

Decision No. 203

Bernard Dussert,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on November 26, 1997, by Bernard Dussert against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Francisco Orrego Vicuña (a Vice President of the Tribunal) as President, Thio Su Mien (a Vice President of the Tribunal) and Prosper Weil, Judges. The usual exchange of pleadings took place. The case was listed on September 21, 1998.

2. The Applicant complains that the decisions on redundancy and termination affecting him were pretextual and did not respond to a genuine business rationale. In the Applicant's view, such decisions were arbitrary and capricious as they were adopted as a reprisal for his intervention in a situation involving his Department Director. Issues of discrimination and forgery have also been raised by the Applicant.

3. The Applicant began his service with the Bank as a Financial Analyst in 1979 in the Agricultural Division 3 of the Western Africa Projects Department and was transferred in 1984 to the Agricultural Division 2 of the Europe, Middle East and North Africa Projects Department. He was promoted to Senior Financial Analyst, level 24, in 1987. Following the 1987 reorganization, he was reassigned to the Agriculture Operations Division, Country Department II in the same Region. This Department later became the Middle East and North Africa (MNA), Country Department 1 (MN1); in 1994 the Applicant's Division (MN1AG) became the Natural Resources and Environment Division (MN1NE) as a result of a process of consolidation of divisions. While the Applicant was not affected at this stage of the reorganization, a number of redundancies ensued from it and additional ones were identified in 1995. This process led to the notice of redundancy to the Applicant of February 21, 1996.

4. The Applicant complains first that the redundancy decision did not respond to a business rationale since the work program did not justify abolishing the position that he had occupied. The programs with which he was involved in Tunisia and Morocco were scheduled in his opinion to last at least until 1998 and 1999 and the current portfolio required two Financial Analysts for four years. The Applicant further argues that more than twenty programs handled by the Department required the involvement of Financial Analysts and that the Auditor General of the Bank had been specifically alerted about shortcomings in financial management. The Applicant also asserts that this view was confirmed in his Performance Review Record (PRR) for 1995 in that it was stated that the Bank would do well not to lose Mr. Dussert's "considerable experience in finance."

5. However, the Respondent has convincingly explained that the redundancies affecting the Applicant's position and the positions of many others were the outcome of an ongoing process of reorganization. In fact, following the reduction of 6% in the Bank's budget for each fiscal year 1996 and 1997, there was a reduction in the number of Higher Level Positions in MN1 from 82 in 1995 to 74 in 1997, and a further reduction later to 67. The Department's budget also reflected these changes in that it was reduced from \$8.588 million in 1995 to \$7.831 million in 1996 and still further to \$7.214 million in 1997. The budget allocations for Morocco and Tunisia were also reduced. The overall result of these budget restraints was that 19 staff members were affected in MN1 and 16 in MN2. Concerning the specific situation of the Applicant's position, as explained in the administrative review of July 29, 1996, the only two rural finance operations ongoing in Morocco and Tunisia were scheduled

to come to an end and no new projects relating to the Applicant's expertise were in the pipeline. Furthermore, the Respondent has explained that the Auditor General's report discussed above had made no specific mention of the need for Financial Analysts in the MNA Region.

6. In the light of this broad reorganization carried out in the Department, the Tribunal is satisfied that there was a genuine business rationale and plan under which the Applicant's position was made redundant and that, therefore, there was no arbitrariness or abuse involved in the decision taken. As the Tribunal has consistently held, "it will not interfere with management decisions except in the case of an abuse of discretion or where the decision is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure." (Teferra, Decision No. 169 [1997], para. 14.)

7. The Applicant has also raised the issue that the Respondent arbitrarily reclassified his position as an "Agricultural Credit Specialist," while he was really a Financial Analyst with a great range of skills, a situation that would have affected his possibilities of remaining in the employment of the Department or the Bank. In fact, the Applicant further argues that his position was the only finance position in the Department. However, it is also evident from the record that his position was always classified as that of a Financial Analyst, with a particular expertise in "rural finance," which was the main emphasis of his work in the Department. It should be noted in this context that, during his career with the Bank, the Applicant's position was always linked to the work of the agricultural sector in the various divisions and departments mentioned. The Applicant also argues that, after his redundancy, portions of his duties were assigned to less experienced staff and consultants or to young professionals recruited for this purpose, and that a new job with similar duties was opened in 1996. Neither of these arguments is tenable since the Applicant was not replaced and the young professionals were recruited for totally different areas of expertise.

8. Notwithstanding its above findings, the Tribunal wishes to examine the Applicant's complaint that ill motive intervened in the Respondent's decision, because such a motive could affect an individual decision taken in the context of a genuine reorganization of a given department.

9. In the Applicant's view, the abolition of his position was pretextual because the real motive was a reprisal for his having intervened to correct an alleged error of his Department Director which had resulted in an embarrassing situation for the Bank. In the Applicant's version of events, the Bank had issued, on February 17, 1996, a threatening letter to Tunisia for failure to make a payment due, a step which, in the Applicant's view, was totally unwarranted and about which he had not been consulted as the Task Manager responsible for the loan involved. The Applicant alleges that a letter of apology was sent to the Tunisian authorities after his intervention. The Applicant prepared a memorandum on this matter to his Department Director, dated February 20, 1996, and circulated copies extensively to various of the Bank's high officers. The following day, the Applicant's notice of redundancy was issued. A confidential memorandum on the above problems was also sent by the Applicant to the President of the Bank on February 26, 1996, that is, after the notice of redundancy was issued.

10. The Applicant's assertion that there is a direct connection between his complaint and the notice of redundancy is in fact belied by the record. First, the process of redundancy was started and had been decided many months earlier than February 1996. Second, while the Department Director was obviously unhappy about the fact that the issue had been brought to the attention of many officers of the Bank, there could have been no retaliation in the form of a redundancy in twenty-four hours. This simply would have been beyond the Bank's operating time schedules, particularly when such decisions require the participation of various officials. And third, there is no evidence that the situation resulted in some kind of diplomatic incident. Like the Appeals Committee, the Tribunal does not find the Applicant's allegations convincing on the question of retaliation. It follows that no abuse of discretion has tainted the redundancy decision on this other count. As stated by the Tribunal in an earlier case:

The Tribunal concludes that this reorganization was justified under business plans for the various years covered by this process and that there is no evidence to support the Applicant's claim that the reorganization was deliberately undertaken in order to retaliate against him for his earlier criticisms of the

Bank.

(Garcia-Mujica, Decision No. 192 [1998], para. 11.) The Tribunal is also satisfied that redundancy was properly declared under Staff Rule 7.01, paragraph 8.02(d), since specific types of positions were reduced in number throughout the Applicant's Department and the Region.

11. The Tribunal shall now examine various procedural questions raised by the Applicant with respect to his redundancy and termination. The Applicant first argues that his redundancy was declared after the October 31, 1995 deadline which had been established by the Bank for announcing all redundancies. However, in the light of the record and other documents submitted by the Respondent, the Tribunal is satisfied that the Applicant's redundancy was recommended on October 30, 1995, and approved the following day, on October 31. Furthermore, approval for severance payment was requested on October 27, 1995, for the redundancy originally scheduled to be effective on January 1, 1996. The Applicant also contends that the Bank forged documents in order to backdate them, an allegation which is not supported by evidence. Moreover, even if the deadline had not been met this would not have prevented the Respondent from later proceeding with further redundancies--as has happened in other cases--since a deadline is not a statute of limitations or a measure that would impede the operation of the Staff Rules.

12. Another procedural complaint made by the Applicant is that he was declared redundant without prior warning. The Tribunal has found in another case that, although there is no obligation under the Staff Rules to give warning prior to the notification of redundancy, a basic guarantee of due process requires that the staff member affected be adequately informed with all possible anticipation of any problems concerning his career prospects. (Garcia-Mujica, Decision No. 192 [1998], para. 19.) In this case, however, there is adequate evidence in the record that prior warning was in fact given to the Applicant. A formal request for the abolition of the Applicant's position was made by the Vice President for the MNA Region on November 6, 1995, following which the Division Chief for MN1NE held a meeting with the Applicant and another affected staff member on November 22, 1995 about the redundancy question. Although the Applicant asserts that the matter discussed in this and other meetings was not related to redundancy, but was rather related to rotation within the Bank, the record shows that, indeed, both questions were discussed simultaneously, as evidenced by a memorandum addressed by the Division Chief to the Department Director in which was recorded the substance of the November 22, 1995 meeting. As a result of this meeting and further correspondence between the Applicant and his Division Chief, the date for his "professional move countdown" was postponed from January 1 to March 1, 1996.

13. The reference to "professional move countdown" pertained not only to the Applicant's redundancy but also to a search by the Applicant for a position outside the region to which he might be able to rotate, a matter that had been under consideration since 1993. The alternative of retaining a part of the Applicant's services was also discussed in this context. While it is true that the Applicant's PRR for 1995 had not directly addressed the question of redundancy, and that this was only done in the Management Review Record of May 6, 1996, that is, after the redundancy notice had been issued, it is also true that the PRR itself had recommended that the Bank not lose the Applicant's considerable experience in finance. This meant in fact that, while redundancy in the MNA region would still be scheduled for implementation, the option of rotation to another region was open for exploration. In any event, the PRR was completed and signed by the Applicant only on May 6, 1996, and, therefore, had no influence on the issue of prior warning.

14. In the light of these considerations, the Tribunal concludes that there was enough warning about the real meaning of the situation that the Applicant was facing, although both the discussions held and the PRR could perhaps have been more explicit in pointing out that if rotation failed, the decision on redundancy was still on schedule.

15. While the Applicant has also complained that the Respondent failed to consider him for another position, the record shows that there was an active search for alternative employment, in that at least five persons intervened in the process and a computer matching service was implemented. The pertinent procedures were explained to the Applicant in due course and also recalled in the reply of the Manager, Human Resources

Service Center, of February 7, 1997 to the Applicant's second request for administrative review dated October 7, 1996. Moreover, the Department Director personally took the initiative to contact other units to inquire about the possibility of hiring the Applicant. Even before redundancy was decided, there was a review of possible openings in the Applicant's Region. The Tribunal is accordingly satisfied that a reasonable and active search was conducted on the Applicant's behalf. The Tribunal must also note that pursuant to management's acceptance of the Appeals Committee recommendations, the Applicant was not limited to working the normal maximum of 30 days per year for the two years following the severance-payment period for staff terminated for redundancy, but was allowed to work 120 days per year. This is also a positive indication of the Respondent's efforts to accommodate the Applicant to the fullest extent possible.

16. A separate procedural question raised by the Applicant relates to the delay in the Respondent's reply to his first request for administrative review dated May 10, 1996, which reply was fifty days late, and to the further delay when his case was before the Appeals Committee. The Respondent has appropriately explained that the first delay was the result of the fact that a number of individuals, who had to be consulted, were on mission. As to the delay concerning the Appeals Committee stage, it has been explained that there was really no such delay on the part of the Respondent but just a question of a mistaken notification by the Secretariat of the Committee. When the proper notification came to the Respondent, its answer to the substantive issues raised in the Appeal was made in time. The Tribunal concludes that both the delay and the mistake in notifying the Respondent are excusable and that the Applicant has derived no harm from these situations.

17. The Tribunal finds no merit whatsoever in the allegations of the Applicant that he was the subject of age discrimination.

DECISION

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

Francisco Orrego Vicuña

/S/ Francisco Orrego Vicuña
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At Washington, D.C., October 19, 1998