

Decision No. 273

Patrice A. Harou,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on February 6, 2002, by Patrice A. Harou against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Thio Su Mien (a Vice President of the Tribunal) as President, Robert A. Gorman and Elizabeth Evatt, Judges. The usual exchange of pleadings took place. The Applicant's request of September 4, 2002 to file an additional written statement in response to the Respondent's rejoinder was denied. The case was listed on September 9, 2002.

2. The Applicant contests the Bank's decision to declare his position redundant, on the grounds that it was unfair and failed to follow proper procedures, that it was discriminatory, and that it amounted to retaliation. He claims three years' net salary, rescission of the redundancy and costs.

Preliminary Requests

3. The Applicant's requests for the production of documents were denied, except in one respect. The Applicant was given leave to file a statement to further identify the specific documents sought. In light of the Respondent's production of certain documents and its willingness to make the Applicant's personnel file available for examination, the Tribunal is satisfied that the Bank complied with the Applicant's requests for documents.

4. The Applicant has asked for anonymity for the proceedings and decision, as he is a well-known scholar and his future employment may be affected. He claims that the published decisions of the Tribunal are distributed electronically and are widely available, and that he has already suffered prejudice in his job search.

5. Under Rule 28(3) of the amended Rules of the Tribunal, the President of the Tribunal may grant a request for anonymity in cases where the publication of the applicant's name is likely to be "seriously prejudicial" to the applicant. The Respondent objected to anonymity as the Applicant had not shown any serious prejudice to himself. The President of the Tribunal denied the Applicant's request on September 3, 2002 on the basis that no serious prejudice had been established.

History

6. The Applicant is an economist specializing in the environment. He joined the Bank in April 1990 as an Economist, level 23, in the Western Africa Department, Agriculture Operations Division. He was transferred to the Economic Development Institute (EDI) Agriculture and Rural Development Division (EDIEN) in September 1992 as an Environmental Specialist. In December 1992, he was promoted to level 24 (this became level GG).

7. The World Bank Institute (WBI), established in 1999, incorporated the former EDI. The Applicant was thereafter employed as a Senior Environmental Specialist in the Environment and Natural Resources Division of the WBI Vice Presidency (WBIEN). He was assigned to the Environmental Economics and Policy Group (EEP), one of six thematic groups of WBIEN. The Applicant's responsibilities included the Training for Trainers program – EEP-TOT, mainly in Africa and Latin America. He also managed the Environmental Economics and

Development Policy Course (EEDP Course), a significant core course of WBI.

8. In 1996, an incident occurred which the Applicant considers relevant to his claim of retaliation. His Research Assistant alleged that she had been sexually harassed by the Applicant's Manager, K. The Applicant alleges that as a result of her complaint about this to the Ombudsman and the Ethics Office, her contract was not renewed. The Applicant claims also that he was wrongly accused of encouraging his Research Assistant to complain, and that the Manager and others turned against him.

9. A further incident occurred in 1999, when a Research Assistant, J, alleged that he had been sexually harassed by a Senior Operations Officer. J did not pursue the matter formally, but sought another assignment. The Deputy Director of EDI at that time arranged for the Research Assistant to be put under the supervision of the Applicant.

10. The Applicant claims that the Senior Operations Officer against whom sexual harassment had been alleged was a friend of the Applicant's Manager at that time, B. He claims that Manager B became hostile towards him because he had given support to the Research Assistant, and that Manager B later told him not to renew J's contract. He also claims that when C became the Applicant's Manager in October 1999, she refused renewal of the Research Assistant's contract at short notice on the ground of lack of funds. The Applicant says that this was a pretext and that the real reason for the non-renewal was because the Research Assistant had made allegations of sexual harassment.

11. In late 1999, the EEP group in WBIEN included the Applicant, at level G, and two other economists. X, a Lead Economist at level H, was allocated 50% to the EEP team, and 50% to the Environmental Department. The other economist was Y, an environmental specialist, allocated at about 50% to the EEP team, the balance being assigned to urban pollution. The team also included a consultant and a team assistant.

12. In mid-1999, a Principal Economist, Z, was transferred to WBIEN. The Applicant alleges that Z then began interfering with his program and prevented a funding proposal of the Applicant from going forward to the donors. The Applicant alleges that this was because Z was a friend of Manager K, and had been influenced by K against the Applicant because of his role in regard to the earlier allegations of sexual harassment. The Applicant raised his concerns with the Human Resources Manager, and was advised to approach Z directly. He later met with Z. This meeting was followed in December 1999 by an acrimonious e-mail correspondence between the two. The Applicant made further approaches to the Human Resources Manager, the Ethics Office and the Ombudsman about the same matters. The Applicant also informed his Manager, C, about his concerns in respect of Z.

13. The Applicant's Manager, C, who had been the Division Chief of the WBIEN since October 1999, took part in a meeting of the WBI External Advisory Council in that month. The Council wanted changes made to the WBI programs. Among the new directions favored by the Council, WBI was to scale up its programs, so that it would reach many more people, use new technologies and distribution systems, and enhance the link between learning and lending.

14. After the External Advisory Council had made its recommendations, a retreat of WBIEN staff was held on January 4, 2000 to develop a plan to implement the new strategic priorities. The Applicant participated in the retreat. The retreat developed criteria to assess the effectiveness of current WBIEN programs and drew up proposals for implementation.

15. Soon after the retreat, each WBIEN team met to assess its activities and to report through the team co-ordinators to Manager C. The Applicant's EEP had identified the EEDP Core Course and the China environmental economics and management program (EEP-TOT China) as fully meeting the requirements for scaling up. Program activities to be dropped or set at a low priority included EEP-TOT for the Middle East and North Africa and EEP-East Asia. There were no proposals for a reduction in staff.

16. The team co-ordinators, including X, met on January 11 to prepare submissions for Manager C. After

considering the report from the teams, Manager C decided to eliminate most of the EEP-TOT courses (except for China) from the EEP program. These were a significant part of the Applicant's activities. On January 18, she informed the Applicant that his work program was to be cut and that he would be made redundant. The EEDP core course, which had been managed by the Applicant, would be retained, but its management would be transferred to X who would also lead the new Environmental Management Program (EMP).

17. The Applicant approached the Vice President, WBI, in an attempt to prevent his redundancy from proceeding. He claimed that there was no rationale for the decision to terminate most of his activities and to transfer the EEDP core course to X. Over the following weeks, he tried to persuade the Manager not to cancel the EEP-TOT programs and to restore the EEDP course to him. He also approached the Ombudsman to make various complaints and allegations about management.

18. Meanwhile, in February 2000, the various thematic groups in WBIEN were consolidated into three; the EEP group was absorbed into the EMP.

19. On February 29, 2000, the Manager notified the Environment (ENV) Sector Board of the proposed redundancy and asked the members of the Board whether there was a position elsewhere to suit the Applicant's expertise. After further approaches by the Applicant, and interventions by management, the matter went to the Sector Board on March 7, 2000. No suitable vacancies were identified for the Applicant, and the redundancy proposal was accepted.

20. The Applicant continued to present arguments to the Manager about the value of the EEP-TOT program and his role in the EEDP course. He disputed the reasons that she had given for her decision.

21. The Manager's formal proposal for the redundancy was presented to the Severance Review Committee. The Vice President, WBI, gave notice of redundancy to the Applicant on April 27, 2000 and encouraged him to look for other jobs. The redundancy was to have effect from June 30, 2000. The Applicant was then given a six-month reassignment period, until December 31, 2000. Severance pay was approved on June 12, 2000.

22. The Applicant continued to dispute the redundancy decision. He was placed on administrative leave on July 1, 2000. His employment with the Bank ceased on February 27, 2001.

Appeals Committee

23. The Applicant filed a Statement of Appeal with the Appeals Committee on June 14, 2000, challenging the procedures adopted and the grounds of his redundancy and raising the issue of retaliation.

24. The appeal was heard on April 25 and May 7, 2001. The Applicant, his Manager, C, and ten other witnesses were heard. In its report of July 3, 2001, the Appeals Committee denied all of the Applicant's requests for relief. It found no abuse of discretion or procedural irregularity with regard to the decision to make the Applicant redundant. The Applicant was notified by letter dated July 18, 2001 (received on October 9) that the Bank had accepted this decision.

Application to the Tribunal

25. The Applicant applied to this Tribunal on February 6, 2002. He claims that the decision to make him redundant was pretextual and an abuse of discretion and that he was in fact unfairly targeted for redundancy. He claims that the Staff Rules relating to redundancy were not implemented fairly and that his performance and fungibility were not properly assessed. He claims that the decision amounted to retaliation against him because of his refusal to tolerate sexual harassment of a subordinate, and that he was subjected to a hostile environment. He claims that as a result of the redundancy decision, he has lost career opportunities and has suffered damage to his reputation.

26. The Bank says the redundancy decision was made in the interests of efficient administration as part of a

comprehensive restructuring of WBI's strategic priorities. The Bank submits that all procedural requirements of Staff Rule 7.01, paragraph 8.02(d), were met, that the redundancy decision was a legitimate exercise of managerial discretion, and that there was no connection between that decision and any of the matters raised by the Applicant in regard to his claim of retaliation or targeting.

Considerations

27. The decision to declare a staff member redundant is an exercise of discretion. Review by the Tribunal is limited to cases where there has been an abuse of discretion, such as where a decision is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure (*Kahenzadeh*, Decision No. 166 [1997], para. 20; *Mahmoudi (No. 2)*, Decision No. 227 [2000], para. 24). An applicant must show a *prima facie* case of abuse of power (*de Raet*, Decision No. 85 [1989], para. 57). The Tribunal notes, however, that it is often difficult for staff to substantiate an allegation of arbitrariness or lack of fairness amounting to an abuse of discretion, and that it is incumbent on the Tribunal to require the strictest observance of fair and transparent procedures in implementing the Staff Rules dealing with redundancy:

Otherwise, ill-motivated managers would too often be able to pay lip service to the required standards of fairness, while disregarding the principle that their prerogatives of discretion must be exercised exclusively for legitimate and genuine managerial considerations in "the interests of efficient administration." (*Yoon (No. 2)*, Decision No. 248 [2001], para. 28; *Husain*, Decision No. 266 [2002], para. 50.)

28. The Applicant argues that there was no need for any redundancies following the reorganization of WBIEN. He submits that the teams had not identified any such need, that there was no budgetary need, and that the overall number of staff in WBI and WBIEN remained stable between 2000 and 2001. The Respondent argues that the redundancy decision was not based on budgetary requirements, but on the needs of efficient administration, and that the redundancy was part of the restructuring of goals and visions for WBI.

29. The Tribunal observes that the redundancy followed from the decision to reduce the EEP program, in particular to drop most of the EEP-TOT program which was a responsibility of the Applicant. Although the Applicant argued strenuously against the deletion of these activities, the Tribunal notes that the team had given them a low priority. It considers that the decision to eliminate EEP-TOT was within the discretion of management and that the Applicant has not put forward any grounds on which this decision could be properly challenged. While the reduction of the Applicant's work program did not lead automatically to any redundancies, it created a situation in which the issue of redundancy could be properly considered.

Were the Staff Rules on redundancy properly applied?

30. The Applicant argues that the Bank did not apply the Staff Rules on redundancy correctly or fairly.

31. The Bank's decision was taken under Staff Rule 7.01, paras. 8.02(d) and 8.03. Paragraph 8.02(d) provides that "[e]mployment may become redundant when the Bank Group determines in the interests of efficient administration that: ... (d) [s]pecific types or levels of positions must be reduced in number." Under paragraph 8.03, "[w]here positions are reduced in number under paragraph 8.02(d) above, the selection of staff members whose employment is redundant shall be made on the basis of managerial judgment about the skills needed by the Bank Group to carry out its work effectively, taking into account the following factors:

- a) [t]he performance of staff members;
- b) [w]hether the abilities and experience of staff members can be used elsewhere in the Bank Group; and
- c) [t]he existence of volunteers for termination who are willing to accept severance payments pursuant to paragraphs 8.08 or 8.09."

32. The Applicant argues that paragraph 8.02(d) should be used only where there is a reduction affecting

several persons in a single grade, level or position. He claims that he was a class of only one person at his level, so that he was in fact targeted for redundancy. He submits that as the Bank was in reality abolishing his position, it should have acted under paragraph 8.02(b), which applies when “[a] specific position in an organizational unit must be abolished.” He points out that the Severance Review proposal states that the position abolished is that of Senior Environmental Specialist, level G, in the former EEP, and that he was the only person holding a position at that level.

33. The Bank, on the other hand, argues that there were three professionals in the EEP group, with an equivalent of two full-time positions. They formed the group or type of positions whose number was reduced.

34. The Tribunal observes that there may be some degree of overlap between the four possible bases under paragraph 8.02 for deciding that a staff member’s employment has become redundant, that these provisions are not completely separated or detached from one another, and that “[m]anagerial necessities must allow for more than mathematical and literal interpretation of the Staff Rules.” (*Lee*, Decision No. 241 [2001], para. 26.) It would not necessarily be inappropriate to apply paragraph (d) to reduce the number of professional staff performing similar services within a particular work team. Paragraph (b) would be appropriate where a position is abolished because the specific functions were no longer required or because different skill requirements applied, such as after a reorganization (see e.g. *Denning*, Decision No. 168 [1997]).

35. In the present case, the three professionals in the Applicant’s team had similar qualifications, though they were at different levels. X was at level H, the Applicant was at level G, and Y was at level F. Although the Applicant claims that they were not interchangeable, there was overlap between their activities. Both the Applicant and X were involved in the EEDP course, while Y was engaged on the China project which was part of the Applicant’s EEP-TOT program. The effect of the Manager’s decision to drop certain programs, including most of the EEP-TOT (which had been the Applicant’s responsibility) was to reduce the need for professionals. Applying the approach adopted by the Tribunal in the *Lee* case, the Tribunal does not consider that it was improper to apply paragraph 8.02(d) in deciding whether to reduce the number of economists in the EEP team.

36. In accordance with paragraph 8.03, the Bank is required to take account of certain factors, including performance, opportunities for employment elsewhere in the Bank and whether there are volunteers for redundancy, when selecting which staff to make redundant.

Performance issues

37. Paragraph 8.03(a) requires that the performance of staff members should be considered and comparisons made. In this case, the Manager, having decided that a reduction in the professional staff was needed, had to assess the Applicant’s performance and also had to make some comparison with the other two environmental specialists in his team, X and Y. Care is needed in such an exercise since the redundancy provisions may not be used to deal with unsatisfactory performance. (*Hoezoo*, Decision No. 181 [1998], para. 13.)

38. The Applicant argues that his performance should have been compared not just with other members of his team, but with others, including the Principal Economist, Z, and other Course Directors in WBI. He asserts that Course Directors are not necessarily experts in the course’s subject-matter. This argument does not really assist his case.

39. After the Manager informed the Applicant of her intention to make him redundant, she drafted redundancy proposals setting out the reasons for her decision. Drafts which she prepared in January 2000 explained that the number of environmental economists was being reduced because the activities of the EEP group had been cut, and the remaining activities had been merged into the EMP. The Applicant had been chosen for redundancy largely because he had no recent original research and had only limited operational experience when compared with X and Y. His performance was weaker than the others, and he had been denied promotion over two years. As the skills needed to meet new strategies differed from those of his position, there was little scope for redeploying him. A later draft added that the Applicant lacked analytical work and had limited fungibility because of his exclusive engagement in the EEP program, which was being scaled back. It

also mentioned that there had been complaints against his courses and that his Overall Performance Evaluation (OPE) was at the lower end of the satisfactory range. Some of these later comments were left out of the final proposal.

40. The formal proposal for severance, dated March 23, 2000, is along similar lines to the earlier drafts. However, unlike the earlier drafts, it refers expressly to the EEDP core course and states that as X had made the greatest contribution to the EEDP course, he had been appointed team leader and would manage the new EMP. Referring to the Applicant, it states that “as team leader for EEDP core course, his contribution had been more administrative than substantive,” and that he would be replaced by X. It also added that the Applicant did not have useful expertise in the new areas of expansion, his main area being forestry. He was less fungible, and the weakest performer of the three.

41. The Applicant has argued that the Manager’s decision was made in a very short period of time and that there were no written records of how the issues arising under paragraph 8.03 were addressed prior to that decision. He submits further that the Manager had to find reasons to justify her redundancy decision after she had informed him about it in January 2000. He claims that the basis of the decision was altered over time, and that it was not final when it went to the Sector Board. He sees improper motivation in this. The Tribunal considers, however, that it is acceptable that changes and improvements be made in such a document unless there is evidence of bias or improper motivation. The Tribunal notes also that while the connection between the restructuring and the redundancy was not clearly made in the early drafts, the views expressed about the three professionals remained consistent.

42. The Applicant disputes the Manager’s views about his expertise, his experience, his performance and his fungibility. He challenges the submission to the Severance Review Group as false and misleading, particularly in regard to the roles played by him and X in the EEDP core course. He asserts that he had played a key role in creating and establishing the EEDP core course in 1998, before X joined WBIEN, and that he had the major responsibility for delivering substantial parts of it, as well as for administering it. He contests the claim that he did not provide operational cross-support, insisting that he had experience of cross-support to Operations Evaluation Department (OED). He also submits that two of his activities, the EEDP course and the EEP-TOT China, had been given high ratings in the review, and that there were no grounds for making him redundant in view of his role in these activities.

43. He claims that his experience has been misdescribed and denigrated to justify his redundancy; he is particularly aggrieved that the core course has since been taken over by X, whose role and responsibility he regards as overrated.

44. The record includes considerable material relating to the development and presentation of the EEDP core course. This includes evidence to the Appeals Committee as well as statements and affidavits provided thereafter by a range of economists at various levels and by directors and other members of management. While their views varied significantly, it is reasonable to conclude from the material that X was making a substantial contribution to the course at the time of the Manager’s decision. It is also clear that the Applicant had been the initiator of the course and had played a substantive role in its delivery and in the preparation of a book on the course.

45. The Tribunal notes also that at a later point in the Appeals Committee proceedings, the Manager agreed that the Applicant had been instrumental in the design of the core course, that he had developed it successfully and that he had played a substantive role. She agreed that she had not seen the published book on the course at the time of the redundancy decision.

46. The Tribunal notes that when the Manager informed the Applicant on January 18 of her intention to make him redundant, she did not have the individual job descriptions for the three economist positions which she was comparing, and that she did not record her comparative assessment in writing until a later date. She denied before the Appeals Committee that the Applicant was made redundant for unsatisfactory performance, emphasizing that he was simply the weakest of the three. The Tribunal also notes that there is nothing in the

Applicant's OPE to support the view that he was a poor performer.

47. Nevertheless, it appears to the Tribunal that the Manager's assessment of performance in the redundancy proposal did not give proper weight to the role which the Applicant had played in initiating and developing the EEDP core course, and that it unfairly minimizes his contribution.

48. It does not necessarily follow that the redundancy decision is vitiated by this defect, since it was based on the future needs of WBIEN after the reorganization. It is clear from the drafts of the redundancy proposal and from the exchanges which passed between the Manager and the Applicant that she was focusing on who would be of most value to the organization in the future, and that she did not consider that the Applicant was suited to carry forward the new agenda set for WBIEN. She had explained to the Applicant several times at length why the EEP-TOT courses had been cancelled, and mentioned on one occasion that it was because of his reluctance to respond flexibly to new opportunities that she had made X the task manager. He continued to disagree with her about the value of the EEP-TOT courses. She later observed, in an e-mail to the Applicant, that new directions were wanted and that the Applicant was "the victim of change."

49. Under paragraph 8.03, "the selection of staff members whose employment is redundant shall be made on the basis of managerial judgment about the skills needed by the Bank Group to carry out its work effectively. . . ." In that regard, it was within the discretion of management to see greater potential in X than in the Applicant.

Opportunities for alternative employment

50. Another factor which had to be considered, under paragraph 8.03(b), was whether the Applicant's abilities and experience could be used elsewhere in the Bank Group. The Applicant has submitted that there was no need to make him redundant at all, that there was at the time the possibility of finding a job for him elsewhere in the WBI, and that the Bank did not consider adequately whether his abilities could be used elsewhere. The Applicant relies on his right to security of employment. However, as the Tribunal has pointed out, security of employment has to be read alongside the redundancy provisions.

51. The Bank has an obligation to assist a staff member who is made redundant to find a new position, and must act in good faith. It does not have an obligation to create a position. Here there had been a genuine reorganization, and the new staffing structures and positions were a matter for management to decide.

52. Manager C followed the procedure laid down by asking the members of the Environmental Sector Board whether there were positions available for the Applicant, but nothing suitable was found for him. The Applicant argues that the redundancy proposal which the Manager submitted to the Sector Board was designed to ensure that no one would offer him employment.

53. During his job search period, the Applicant applied for a number of jobs in the Bank without success. He was shortlisted in relatively few instances. He argues that he was not considered either for jobs for which he was eligible or for external assignments because of deliberate obstruction by the Bank. The Applicant also claims that the Bank denied him a re-entry guarantee which would have enabled him to pursue various exchange offers; however, it appears that the offers in question did not fall within the terms of such a guarantee. Along similar lines, the Applicant argued that the Bank prevented him from getting a job in the United Nations Development Programme; the cancellation of the position in question was, however, satisfactorily explained in evidence.

54. The Tribunal has observed that in a certain respect the Manager's redundancy proposal was not entirely fair to the Applicant, but it is not clear whether this had any impact on his employment prospects. The Tribunal does not find evidence to support a conclusion that the Bank failed to consider alternative employment opportunities for the Applicant or that it obstructed his job search.

Consideration of volunteers

55. Under paragraph 8.03(c), the Bank must consider whether there are volunteers for termination who are willing to accept severance payments pursuant to paragraph 8.08 or 8.09 before deciding on a redundancy under paragraph 8.02(d). In this case, the Manager had asked X if he was interested in redundancy before informing the Applicant of her plan to make him redundant; this was confirmed by X in his evidence. She did not approach Y as a potential volunteer, however, as he was crucial to the management and success of an important project in relation to China (he is a Chinese speaker).

56. The Applicant has argued that the Bank failed in its obligations by limiting the search for volunteers to the three members of his team, and that this exercise was conducted in a cursory manner in just a few days between January 14 and 18. He says he should have been compared to a wider group.

57. The Tribunal has already concluded that it was not inappropriate to compare the Applicant with the two other professionals in his team. It follows that limiting the search for volunteers to the same professional team was not an abuse of discretion. The Bank was entitled to take into account the fact that at the professional levels of the Applicant, X and Y, positions are not always completely interchangeable outside a particular team. It notes, however, that there is no written record of the Manager's discussion with X prior to January 18, 2000, when she informed the Applicant of her intention to make him redundant.

Decision-making procedures

58. Under paragraph 8.03, a redundancy decision is to be made by the Vice President responsible after consultation with the applicable Sector Board, and with the concurrence of the Manager of Human Resources. The Applicant argues that his Manager, C, in fact made the decision on redundancy unilaterally without following the process laid down by paragraph 8.03, and in particular without first seeking the input of the Sector Board and without consulting senior management. The Applicant has argued that the Sector Board did not really consider the issue, and that there is no record of the meeting which approved the redundancy.

59. There is no substance in the Applicant's points. The procedures laid down were complied with by the Manager. She had consulted the Vice President and the Senior Human Resources Manager before informing the Applicant of her intentions. She informed him promptly, as she wanted to give him time to adjust. She later put her reasons for proposing the redundancy to the Environment Sector Board for approval. The Chair of the Sector Board gave evidence that the case had been reviewed and that the Board had concluded that there was no suitable position for the Applicant in the Sector. The formal decision of redundancy was made some months later by the Vice President, in accordance with the provisions of paragraph 8.03.

Was there retaliation?

60. The Applicant claims that the redundancy decision was flawed because the whole process was retaliation against him. The decision was, he says, improperly motivated by the fact that he had given support to staff who had made allegations of misconduct against their managers or senior officers. He submits that while there is no single incident which establishes this, it can be inferred from the pattern of events that he was targeted for redundancy because of the hostility of management towards him, or because of their self-interest or friendships among them.

61. The Applicant includes in this allegation Managers K and B, the Senior Human Resources Officer, his team colleague X, the Principal Economist in WBIEN, Z, the HR Manager for the Poverty Reduction and Economic Management Network (PREM) and WBI, and the Chair of the Environment Sector Board.

62. The Applicant argued that hostile attitudes towards him had led to the refusal to give him a re-entry guarantee, his failure to find another position and an unfair final OPE.

63. The Applicant submitted a lengthy affidavit which sets out in detail his claims concerning retaliation, and which describes a complex web of friendships and common interests among those he claims to be working against him. Despite his approaches to the HR Manager of PREM and WBI, to the Ethics Office and to the

Ombudsman, no action was taken satisfactory to the Applicant. He was so concerned about this hostility that at one point he was invited to nominate a personnel officer of his choice to work with him.

64. The former Division Chief of the Industry and Finance Division of WBI supported the Applicant's view that Manager K had been hostile towards him. The former Deputy Director of WBI gave evidence to the Appeals Committee generally supporting the Applicant's story about the allegations of sexual harassment which were made in 1999. However, he did not see any connection between this incident and the Applicant's redundancy. He suggested there may have been other causes of ill-feeling between the Applicant and his managers.

65. The Tribunal finds nothing to support the view that his Manager, C, knew of, or was influenced by, the earlier incidents of sexual harassment. It appears that the Manager knew of the dispute with Z, as the Applicant had informed her of his approach to the Ethics Office only a few days before she told him of his redundancy on January 18, 2000. A copy of the e-mail from Z to the Applicant had been sent to her and Z had also spoken to her about the matter. However, it is not clear that the Manager paid any attention to what she described later as apparently a personal dispute, or that it influenced her decision in any way.

66. In support of his claim that he was subjected to a hostile working environment, the Applicant has referred to an assignment he carried out for the OED. He evaluated the Bank's environment work in North Africa and undertook a mission to Morocco. The Environment Co-ordinator for OED assessed his performance as Superior. However, in the Applicant's OPE for the period to March 31, 2000 (unsigned and undated), his Manager rated his performance as Partially Satisfactory in respect of the OED review, commenting that regional management, though agreeing with the findings, indicated that the Applicant's approach to evaluating the Bank's work was not up to the expected standard. The Director of OED later objected to the performance of evaluators being based on the views of those evaluated. In evidence to the Appeals Committee, the Environment Co-ordinator for OED said that he suspected that this bad evaluation was retaliation against the Applicant.

67. The Tribunal notes that the assessment of the Applicant's performance took place after the decision about his redundancy, and that the OPE assessment was in other respects quite positive towards the Applicant, rating him as Superior or Fully Successful. There is nothing of substance to support the claims that there was improper motivation or retaliation involved in the OPE or that there was improper conduct in regard to the Applicant's redundancy.

68. It is of concern to the Tribunal that the Applicant believes he has suffered retaliation because of his support for staff who, he claims, were subjected to sexual harassment. The Tribunal notes that the allegations of misconduct outlined by the Applicant have not been fully investigated, as the persons affected did not proceed with their complaints. To establish his claim of retaliation, the Applicant would need to show that his Manager was improperly motivated against the Applicant because of the position he had taken, or that she was unduly influenced in her decision by others who were hostile towards the Applicant. While the Tribunal accepts that it is not always easy for an applicant to produce evidence to support a claim of retaliation, it does not find support in the record for a finding that the Manager's decision to make the Applicant redundant was improperly motivated by retaliation or by hostility to the Applicant.

Conclusions

69. The Tribunal concludes that, while the Bank appears to have complied with the formal requirements of paragraphs 8.02(d) and 8.03 in regard to the redundancy of the Applicant, there remain some concerns about the process.

70. Of particular concern to the Tribunal is that the Manager reached her decisions to make the Applicant redundant and to transfer responsibility for the EEDP core course to X either without being fully aware of, or without giving adequate weight to, the role which the Applicant had played in initiating and developing that course. Further, it appears that the Manager arrived at her decision hastily, without making any contemporary written record of her assessment of the three professionals or of her consideration of potential volunteers for

redundancy. (See *Lee*, Decision No. 241 [2001], paras. 34-37.) A record of that kind would have prevented any concern arising that the reasons for proposing the redundancy were developed after that decision has been notified to the person affected.

71. Nevertheless, despite these flaws in the process, the situation was that the volume of work for the Applicant, and for the EEP team as a whole, had been reduced. A reasonable response to this was to reduce the number of professionals. There were grounds for exercising managerial judgment in accordance with paragraph 8.03 in favor of selecting the Applicant for redundancy, rather than X or Y.

Remedies

72. The Tribunal concludes that the Bank's decision to make the Applicant redundant under paragraphs 8.02 and 8.03 of Staff Rule 7.01 was not an abuse of discretion. The Applicant's request for relief on this ground should be denied.

73. However, the Tribunal concludes that there were flaws in the procedures followed in relation to the redundancy decision and in the reasons advanced for the redundancy. These were incompatible with the right to fair treatment.

Decision

For the above reasons, the Tribunal decides that:

- (i) the Respondent shall pay the Applicant compensation in the amount of six months' net salary;
- (ii) the Respondent shall pay the Applicant costs in the amount of US\$5,000; and
- (iii) all other pleas are dismissed.

/S/ Thio Su Mien

Thio Su Mien
President

/S/ Nassib G. Ziadé

Nassib G. Ziadé
Executive Secretary

At Washington, D.C., September 30, 2002