit complaint against the process followed by the Bank in evaluating his performance, and the linkage he made between said process and the non-renewal of his contract, the Applicant was, in substance, challenging the decision of the Bank not to renew his contract. Even if the Applicant's expression of such complaint were to be found lacking in clarity, the fact remains that the Applicant did challenge the decision of non-renewal during the administrative review stage, and he carried such challenge through to the Appeals Committee, thus meeting the requirement of exhausting internal remedies before submitting his case to the Tribunal.

23. Turning now to the merits of the application, the central issue for determination is whether, by deciding not to renew the Applicant's consultancy appointment beyond June 30, 1997, the Bank failed to observe the Applicant's terms of appointment.

24. This Tribunal has on several occasions declared that "[a] fixed-term contract is just what the expression says: it is a contract for a fixed period of time.... Whatever may be the character of the work which a member of the staff performs, his legal position is controlled by the terms of his appointment." (Mr. X, Decision No. 16 [1984], para. 35; see also Atwood, Decision No. 128 [1993], para. 35.) As noted by the Tribunal in Barnes (Decision No. 176 [1997], para. 3): "Staff Rule 4.01, paragraph 2.01(b), defines a fixed-term appointment as an appointment for a specific duration. According to Staff Rule 7.01, paragraph 3.01, an appointment for a definite term expires upon completion of the term as specified in the staff member's letter of appointment."

25. The Applicant's letter of appointment unequivocally stated that "[t]he World Bank has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed to in writing at the time of the expiration of the appointment." Given this explicit stipulation, the Tribunal cannot but conclude that the Bank did not violate the Applicant's terms of appointment by not renewing his contract.

26. Although the Bank refers to "Respondent's overall dissatisfaction with Applicant's performance, and with Applicant's inability or unwillingness to accept guidance from his manager," as constituting "valid and reasonable bases for the non-renewal of Applicant's contract," the Tribunal does not find such reference to be necessary. As decided in McKinney, Decision No. 187 [1998], para. 10:

As a matter of principle, there is no justification for requiring that the Bank provide a reason for the non-reappointment of a person who is employed by the Bank on an appointment that is expressly stated, in the letter of appointment, to be temporary, and the termination date of which is expressly set forth in that letter.

27. The Tribunal has previously determined that an employee of the Bank under a contract for a fixed period of time may claim an entitlement to renewal where the circumstances show that a promise was made that the contract would be renewed or extended or where certain acts or pronouncements by the Bank were such as to create a reasonable expectation in the mind of the staff member that renewal or extension would be forthcoming. Under such circumstances, the conduct of the Bank creating a "legal expectation" of renewal or extension becomes part of the contract of employment, and failure to meet such legal expectation may be deemed to be a violation of the contract of employment. (See McKinney, Decision No. 187 [1998], paras. 14-16.)

28. The record does not show any such circumstances in the case of the Applicant. Nothing whatsoever, prior to the date of expiry of his appointment on June 30, 1997, may be reasonably understood as a promise of renewal, and no conduct of the Bank can be validly invoked as creating any kind of expectation in the mind of the Applicant that his contract would be renewed upon its date of expiry.

29. On the contrary, a few days after the Applicant and his new supervisor, Mr. Z, met to discuss the Applicant's contract, the Applicant, on February 24, 1997, received a memorandum from Mr. Z stating: "This is to reconfirm the agreement and mutual understanding we reached at our meeting held on Friday, February 21, 1997 that your contract will end on June 30, 1997 and it will not be renewed further. I was pleased to note that you thought that perhaps it was time for you to change jobs or countries after 4 years of work with the program." (Emphasis added.)

30. That the Applicant had no expectation of contract renewal is confirmed by a memorandum dated April 2, 1997 from the Applicant to the Division Chief of TWUWS, in which the Applicant contested the validity of his PMP. In that memorandum, the Applicant stated: "My aim is not to avoid contract termination as I had already decided in January that I would not seek renewal of my contract here in Abidjan for reasons I could easily explain if asked. What I want is to have the opportunity to present relevant information to support my point of view, to have a fair PMP on file and to have my good reputation reestablished." The above statement shows clearly that the Applicant himself had no doubts as to the Bank's determination to end his employment on the expiry of its fixed duration. Moreover, the Applicant does not now contend that there was any conduct by the Bank that created in his mind any different expectation.

31. The Applicant further alleges that his supervisor, Mr. Z, was "personally biased" against him and was unfair in evaluating his performance. He further alleges that Mr. Z's negative evaluation of his performance was the reason why his contract was not renewed.

32. The record does not substantiate the above allegations. It does, however, show that there was a personality conflict between the Applicant and Mr. Z. Their relations were strained almost from the outset, immediately after Mr. Z's arrival in Abidjan. Mr. Z's evaluation of the Applicant, however, touched upon several specific elements of performance. His overall negative assessment of the Applicant's performance was subsequently endorsed by a Management Review Group and was signed by the Applicant's Program Manager on March 14, 1997.

33. The Tribunal concludes that the Bank's decision not to renew the Applicant's contract of employment was a proper exercise of its managerial discretion and was in conformity with the explicit wording of said contract of employment. Although, as on several occasions declared by the Tribunal, the discretionary power of management is not, and cannot under the rule of law be, a limitless arbitrary power, the record does not support the Applicant's allegation that the Bank abused its discretion and that the evaluation of his performance was improperly motivated.

34. The Applicant further alleges that there was "interference" in his search for new employment within the Bank. The Applicant, however, was unable to substantiate his allegations concerning potential contracts. Moreover, the Tribunal finds such allegations to be contradicted by the fact that subsequent to the non-renewal of his contract, the Applicant was twice hired by the Bank as a short-term consultant.

35. The Tribunal notes, however, that the process of evaluating the Applicant's performance had taken a strange course. The record shows that four different drafts were produced successively in order to accommodate some of the Applicant's objections to his supervisor's comments on his performance. It is not unusual for certain changes to be introduced to a first draft of a PMP in order to accommodate some objections of the evaluated staff member. What is unusual, however, in the case of the Applicant, is the change from "satisfactory" to "unsatisfactory" in describing his overall performance, a change so radical as to create legitimate concern regarding the accuracy of the evaluation.

36. Moreover, the Tribunal notes the unusual delay in finalizing the Applicant's 1996 PMP, a delay which was carried over until after the Appeals Committee had made its recommendations on October 8, 1998 on the

Applicant's complaints. The Respondent, for reasons concerning Mr. Z and the Program Manager, failed to provide the Applicant with the signed original of the final PMP prior to his departure from his work station in Abidjan.

37. In the opinion of the Tribunal, the procedural flaws identified in the two paragraphs above in the process of evaluating the Applicant's performance denied him fair treatment and deserve to be redressed by paying the Applicant compensation. As the Tribunal has held in a previous case: "It is particularly important that the proper procedures be followed in the case of field staff who do not have ready access to the services and facilities available at headquarters to protect their interests." (Mustafa, Decision No. 207 [1999], para. 35.)

Decision

For the above reasons, the Tribunal unanimously decides that:

- (i) the Respondent shall pay the Applicant compensation in the amount of \$5,000 net of taxes; and
- (ii) all other pleas are dismissed.

Robert A. Gorman

President

Nassib G. Ziadé

Executive Secretary

At Washington, D.C., October 1, 1999