

Decision No. 192

Jorge Garcia-Mujica,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of E. Lauterpacht, President, R.A. Gorman and F. Orrego Vicuña, Vice Presidents and P. Weil, A.K. Abul-Magd, Thio Su Mien and Bola A. Ajibola, Judges, has been seized of an application, received on September 3, 1997, by Jorge Garcia-Mujica against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on April 6, 1998.

2. This case involves a complaint by the Applicant that the decision to make him redundant was based on improper motives and that a number of procedural and substantive irregularities occurred in this connection. The Applicant has also alleged that the Bank refused to protect his professional reputation in connection with critical press reports about his work on Uruguay. A biased performance evaluation and a low salary increase have also been matters of complaint by the Applicant.

3. The Applicant joined the Bank in 1978 as an Economist in the Latin America and Caribbean Region (LAC), where he was promoted in 1991 to the position of Senior Economist, level 24. During his career, he received positive evaluations and had responsibility for Paraguay and Uruguay in the Latin America and the Caribbean Country Department I (LA1), Country Operations Division (LA1CO). At a meeting held on March 26, 1996, the Applicant was advised that his position would be abolished in view of the changes that were being introduced in his Division structure. However, in his Performance Review Record (PRR) for 1995, signed by two acting Division Chiefs on April 22 and April 29, 1996, respectively, the Applicant was praised for his work on Uruguay, particularly for its rigor and soundness of policy advice in macroeconomic policies and social security; he was also considered to be fully effective in project management and resourcefulness. While there were no areas in which he was found to be generally ineffective, he was encouraged to be more effective in communications. The performance effectiveness plan in that PRR stated that the Applicant would be "expected to continue his work on Uruguay and to develop specific initiatives to assist sector operating divisions"; it also mentioned that the Applicant had indicated that he would be actively pursuing transfers within the Bank, where he could be of "immeasurable assistance to other departments ... particularly those with a strong country focus who desire a broad based economist with extensive experience."

4. In the Management Review Record (MRR) for 1995, also signed on April 29, 1996, the Director of LA1 observed that, in the new country unit that had just been established as part of a reorganization of LA1CO, "skills at a premium would be flexibility, need to manage country program work on an agile and timely basis, and work on a range of countries, issues and themes." He further commented that since the Applicant's skills tended to be closer to research in traditional economic and social work, the Management Review Meeting had "urged him to seek a transfer to a position better suited to his skills expeditiously." The 1995 evaluation led to a 3 merit award rating for the Applicant, which, although within the fully satisfactory range, was in the lower part of the scale.

5. Redundancy of the Applicant's position was requested by the Division Chief of the LA1 Country Operations Unit 2 Division on May 8, 1996, that is only a few days after the PRR had been completed. The request for redundancy was made on the basis of a restructuring of LA1CO, which restructuring was to place greater emphasis on strategic country management and on the development of new areas, particularly labor economics and fiscal decentralization. In the Bank's view, the Applicant's skills were best suited for traditional country

operations and not for the “new style” being created. Notice of the redundancy was thereafter issued on May 28, 1996.

6. The first administrative review requested by the Applicant was of his PRR of 1995, which he considered inaccurate and prepared without proper consultation. In particular, the Applicant argued that if the problems raised in the MRR were true, he should have been made aware of them well in advance and they should have been well documented, neither of which had happened. The finding of this administrative review, concluded on October 16, 1996 by the acting Vice President of LAC, was that there was a case for revising the wording of the management review and that it should be replaced by a more accurate and favorable revision proposed by the Director of LA1. Although this more favorable version also proved unacceptable to the Applicant, it was substituted in the final version of the MRR.

7. A second administrative review was requested on August 19, 1996, on the specific issue of redundancy. The Vice President of LAC, by memorandum of September 18, 1996, concluded that there was no basis for reversing the notification of redundancy, which, he said, was justified “on the grounds that there [was] no sufficient macroeconomic work in his [the Applicant’s] division” and that the areas for future expansion were “not the areas in which he [had] demonstrated strengths.” The issues raised in the two administrative reviews were taken to the Appeals Committee, which, after consolidating the claims, recommended the denial of the relief requested, except for an *ex gratia* payment of three months’ net salary for procedural errors. The Respondent accordingly paid the Applicant \$24,152.50.

8. The Tribunal must first decide the basic issue as to whether the Applicant’s redundancy was based on improper motives, as argued by the Applicant, or on the genuine needs of a reorganization of LA1CO, as argued by the Respondent. In the Applicant’s view, the decision to make him redundant originated in a series of problems that arose in 1995 between the Bank and the Government of Uruguay in connection with an evaluation of Uruguay’s social security reform. A broad report prepared by the Applicant – the Country Economic Memorandum (CEM) – had dealt with the basic principles for a successful social security reform, but the evaluation as such was undertaken by a separate ad hoc mission that issued a critical report. Although the Uruguayan Government had accepted the CEM, it had rejected the critical report on its social security reform. As a result, relations between the Bank and the Government became strained and lending to Uruguay was reduced. When the Applicant was later asked to analyze the issue further, he concluded that the Bank was wrong and that the ad hoc mission had misunderstood the reform. In October 1996, the Bank decided to accept the reform and in June 1997 the reform was specifically recognized by the Operations Evaluation Department. However, in the meantime, the Applicant had been made redundant, a decision which he relates to the intention of the Bank to cover its mistakes. He asserts that he was made the scapegoat for mistakes that were not his and that an unfair evaluation, false claims, and redundancy were the end result.

9. In the Respondent’s view, however, the decision on redundancy was entirely unrelated to such events and was the outcome of a process of reorganization that had affected LA1 as a whole and LA1CO in particular. The record shows that the region had been undergoing a process of reorganization since 1994 and that it had proceeded through several stages up to July 1997. But the restructuring of the Applicant’s Division initially discussed in October 1995 had only been specifically proposed in a memorandum from the Director of LA1 to the Vice President of LAC on February 14, 1996. In LA1’s Business Plan for fiscal years 1996-1998, it was projected that the overall Departmental budget base would be reduced by 5.6% in fiscal year 1996 and by 6.5% in fiscal year 1997. The percentage of regular staff reductions for fiscal year 1996 as compared to the end of fiscal year 1995 was projected to be 15.7%.

10. The Tribunal considers that while not every division or unit was affected in the same way, and while the budgets for individual countries within the same unit were not reduced in the same percentages, a reorganization and corresponding budget accommodation did in fact take place. In a broad reorganization such as this, the question of whether the Bank’s lending to Uruguay increased, as argued by the Applicant, or decreased over the years, as the Respondent maintains, does not in itself provide a clear answer with respect to staffing needs, since the governing element is the redefined work strategies and priorities resulting from the overall new structure envisaged. Even if, as the Applicant argued, the staff budget had been increased, this

would not preclude staff reductions based on a different business rationale.

11. It is in this context that the work program and focus of LA1CO were changed. Traditionally, the country economist had defined the overall strategy and had conducted the macroeconomic work needed for each country, while he coordinated the sectoral studies done by specialized microeconomists. The effect of the changes introduced was that the principal economist was to do the macroeconomic work for the various countries included in the Unit – Argentina, Chile, Paraguay and Uruguay – while sectoral economists would do the microeconomic studies needed. No longer would there be one senior economist assigned to each country, and it was therefore considered that the Applicant's position for Uruguay could be made redundant. The Tribunal must conclude on this point that there was a genuine reorganization taking place at the time the Applicant's redundancy was declared and that, in this context, work programs and staffing needs were revised. All this fell quite clearly within the Respondent's discretionary powers, as the Applicant himself has conceded. 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.

12. The Applicant next raises the question of whether he possesses the skills needed to perform the new functions assigned to LA1CO as a result of the reorganization process. The Applicant has argued in this connection that his skills were incorrectly defined in the PRR of 1995 and that the MRR discussed above was totally inaccurate in this respect. In the Applicant's view, the distinction made by the Bank between macroeconomic work and microeconomic inputs was inappropriate, since, in his work on Uruguay, he had in fact carried out both types of work and the sectoral specialists had contributed nothing to the preparation of the pertinent reports. The Applicant therefore argues that he had competence in all the fields that had been advertised in connection with the hiring of new specialists and that any shortfalls could have been easily corrected with minimum training. He further argues that his skills were defined arbitrarily in order to make him ineligible for the new specialist positions and that alternative assignments were not duly explored.

13. The identification and definition of specializations is a matter that comes within the managerial discretion of the Bank as does the evaluation of the corresponding skills to perform these tasks. As a result of the reorganization undertaken, the Bank defined three required fields of specialization (labor economics, fiscal decentralization and poverty reduction) and advertised for specialists in these fields. These specialists were intended to serve several countries simultaneously within the two units that resulted from the reorganization of LA1CO. As stated in the revised version of the MRR for 1995, "[i]n addition to the Principal Economist for the group of countries, the new Units need economists with specialized micro-based skills such as sub-national level fiscal management, labor market issues, poverty reduction policy, and economic integration policy issues. These will have to be performed with a high degree of expertise, under short deadlines and simultaneously competing demands from several countries."

14. In the Bank's view, the Applicant did not meet the requirements of a specialist in any of these fields since his abilities were related to broader macroeconomic work. He was accordingly encouraged to find a new position in the Bank and was ultimately made redundant. The Respondent has stated in this respect that "to qualify as an expert, an economist must work in a sector for a number of years and be generally recognized as an authority on the subject." The PRR for 1995 clearly referred to the question of the Applicant's specialization in stating that his "weight in the Uruguay team would be further enhanced were he to take a more proactive stance vis-à-vis sector divisions in economic/sector analytical tasks so as to make himself more sought out by others" and that "[h]is skills as an economist would then be of greater benefit to the department." The explanation of why the Applicant was not selected for any of the new positions created was given in a communication to him of August 22, 1996, which, after noting that he tended to focus on one major product or a limited set of issues at a time, concluded that he "would have some difficulty in dealing with a broad range of policy and operational issues for two countries at the same time."

15. In the light of the above, the Tribunal cannot find an abuse of discretion in the definition of the specializations established by the Respondent, in the evaluation of the Applicant's skills to perform the new tasks so identified or in the decision to give the Applicant a rating which was compatible with the fully

satisfactory range of merit awards.

16. Redundancy of the Applicant was declared under Staff Rule 7.01, paragraph 8.02(b), which allows the Bank to abolish specific positions in an organizational unit “in the interests of efficient administration.” However, because the question of skills was taken into consideration in this context, the Applicant has also argued that he was really made redundant under paragraph 8.02(c) of that Staff Rule, which addresses the situation where a position description has been revised to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position. In the Applicant’s view, the guarantees provided under paragraph 8.03 were violated since there was no call for volunteers, there was no comparison of performance and there was no review of the need for his skills elsewhere in the Bank.

17. On this point, the Tribunal has repeatedly held that “taking into consideration the grade and relative qualifications of staff members in making appointments in a reorganized structure is reasonable and it avoids a rigidity that would be inconsistent with the very objectives of a comprehensive staff reorganization (Fernandes, Decision No. 90 [1990], para. 29)” (Denning, Decision No. 168 [1997], para. 27). It follows, therefore, that the consideration of the Applicant’s skills does not mean that paragraph 8.02(b) is no longer applicable. Moreover, this is not a case of a redesigned position as envisaged under paragraph 8.02(c) since the duties assigned to the Applicant’s former position were redistributed in a rather comprehensive reorganization of the Division. In any event, the Tribunal notes that the guarantees of paragraph 8.03 apply only with respect to redundancies under paragraph 8.02(d) in which the positions are reduced in number; not under paragraph 8.02(c), as argued by the Applicant. The Tribunal concludes that paragraph 8.02(b) of Staff Rule 7.01 was the appropriate provision to apply in this case.

18. In spite of the fact that there was a genuine reorganization taking place and that the Applicant’s skills were evaluated in a lawful context of managerial discretion, a number of irregularities and defects have tainted the handling of the matter. The Tribunal must first note that in a meeting with the Director of LA1 in October 1995, the Applicant was charged with serious deficiencies in his performance. Although specific explanations were repeatedly demanded by the Applicant, none was provided. This discussion was evidently related to the events in Uruguay and to differences of opinion between the Applicant and his managers about the reports on the evaluation of that country. The issue of performance was not mentioned again, but a short time later the question of the Applicant’s skills surfaced in the context of the preparation of his PRR and the proposed reorganization. Had performance been the ground chosen for termination the procedure to have been followed under Staff Rule 7.01, Section 11, would have been entirely different and indeed longer since there would have been a need for a monitored work program and other steps before a decision could actually have been adopted. Since reorganization was also first discussed in October 1995, that is at the same time as the discussion of the Applicant’s performance took place, there was in fact the alternative choice of considering his situation in the context of the reorganization, which is the route that was followed. The PRR itself shows this connection because it not only makes comments about the period of January-December 1995, which was the year covered, but also refers to the events relating to the reorganization that followed during the period of January-April 1996, including the establishment of a new unit in March and the evaluation of the Applicant’s skills in that connection. While the approach followed does not invalidate the reorganization or the objective evaluation of the Applicant’s skills, it resulted in a situation where he was deprived of an adequate opportunity to defend himself against the managers’ complaints because no information was provided to him on a timely basis.

19. The Applicant also points to the haste with which the reorganization of LA1CO was implemented. In truth, the acting Division Chief, by memorandum of February 20, 1996, had observed that LA1CO was becoming understaffed as a consequence of the downsizing that was taking place in the Department. He made no reference whatsoever to making positions redundant in the Division. Neither was redundancy mentioned in the Applicant’s PRR in late April 1996, which, on the contrary, contemplated the continuance of his work on Uruguay. As mentioned earlier, the Applicant was only informed orally of the possibility of redundancy in the meeting held on March 26, 1996. Although Staff Rule 7.01 does not provide for a specific advance warning about the issuance of a notice 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,



skills or other relevant aspects of his work. In this case, such guarantee was not complied with in a satisfactory manner since, as explained above, a number of matters that could affect his career were known to the managers as early as October 1995.

20. As a result, the Applicant was declared redundant on very short notice. In point of fact, his supervisors signed the PRR on April 22 and 29, 1996; the MRR was signed on this same last day (*i.e.*, April 29); the Applicant received a copy of this Management Review on May 2, 1996; and the redundancy was requested by the Division Chief on May 8, 1996. Thus, the Applicant had only a few days in which to prepare any comments he might have wished to make or to take other steps to defend himself against criticisms or managerial views that he did not share. While drafts of the PRR were shown to him earlier and discussions had taken place a few weeks before, they did not provide the Applicant sufficient grounds on which to react formally. Apart from the Applicant's initial written statement, the PRR does not contain any further comments by him on his supervisors' evaluation, an opportunity which is usually provided before the matter is considered by the Management Review Group. This opportunity was probably not made available since both the supervisor's section and the MRR were finalized on the same day. The Tribunal is also troubled by the fact that the Management Review meeting took place on March 14, 1996, that is before the supervisors had completed their evaluation of the Applicant and had filled in the corresponding section of the PRR. The Applicant was given notice of redundancy on May 28, 1996, and the redundancy became effective three days later, on June 1, 1996. While an administrative review can follow, as indeed was the case here, it is important for a staff member to be able to make his views known before a formal decision affecting him is adopted.

21. Another procedural flaw is that the revised MRR was not placed in the Applicant's file until after he left the Bank, a situation which the Applicant considers to have been damaging to his prospects of being relocated elsewhere in the Bank. Although the Tribunal is satisfied that this omission was due to an administrative error, it is most important in a situation where a staff member is being declared redundant and is simultaneously applying for other positions in the Bank, that his file be accurate and up-to-date in order that it should not provide a distorted view which might damage his opportunities.

22. In addition to the above, the Applicant invokes other defects by which the Tribunal is not persuaded. The Applicant believes that there is a parallel between the situation that led to his redundancy and a somewhat similar problem he had confronted in the early 1980s when he forewarned management about the financial crisis in Mexico. On that occasion, in the Applicant's view, the same arguments had been used against him, namely, that his skills were related to short-term macroeconomic policies, that his work was not completed in a timely manner, that his strength was in research and that he was inflexible. On these bases, he claims that he had been ostracized but later vindicated by a new Division Chief and by a Report of the Operations Evaluation Department. There is no evidence, however, that this situation had any influence on the decisions adopted in 1996.

23. The Applicant has also argued that the first requested administrative review violated the 30-day rule for completion because it was delayed for over two months. The Bank, however, has persuasively explained that this was caused by various efforts to accommodate the Applicant's complaints about the Management Review Committee's evaluation and about the production of new drafts for that purpose. Further, the Tribunal does not find any irregularities in the search for a new position within the Bank Group following the redundancy notice, nor any merit in the Applicant's argument that age discrimination was a motive in the decision to make him redundant.

24. A different type of complaint made by the Applicant relates to the coverage by the Uruguayan press of deteriorating relations between the Bank and Uruguay. Some Uruguayan publications erroneously attributed the conflict to the Country Economic Memorandum prepared by the Applicant, who was specifically named in these reports, and not to the separate report on social security reform which was the real source of the tensions. The Applicant had asked the Director of LA1 to answer these charges publicly, but, with the advice of the External Affairs Department, the Respondent chose not to do so in view of a long-standing practice which treats with disfavor responses to negative press comments and of the need to avoid a heated public debate about the Bank's policies in Uruguay. These reasons justify the exercise of the Bank's policy.

25. The Tribunal turns now to the question of remedies. As stated in Broemser (Decision No. 27 [1985], para. 40): "There have been a number of cases in which the Tribunal, though finding that there has been an irregularity or defect in the Bank's treatment of a staff member, has concluded, in circumstances where such a conclusion was appropriate, that rescission of the decision contested or specific performance of the obligation invoked was not a remedy appropriate to the injury done." Indeed, these options are not readily available in this case since the Applicant's position no longer exists. However, since the irregularities discussed above have caused intangible injury to the Applicant, the Tribunal will order the payment of compensation assessed at six months' net base salary, together with costs. This is in addition to any *ex gratia* payments already made.

### DECISION

For the above reasons, the Tribunal unanimously decides that:

- (i) the Respondent shall pay the Applicant compensation assessed at six months' net base salary;
- (ii) the Respondent shall pay legal costs in the amount of \$4,000; and
- (iii) all other pleas are dismissed.

Elihu Lauterpacht

/S/ Elihu Lauterpacht  
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé  
Executive Secretary

At London, England, May 15, 1998