

Decision No. 28

Peter Gyamfi,
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, E. Lauterpacht, C.D. Onyeama and Tun M. Suffian, Members, has been seized of an application, received May 29, 1985, by Peter Gyamfi against the International Bank for Reconstruction and Development. The Tribunal decided that oral proceedings for the purpose of hearing a witness, as requested by the Applicant, were unnecessary and should not be ordered. After the usual exchange of pleadings, the case was listed on March 3, 1986.

The relevant facts:

2. The Applicant joined the Bank on June 1, 1971 as a Young Professional. After graduation from the Young Professionals' program he was assigned as a Transport Economist to the Transportation Department. When the Bank was reorganized in October 1972 he was reassigned to the Western Africa Highways Division. He transferred from that Division to join the Feeder Roads Section in the Resident Mission in Abidjan in July 1976 and became Chief of that Section in October 1978. In July 1979 he was appointed Chief, Eastern Africa Highways Division which in July 1982 became Eastern Africa Transportation Division I (EAPT1).

3. The Applicant's Anniversary Evaluations (AERs) for 1981/82 and 1982/83 noted that his performance was good and that he was a good manager, although they also pointed out certain problems he was having in the field of personnel relations, particularly with support staff. On January 1, 1981, at the end of his second year as a Division Chief, he received an above norm merit increase; on January 1, 1982 also an above norm increase; and in May 1983 an increase which was the equivalent of the norm.

4. In the latter portion of 1983 certain problems relating to procurement in Burundi, a country for which the Applicant was responsible as Division Chief, came to the attention of the Respondent. About the same time the Applicant's supervisors and the Personnel Management Department (PMD) were made aware of certain personnel problems the Applicant's Administrative Secretary was having in her dealings with him. These included alleged threats of physical harm made by the applicant to the Administrative Secretary. Later, in memoranda to PMD, three members of the support staff who had previously worked in the Applicant's division and left because they were unhappy complained that they had been intimidated by the Applicant when they worked in his division and that he had been guilty of favoritism in managing the support staff of the division. Also allegations about the abuse by the Applicant of the facility of making international telephone calls were brought to the attention of the management of the Respondent.

5. On his return from a mission at the end of January 1984, the Applicant was given a memorandum dated February 1, 1984 from the Director, PMD, informing him that he was being "suspended from duty with pay and without prejudice effective immediately". The memorandum also notified the Applicant that the Bank was undertaking investigations into the three problems outlined in paragraph 4 above, that their reviews were to be completed by the end of February 1984, that the Applicant's suspension was to continue during this period, and that "you are to refrain from all contact with your present and former staff in EAPT1 and remain away from Bank premises except when specifically asked to present yourself for interviews in connection with the matter under review". This memorandum was delivered, and the suspension effected, with the agreement of the Vice

President, Eastern Africa Programs (VPEA).

6. In regard to the procurement problems that had arisen in Burundi, a full review of the case was carried out by the Director of the Eastern Africa Projects Department (EAPD), the Applicant's Director. Written reports were requested from those involved in the procurement exercise in Burundi. In a memorandum of January 16, 1984 from the Assistant Director, EAPD, to the Director the following conclusions were recorded as having emerged from a meeting of January 10, 1984 at which the Applicant was present:

- (a) The Bank's procurement procedures had not been followed for the review and approval of a contract amounting to about \$US4 million. No bidding documents were prepared or reviewed. No competitive bidding (neither ICB or LCB) was conducted. Contract was approved verbally by the project officer in the field without subsequent formal telex confirmation by the Division from Washington which, according to the Division Chief, is a normal divisional requirement;
- (b) No one outside the Division in the headquarters was informed of the transaction (Programs, Legal, OPD Procurement Unit, and the Front Office of the Projects Department). The supervision reports did not provide adequate information about the transaction;
- (c) Subsequently to [Mr. X's] first inquiry, the Division was asked to provide an explanation of [Mr. X's] concern. The explanation was inadequate and did not refer to the real problem. On November 23, 1983 I sent a memo to you (copied to Mr. Gyamfi) listing [Mr. X's] concerns. On December 2, 1983, in response to a Loan Department inquiry - whether we plan to reallocate funds (already overdrawn on November 16 by SDR 760,000) or if we do not plan to reallocate, up to what limit can the Loan Department continue overdisbursement - the division again without prior consultation with any person outside the division authorized the Loan Department to disburse up to SDR 3.5 million under category 2(b) under which only SDR 400,000 was available. After the event, it appears that no attempt was made to inform anyone outside the division of the authorization. There is an apparent lack of attention to [Mr. X's] inquiry and to the outstanding issues raised in my memo to you;
- (d) Concern was expressed that even if the emergency circumstances might warrant speedy action, the complete lack of consultation with, and proper review by, others outside the division and the absence of divisional managerial guidance and intervention could not be justified.

This memorandum was communicated to the Applicant. During the period of his suspension the Applicant was offered an opportunity to review that part of the Director's report setting forth his findings of fact, but on the advice of his lawyer the Applicant refused to do so, stating that two memoranda from him on the subject contained all he knew about the case. In his report to the VPEA, dated February 28, 1984, the Director, EAPD, examined the record and came to the conclusion that there had been certain shortcomings in the handling of the procurement case. He found that these shortcomings were due to:

- (i) failures by the Division Chief, the Deputy Division Chief and the Project Officer to follow well-established policies and procedures;
- (ii) lack of supervision of the Project Officer by the Division Chief and the Deputy Division Chief;
- (iii) lack of review of supervision work by the Division Chief;
- (iv) failure by the Division Chief to consult with the other relevant parties; and
- (v) serious errors in judgment by the Division Chief.

He concluded that personnel action was required regarding officers directly involved in the case and recommended the following action in regard to the Division Chief, namely the Applicant:

[S]ince other inquiries are underway and their results will be available to you at about the same time as this report, the requested recommendation for personnel action will need to be carefully evaluated against the findings in the other inquiries, in particular, as they may have a bearing on the assessment of the Division

Chief's management capabilities. Should the other inquiries not bring up any recommendation for personnel action, I would recommend (i) a written reprimand spelling out the above listed areas of negligence; (ii) a written understanding on the areas in which there need to be changes in his management in particular as these relate to effective interactions with other relevant managers, especially with his Assistant Director, with a follow-up review not later than within three months; and (iii) full recognition of the identified shortcomings in the 1984 reward review.

7. In regard to the allegations made against the Applicant in respect of his personnel management practices, after consultations between PMD and the Regional Management, it was decided by the Respondent to appoint a committee to review the allegations. By memorandum, dated February 6, 1984, from the Director, PMD, a committee of three was instructed to (a) enquire into the allegations with regard to certain managerial practices, specifically that the Applicant instilled the fear of physical harm in one or more of his present and former staff; and (b) prepare and complete a report on the outcome of the enquiry and forward that report to the VPEA and the Director, PMD. The Chairman of the committee was the Director, Education Projects Department (ED), and the other two members were a Counsel in the Legal Department and a Personnel Officer in PMD.

8. The committee stated that it interviewed 31 persons including all current members of the staff of EAPT1, all support staff on the roster of the division as of December 31, 1981 (except for two secretaries who had left the Bank), one former higher level staff member, two former Deputy Division Chiefs, the current Assistant Director and Director of EAPD, the Personnel Officer involved and the Applicant. The comments by telephone of a former Administrative Secretary were also obtained. The committee also considered other evidence, including a memorandum from the Applicant's current Administrative Secretary. The procedure followed by the committee was to call people for individual discussion on a confidential basis, the conversations, with the permission of the interviewee, being tape recorded for the use of the committee alone. The Applicant was not informed of the identity of those who made the allegations, though he was informed of the contents of the allegations.

9. In its report dated March 7, 1984 the committee came to the following conclusions:

A. With respect to the Division in general:

- (i) That Mr. Gyamfi took over what is generally regarded as a competent, motivated staff.
- (ii) That after December 1980 Mr. Gyamfi and nearly all of his support staff were clearly at odds.
- (iii) That this situation was on the surface resolved by the rather unusual and, in hindsight, questionable solution of transfer of all such staff over a period of months.
- (iv) That Mr. Gyamfi does not appear to have the same level of difficulty with the current support staff, with the exception of [the Administrative Secretary], with whom the entire current Division appears to have trouble.

B. With respect to Mr. Gyamfi:

- (i) That he is a highly intelligent, ambitious, individual, technically sound, who universally is given high marks both for the quality and quantity of work produced by his Division and for his abilities at dealing with host country officials.
- (ii) That he holds certain values and exhibits certain behavior which make him much less successful when it comes to managing staff, in particular, support staff. These include generating a high level of tension and stress by such conduct as an unpredictable temper and by ceasing to speak to individual staff, both higher level and support for extended periods of time; having a lower tolerance for criticism or difference of view, and frequently considering expression of differences of opinion by others, particularly by those closest to him, as an act of disloyalty; a tendency towards the belief that 'enemies' are working against him; and displaying poor judgment in several personnel-related matters, such as promoting a comparison between himself and [the Administrative Secretary] by means of a Division attitude survey, and at least in the past, apparently indulging in inappropriate assessments of one staff member with another staff member.
- (iii) That he appears to have "blind spots" with respect to any personnel management shortcomings and

becomes unyieldingly defensive when confronted on the subject.

C. With respect to the allegation that Mr. Gyamfi has instilled fear of physical harm in one or more of his present and former staff:

- (i) That this fear is genuinely held by the five persons who made such a complaint.
- (ii) That there appears to be some basis for a certain level of apprehension, particularly for three of the five complainants in light of certain encounters with Mr. Gyamfi in the corridors and elsewhere described by them (although the Committee, was not able to obtain eye-witness corroboration).
- (iii) That aside from the distress of fearing physical harm, Mr. Gyamfi's conduct has caused deep and lasting personal trauma for certain former support staff, who by nearly all accounts other than Mr. Gyamfi's are considered to be competent, steady, reliable individuals.

D. With respect to the question of favoritism towards [a secretary]:

- (i) That the perception of favoritism, towards [the secretary] on Mr. Gyamfi's part held by the former support staff and the impact they felt this had on them appears to have been a large factor in putting them at odds with Mr. Gyamfi.
- (ii) That considering the ambiguous circumstances of [the secretary's] selection in December 1980 for the original position, the quick recommendation for promotion in March 1981, the rather unusual work allocation and supervisory arrangements, and questions about [the secretary's] competence at the time of recruitment, there was some basis for the creation of this perception in the former support staff.
- (iii) That while there is support for the contention that [the secretary] was not the first choice for selection by the panel described in Section III C. above, this cannot be conclusively determined in the absence of the rating sheets.
- (iv) That the perception of favoritism continues to be held by a number of current staff, higher-level and support.

E. With respect to Mr. Gyamfi's relations with his Front Office:

- (i) That the relationship between him and his Assistant Director appears to be strained to the point where, on occasion, Mr. Gyamfi has refused to deal on specific matters with the Assistant Director.
- (ii) That the difficulties between the two appear to stem from differences in approach on operational matters, and from the Assistant Director's appropriate insistence on reviewing what takes place in Mr. Gyamfi's Division.

F. With respect to Mr. Gyamfi's future in the Bank:

That notwithstanding his acknowledged technical competence, and without firmly deciding whether he is or is not actually aware of his impact on others, the personal cost to personnel working under him and up the line has been too high to allow him to continue at this time in a line position with authority for the management of a large number of staff.

G. With respect to [the Administrative Secretary]:

- (i) That there is nearly universal dissatisfaction among the current higher-level and support staff with her performance.
- (ii) That there is some basis for concluding that their difficulties may stem more from her own inadequacies than from obstacles allegedly presented by Mr. Gyamfi.

10. The committee recommended that, since termination or demotion was not warranted, while a warning was inadequate:

(i) Mr. Gyamfi be reassigned at his current rank and salary to a position inside or outside the Region, for example in the Programs area, which will allow scope for his technical and representational abilities.

(ii) That Mr. Gyamfi be squarely confronted with the difficulties that his words and actions generate for his co-workers.

(iii) That [the Administrative Secretary] be reassigned from the Division and consideration given to whether she has the temperamental qualities required to handle an Administrative Secretary position.

(iv) That the Bank, as an institution concerned about staff, including support staff, consider whether and how amends might be made to certain of the support staff affected by the situation.

11. As regards the abuse of the facility to make international telephone calls, an officer in PMD investigated the issue and in a report, dated March 6, 1984, to the VPEA and Director, PMD, came to the conclusion that (i) there was no proof of abuse of the Bank's telephones for personal use by the Applicant and (ii) there was managerial negligence in the Applicant's not having made arrangements for ascertaining for so long a time which calls from the division were personal and which were official.

12. In a memorandum to the Applicant, dated March 9, 1984, the VPEA summarized the findings of all three investigations and stated:

In the light of the finding on all these matters, in particular the conduct of personnel management, I conclude that you should not continue in your present assignment, and that the most suitable assignment for you at this point would be in a non-managerial position. Therefore, and in the light of your valuable professional contributions to the Bank work, your professional competence and your expertise, I shall recommend to PMD that you should be reassigned to a senior professional staff position in an operational Projects Department. Your future grade should be that of the position you will be assigned to but should not be less than "M". Your salary should remain at its present level. Considering the disturbances, the demotivation of staff reporting to you, and the psychological harm inflicted by your actions, I will further recommend that there should be no salary increase awarded to you prior to April 30, 1985. Until arrangements have been made for you to assume new responsibilities you will remain on administrative leave with pay. You are free, of course, to appeal this decision through the Bank's grievance mechanisms.

13. By memorandum, dated April 4, 1984, the Director, PMD, reassigned the Applicant to the Latin America and Caribbean Region, Projects Department, Transportation Division 2, as a Senior Transport Economist with effect from April 1, 1984.

14. The Applicant filed an appeal with the Appeals Committee on April 20, 1984 against the decisions taken in regard to him. The Appeals Committee examined several witnesses and reported to the Vice President, Personnel and Administration (PA), on October 31, 1984. The Appeals Committee concluded that the VPEA had not abused his discretion but had based his decision on a detailed and careful review of those areas of concern. However, it pointed out that the outcome might have been different, if the three reports which formed the basis of the decision taken had been considered separately. It said that there appeared to have been a considerable lack of, or lapse in, communication with the Applicant as to the specific charges levelled against him, the inquiries under way and the reports which were the outcome of those inquiries. It noted that, while investigations were under way in early February, the first time an effort was made to hear the Applicant's side of the story was in late February or early March, almost a month after his suspension from duty and the locking of his offices. The Appeals Committee also pointed out that the fact that two of the three members of the committee which investigated the allegations of personnel mismanagement had already been involved in other areas of inquiry in connection with the Applicant's case put in question the perception of fairness, at least in the mind of the Applicant. The Appeals Committee also commented adversely on the fact that the matter of finding an appropriate non-managerial position for the Applicant was not fully thought through. It also considered that further inquiry into the credibility of those making the allegations against the Applicant before the committee on

personnel management may have been warranted. Finally, it strongly protested against a procedure relating to the conduct of the appeal, namely, the Respondent's assembling of witnesses prior to meetings of the Appeals Committee.

15. The Appeals Committee recommended that:

The Bank make a genuine effort to consider possible reassignment options (including an advisory position) for purposes of placing Appellant in a non-managerial position which would properly utilize his undisputed professional qualities. In so doing, due consideration should be given to the objectives of restoring, firstly, the functional effectiveness and, secondly, the career prospects of Appellant. In particular, Respondent should have extensive and frank discussions with Appellant about his managerial practices and provide him with intensive training on personnel management, in a determined effort to create conditions under which he could become a viable candidate for a managerial position and, therefore, be given a second chance to prove himself as manager.

The Appeals Committee also recommended that the Applicant be reimbursed his attorney's fees and that the Respondent arrange for the removal from the Applicant's personnel file of any document recording unproven allegations.

16. The Vice President, PA, decided to accept the Appeals Committee's finding that the VPEA did not abuse his discretion and its recommendations (i) to restore the Applicant's salary, (ii) to have the personnel file of the Applicant cleared of documents recording unproven allegations, (iii) to explore other employment possibilities, (iv) to meet personally with the Applicant to discuss his future career prospects, (v) to explore the possibility of extensive personnel management training for the Applicant, and (vi) to reimburse the Applicant's attorney's fees. The Vice President, PA, also stated:

After having reviewed the report, I must express my profound regret that the process followed by the Bank in dealing with the problems that emerged, although recognized by the Appeals Committee as well intentioned, has had serious shortcomings, to which the report draws attention....

I wish to repeat my regret that the process followed in dealing with the problems you and the institution encountered has been deficient

The Applicant's main contentions:

17. There was a total disregard for due process on the part of the Respondent, a fact which has been admitted by the Vice President, PA. Among other things, the Respondent had (i) put on the committee to investigate personnel management issues two persons who had already been involved in areas of inquiry in connection with the Applicant, (ii) failed to hear the Applicant's explanation till long after the inquiries had got under way, (iii) failed to inquire into the credibility of those making allegations against the Applicant before the committee investigating personnel management issues, (iv) failed to interview certain former supervisors of the Applicant, (v) failed to allow the Applicant to hear and cross-examine witnesses, (vi) failed to provide the Applicant with some reports promptly, and (vii) assembled witnesses and coached them prior to the hearings before the Appeals Committee.

18. The facts upon which the assessments of the VPEA and Vice President, PA, were made and their decisions taken were materially inaccurate. The facts upon which their decisions were based were not established, because a) the alleged shortcomings relating to procurement matters took place when he was abroad on a mission; b) it was not the Applicant but the Administrative Secretary who was in charge of recording international telephone calls; and c) the allegations of threats of physical harm to support staff had been rejected as unproven by the Appeals Committee.

19. The assessment of the Applicant's management capabilities was based on events which took place at an earlier stage of his career and was in contradiction to the evaluations of the Applicant's performance in his

AERs.

20. The Respondent violated its obligations under Principle 2.1 (a) of the Principles of Staff Employment by not only failing to take appropriate measures to safeguard confidentiality, but by actively initiating the spreading of vicious reports about the Applicant.

21. The Respondent's action in suspending the Applicant with pay during the investigation was improper, because it amounted to condemnation before the Applicant had been heard.

22. The Applicant sought the following relief:

(a) to be restored, and made as whole as possible, to the pre-February 1, 1984 situation by directing the Respondent:

(i) to annul all the decisions of the VPEA which were partially endorsed by the Vice President, PA, after the Appeals Committee made its recommendations;

(ii) to issue a public apology for the harm caused to the Applicant's reputation because of the wide publicity given to its stories, a personal letter from the Respondent or the records of the Tribunal not being sufficient;

(iii) to remove from the Applicant's personal files all documents related to this case;

(iv) to pay an appropriate amount of compensation for the extreme harm caused to the Applicant and his family; and

(b) to restore the Applicant's recognized high potential for further career advancement and to remove any impediments placed thereupon by the Respondent's actions by the Respondent's promoting the Applicant, by direct placement, to an Assistant Director position in an operational projects department or in an equivalent position in an overseas mission. The Respondent should give its agreement to do this within a calendar year from the time the Tribunal gives its judgment.

23. Should the preceding remedies not be acceptable to the Respondent, he would have to leave the Bank, because it would be impossible to continue to work there. Therefore, the Applicant sought in the alternative:

(a) US\$1.85 million in lost future income and benefits over the remaining 20 years of his otherwise possible service with the Respondent before retirement;

(b) punitive damages of US\$2 million for other harm done to him and his family;

(c) regular termination benefits from the Respondent.

The Respondent's main contentions:

24. The decisions of the VPEA and Vice President, PA, regarding the Applicant were taken after a fair and conscientious review of the circumstances and they represent a proper exercise of discretionary authority.

25. As regards the Applicant's contention that due process was disregarded:

(i) there was no impropriety in having two members on the committee investigating personnel management practices who had been involved in other areas of inquiry into the Applicant's conduct, because it would have been impossible for the Respondent to operate if officials such as these were disqualified from sitting on such a committee, and they did not in any case show bias or prejudice;

(ii) the committee investigating personnel practices did take account of the credibility of witnesses in so far as they, for example, discounted the evidence of the Applicant's Administrative Secretary:

(iii) the Applicant was not refused access to the report on procurement in Burundi. It was he who refused to comment on one of them;

(iv) the Applicant was given an opportunity to refute the evidence given by witnesses. The confidentiality under which investigations were conducted was a necessity because of threats of reprisals by the Applicant against the witnesses;

(v) the committee investigating personnel management practices took great care to interview as many of the relevant witnesses as were available;

(vi) the same committee, soon after it was constituted, fully informed the Applicant of the charges against him;

(vii) the assembling of witnesses before the Appeals Committee hearings was a method of proceeding employed by the Respondent in order to facilitate attendance at the hearings and in order to explain to the witnesses what was to take place at the hearings.

26. In any event, any procedural deficiencies that occurred were not sufficiently important to vitiate the decision contested. Moreover, the proceedings before the Appeals Committee served to cure them.

27. The decisions taken were based on a thorough examination of the evidence. There were no errors in the findings of fact nor were mistaken conclusions reached.

28. The suspension of the Applicant with pay and without prejudice during the period of investigation was a proper administrative action in the circumstances of the case. It was within the provisions of Principle 8 of the Respondent's Principles of Staff Employment.

29. Any injury to the Applicant's reputation, career and family was not caused by the Respondent's actions. The Respondent treated the Applicant's case with the strictest confidentiality and did not publicize the case; the Applicant was himself largely responsible for much of the attention surrounding his case.

30. The relief requested in the form of a public apology is outside the scope of Article XII of the Statute of the Tribunal.

Considerations:

31. The Applicant contends that the decisions of the Respondent to remove him from the position of Division Chief and reassign him to a non-managerial position at a lower grade violated his contract of employment and the terms of his appointment. He bases his contention on two main grounds:

(a) that the decisions lacked substantive factual basis since the assessments of those who took them were based on materially inaccurate information;

(b) that the Respondent's handling of the Applicant's case and the procedures followed to reach these decisions violated the basic requirements of due process of law.

32. The Tribunal takes note at the outset that the decisions of the Respondent challenged by the Applicant were taken on the basis of the findings and conclusions of three investigations carried out simultaneously but separately by the Respondent.

33. The first accusation concerned the Applicant's work relations with subordinates, colleagues and supervisors. In particular he was accused of having instilled fear of physical harm into some of his support staff. Investigation of this accusation was entrusted to a committee of three established on February 6, 1984. The second accusation related to the Applicant's alleged abuse of the Respondent's telephone facilities by making a large number of unexplained and unaccounted for international telephone calls. Investigation of this accusation was entrusted to a personnel officer in October 1983. The third accusation related to the handling by the Applicant and his Division of the procurement problem that had arisen in Burundi. In the latter portion of 1983, it was investigated by the Director, EAPD, who was the Applicant's Director.

34. The Respondent does not question the technical competence of the Applicant nor does it underestimate the many strong points and positive aspects of his performance. These have been systematically recorded in the Applicant's AERs since the beginning of his career with the Respondent and up to the last AER immediately preceding the decisions taken against him. They are also substantiated by his receiving a merit increase above the norm in some years and equal to the norm in others. Most revealing in this respect are the words of the VPEA in the memorandum in which he recommended the decisions which have been challenged. In this memorandum, dated March 9, 1984, the VPEA refers to the Applicant's "valuable professional contributions to the Bank work" and "his professional competence and expertise".

35. In evaluating a staff member's performance, however, the Respondent cannot be expected to limit its consideration to the narrow professional and technical aspects of that performance. This Tribunal has several times interpreted "performance" as including various extra-technical aspects relating to the personality of the staff member; his work relationships with colleagues, subordinates and superiors; and his impact on the general work atmosphere and on the general image of the institution (Buranavanichkit, WBAT Reports 1982, Decision No. 7, para. 27, Matta, WBAT Reports 1983, Part I, Decision No. 12, para. 47). The evaluation of these aspects is particularly important in the case of staff members holding managerial positions. The Tribunal must, therefore, examine the non-technical aspects of the Applicant's performance in order to determine whether the Respondent's decisions founded on an assessment of these aspects were – as claimed by the Applicant – lacking any factual basis.

36. The Tribunal's examination of the entire record, including the three investigatory reports regarding the different accusations against the Applicant, leads the Tribunal to conclude that the Respondent was reasonable in finding that:

- (i) the Applicant's handling of the Burundi procurement case revealed many shortcomings related to his managerial style and showed failure to abide by established rules followed by the Bank in similar situations;
- (ii) the Applicant was responsible for failing to establish an effective system for monitoring Division telephone calls, although abuse on the part of the Applicant himself could not be found. Moreover, the Applicant's conduct during the investigation reasonably raised some doubts in the mind of the investigator as to his credibility and trustworthiness;
- (iii) the Applicant's relations with his subordinates, colleagues and supervisors were strained, although the allegation of instilling fear of physical harm in some of his support staff could not be substantiated. Moreover, in one instance, the Applicant's treatment of one of his subordinates caused other members of the Division reasonably to believe that the Applicant was favouring her as against the rest of the team.

37. On several previous occasions the Tribunal has decided that the evaluation of the performance of staff members is a matter for management as long as its exercise of discretion is not ill-motivated, arbitrary, discriminatory or otherwise vitiated by any other abuse of power.

38. In determining the validity of the Respondent's decisions the Tribunal notices that they comprise two distinct elements: (i) removal from the managerial position of Division Chief; (ii) demotion from a Level N to a Level M position. Whereas removal from the managerial position is an administrative decision of a purely organizational nature relating to the efficient operation of the institution, demotion on the other hand is a disciplinary measure which directly affects the rights of the staff member. Principle 8.1 of the Principles of Staff Employment of the Respondent enumerates disciplinary measures; while it includes demotion as a disciplinary measure, it makes no mention of transfer or removal from a managerial position.

39. The scope of the Tribunal's power of review in respect of decisions of a purely managerial or organizational nature is more limited than that which it may exercise with respect to disciplinary actions. In the present case the findings and conclusions of the three investigations taken together convinced the Respondent that it was in the interests of the institution to have the Applicant transferred from his managerial position of Division Chief, since his managerial performance had fallen short of the level required of a Division Chief. This transfer is not a

disciplinary measure adversely affecting the rights of the Applicant under his contract of employment. The final decision in this respect rests with the Respondent as long as the exercise of discretion is not discriminatory, improperly motivated, based on error of fact or otherwise tainted by abuse of power. The Tribunal concludes that these defects were not present in this case.

40. On the other hand, the decision to reduce the grade of the Applicant is a demotion, classified as a disciplinary measure by Principle 8.1 of the Principles of Staff Employment. It is, therefore, necessary for the Tribunal to determine whether the Respondent has satisfied the basic requirements of procedural due process in applying this sanction to the Applicant.

41. The list of procedural flaws begins with the decision on February 1, 1984 to suspend the Applicant from duty with pay and without prejudice. The legality of the suspension itself cannot be questioned, since suspension is expressly authorized by Principle 8.1 of the Principles of Staff Employment. It is rather the way of implementing the suspension that raises certain questions as to the regularity and fairness of the procedure. In paragraph 5 of the notification to the Applicant he was told to refrain from all contact with his present and former staff in EAPT1 and to remain away from Bank premises except when specifically asked to present himself for interviews in connection with the matters under review. The Respondent fully implemented these aspects of the suspension order and the Applicant's office was bolted in plain view of his divisional staff. The harshness of these measures can hardly be justified by the mere invocation in the February 1, 1984 letter of notification of the "allegation of physical threat".

42. Another serious procedural irregularity was the Respondent's repeated failure properly to inform the Applicant of the accusation against him concerning personnel management, and to allow him an opportunity to present his side of the case.

43. The Respondent did not reveal to the Applicant the names of his accusers. His first chance to learn of the exact content of their allegations was when he appeared before the investigating committee as a witness. This failure to inform the Applicant seriously impaired his ability to defend himself.

44. Before the investigating committee the Applicant was denied the right to confront his accusers or cross-examine them. His request to call two witnesses whose testimony he deemed supportive of his case was ignored. The Tribunal finds that to be a serious impairment of the Applicant's rights under due process of law. The Tribunal cannot accept the Respondent's argument that it avoided confrontation of witnesses to keep them away from any intimidation by the Applicant. Accepting such an argument would logically lead to the abolition of the right to cross-examine hostile witnesses in all such cases. Moreover, sensitivity to the need of witnesses to be free from any possible intimidation should be weighed against the basic right of the accused to a fair trial and an unhampered opportunity properly to be heard. In the present case, the Respondent's failure to allow the Applicant to confront his accusers and to call certain witnesses impaired his ability to defend himself.

45. As regards the composition of the investigating committee, it is a fundamental rule of both judicial and quasi-judicial procedures that whoever is invited to pass judgment on another must assume his responsibility free from any possible prejudice developed through previous involvement with the case. Without in any way raising the slightest doubt as to the integrity and fairness of the committee members, in the present instance the Tribunal notes that the personnel officer who played an important role in the committee's discharge of its duty had already been involved in the investigation of other aspects of the Applicant's conduct; this must of necessity have led him to form a prior general impression of the Applicant and his conduct. Indeed, in the context of his investigation of the telephone issue the personnel officer admitted that he had, by virtue of his service on the investigating committee, formed doubts about the Applicant's truthfulness. In addition, the member of the Legal Department who served on the committee was also involved in other aspects of the case before serving on that committee. The Tribunal finds that the participation in the committee of two members who were involved in other areas of inquiry puts in question the perception of fairness and impartiality.

46. The Tribunal does not approve of the way the Respondent assembled the witnesses chosen to testify before the Appeals Committee, despite the Respondent's claim that it did so only in order to familiarize them

with procedures and liberate them from any possible inhibition. Such a practice is bound to cast doubt upon the credibility of the testimony of the witnesses and is inconsistent with fundamental principles of due process of law.

47. In previous cases the Tribunal has expressed its grave concern over certain procedural irregularities and other practices that did not conform with the requirements of due process of law. In no case, however, has it found them serious enough to warrant a finding that the substantive decisions based upon them were null and void. In this case, the situation is different. The decision to demote the Applicant was based on the conclusions of three different investigations. The most serious of the accusations investigated was the alleged threat of physical harm by the Applicant against some of his support staff. It was the investigation of that allegation that has been shown to be fraught with serious procedural flaws and shortcomings. The Tribunal cannot be sure that, if the requirements of procedural due process had been followed, the result of the investigation would have been the same. Nor can the Tribunal be sure that without the conclusion reached on the physical-threats issue the Respondent would, nonetheless, have decided to downgrade the Applicant. Indeed, even the committee that investigated the allegations of personnel mismanagement – in spite of their findings of very serious mismanagement and staff apprehensions of intimidation – concluded that demotion of the Applicant would be too harsh a measure. Furthermore, in concluding his investigations of the procurement case, the Director, EAPD, stated that “should the other inquiries not bring up any recommendation for personnel actions, I would recommend (i) a written reprimand spelling out the above listed areas of negligence....”.

48. Having regard to what has been said above the Tribunal concludes that the decision to downgrade the Applicant must be rescinded. Although reinstatement to the position of Division Chief is not directed for the reasons already set forth, the Respondent must restore the Applicant to a position in the same grade as the one he was occupying before he was downgraded. In the event that the Respondent decides not to implement this restoration it shall pay the Applicant one year's net salary. In any event the Respondent should pay the Applicant damages in the amount of \$60,000 for the injury caused to him by the Respondent's decision. In fixing this amount the Tribunal has taken into consideration the fact that the Applicant has suffered unnecessary and considerable damage as a result of the improper treatment to which he was subjected and the fact, on the other hand, that he was kept in the service of the Bank and still has the full opportunity to pursue therein his career.

Decision:

For these reasons the Tribunal unanimously decides that:

1. the decision to demote the Applicant shall be quashed;
2. in the event the Respondent does not restore the Applicant to a position in the same grade it shall pay him a sum equivalent to one year's net base salary;
3. in any event the Respondent shall pay the Applicant damages in the amount of \$60,000;
4. all the other pleas be rejected.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At London, England, April 22, 1986