

Decision No. 227

[ED] (No. 2),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on July 28, 1999, by [the Applicant] 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, Bola A. Ajibola, Elizabeth Evatt and Jan Paulsson, Judges. The usual exchange of pleadings took place and the Applicant was allowed to file an additional statement. The case was listed on May 8, 2000.

Object of the Application

2. The Applicant challenges a decision by the Bank to declare his position redundant, which in the Applicant's view was arbitrary and improperly motivated.

3. The Applicant seeks, in the alternative, either compensation for "immediate losses," "long-term economic losses," and "moral and professional reputation damages," or a combination of reinstatement plus compensation on account of the aforementioned "moral and professional reputation damages."

Factual background

4. The file generated by the Applicant in support of his claim is exceptionally extensive. In order to focus on the issues which are relevant to the areas of inquiry that fall within the purview of this Tribunal, it is useful to clarify which elements of the dense factual record relate to matters which are *not* at issue.

5. The Applicant, who holds undergraduate and master's degrees in economics, joined the Bank in 1978 under a temporary appointment. Two years later, he received a fixed-term appointment. He was made a regular staff member effective February 1981 and received a number of gradual promotions over the years.

6. In these proceedings inadequate performance has never been put forward as a justification for the decision of which the Applicant complains. For the purposes of this case, the Tribunal must proceed on the basis that the Applicant's quality of performance at the Bank was always satisfactory.

7. In 1995, the Applicant, then a Level 22 Projects Officer in the Central and Indian Ocean Department (AF3) Agriculture and Environment Division (AF3AE) of the Africa Region, was informed that his position would become redundant, effective March 31, 1995, pursuant to Staff Rule 7.01, paragraph 8.02(d) (which deals with instances of reduction in the number of specific types or levels of positions). The Applicant unsuccessfully sought administrative review of the redundancy decision, which was accordingly reconfirmed. Nevertheless, following communications among Human Resources staff members, managers of the West-Central Africa Department (AF4) and the Vice President of the Africa Region, it was decided to withdraw the decision and to transfer the Applicant, with no change in his status, from AF3AE to AF4. In

November 1995, he accordingly began to work in the Population and Human Resources Division of AF4 (AF4PH). The legitimacy of the 1995 redundancy decision and its withdrawal are not at issue.

8. In July 1996, the entire Africa Region underwent an extensive reorganization as part of what was called the Africa Region Renewal Program. AF4PH staff members became part of a new Division called Africa Technical Families, Human Development 3 (AFTH3), headed – as of September 1996 – by a Technical Manager (the Applicant's direct manager). The Technical Manager reported to the Sector Director, Africa Technical Families, Human Development (AFTHD).

9. Although they strongly disagree about the causes, the Applicant and the Bank concur that the Applicant found himself under-employed in AFTH3. In May 1997, he met with a Human Resources Officer and told her that he was having difficulty in obtaining work assignments and that he considered himself to be a victim of work harassment within AFTH3. The Human Resources Officer took no action in respect of this complaint, on the basis that she did not see any evidence of work harassment. She testified before the Appeals Committee that in her view the Applicant's "under-programming" within AFTH3 was the consequence of an underlying skills mismatch.

10. The way in which this work harassment complaint was handled is not at issue per se although the Tribunal will consider below the allegations germane to that complaint in relation to its assessment of the bona fides of the redundancy decision which constitutes the gravamen of the present Application.

11. On October 7, 1997, the Applicant met with his manager, the Technical Manager in AFTH3. In a note to the Human Resources Officer dated the same day, the Technical Manager indicated that:

- the Applicant had inquired about possible funding for a two-year Ph.D. studies program in London, and she had responded that it was unlikely in principle;

- she had told the Applicant that while both the Applicant and she had attempted to find assignments for him, "he did not have the skills to work in our group"; and

- the Applicant had expressed concern that "there was something impeding his finding assignment[s]" within AFTH3, and wished to speak to the Sector Director, AFTHD.

12. The Applicant indeed met with the Sector Director that very day. In his summary of the discussion dated the same day, the Sector Director noted that he had told the Applicant that he (the Applicant) was severely underprogrammed as a result of "skill mix problems," and that he was facing a risk of redundancy.

13. On October 10, 1997, the Human Resources Officer notified the Applicant that he was "vulnerable" to redundancy on account of his limited work program and informed him that she was willing to help him search for a new position within the Bank.

14. On January 14, 1998, the Sector Director, AFTHD, made a formal request to the Africa Region Vice Presidents for their approval to declare the Applicant's position redundant in accordance with Staff Rule 7.01, paragraph 8.02(c). This Rule deals with instances where "a position description has been revised, or the application of an occupational standard has been changed, to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position." (This provision will be referred to below simply as "paragraph 8.02(c).") The request stated that changes in demands in the Human Development sector, as well as changes in the organization of work in the technical unit, resulted in under-programming among

some sector staff. It further stated that the unit was no longer able to occupy fully Project Officers with generalist skills and that the Applicant was therefore being proposed for redundancy.

15. On January 20, 1998, the two Vice Presidents of the Africa Region addressed a Notice of Redundancy to the Applicant confirming an earlier indication from the Technical Manager, AFTH3, to the effect that his employment would become redundant effective February 1, 1998. The Notice cited paragraph 8.02(c) without any elaboration, thus presumably confirming the rationale of the Sector Director's request.

16. On April 17, 1998, the Applicant requested administrative review of the redundancy decision. He claimed that paragraph 8.02(c) was inapplicable to him since neither his position nor the occupational standard had changed and that he should have been granted special leave. The first of these claims is central to the present Application, the second is not at issue.

17. The Applicant's pursuit of administrative review was unsuccessful, as was his recourse to the Appeals Committee. He was placed on administrative leave as of February 1, 1998, and was separated from the Bank on September 30, 1998.

18. In July 1998, the Applicant and three other members of AFTH3 raised written allegations of discrimination in their Division. This resulted in an inquiry conducted by a partner in a well-known law firm leading to a lengthy report (the Lynk Report) concluding that the complainants had not demonstrated "discrimination based on race or nationality." The Applicant has complained about the commissioning, methodology, and conclusions of the Lynk Report, but these complaints are not at issue under this Application.

19. The present Application raises no issue as to the *implementation* of the redundancy decision. In particular, it does not engage any controversy as to the Applicant's entitlements as a consequence of that decision. The Applicant's waiver of severance pay in order to gain eligibility for an unreduced pension under the Rule of 50 is discussed – and was given effect – in the decision on an earlier application, [ED], Decision No. 219 [2000].

20. Nor finally does the Applicant seek relief on account of a perceived insufficiency of the Bank's efforts to secure alternative internal or external employment. In fact, the record shows that with the active involvement of the Human Resources Officer, the Applicant unsuccessfully applied for 43 positions in the Bank between September 1997 and August 1998 alone.

21. This case thus concerns the legitimacy of the redundancy decision, and the Tribunal will therefore be concerned only with allegations relevant to that evaluation.

The applicable standard

22. Paragraph 8.02 provides as follows:

Employment may become redundant when the Bank Group determines in the interests of efficient administration that:

...

(c) A position description has been revised, or the application of an occupational standard to the job has been changed, to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position.

23. The Applicant argues vehemently that the decision to declare him redundant was wrong; he emphasizes evidence of his good prior performance as well as his own perception of his continued usefulness within his work group. The Tribunal appreciates that any individual in such circumstances is likely to manifest great strength of feeling on the subject. Certainly, the merits of

a redundancy decision may sometimes be highly debatable.

24. But this Tribunal does not necessarily have the final word in such debates. The Bank must be free to evolve, and therefore to adjust to new needs in its client countries, and corresponding new requirements in its activities. The fact that a staff member's skills have been beneficial to the Bank in the past does not insulate him or her from the risk that the relevant work group requires a "skills mix" (to use the Bank's nomenclature) into which he or she does not fit. The Tribunal has ruled that redundancy decisions are "within the discretion of the Bank, subject only to limited review by the Tribunal" and that, consequently, "[it] will not interfere with the exercise of such discretion unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, [or] improperly motivated...." (Montasser, Decision No. 156 [1997], para. 10; see also Kahenzadeh, Decision No. 166 [1997], para. 20.) This decision is therefore concerned solely with allegations and evidence that would, if probative, establish an abuse of the Bank's discretion.

25. This Tribunal faced an application challenging a decision rendered under paragraph 8.02(c) in Kocic, Decision No. 191 [1998]. The applicant in that case alleged that the redundancy decision affecting him was an abuse of discretion because it was not made "in the interests of efficient administration" as required by paragraph 8.02(c), but was both discriminatory and improperly motivated. A number of allegations of personal animus against the applicant were specific to that case and are therefore irrelevant here. What is noteworthy in Kocic is the contention that there was no valid reason to declare the applicant redundant because he was the only power engineer in his Division to be so declared, although he had more knowledge and experience than his colleagues. The Tribunal was unwilling to substitute its assessment for that of the Bank as to the continued suitability of the applicant's skills.

26. The present Applicant has sought to persuade the Tribunal that his case is different, in that the applicant in Kocic

was a power engineer and Respondent claimed it needed to replace him with someone with economics and management skills. The two sets of skills have little to do with each other. In this case, Applicant was an economist/operations officer and financial analyst performing in a position calling for economics, financial analysis, and operations experience. For this reason (i.e. Applicant's skills exactly matched the requirements of the job description), Respondent used false allegations of underprogramming as a proxy for skills mismatch. There was no claim that distinctly different skills were required as in the Kocic case.... (Emphasis in the original.) [Applicant's Additional Statement, para. 20.]

But the issue in Kocic was not whether an engineer could do the job of an economist. The issue was rather whether an engineer whose significant experience was in the use of planning models and procurement could meet the new requirements of client countries in transition, which required expertise in "privatization, regulation in market economies or management in well run utilities." The Tribunal was unwilling to question the judgment that the Bank's evolving role in countries where that applicant was active required someone with significant experience in privatized as opposed to centrally planned power industries. Similarly, it would be unwilling in the present case to question the judgment that the Applicant's skills as a generalist had become redundant in the context of programs which now required specialists.

27. This cannot, however, be the end of the matter. For in order to justify the application of paragraph 8.02(c), the Bank must demonstrate that it did in fact exercise its judgment in a legitimate manner, and in circumstances where that provision finds application. The text of that provision explicitly requires that there be:

(i) a determination in the "interests of efficient administration" that

(ii) a revision of the "position description," or a change in "the application of an occupational

standard to the job," has had the result that

(iii) the qualifications of the incumbent do not meet "the requirements of the redesigned position."

This text does not provide the kind of clarity one would like to see in a rule which by its nature is likely to affect individuals in a manner they are likely to consider a dramatic moment in their careers. What is clear, however, is that paragraph 8.02(c) does not entitle the Bank to invent post hoc rationalizations. The incumbent must be affected by a conscious prior *redesigning* of his position.

The allegations and the evidence

28. The Applicant alleges that the redundancy decision was "an abuse of power, procedure and discretion, based on a preconceived plan wrongfully designed by the Africa Region personnel team."

29. The Applicant has variously accused the Bank of "sabotaging" his FY97-98 work programs, of repeatedly "misrepresenting" his employment record as well as significant events in his career with the Bank, of "libeling" him as suicidal, of conspiracy to achieve his termination by any means, and of harassment, discrimination and humiliation.

30. None of these allegations has been proved to the Tribunal. Where the Applicant infers sabotage, the evidence shows no more than differences of opinion about suitability for assignments. Where he sees misrepresentation, the Bank's statements are no more than differences in evaluating the record that are legitimate and indeed inevitable in litigation. As for the "libel," the record shows that a Bank official noted that the Applicant had asked him whether he would have to throw himself out of the window to impress upon the Bank the need to deal justly with his case; the Tribunal cannot see how any responsible official could be criticized for noting such a warning. Finally, although his presentation uses strong rhetoric, the Applicant has produced no proof of conspiracy, harassment or intent to humiliate.

31. Indeed the Applicant has pursued his case in a regrettable manner. The experience of redundancy may be traumatic, but someone who considers himself a victim should be careful not to victimize colleagues by making unfounded allegations.

32. The Applicant has also charged that the Bank has falsified documents in order to manipulate his record. Upon examination, these accusations turn out to be nothing more than complaints about alleged errors *in the content* of documents, either because the Applicant disagrees with the way certain events have been portrayed (such as the appropriateness of recording budgeted as against non-budgeted time) or because he has been able to point to errors in the description of events in his career. He has been given the full opportunity, on repeated occasions, to present his version, and to correct the record. The Tribunal is satisfied with the conclusion of the Appeals Committee that nothing sinister lay behind the errors, which by now have been corrected, so it would seem, to the most minute detail. Since this case raises no issue of adequacy of performance, the Applicant's insistence on most of these points is academic. At any rate, there is nothing that could remotely justify the accusation of falsification in the true meaning of the word, i.e., the manufacturing or alteration of documents with the intent to deceive.

33. The Applicant invariably depicts persons who did not see things his way as part of a scheme of wrongdoing by which the Bank sought to deprive him of his entitlements. Thus, to take but one example, he considers that the Human Resources Officer to whom he brought his complaint of harassment failed to take his complaint seriously, when in fact the extensive record rather supports her conclusion that the matters brought to her attention by the Applicant did not justify action on her part.

34. The record contains notes by the very persons whom the Applicant would now portray as his antagonists in which they express regret and compassion given the professional difficulties encountered by the Applicant. In particular, an incident which figures repeatedly in the Applicant's submissions involves a request in June 1998 that the Applicant vacate his office. In the notice of redundancy dated January 20, 1998 he had been told that he would be put on administrative leave as of February 1, 1998, and that you "should agree with your manager a suitable date by which you will move out of your current office space." In fact Staff Rule 6.06, paragraph 9.07, allows less generous treatment; it provides flatly that a staff member on administrative leave "may not continue to occupy his former office." The Applicant was nonetheless allowed to stay in his office a further five months although he was doing no work for the Bank, but merely exploring job possibilities. When the Applicant was finally asked to vacate his office because it was needed for other staff, the Applicant wrote a memorandum stating that "I strongly disagree with the decision to force me out of my office by the end of this month without my agreement. Of course, I consider this a form of harassment ..." and initiating a vituperative series of notes complaining of discrimination. It is difficult to understand the Applicant's complaint about this incident, and impossible to accept that it involved any form of discrimination.

35. And yet there is a serious allegation at the heart of the Application. Unlike the just-mentioned catalogue of complaints, which, as the Bank has readily been able to show, are unsubstantiated, this matter raises serious issues of principle at the core of the Bank's relations with its staff, and with respect to which it has provided no satisfactory answer. The Bank can hardly complain that it was not put on notice of this issue. The Applicant put his finger on this problem in the first substantive lines of his Application, when he demanded to be given copies of

[f]ormal memoranda or informal notes on changes in the job description, or occupational standard for Projects/Operations Officer positions in the HD [Human Development] sector.

36. What the Applicant was focusing on was – or should have been – perfectly obvious: Was there any alteration of the requirements of his position that justified his redundancy on the footing of paragraph 8.02(c)? The Applicant vehemently rejects the Bank's assertion that his "services were in low demand and he was consistently under-programmed, as a result of skills mismatch." He takes the position that he

was in a Project Officer position and had all the necessary skills required for that position. Had Applicant been in a position of a health specialist or education specialist then Respondent might have claimed lack of Applicant's skills for such positions. [Additional Statement, para. 21.]

37. The Applicant apparently believes that a generalist has "all the necessary skills required" for a Project Officer. But if the Bank had determined that the requirements of the job had changed, and that specialist skills were in fact needed, it would not, under the applicable principles recalled above, be for this Tribunal to question whether this conclusion was right. Viewed in this light, and in the absence of proof of bias or other elements of abuse of discretion, the Applicant's implicit concession to the effect that he was not a specialist might have undermined his complaint.

38. The problem with the Bank's defense, however, is that it cannot demonstrate that it made the prior determination that would have entitled it to invoke paragraph 8.02(c) in the Applicant's case. For these purposes a review of the immediate background of the decision is helpful.

39. In 1997, the Technical Manager, AFTH3, sought to initiate a so-called PIP process ("Performance Improvement Plan") which is designed to deal with cases of under-performing staff. It appears that the Technical Manager misunderstood the role of the PIP process, particularly with respect to someone like the Applicant, who might be said to be under-*employed* but not – as far as the record shows – under-*performing*. The Technical Manager was new to her position and quite clearly hesitant in her initiation of administrative steps. She sought guidance about the appropriateness of the PIP process with respect to the Applicant and ultimately

abandoned it.

40. The Applicant views this episode as fraught with odious implications to the effect that there was an attempt to get rid of him by any means. Having thoroughly reviewed the extensive documentation, the Tribunal does not accept the Applicant's conspiracy theory. Nevertheless, the episode of the aborted PIP is disturbing. Staff members are entitled to believe that the Bank does not lightly take steps that affect fundamental aspects of their professional development. That belief must be shaken when it transpires that managers initiate procedures that are highly important in their subordinates' careers without an adequate understanding of the relevant rules.

41. The Bank should understand that a redundancy following on the heels of an attempt to separate on performance grounds will be viewed with suspicion unless the Bank can satisfy the person concerned – and, if it comes to that, the Tribunal – that the redundancy decision was a legitimate exercise of discretion in compliance with the applicable regulations. And indeed, the Tribunal's sense of disquiet is transformed, upon its review of subsequent events, into a firm rejection of the way paragraph 8.02(c) was ultimately applied.

42. The Applicant objected to the Bank's attempt to effect the redundancy under paragraph 8.02(c) in the following terms:

As opposed to the above Rule, Respondent never produced a single document on redesigned job description or occupational standards for the human development Projects/Operations Officers positions. Respondent never communicated any official document on these changes to the HD [Human Development] Projects/Operations Officers. A decision based on imaginary and unfounded arguments about skill mix or occupational standard changes, where no specifics for a particular position have been documented or communicated to staff, is an abuse of process.

43. In its dealings with the Applicant, the Bank appears not to have applied the standard articulated in de Raet (Decision No. 85 [1989]), where, at paragraph 62:

The Tribunal observes that there is room for uncertainty as to the correct manner in which to interpret this provision. It is not clear whether sub-section (c) requires an express 'redesign' of the position or whether an informal redesign is possible by means of a gradual change in the requirements of the position. The probability, in an organization such as the Bank, where every position has its job description, is that the correct understanding of sub-section (c) is that formal 'redesign' is called for and that a written product of that redesign, in the shape of a new job description, is required. Otherwise, there is a risk that staff members may be deprived of the benefits of the predictability of their activities and the standards implicit in an expressly formulated job description. There is also a risk that, in the absence of such explicit redefinition of job content, Bank management may too readily fall into the error of terminating on redundancy grounds the services of a staff member whose superiors are in reality moved by the poor quality of his performance rather than by his lack of the skills newly incorporated in a 'redesigned' position

44. This Tribunal also stated in de Raet at paragraph 66:

[I]t [is] unnecessary for the Tribunal to say more about [the redundancy] process in the present case. But ... clarification now of the mode of operation of the redundancy provisions may assist in avoiding difficulties in the future.

45. Accordingly, to motivate a redundancy decision under paragraph 8.02(c), it is not enough to observe that a staff member is underemployed. Such a conclusion might justify redundancy under paragraph 8.02(b) (abolition of position), but the fact of underemployment, standing alone, does not lead to an unavoidable inference that the position "has been redesigned." Managers understandably have discretion to assign staff members in accordance with their perception of suitability and effectiveness. This discretion would be abused if staff members could be forced

into redundancy by the mere fact of underassignment. Significant and persistent underemployment is clearly indicative of a problem that needs to be resolved. The Bank cannot afford the opportunity cost of unproductive human resources. The way to resolve that problem, however, cannot be to apply paragraph 8.02(c) – unless the staff member's position has *truly* been redesigned. It would be an abuse of discretion, let alone language, to conclude that a position must somehow have been unintentionally "redesigned" simply because there is a low demand for the incumbent's services. The element of conscious deliberation inheres in the concept of a "redesigned position."

46. In the case at hand, there has been considerable controversy about the motivation of the Bank when it found a way to redeploy the Applicant in 1995, and thus to withdraw the earlier redundancy decision. The Bank characterizes this redeployment as a generous reaction to a situation of hardship; the Applicant refutes this characterization. The litigants appear to believe that this issue is relevant to an understanding of the significance of the Applicant's job description, i.e., that if his redeployment was motivated by considerations of hardship, the description might have been amorphous or irrelevant. Inasmuch as this reasoning might lead to the conclusion that a staff member who is redeployed by reason of hardship could be given a position without regard to its skill requirements, and thereafter be declared redundant at any time the Bank declares a need for particular skills, it is unsupportable and potentially abusive.

47. It is instructive to consider the Bank's summary of its defense, as presented in the beginning of the Answer:

The Applicant was not recruited into the Human Development [HD] sector and he did not possess specialized sector skills. Following the July 1996 reorganization, those specialized sector skills became essential to maintaining a work program, since the Technical Managers no longer had the budget or responsibility for creating work programs for their staff, but rather, the budget for the staff members' services now rested with the Country Directors, who were looking for specialized skills. Under this demand-driven system, the Applicant's services were in low demand and he was consistently under-programmed, as a result of his skills mismatch. The Applicant was thus a genuine candidate for redundancy, if he could not be reassigned.

48. This is an explanation of redundancy as the alleged indirect result of a change in general administration. It constitutes an implicit admission that the decision was based on the mere fact of underemployment, which then is rationalized as the presumed consequence of changed requirements for the job. The Appeals Committee acknowledged that

there was no specific revised 'Position Description' document that could serve as the basis for the redundancy decision.

There is no attempt to show how the Bank's conduct might be said to comply with the language of paragraph 8.02(c).

49. The Bank's argument to the effect that there had in 1995 been a budget to support a generalist, but that this changed soon thereafter, is not tenable. Suppressing a budget item corresponding to the function of a staff member might be consistent with redundancy which is justifiable on other grounds, but it is inconsistent with redundancy on the basis of paragraph 8.02(c); it may suggest that a job no longer serves its function, but it does not prove that the *requirements* of the job have changed.

50. The Chief of the Population and Human Resources Division of AF4 (AF4PH) affirmed that in 1995 he had learned at a Departmental Management Team meeting that the Vice President of the Africa Region had asked the Department to find a place for the Applicant, and to determine which of the Divisions would provide the best fit. The Division Chief of AF4PH thus concluded that although he believed that at that time he could find a good work program for the Applicant in his

Division, there had been no recruitment process for the Applicant, and thus no determination that the Applicant possessed any of the specialized sector skills required by the different units.

51. The Bank has built more into the AF4PH Division Chief's account than can be reasonably sustained. To say that there was no determination that the Applicant possessed any of the specialized sector skills required by the different units is not tantamount to a job description. Nor obviously can it be interpreted as signifying that the Applicant was not qualified for the position; otherwise it should not have been given to him. The only conclusion must be that the Applicant's "generalist skills" were sufficient even though he did not possess "specialized sector skills," since there was apparently no need to make a "determination" that he possessed them.

52. The Tribunal has not found sufficient evidence of substantive – let alone "dramatic" – changes in the "working conditions and standards applicable to the Applicant" to sustain a redundancy decision based on paragraph 8.02(c). Even more importantly, the Tribunal observes that the Bank, in its explanations, has elided the requirement that the incumbent's position must have been *redesigned*. That requirement has not been satisfied in this case, and the Bank has not satisfied the Tribunal that the circumstances justified the exercise of discretion under paragraph 8.02(c).

Remedies

53. In light of the above, the redundancy decision lacked a normative basis, and must be rescinded as an abuse of discretion. There is no excuse for the Bank not to have been mindful of the clear warning expressed in *de Raet* more than ten years before the course of conduct which led to the present Application. A decision to declare a staff member redundant is one of great importance; an abuse of discretion in making such a decision is a serious abuse. It must be sanctioned in proportion with its gravity. And the Applicant undoubtedly faced difficulties in the wake of his redundancy.

54. Under Article XII of the Tribunal's Statute, compensation – in the event the Applicant is not reinstated – shall "not exceed the equivalent of three years' net pay of the applicant. The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher compensation." It now falls to the Tribunal to determine the appropriate measure of damages.

55. Following its review of all the circumstances, including the context of the Applicant's initial assignment to AF4PH as well as the consistent and plausible record of difficulties for his managers to find a full work program for him, the Tribunal accepts that the situation was one which the Bank would ultimately in all likelihood have been forced to deal with in any event by redesigning his position or proceeding under another redundancy regime. This factor must be taken into account in the determination of compensation.

56. In view of all the circumstances, the Tribunal decides that, in the event the Bank decides not to reinstate the Applicant, damages in the amount of eighteen months' net pay shall be granted.

Costs

57. The significant relief accorded to the Applicant is granted notwithstanding the regrettably strident and confusing way in which the Applicant has pursued his claim. The Applicant's presentation of the issues has been contradictory. His citations to the evidentiary record have been misleading. His accusations of harassment, conspiracy, libel, and falsification of documents have been ill-conceived. Most of the documents he has submitted to the Tribunal have been irrelevant, indeed incapable of sustaining the interpretation he seeks to put on them.

58. The judgment in this case was compelled by the plain facts of the record and by the inability of the Bank to justify its action. It was not assisted by the arguments of the Applicant, whose submissions often missed central points and dwelled upon numerous irrelevancies which unduly

complicated the proceedings.

59. Therefore, the Tribunal makes no award of costs.

Decision

For these reasons, the Tribunal unanimously decides that:

- (i) the decision to declare the Applicant redundant shall be rescinded; and
- (ii) the Respondent shall reinstate the Applicant in a position equivalent to that he held at the time of the redundancy decision; but
- (iii) pursuant to Article XII of the Statute of the Tribunal, in the event the President of the Bank, within 30 days of the notification of this judgment, were to decide in the Bank's interest that the Applicant should not be reinstated, the Respondent shall pay the Applicant compensation equivalent to eighteen months' net pay.

Francisco Orrego Vicuña

President

Nassib G. Ziadé

Executive Secretary

At Paris, France, May 18, 2000