

Decision No. 23

Rudolf F. Einthoven,
Applicant
v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, A.K. Abul-Magd and P. Weil, Vice Presidents, and R.A. Gorman, N. Kumarayya and C.D. Onyeama, Members, has been seized of a complaint, received May 3, 1984, by Rudolf F. Einthoven, against the International Bank for Reconstruction and Development. After the usual exchange of pleadings, the case was listed on November 15, 1984.

The relevant facts:

2. In May 1970, the Applicant took up a regular probationary appointment with the Respondent as a Transportation Economist in the Transportation Projects Department. His assignment covered principally the transport investment programs of Senegal, Gabon, Ivory Coast and Congo, in French-speaking West Africa. After receiving an evaluation report indicating satisfactory technical work but some difficulty in working with colleagues, the Applicant was confirmed in his appointment in May 1971. At about that time, the Applicant went on record complaining about his assignment to Francophone Africa and requesting a transfer from his division.

3. The Applicant's evaluation reports for both 1971 and 1972 once again cited both his technical competence and his difficult working relationships with colleagues. In these reports, the Applicant reiterated his strong dissatisfaction with working in West Africa and his desire to be transferred, preferably to Southeast Asia.

4. Effective October 1, 1972, the Applicant was in fact transferred to the Asia Regional Projects Department, and as of March 1973 he was assigned to the Resident Mission in Bangkok to serve as Transportation Specialist. Annual evaluation reports for the years 1973 through 1976 reflected overall competence in his technical performance (with some decline noted in the last year) as well as persistent problems relating to the Applicant's temper, uncooperativeness, inflexibility, strained working relationships, and resistance to Bank operating procedures. Throughout this period, the Applicant communicated with members of the Personnel Department, complaining about the insensitivity of his supervisors and about working conditions, and putting himself forward for more responsible and multifaceted positions in Bangkok and in East Asia generally. Management acknowledged his competence as a transportation economist, but expressed specific reservations regarding his competence outside that field as well as his personality problems.

5. After a brief transfer back to the Bank's headquarters in mid-1976, the Applicant in September 1976 was transferred to a position as an evaluation officer in the Respondent's Operations Evaluation Department (OED). OED, an independent department within the World Bank Group, reviews policies and carries out performance audits of completed projects financed by the Bank; these audits assess performance accomplishments and weaknesses. The department reports through its Director-General directly to the Executive Directors of the Respondent. The Applicant's evaluation reports for the periods ending May 1977 and April 1978 once again cited his technical competence as well as his difficulties in staff working relationships. The 1978 report, for example, while commenting on the Applicant's good relationships with regional staff and with representatives of member countries, stated that "His relationship within the Department, both with his colleagues and superiors does not appear to be as smooth. This problem may be resolved if he exercises more willingness to consider viewpoints of others." His supervisors noted that the Applicant blamed his colleagues' shortcomings for the personal difficulties between them, and concluded that the Applicant could turn out better work "if he could

recognize that, in an institution like the Bank, compromise with the views of others is a necessity and does not signify a defeat of one's own position." Nonetheless, the Applicant's superiors noted that there was an improvement in his working relationships, that he did exhibit overall competence, and that they therefore endorsed his request for a promotion from his "L" level position to an "M" level position.

6. In August 1978, however, the Personnel Department (PD) concluded that such a promotion was unwarranted. It pointed out the high qualifications required for an "M" level position, and noted that although the Applicant was showing signs of improved maturity, judgment and working relationships, "in eight years of service he has never been given a performance report devoid of blemish." A promotion under those circumstances "with not even one year's solid performance [in OED] would not only be unequitable [sic] but also unprecedented."

7. The Applicant's evaluation report for the period May 1978 to April 1979 reflected not only satisfactory performance but also a decided improvement in his relationships with his colleagues and superiors. His supervisors recommended once again that he be promoted to the "M" level, and such a promotion to the position of Senior Evaluation Officer was in fact granted. In his first annual evaluation thereafter, covering through April 1980, the comments about the Applicant's working relationships were mixed, and the Director of OED stated that the Applicant should "continue efforts to improve his working relations with colleagues both within and outside the Department." In that same report, the Applicant stated that he had been actively seeking reassignment to a position elsewhere within the Bank Group, preferably outside the transportation sector. This preference was based on his apprehension that persons in that sector whom he might have criticized while performing his work in OED might harbor resentment against him, and on his desire not to return to the same kind of work that he had done when he started working with the Respondent some eight years before.

8. The Respondent's established policies with regard to reassignment of staff are articulated in Personnel Manual Statement (PMS) 4.04, and in Personnel Manual Circulars of March 25, 1977 and April 15 and 21, 1980. Among other things, these documents provided that non-managerial staff graded "J" through "M" in OED are subject to "planned periodic reassignment," such that reassignment is normally to be expected after five years in the department, with the possibility of retention for at most two additional years in special circumstances. To aid in making reassignments that accommodate the interests of the staff member and those of the Respondent, reassignment panels have been created pursuant to PMS 4.04. These panels are composed of managers within each of the major "functional streams" and sectors for which planned periodic assignment is the norm. The panels meet from time to time and, among other things, review relative staffing strengths of the units in which the functional specialty (such as transport) is employed, establish general principles to guide reassignment practices and recommend action on eligible candidates for reassignment who have not been offered a position after actively seeking a transfer for several months. One such reassignment panel is the Transportation Sector Reassignment Panel (TSRP).

9. In June 1980, it was decided by the TSRP that the Applicant's candidacy for reassignment should be considered by the next TSRP. In the spring of 1981, the Personnel Management Department (PMD) concluded that the Applicant's case should be heard by that year's TSRP because of his express request to move out of OED, his department's support of that request, and the Applicant's inability to secure reassignment on his own through the Vacancy Information System (VIS). The Applicant was informed by PMD that it would not attempt to "force" his reassignment on an unwilling department, that due consideration would be given to his reassignment preferences, and that PMS 4.04 dictated that "in the event of any conflict between the interests of the staff and those of the Bank, it is the interests of the Bank which will prevail." Although the Applicant had stated frequently that reassignment of OED staff through the reassignment panels was inappropriate –in view of the potential resentment of panel members who had been critically evaluated by the candidate, and in view of the potential conflict of interests that would be created for OED staff – PMD informed the Applicant that "our experience to date does not point to the need for a separate reassignment mechanism for OED staff."

10. The Applicant was not, however, reassigned in 1981, and the TSRP did not meet in 1982. In the meantime, the Applicant in his evaluation report for May 1981 to April 1982 reiterated his desire for another Bank position that would use his "broad knowledge of the Bank's operations," or alternatively for a position as Chief

Evaluation Officer within OED. His superiors commented upon the good quality of his work and of his working relationships, but expressed some hesitation regarding his prospects for promotion: "Since any position of a chief evaluation officer in this department would have to be filled from a Bank-wide list of possible candidates, the competition is bound to be tough and I would not encourage Mr. Einthoven to pin his hopes on such promotion."

11. Although in April 1983, the Acting Director General, OED, proposed to PMD that the Applicant be considered for reassignment in June 1983, the Applicant in a memorandum to his personnel officer expressed his disagreement with placement through TSRP. He stated that he sought a position that would not deal exclusively with transportation; that reassignment to an operational job in the transportation field such as he had prior to joining OED would be a "step back"; that the reasons for routine reassignment did not apply to OED staff, who could contribute most to Bank operations by length of service in OED; and, most pertinently, that:

"the system of reassigning staff through panels appears rather unsuitable in the case of OED. The fact that in the course of their duties OED staff have been critical of work done by the operating divisions has at times displeased operational staff. This situation leads to a distinct handicap for OED staff during the rather impersonal processes of a reassignment panel. Even more important, the system could easily affect OED's independence, if OED staff have to keep in mind that their career opportunities are with the very divisions whose work they are evaluating."

12. In a memorandum to the Applicant dated May 25, 1983, the Acting Director General, OED, stated that the Applicant could not remain indefinitely with OED and that his inability to secure reassignment through "the free market" (i.e., through VIS) made it appropriate to turn to the reassignment panel. As for the Applicant's concern regarding conflict of interests for OED staff, the Acting Director General stated that that issue had been considered at various times by members of the Bank's Executive Directors, and that:

"the conclusions have always been that (i) there is no evidence that the present reassignment policy has led in any manner to compromising the integrity of the operations evaluation function, and (ii) the Bank is best served by the presently enunciated OED staffing and reassignment policy."

He concluded that the Applicant's case would be "forcefully presented" to the TSRP and that the Applicant's experience and personal preferences would be taken into account.

13. The Personnel manager of PMD reiterated this position in a memorandum to the Applicant on May 31, 1983. She stated that rotation between the operations complex and OED was "essential to the effectiveness of OED," that service with OED can often enhance career opportunities, that "it is clearly in the Bank's interest to bring new staff into OED," and that it is accordingly important to facilitate the reassignment of OED staff after four or five years there. She concluded that the Respondent's policy regarding rotation between OED and the operations complex "is firmly held after careful review and further discussions with the Board." She urged the Applicant to accept this decision and to look forward to any new assignment.

14. The Transportation Sector Reassignment Panel met on June 22, 1983, and assigned the Applicant to the position of Senior Transport Economist, Level "M", in the Western Africa Region, effective August 1, 1983. In a confidential annex to its report, the TSRP noted that the Applicant, although "a competent transportation economist who has excellent relations with borrowers and good technical assistance skills," nonetheless created concern "regarding his relations with Bank colleagues." The TSRP adverted to the Applicant's reassignment preferences, but concluded "on the grounds of operational need and his ability in using French" to assign him to serve in the Western Africa region.

15. The Applicant requested the Acting Vice President, Personnel and Administration (PA), to rescind the reassignment decision, but the latter decided in July 1983 to uphold the TSRP decision. He reiterated that systematic rotation of staff in and out of OED was "in the best interests of the Bank," and that reassignment of the Applicant after seven years with OED (as of September 1983) was fully consistent with the Bank's

reassignment policy set forth in the Personnel Manual Circular of April 15, 1980. He reminded the Applicant that although the TSRP had taken his personal preferences into account, "in the last resort the interests of the Bank must prevail"; the decision of the TSRP "was taken in the light of operational need, to strengthen the staffing of the Western Africa Region." This observation was reinforced in a July 1983 memorandum to the Applicant from the Director General, OED, who stated:

"I especially regret that, at a time when the management have instructed reassignment panels to give priority to strengthening the staffing of the African regions to address more effectively the extremely difficult and challenging developing problems there, you persist in considering your reassignment a demotion I only hope that you can soon bring yourself to acknowledge that the Bank's operational purposes in Western Africa are now substantively different than they were when you were last there and offer professional challenges of quite a different order."

16. In August 1983 the Applicant took up his new position and he also filed an appeal with the Appeals Committee. The Appeals Committee rejected the Applicant's contentions that there had been a conflict of interests in his reassignment, that his new assignment was a retrogressive step, and that the Bank had discriminated against him. Nonetheless, the Committee recommended that the decision to reassign the Applicant be reconsidered, as the Committee doubted that the reassignment had served the interests of either the Applicant or the Respondent.

17. The Vice President, PA, by letter of February 6, 1984, informed the Applicant that his reassignment was proper, that it had been reviewed through normal personnel channels within the Bank, that the reasons for the reassignment had been fully explained to the Applicant and essentially endorsed by the Appeals Committee, and that the recommendation of the Committee exceeded its authority and impinged upon "an area solely within the bounds of managerial discretion." In spite of these conclusions, the Vice President stated that he would make an exception to the "time in assignment" requirement of PMS 4.04, and concluded: "You are therefore free (if you wish) to seek another assignment through the VIS process and other normal reassignment channels including any future panels." The Applicant filed an appeal with this Tribunal on May 3, 1984.

The Applicant's main contentions:

18. The action taken by the Respondent violated a principle declared in the Bank's Standards and Procedures for Operations Evaluation. These Standards provide that OED staff members preparing reports must do so candidly and "without fear of censure." The reassignment of the Applicant to the Western Africa Region, made principally by two persons who were biased against him because of adverse audits of operations at which they had worked, was a form of censure. It was known that in this region the Applicant's skills would be underutilized and he would have least job satisfaction.

19. The Respondent also violated the declared policy of the Bank that an assignment in OED is an important broadening step in the career of World Bank employees. Because the Applicant's tasks in his new assignment were less challenging than those he had in OED and were essentially the same as he had twelve years earlier, his reassignment was a step back and the Respondent's stated policy was therefore violated.

20. The Respondent's policy that OED staff should be transferred after 3 to 5 years was ignored, when the Applicant remained in OED for seven years, thus making his transfer more difficult.

21. By overruling the conclusions and recommendations of the Appeals Committee, the Respondent became a judge in its own cause, in violation of established legal practice. The action of the Vice President, PA, also indicated that the Respondent is unwilling to comply in good faith with the judgments of its appellate entities.

22. The Principles of Staff Employment for the World Bank, and the Vice President, PA, support the proposition that the assignment and transfer of staff should not be forced on unwilling individuals but should rather take account of their wishes and qualifications. The Applicant was transferred without due consideration for his

qualifications and very much against his will, in violation of these policy statements.

23. The planned periodic reassignment of staff members out of OED through the use of reassignment panels is unreasonable. Panel members who have been the subject of adverse comments in OED reports will be tempted to exact reprisals, and OED staff in recognition of their dependence upon the favor of reassignment panel members will be induced to limit the exercise of their critical judgment. Such reassignment procedures are also in conflict with those of other international organizations.

24. The Operational Management Review Group (OMRG) has since 1983 provided assistance in reassignments, and permitted staff members to express preferences and to refuse unsuitable assignments. Furthermore, use has been made of PMD's authority to "forcibly place" staff members against the wishes of managers in receiving departments. These procedures were not utilized for the Applicant.

25. The Respondent has violated its own rules, particularly those relating to the Vacancy Information Service (VIS) and to annual performance evaluations.

26. The assignment of the Applicant to the Western Africa Region because of operational need and because of his French language ability was improper. The Respondent's established policies provide that language ability should not be an overriding factor in reassignments, and his new division was already overstaffed with senior-level employees.

27. It was improper for the TSRP to give weight to the Applicant's personality problems reflected in evaluation reports of many years before. The Respondent and the Tribunal should disregard adverse appraisals that are older than five years.

28. The Applicant requests the Tribunal to rule that he should be reassigned within a stipulated time to a position that will provide professional challenge at least equal to his immediately previous assignments, that will permit him to make full use of his diversified and broadened experience, and that will be in countries where the Applicant can have a mutually satisfactory working relationship. He also requests that his new position be selected so as to avoid potential conflicts of interest between his new tasks and his previous work in OED, and that his choice of assignment not be limited by views held by managers on account of his work in OED.

29. The Applicant also requests that the Tribunal review verbatim transcripts made between 1981 and 1984 of discussions among the Executive Directors relating to the Bank's policy applicable to OED staff, and that it also review the personnel files of two officers who had in the past written adverse personnel assessments of the Applicant.

The Respondent's main contentions:

30. The Applicant's reassignment to the Western Africa Region was not a form of censure for audits he prepared in OED. The reassignment was made because under Bank policy it was long overdue, the Applicant had failed to locate an assignment through VIS, and the Western Africa assignment was the best that could be arranged.

31. The Applicant's reassignment was not a violation of the Respondent's policy statement than an assignment in OED is a broadening step in a staff member's career. The assignment was not a step back but was rather part of a policy to expand the assignment of highly qualified staff in order better to aid the development of Africa.

32. The Respondent's senior management and Executive Directors reasonably decided that the rotation policy for OED staff raised no issues of conflict of interests and that in fact it served the best interests of the Bank. Moreover, in the particular case of the Applicant, he has not contended that the eventuality of reassignment caused him to be less diligent in his OED audits, and there is no evidence to support any contention that his audits adversely affected the views of the managers participating in his TSRP panel. Any adverse appraisal

stemmed rather from the Applicant's known history of difficult working relationships.

33. The Vice President, PA, did not abuse fair procedures when he rejected the recommendation of the Appeals Committee. The function of the Committee is not to render judgments but to make advisory recommendations to the Vice President, PA, whose function it is to review such recommendations and render a final decision for the Bank. PMS 8.03, paras. 2, 24 and 25 so provide.

34. The Applicant was transferred not without due consideration for his qualifications, but rather because of the operational need for those qualifications in the Western Africa Region. Moreover, the Applicant's preferences were considered by the TSRP, which unfortunately was unable to implement them. PMS 4.04 and the Personnel Manual Circular of April 15, 1980 state that as a matter of general policy efforts are made to reassign staff to positions which "best utilize their talents and satisfy their expressed preference," but that when the interests of the staff and the Bank conflict, "the interests of the Bank will prevail." It was entirely within the Respondent's discretionary authority to accord greater weight to the Respondent's needs than to the Applicant's preferences.

35. The assistance of the OMRG was invoked in the case of other OED staff members because no appropriate reassignment panels were available in their cases, which was not so for the Applicant. Moreover, PMD did not exercise its forced-placement authority during this process.

36. The Applicant's chances of obtaining suitable reassignment were not adversely affected by any violation of the Respondent's rules. The Respondent did not fail to adhere to the rules concerning the VIS. Although it did fail to follow procedures regarding several evaluation reports, it offered to rectify any irregularities, which in any event had no effect upon the substance of his evaluations or the fairness of his reassignment.

37. The Applicant concedes that his reassignment was in accord with the applicable Personnel Manual Statements and with the policy for rotation of OED staff. His disagreement is with the policy itself. It is, however, within the authority of the Respondent to establish its reassignment policy.

38. It is proper for the Respondent and for the Tribunal to consider the Applicant's entire employment history, at least to show the full context of the Applicant's chronic dissatisfaction with his employer.

39. The Tribunal should deny the Applicant's request to review certain discussions among the Respondent's Executive Directors and certain personnel files of the Applicant's supervisors in years past. This information does not materially bear upon the subject of the Applicant's claim, namely the extent to which his reassignment was consistent with the Respondent's stated policies and procedures.

Considerations:

40. The Applicant challenges both the Respondent's general policy regarding the reassignment of OED staff and the application of that policy to his particular case. As to both the policy and its application, this Tribunal has the authority to examine only whether there has been "nonobservance of the contract of employment or terms of appointment" of the Applicant. It therefore becomes necessary to determine whether the Respondent has violated some mandatory Bank policy or procedure, or whether it has otherwise abused its discretion by taking action that was "arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure." (Suntharalingam, WBAT Reports 1982, Decision No. 6, paragraph 27).

41. At the root of the Applicant's complaint against his reassignment to Western Africa is his disagreement regarding the appropriateness of applying to OED the usual reassignment procedures applicable generally to Bank staff members. Those procedures are set forth in PMS 4.04 as elaborated in Personnel Manual Circulars of 1977 and 1980. The Applicant does not contend that the PMS and Circulars violate mandatory Bank policies and procedures but rather that they are arbitrary and unreasonable in the context of reassigning staff from OED. He believes that inherent in the Respondent's reassignment procedures is a conflict of interests which will make reassignment panels less likely to honor the preferences of the staff member to be transferred from

OED, and which will make OED staff less candid in preparing audits of operational departments. He also believes that regular rotation out of OED is contrary to the best interests of the Bank, which should value experience and length of service in that department.

42. The Applicant's position on this issue of policy may well be reasonable. But the considerations on which he relies have been examined on numerous occasions by the Respondent's managers and found to be outweighed by other considerations. The Applicant was fully and frequently informed of those other considerations: the contributions made to OED when staff members from operational departments are transferred in; the contributions made to operational departments when OED staff members are transferred out; the useful broadening of experience for Bank staff members; and the absence of any proof that such rotation has in any way compromised the integrity of the operations evaluation function.

43. The weighing of these competing considerations is clearly within the broad discretionary policy-making function of the Bank. So long as the Bank's resolution and policy formulation is not arbitrary, discriminatory, improperly motivated or reached without fair procedure, there is no violation of the contract of employment or of the terms of appointment of the staff member. The Tribunal concludes that the Respondent's decision to utilize normal reassignment channels for staff members being transferred into and out of OED was not such a violation.

44. The Applicant contends that, even assuming the propriety of the general reassignment policy and procedure for OED staff members, there were irregularities in his own reassignment sufficient to warrant setting aside the decision of the Transportation Sector Reassignment Panel and the decision of the Vice President, PA. The Tribunal notes that the Applicant bases this challenge to his own reassignment not on PMS 4.04 and the pertinent Circulars but rather upon "World Bank Standards and Procedures for Operations Evaluation ... and General Legal Procedures." The Standards and Procedures to which the Applicant refers are a general description of the operations evaluation function. They are guidelines for staff members in OED more than they are intended as authoritative regulations governing Bank action. It is not readily to be assumed that they are intended or are understood to create rights in the Applicant or correlative duties in the Respondent.

45. The alleged defects in the reassignment of the Applicant can be better understood if the Tribunal summarizes at the outset the factors that were considered by the TSRP. These factors are set forth in the confidential TSRP minutes and in the memoranda that Bank officials sent to the Applicant shortly after the reassignment decision was made.

46. The TSRP credited the Applicant with skills as a transportation economist, good technical assistance skills, and excellent relations with borrowers, but was concerned about his working relations with staff colleagues. It took account of his preferences for reassignment in places other than Africa, but noted the lesser need for and interest in him in the East Asia Region and the greater receptivity of Western Africa managers to his appointment there. The TSRP concluded "on the grounds of operational need and his ability in using French" to assign the Applicant to the Western Africa region. The operational need to which the TSRP referred was the strengthened staffing in that region so as to deal more effectively with the difficult and challenging development problems there. Although the Respondent could not place the Applicant in a position that was optimal from his point of view, it concluded that the needs of the Bank should take priority.

47. The Applicant contends that his assignment to a position and to a geographic region that would provide him with no job satisfaction was a form of "censure," imposed by members of the TSRP who were biased against him as a result of his adverse comments in earlier OED audits. There is, however, no evidence at all to support his claim, which rests on no more than the Applicant's speculation. The failure to reassign a staff member to a fully satisfying post cannot by virtue of that fact alone be interpreted as a covert form of censure or reprisal. PMS 4.04 and the relevant Personnel Manual Circulars, as well as direct statements to the Applicant by Bank superiors, make it clear that staff members will have their preferences considered but cannot always expect to have them honored. When Bank interests dictate reassignment elsewhere, those interests will prevail. The Tribunal concludes that such a policy, which falls within the discretion of the Respondent, was fairly applied in this case.

48. The Applicant also contends that his reassignment was a step backward to a less challenging position than that in OED and to a position similar to that occupied by him twelve years before, contrary to the Respondent's assertions that an OED assignment is an important broadening step in a career with the Bank. There is no evidence that supports this contention. There is no reason to doubt the assertion of the Director General of OED, communicated to the Applicant in July 1983, that the Bank was anxious to strengthen its staffing in Western Africa in order "to address more effectively the extremely difficult and challenging development problems there [T]he Bank's operational purposes in Western Africa are now substantively different than they were when you were last there and offer professional challenges of quite a different order." The Applicant's observation that the region to which he was assigned was already well staffed with senior officers would appear to confirm the Bank's position rather than to undermine it.

49. The Applicant refers to a set of published "ground rules" for reassignment panels, which provide that in making certain reassignments the panel should not treat possession of particular language skills as an "overriding factor." He claims that the emphasis given by the TSRP to his French language skills violated that ground rule. The ground rule does not, however, mean that language ability should not be considered at all by reassignment panels. It is indeed quite reasonable for the Bank to consider language ability in making an assignment to a senior staff position. In this case, the TSRP obviously placed very great weight – by advertent to "operational need" – upon the Applicant's training and expertise, his service with the Bank, his relationships with borrowers and other appropriate factors.

50. The Applicant asserts that the TSRP ignored his qualifications and his frequently expressed wishes in making his reassignment. That assertion also is unfounded. As the Tribunal has just noted, the TSRP made the assignment it did, not in spite of the Applicant's qualifications, but because of them. Although the Applicant for a number of years claimed competence in a broad range of substantive areas beyond transportation, his supervisors generally took issue with his self-assessment. Moreover, as also noted above, the Applicant's reassignment preferences were not ignored. The TSRP in fact adverted to them, but was reluctantly unable to honor them.

51. The Applicant also criticized the TSRP for placing undue reliance upon evaluation reports regarding his work many years before, and he urges the Tribunal to declare inappropriate the reliance on reports that are more than five years old. The Tribunal shares the Applicant's concern regarding the undue reliance on early evaluation reports when making promotion and reassignment decisions, particularly when the staff member has in the intervening years actually responded to those comments by improving his performance as contemplated by his supervisors.

52. In the present case the negative comments on the Applicant's working relations that appeared in his earliest evaluation reports continued to appear throughout his term of service. Every evaluation report on the Applicant from his probationary term through 1978 commented adversely on his work attitudes and his working relationship with staff colleagues. His April 1979 report did note a decided improvement in his relationships with his colleagues and superiors and recommended a promotion to "M" level, which was granted. His April 1980 report, however, was mixed on this matter, and urged that the Applicant "continue efforts to improve his working relations with colleagues both within and outside the Department." The Applicant's April 1982 evaluation report, while on the whole quite affirmative, still reflected the comment of the Director General of OED that "His performance would improve further if he were to be less rigid and more flexible in interacting with other staff" on issues in project experience.

53. The Applicant was considered for reassignment by the TSRP slightly more than a year later, in June 1983. It was not unreasonable, arbitrary or discriminatory for the TSRP to continue to give weight at that time to a serious problem of personal interaction that had been the subject of comment on the Applicant's annual evaluation reports for more than a decade and as recently as the previous year. Although the Applicant should have been given some credit for the improvement in his working relations since 1979 (and it cannot be known from the evidence whether the TSRP in fact wholly disregarded this improvement), the TSRP was not unreasonable in concluding that adverse criticisms in the earlier evaluation reports had not yet been

satisfactorily addressed by the Applicant.

54. The Applicant contends that the Respondent's policy of reassigning OED staff after only three or four years was violated in his case, and that reassigning him after seven years made it difficult to place him in a satisfactory position, given the greater number of critical audit reports he issued over the longer period. Again, there is no evidence to support the claim of bias in the potential receiving departments. Moreover, had the Applicant been reassigned approximately in 1979, as he now contends should have been done, the tenor of his most recent evaluation reports would have in all likelihood made it even more difficult to satisfy his reassignment preferences. In any event, it is odd that the Applicant complains of delayed reassignment when, at the same time, he claims that OED staff should be treated as an exception to the usual requirement of reassignment after seven years and should be retained in that department for an even longer period of time.

55. The Applicant's allegations of irregularities in the application of VIS procedures, and discrimination against him in this regard, are unwarranted. More troubling, however, are his claims regarding irregularities in connection with his annual evaluation reports for several years, more particularly the failure of his supervisors to share with him those reports and the critical comments therein during the period 1973-1976. No justification has been given by the Respondent for this serious irregularity. The Bank should make every effort to assure that this kind of failure does not recur, either with regard to the Applicant or with regard to any other staff members. Nonetheless, the Respondent did offer to rectify this defect when the Applicant brought it to its attention. In addition, the Applicant conceded that during the period in question he had been orally counseled by his supervisors and that he was well aware of their concerns regarding his strained working relations with staff colleagues. Finally, the Respondent's omission in the 1973-1976 period has not been shown to have a bearing upon the propriety of the Applicant's reassignment in 1983.

56. The Applicant's allegations of discriminatory operation of the Operational Management Review Group (OMRG) and PMD, in supplementing the reassignment activities of the TSRP and in "forcibly placing" reassigned staff members, respectively, are not well founded factually.

57. The fact that the Vice President, PA, decided not to implement the recommendation of the Appeals Committee – whose decision on the merits of the Applicant's reassignment favored the Respondent in every respect – cannot be regarded as an abuse of fair process or as evidence of bad faith. As is obvious from PMS 8.03, paras. 2, 24 and 25, the function of the Appeals Committee is not to render binding decisions but rather to make purely advisory recommendations to the Vice President, PA, or in certain circumstances to the President, whose responsibility it is to render a final decision.

58. The Applicant requests that the Tribunal inspect verbatim records of discussions by the Respondent's Executive Directors regarding the operations of OED, as well as the personnel files of certain former staff members who had allegedly made negative appraisals of the Applicant's work many years ago. The Tribunal concludes that these documents would have insufficient bearing upon the propriety of the reassignment of the Applicant in this case, and accordingly denies the Applicant's request.

59. In essence the Applicant's challenge to his reassignment is based upon the fact that the Respondent assigned him to a post that he believed to be beneath his skills and that was in a geographic region known to be most uncongenial to him. Although the Applicant's disappointment is understandable, this Tribunal has the authority to review actions of the Respondent only for "nonobservance of the contract of employment or terms of appointment" of the staff member: Article II(1), Statute of the Administrative Tribunal. The Applicant himself concedes that there has been no violation of PMS 4.04 and the pertinent Personnel Manual Circulars, the principal documents that set forth the Respondent's policies and procedures regarding staff reassignment. The Tribunal has concluded that the Respondent's actions were not only in conformity with those policies and procedures but also that they were not arbitrary, improperly motivated or carried out in violation of a fair and reasonable procedure.

Decision:

For these reasons, the Tribunal unanimously decides that the Application be rejected.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington, D.C., March 22, 1985