

**Decision No. 321**

**Michael J. Jakub,  
Applicant**

**v.**

**International Bank for Reconstruction  
and Development,  
Respondent**

1. The World Bank Administrative Tribunal has been seized of an application, received on January 5, 2004, by Michael J. Jakub 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, and composed of Elizabeth Evatt (a Vice President of the Tribunal) as President, Robert A. Gorman, Sarah Christie and Florentino P. Feliciano, Judges. The usual exchange of pleadings took place and the case was listed on June 30, 2004.

2. The Applicant contests the decision that declared him redundant. He claims that it violated Staff Rules, was an abuse of discretion and resulted from age discrimination. He asks for rescission of the redundancy and reinstatement with back pay or compensation.

**Background facts**

3. From September 1993 to May 1997, the Applicant was an external Contractor with the Bank's Information Solutions Group (ISG). He was a systems manager, working with the VAX/VMS computer systems. VAX is a computer platform and VMS is a software package that works with VAX. The Applicant had earlier worked with the developer of these systems, Digital Equipment Corporation.

4. The Applicant left the Bank in May 1997 to take up a permanent position at Johns Hopkins University. On September 8, 1997, he left his University position to take up a position he had been offered in the Bank's Treasury Department (TRE) as a Long-Term Consultant assigned to work on the VAX/VMS systems.

5. It is not disputed that when the Applicant was hired in 1997, he was aware that it had been decided to phase out the VAX/VMS systems in TRE and to replace them with UNIX, a different operating system. The Respondent says that the Applicant was informed at the time that he needed to obtain training so that he might have an opportunity to move into other areas in due course. The Applicant maintains that even though he was aware that the VMS systems were being phased out, he was not told that his job would become redundant. He expected to move to another position in the department.

6. The phasing out of the VMS systems began in 1998, but it was not known at that time how long the transition to UNIX would take. At about the same time, TRE decided to outsource its technological services.

7. In mid-1998, and continuing into 2000, the Bank implemented personnel changes which included phasing out all Long-Term Consultancies and replacing them with Term or Open-Ended appointments. Existing Long-Term Consultants, including the Applicant and one other VMS systems administrator, Ms. X, were eligible for conversion.

8. On November 9, 1998, the Applicant sent an e-mail to the Director of Treasury Operations, requesting a meeting to discuss his situation and asking for an "Open" appointment rather than a Term appointment. The Applicant stated in the e-mail that he had been informed that "Open" appointments were for work that would

last more than a year, while Term appointments were for work ending sooner. The Applicant foreshadowed in his e-mail that VAX might last two to three years, after which he could work on Treasury NT or UNIX.

9. The Applicant met with the Director on the following day, November 10, 1998. The Applicant says that he discussed his desire to continue with the Bank and to migrate to newer Microsoft Windows technologies as VMS was phased out.

10. The Respondent states that the Director decided to offer to Consultants whose positions were of uncertain duration Open-Ended appointments, as this would bring them greater benefits including notice, training, transfers, severance and other benefits associated with redundancy when their work came to an end. Staff were informed of this decision.

11. In early 1999, two Information Analyst positions in Treasury Information Systems were listed as Open-Ended Regular staff positions. The selection criteria for these positions specifically called for experience with VAX/VMS. The Applicant was appointed to one of these new positions with an Open-Ended appointment as a Level GE Information Analyst, with effect from June 23, 1999. He was then 55. His colleague, Ms. X, who did similar work, was appointed to the other position; she was in her mid-forties. No special conditions were mentioned in the Applicant's letter of appointment. On May 31, 2000, the Applicant received notification that his probation had been successfully completed.

12. Previously, after having taken up his appointment as a Consultant, the Applicant undertook some weeks of training in 1998, in order to prepare for a move to Microsoft Windows after the VMS systems were phased out. His recruiting manager encouraged him to do so. The Applicant states that he thereafter requested training several times, but received very little support; he had only one week of training during 2001-02.

13. In 2000, the Applicant was provided an opportunity to work with the two staff members who were then performing Windows NT administration in TRE. The Applicant was to spend a portion of his time backing up one of these officers. The Respondent says that the assignment was not successful, due to interpersonal difficulties among the staff. The Applicant complained that he was given no instruction. The assignment lasted six to eight months.

14. After making a number of oral requests for training, the Applicant e-mailed his then Manager in the Treasury Information Services Division (TROIS), on December 19, 2000, asking, *inter alia*, to discuss his migration to the Windows NT group, and for training in Windows 2000 Networking. The Manager answered that he knew about the Applicant's concerns, and that he would make some changes in January 2001.

15. The Applicant sent another e-mail to the Manager on May 24, 2001, requesting training in Windows 2000. The Manager responded that it would have to wait till summer, as there were a lot of projects and work to get done. On October 16, 2001, the Applicant resubmitted his request for training; the Manager approved one course. On May 10, 2002, the Applicant again requested training, but was informed that he would have to wait until the next fiscal year. The Applicant lists the training allocations in his unit for the period July 1, 2000 to February 11, 2002, noting that he had only five days of training in that period.

16. The Applicant claims that because of the lack of support from management for him to get training, he studied Microsoft Windows at home to prepare for his migration. This involved considerable time and effort on his part. He paid to undertake courses and tests, and obtained certification as a Microsoft Certified Systems Engineer (MCSE) in Windows NT in 2000. On June 8, 2001, he obtained the MCSE Windows 2000, with a Certificate of Excellence. The Applicant says that the MCSE is recognized throughout the industry and that the Bank's Information Solutions Network recognizes the MCSE program as network education and experience certification for Grades D, E and F.

17. It appears that in October 2002, the Applicant's request for internal on-the-job training, i.e., "Work hands on with Windows 2000 system or network administrators within the Treasury department," was approved by the TROIS Manager.

18. On March 27, 2001, the then Manager, Treasury Operations Department (TRO), sent an e-mail to the ISG Manager, Enterprise Computing Services (ISGEC), asking if she had a current need for two NT administrators in ISG. He informed her that because of the transfer of Windows NT systems administration from TRE to ISG and the transfer of NT-based applications to UNIX, he anticipated making the two NT systems administrators redundant. Their positions were in fact abolished later in 2001. The TRO Manager also informed the ISGEC Manager, in the same e-mail, of his plans to phase out the Treasury VMS system by the end of the calendar year, and to declare the Applicant, along with Ms. X, redundant. He asked if there were any opportunities for them in ISG. He mentioned that he was keen to provide training and to help the staff. The ISGEC Manager responded on April 9, 2001 that she had no opportunities for either the NT systems administrators or the VMS administrators, as all VMS systems were being discontinued by ISG.

19. The TRO Manager testified that he had had discussions with both the ISGEC Manager and the ISG Manager, IT Client Support Solutions (who was also the Chair of the Information Systems Network (ISN), the applicable Sector Board), about possible opportunities for the Applicant prior to his redundancy, but was informed that there was nothing available for him.

20. On April 9, 2001, Ms. Y was given a Term appointment working in the Applicant's unit. Her function was to provide computer support to the trading-room floor, and this required skills in Windows. On December 1, 2002, the day on which the Applicant was declared redundant, Ms. Y was converted to a permanent position as an Information Analyst. During 2002, a position in the unit requiring Microsoft Windows skills was given to an outside contractor, Ms. Z. She provided training and support for remote computing (at home and on travel).

21. The Applicant's Overall Performance Evaluation (OPE) for 2001 rated him as fully successful in all categories. His Supervisor did not mention any impending change in his situation or call for the development of any skills, although the Applicant himself mentioned that he had undertaken training in Windows 2000.

22. The Applicant's OPE for 2002 rates him fully successful in most categories and superior in some. The Respondent accepts that he performed ably and was fully successful in keeping the VAX/VMS systems up and running. The Applicant's own comments in his OPE make it clear that he was aware of the phasing out of VMS. Both his Supervisor and Reviewing Manager refer to future changes for the Applicant when the VMS systems were to shut down in the coming year. The Applicant claims that he was not told at this point that he needed to improve his skills significantly in any area in order to retain his employment.

### **The phasing out of VMS and the Applicant's redundancy in 2002**

23. The number of applications operating on VMS within TRE dropped from 10 to 3 in the last half of 2002, and the number of active VMS servers dropped from 13 to 7. At that time, management expected that residual VMS system administration functions would require one half-hour per day until 2004, when all VMS work would cease.

24. In November 2002, the Vice President and Treasurer (TREVP) approved severance for the Applicant and Ms. X. The Request for Approval of Severance Payment for the Applicant, dated November 1, 2002, set out the grounds on which the Information Analyst position was abolished. It explained that the phasing out of VAX/VMS systems eliminated the need for a VAX/VMS system administration. Staff had been informed of this when the positions were established in 1998, "and therefore that the position would likely have a finite term." A small, residual effort to manage a single remaining application for up to 12 months would be handled by an application team. The Request stated that the abolition of the position was agreed by the Senior Management Team of Treasury in consultation with the Human Resources (HR) team. It commented further that it would take three years experience to manage the UNIX and Veritas environment now running, so that the two staff could not be retrained for this: "Treasury has consulted with ISG and the ISN in an attempt to identify new opportunities for the staff, but none are presently available."

25. On November 25, 2002, the TREVP officially notified the Applicant that he would become redundant under

Staff Rule 7.01, paras. 8.02(b) and 8.03, with effect from December 2, 2002. He was then 58. The Applicant was informed that if his job-search efforts were unsuccessful, his employment would be terminated on June 1, 2003.

26. On November 26, 2002, the Applicant sent an e-mail to the Senior Officer, HR, requesting an explanation for the notice of redundancy. The reply of December 5 stated that when the Applicant's position had been established in 1998, the Applicant had been notified that a major systems renewal program was under way and that the position would likely have a finite term. The points made in the severance notice were repeated.

27. On December 9, 2002, the Applicant sent an e-mail to the TREVP asking the reason for his redundancy. On December 13, 2002, the TREVP responded that when the Applicant joined the Bank, it had been on the understanding that his position would have an uncertain but finite term because of the phasing out of VMS systems. The TREVP understood that the Director of Treasury Operations had informed the Applicant that the phasing out was due to occur in 2000. Because there had been uncertainty about the date of phasing out, his appointment had been made Open-Ended. It had in fact taken until 2002 to eliminate the VAX equipment and move the servers to the UNIX environment. Now that most of the VAX/VMS servers had been eliminated, there was no work for the VAX/VMS system administrators. The TREVP referred to the December 5 e-mail of the Senior Officer, HR, and also made reference to the discussions that the Applicant had had with the Director, Global Operations, TRO, and with his Manager about his redundancy.

28. The Applicant later applied for two Windows positions but was not selected. On June 1, 2003, the Applicant's employment with the Bank was terminated.

### **Appeals Committee**

29. On February 20, 2003, the Applicant filed an appeal with the Appeals Committee. The Appeals Committee held a hearing and issued its Report on August 29, 2003. The Appeals Committee Panel found that the Bank had not abused its discretion in deciding to abolish the Applicant's position or in its treatment of the Applicant relative to younger employees. However, the Panel found that management had abused its discretion by failing to consult the applicable Sector Board before declaring the Applicant's employment redundant, as required by Staff Rule 7.01, para. 8.03. The Panel recommended an award to the Applicant of three months' net salary, to compensate for the intangible injury he had suffered as a result of management's failure to fully comply with Staff Rule 7.01. The Panel also recommended the payment of attorneys' fees in the amount of US\$3,200. On September 24, 2003, the Vice President, HR, accepted the Committee's recommendations.

### **Application to the Tribunal**

30. The Applicant filed an application with this Tribunal on January 5, 2004. He claims that the decision to make him redundant violated Staff Rules, was an abuse of discretion and resulted from age discrimination. The Applicant contends that the Respondent did not act with fairness and violated the letter and spirit of Staff Employment Principle 2.1, which requires the Organizations to act at all times with fairness and impartiality and to follow a proper process in their relations with staff members.

31. The Applicant seeks:

(i) rescission of his redundancy;

(ii) reinstatement with full back pay and benefits, with no loss of continuous service or, alternatively, full pay and benefits until May 8, 2006, when the Applicant turns 62, the normal retirement age for the Bank; and

(iii) reimbursement of all costs and attorneys' fees.

### **Was the Applicant misled about his position?**

32. The Applicant complains that his letter of appointment did not mention that he was expected to become redundant. He asserts that he would not have left the Johns Hopkins University to accept employment at the Bank if he had been informed that he would become redundant when the VMS was phased out. He had expected to move into another position in the Bank, and says that management was aware of that. If, as the Respondent asserts, his redundancy was contemplated from the beginning, the failure to include this in the letter of appointment as a special term violated the letter and spirit of Staff Employment Principle 4.1(c) and misled him to believe that his employment was permanent.

33. Staff Employment Principle 4.1(c) establishes, at the relevant part, that the Organizations shall

appoint staff members by letter of appointment, which shall specify the type of the appointment. Unless otherwise specified in such letter, the appointment shall be subject to those Principles and Staff Rules applicable to the staff member's type of appointment, to amendments to those Principles and Staff Rules, and to other written agreements, if any, with the staff member.

34. A related claim by the Applicant is that if, as the Respondent suggests, redundancy was anticipated when the Long-Term Consultants were converted to Regular, Open-Ended appointments, this in effect created two classes of Regular staff, one of which was marked for redundancy. This, he asserts, is a clear violation of Staff Employment Principle 2.1, which states in relevant part that the Organizations "shall not differentiate in an unjustifiable manner between individuals or groups within the staff."

35. The Respondent contends, in reply, that the Applicant knew from the beginning that there was no long-term need for a VMS administrator. He received no assurance that his appointment would continue until retirement. The Applicant had requested an Open-Ended appointment and this was given to him, as it was the most favorable in case his position was abolished. His appointment was subject to the same terms and conditions as every other Open-Ended appointment and was not immune from redundancy.

36. The Tribunal notes that the Director of Treasury Operations explained to the converted staff that Open-Ended appointments would be more beneficial to them, financially and otherwise, should their jobs come to an end. The Applicant agreed that the staff had been informed about these matters by the Director, but he testified that he never understood that the Director was talking to him personally, only to the whole group.

37. The Tribunal finds no abuse of discretion or violation of the Principles of Staff Employment in appointing the Applicant to an Open-Ended position, even though the long-term future of the functions attached to that position was known to be in doubt. The appointment of the Applicant was not subject to any hidden conditions. Nor is there any substance in his allegations that the Respondent misused Regular and Term positions, created two classes of employees, or misled him as to the nature of his appointment. In the absence of any evidence that the Applicant was given a specific assurance of permanent or long-term employment, as in *Bigman*, Decision No. 209 [1999], his appointment was subject to the same Staff Rules relating to redundancy as other appointments.

38. The Tribunal stresses, however, that the fact that it may have been possible to anticipate that the Applicant might become redundant in future cannot of itself justify the redundancy. Nor, on the other hand, does it invalidate the redundancy. The redundancy decision has to be considered on its own merits and according to the ordinary rules. The fact that the Respondent anticipated the redundancy does mean that the decision must be examined with particular care to ensure that the Staff Rules and Principles of Staff Employment were applied appropriately.

### **Were the correct redundancy Rules applied?**

39. The Applicant complains that the Respondent misapplied the Staff Rules by dealing with his redundancy under Staff Rule 7.01, para. 8.02(b), which applies to redundancy when "[a] specific position in an



organizational unit must be abolished.” The Applicant contends that his position was not a “specific position,” but a generic position of Information Analyst. Both the job description and his letter of appointment refer to it as such. Although he was assigned to VMS, the Applicant claims that he had skills to work in wider areas and should not have been pigeonholed solely as a VMS administrator.

40. The Applicant contends that his redundancy ought to have been considered under Staff Rule 7.01, para. 8.02(d), which applies to redundancy when “[s]pecific types or levels of positions must be reduced in number.” In such a case, paragraph 8.03 should have been applied to determine who should be selected for redundancy, taking account of performance and following a call for volunteers. In effect, he is saying that there should have been a competition for all Information Analyst and Officer positions in the unit. Staff Rule 7.01, para. 8.03, provides in relevant part:

Where 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) The performance of staff members;
- (b) Whether the abilities and experience of staff members can be used elsewhere in the Bank Group; and
- (c) The existence of volunteers for termination who are willing to accept severance payments pursuant to paragraphs 8.08 or 8.09.

41. The Respondent argues that the Applicant and Ms. X were performing specialized functions, and that upon the phasing out of VMS it was more rational to abolish their positions as Information Analysts under paragraph (b) than the positions of other Information Officers whose work was not affected by the change.

42. The Tribunal notes that although the Applicant’s job title does not refer to VAX/VMS, the stated requirements for the position to which he was appointed in 1999 included experience with VAX/VMS systems. There was evidence that he had been paid extra because of his VAX experience. Furthermore, his work from 1999 to 2002 was almost entirely with those systems. Only he and Ms. X did this work. When VAX/VMS was phased out, their specific functions were no longer required. The phasing out did not affect the functions performed by the other Information Analysts and Officers in the unit (other than to add a small amount of residual VMS work). Paragraph (d) applies to the reduction of positions and is most appropriate where identical or very similar functions are performed by staff at the same level. In the circumstances of this case, it was reasonable to deal with the redundancy under paragraph (b). To do so was not an abuse of discretion.

### **Was the Applicant given sufficient training and career support?**

43. The Applicant claims that he was unfairly denied security of employment, career development, training and opportunities for alternative employment, all of which, he claims, contributed to his redundancy. He claims that the Respondent did not observe paragraph (d) of Principle of Staff Employment 2.1, which states that the Organizations shall “provide staff members security in their employment consistent with the terms of their appointments, their satisfactory performance and conduct, and the efficient administration of the Organizations.” He also alleges that his redundancy resulted from age discrimination by the Respondent.

44. The Applicant claims that the Respondent failed to provide him with job security or with a viable career path beyond VMS. He claims that he discussed career development and training with his supervisors and undertook training in good faith to prepare for migration to Windows. He says that he was encouraged in his 2002 OPE to believe that he would make such a transition, but that the Respondent had targeted him for redundancy from the beginning, made no plan for his future and failed to advise him as to how to improve his prospects of staying with TRE. The Applicant contends that age discrimination was a factor in this.

45. In response to these claims, the Respondent points out that the Applicant was informed before commencing his appointment in 1999 that his functions would be subject to significant changes. He was advised of the need to transfer to other functions to maintain his employment, and that this would take some initiative on his own part, in training and in seeking opportunities. There was no guarantee that his appointment would continue until retirement.

46. The Tribunal considers that the issue is not whether the Applicant knew that the VMS was coming to the end of its life when he took up his position. That was known to all, and he chose to train in Microsoft Windows in preparation for the transition. The issue is whether the Respondent made reasonable efforts to assist in his career development by providing training or seeking other employment opportunities for him.

47. The Applicant complains that the Respondent failed to comply with Principle of Staff Employment 5.1(d), which requires the Respondent to “establish programs and arrangements for staff training and development for the purpose of updating and improving staff skills to meet the needs of the Organizations.” He contends that because of his impending redundancy and his age, the Respondent denied him adequate training. Despite the Director’s offer at the time of conversion that those who might be affected by redundancy would be treated favorably in regard to training, his requests for training were consistently denied. He claims that, despite his many requests, his Manager approved only five days of training from July 1, 2000 to May 2002, and that half the training allotment was given to a small group of senior staff. This did not meet his need for training in a fast-changing area of technology.

48. The Respondent denies that age discrimination played any part in the allocation of training or otherwise and that, contrary to the Applicant’s claim, he was provided with adequate training and development opportunities, in amounts consistent with those given to other staff in TROIS.

49. The Tribunal notes that while the record suggests that some managers and senior staff received considerably more training than other staff, there is nothing to suggest that the Applicant was treated less favorably than other Information Analysts and Officers. Some had more and some less training than he. It is not entirely clear whether the Director’s promise of favorable treatment to those whose jobs were not expected to last indefinitely was in fact fulfilled. But it does not appear that he was discriminated against in regard to training, or in any event that a lack of training contributed to his redundancy, as he was well-qualified in Microsoft Windows if there had been opportunities open to him.

50. The Applicant asserts that he kept his IT skills up to date on his own account, and gained a high level of certification in Microsoft Windows because he wanted and expected to migrate to Windows after VMS ended. Management was aware of this and of his intentions. But, he says, the Respondent ignored his Microsoft Windows skills and gave the Applicant no opportunity to progress to Windows after the phasing out of VMS systems. The Applicant claims that when the TRO Manager asked the ISGEC Manager about other opportunities for him in March 2001, the TRO Manager defined the Applicant’s skills only as VMS systems management. The TRO Manager made no effort at all to present the Applicant’s Microsoft Windows skills to relevant sections of the Bank before declaring him redundant.

51. The Applicant complains also that HR made no efforts to redeploy him and had no knowledge of his skills. From March 27, 2001, when his redundancy was first foreshadowed to HR, nothing was done to assist him by the Senior Officer, HR.

52. The Applicant contends that his TRO Manager denied him any opportunity to get work experience in Windows. The NT Windows system administrator to whom he was assigned for a temporary period refused to instruct him. The Applicant contends that, given his Microsoft technology skills, he could have been retrained within a short time for certain Windows positions in his department. He refers in particular to the positions taken by Ms. Y in 2001 and Ms. Z in 2002. The Applicant says that he was not informed at the time that these positions were available and had no opportunity to apply for them. He asserts that Ms. Y and Ms. Z were both younger than he was and less qualified, and that it would have been reasonable to have groomed him for

either of the positions. He claims that he was excluded on age grounds.

53. The Respondent contends, in reply, that it made appropriate inquiries about opportunities for the Applicant before and after his position was declared redundant. However, there were few places for which he would have been suited. The Respondent asserts that it was not obliged to create a position for the Applicant for which there was no business need, or to dislodge another staff member from his or her position in order to make it available to the Applicant. The Respondent contends also that the Applicant could have more actively sought alternative positions for which he was qualified, but he did not apply for any positions within the Bank after his appointment in 1999.

54. The Respondent points out that all of the Windows NT server administration, other than local administration, had been outsourced by TREVP to ISG in 2001. The two NT administrators in TRE became redundant in 2001 as no alternative employment could be found for them. At the time when the Applicant's position was abolished, TRE had no full-time Windows 2000 and NT systems administrators and had no plans for such. The Respondent says, further, that three staff members working in Windows 2000 and NT, including Ms. Y, were appointed to their positions before the Applicant's position was abolished.

55. As to the positions of Ms. Z and Ms. Y, which the Applicant claimed should have been offered to him, the Respondent states that their positions were not suitable for the Applicant. Ms. Z was employed as a contractor to provide training in desktop applications and user support in mobile and remote computing. She was not a systems administrator and her work was finite. In regard to Ms. Y, the Respondent states that she was hired initially in 2001 before the Applicant's redundancy.

56. In redundancy cases, the Tribunal observes, the Respondent is obliged to make genuine efforts to help the affected staff member to find a position. But it is not obliged to guarantee that a position will be found. (*Arellano* (No. 2), Decision No. 161 [1997], para. 42.) The Applicant complains that the TRO Manager's e-mail to the ISGEC Manager of March 2001, which foreshadowed the Applicant's redundancy, mentions only the Applicant's skills as a VMS administrator and that this limited his opportunities. The Tribunal notes, however, that the e-mail also asked about possible positions for the two Windows systems managers in the Applicant's unit. The response was that there were no known openings for Windows or VMS administrators.

57. The Tribunal notes also that the Applicant's qualifications to work in Windows were not mentioned in the request for severance, though it was known to the Respondent that he wanted to migrate to that area. This showed some lack of diligence on the part of the Respondent in seeking opportunities for the Applicant. Even though testimony given to the Appeals Committee about the inquiries made immediately before the redundancy and during the job-search period indicated that there were no suitable positions available in Windows NT administration, the Respondent should have been more diligent in setting out his capabilities, particularly in view of the Applicant's age, which latter factor might diminish his prospects of employment elsewhere. (*Lee*, Decision No. 241 [2001], para. 39.) The Bank also failed to refer the redundancy to the Sector Board (as considered below).

58. The Tribunal notes also that before his redundancy, the Applicant did not apply for any positions. He appears to have regarded it as the Bank's responsibility to arrange for his transition. During his job search, he applied for two Windows-related positions. His testimony was that there were few openings. The Tribunal notes that the Applicant's HR Officer testified before the Appeals Committee that he had offered help to the Applicant in the form of providing references during the job-search period, but that the offer was not taken up.

59. On balance, and subject to the Appeals Committee's recommendation concerning the Bank's failure to refer the redundancy to the Sector Board (see below), the Tribunal considers that the efforts made by the Respondent to find alternative employment for the Applicant outside his own unit satisfied its minimum obligations to make reasonable efforts to place him, though they could well have been more diligent.

60. As to the Applicant's complaint that he was denied employment opportunities in his own work unit, the Tribunal notes that his part-time deployment to the Windows NT system administration team in his unit was



unsuccessful, but in the long run it would not have provided him with future employment, as the Windows system administration was outsourced and the two system administrators were made redundant. There remained four staff in the Windows area, three Information Officers and one contractor.

61. The Tribunal concludes that the Applicant's claim that Ms. Z's functions should have been allocated to him has no merit. She was not a permanent employee but a contractor. His complaint in regard to Ms. Y, however, raises wider issues because of the fact that she was appointed to a permanent position as an Information Analyst on the same date as his redundancy in an equivalent position was declared. These issues are considered below.

62. The Applicant complains that there was a pattern of discrimination against older people in the unit. He was the oldest at 59. He alleges that his Windows skills and higher credentials were disregarded while younger people, most in their late 20s, were brought in to work in Windows. He considers it irrelevant that Ms. X was made redundant at age 47, as she herself may have suffered age discrimination (and as she had no qualifications in Windows). He points out that the four Information Analysts (i.e., systems administrators) who had been made redundant were all in their 40s, whereas the current Information Analysts and Officers in the unit are around 30. A related claim is that the younger people worked together on the 7th floor, while the two VMS administrators were on the 6th floor; and when they moved up they were separated from the others. He alleges that all this is a *prima facie* case of age discrimination.

63. The Respondent denies any age discrimination and asserts that if it had discriminated on the ground of age, perhaps it would not have appointed him at age 55. The fact that IT staff in TRE are younger than the Applicant was unavoidable, as the Applicant himself was in 2002 nearing the maximum age for retirement.

64. The Tribunal considers that the Applicant's claims of age discrimination are undermined by the fact that Ms. X was appointed and was made redundant at the same time as the Applicant. Although he seeks to distinguish her situation, or to suggest that she too suffered age discrimination, the fact is that she worked in the same environment. The only issues that arise for consideration in regard to the claim of discrimination are whether his age affected in any way the Bank's willingness to assist him to find alternative employment (as considered above) or to consider him as a candidate for the position of Ms. Y (see below).

### **Did the redundancy decision respect the Principles of Staff Employment?**

65. The Applicant claims that the Respondent failed to respect the Principles of Staff Employment in declaring him redundant. According to Principle of Staff Employment 7.1(b)(iii), separations may be initiated "when the Organizations determine that a position or positions are no longer necessary, ... provided that no vacant position in the same type of appointment exists for which the Organizations determine that the staff member is eligible and has the required qualifications or for which he or she can be retrained in a reasonable period of time."

66. The Applicant complains that on the same day that his position as Information Analyst was abolished, Ms. Y was appointed to a permanent position as an Information Analyst. Her functions were to support the trading room and involved skills in Microsoft Windows. The Applicant claims that the position was created without announcement and that it was, in reality, the position which he had vacated. He had the qualifications for the position and could have been trained to do the job quickly. He claims that he was unfairly denied the opportunity to compete for it, and that this was an abuse of discretion.

67. The Respondent states that Ms. Y was selected for her position before the Applicant's position was abolished and that her work supporting staff and systems in the TRE trading room was not suitable for the Applicant; it required skills in a broad array of technologies, applications and equipment, including Microsoft Windows. The Respondent does not explain how the permanent position to which Ms. Y was appointed was created, listed or filled. The Applicant's Manager told the Appeals Committee that, in hindsight, he did not think the Applicant was suited, either from a technology-training or temperament basis, to support the trading floor.

68. The Applicant claims that the reference to his “temperament” as being unsuitable for the trading room was a code word for age. He asserts that the comments reflect adversely on his age and his ability to adapt to new environments, and take no account of his high ratings and skills.

69. It is not clear whether the position to which Ms. Y was appointed was in fact a “vacant position” in the sense of the Principle quoted. She presumably continued to do the same work that she had been hired to do under a Term appointment in April 2001. The Tribunal considers, however, that if this was a newly created vacant position, the Applicant ought to have had a chance to apply and to compete for it, in keeping with the Bank’s obligation to act in good faith to consider the Applicant’s qualifications and experience to see if he could be assigned or trained for something else. The remarks made by the TRO Manager in his testimony suggest that no consideration at all was given to the Applicant for this position. It is possible that if the Applicant had been allowed to compete for the post, he would not have been selected. The Bank was not obliged to put him into the position in preference to Ms. Y, but in keeping with its obligations, it ought to have at least considered him for the position.

70. The Tribunal considers that in failing to consider the Applicant for the position allocated to Ms. Y, the Respondent did not meet the standards set forth in Principle of Staff Employment 7.1(b)(iii) and failed to treat the Applicant with the fairness to which he was entitled under Principle 2.1. For this, the Applicant should be compensated.

### Other issues

71. The Applicant complains that the Respondent failed to notify the ISN Sector Board of the redundancy, or to use it in attempting to deploy him, as required by paragraph 8.03 of Staff Rule 7.01. Paragraph 8.03 provides in relevant part that a decision that a staff member’s employment is redundant “shall be made by a vice president responsible for administering the position, after consultation with the applicable Sector Board or Staffing Group and with the concurrence of the Manager, Human Resources Service Center, for Bank or MIGA staff, or the Vice President, Personnel, Administration and Corporate Business Development, for IFC staff.” The Applicant asserts that he could have been redeployed in Treasury or elsewhere if the Bank had given proper attention to planning his career using the expertise of the Sector Board.

72. The Respondent accepts that the Sector Board was not notified. It contends that the Applicant’s Manager contacted the ISN Chair, who served on the applicable Sector Board, to inquire about job opportunities, but found that there were no openings for which he would be suited. The testimony of the ISN Chair was that it was not the practice of the ISN Sector Board to review redundancies at that time.

73. The Appeals Committee found that there had been an abuse of discretion by the Bank in failing to refer the Applicant’s redundancy to the Sector Board as required by paragraph 8.03 of Staff Rule 7.01. It pointed out that one of the twelve Sector Board members may have known of some possibility for the Applicant. It recommended compensation of three months’ net salary in respect of this failure, and this recommendation was accepted. The Tribunal considers that this was appropriate compensation for the abuse of discretion.

74. The Applicant claims that his redundancy was premature, as VMS systems were still in operation. He argues further that if the remaining VMS work had been absorbed by the existing team, that team would have expanded, and there would have been a position for him. The Tribunal finds no substance in this claim. There is no real dispute that most of the VMS system administration had ceased. The Applicant’s Supervisor testified that the remaining application running on VMS was managed by the messaging team, and that this took about 10 minutes a day. The timing of the redundancy was for management and no abuse of discretion has been established.

75. The Tribunal finds no merit in the Applicant’s claim that he could have been trained to manage the UNIX system within a short time. He insisted in his testimony that he had been trying to migrate to Windows, not to UNIX. He also said that he did not apply for the UNIX position that had become available, as he had planned a transition to Windows, and “UNIX wasn’t what I was going toward.”

## General conclusions

76. The Applicant complains that his position was created with the clear intention of making him redundant in due course, and that the Respondent failed to meet its obligation to ensure that he was able to develop a work program. The Tribunal observes, however, that the Respondent was not obliged to create a position for him. The issues are whether the Respondent took reasonable steps to assist him, with training and his job search, and whether he was diligent in his own interests. It was unfortunate for the Applicant that his main opportunity for alternative employment in the Bank was frustrated by the transfer of the Windows NT system administration away from TRE just at the time when the VMS was being phased out. Later inquiries revealed no vacant places for his skills in either field. The Tribunal considers that the Respondent might well have done more to assist the Applicant to find alternative employment, especially in view of his age, but except in one regard, it does not consider that any failings of the Respondent constitute an abuse of discretion. The Tribunal concludes that because the Respondent failed to give the Applicant an opportunity to compete for a position in his department for which he was entitled to be considered, he should be compensated for the injury caused to him.

## Decision

For the above reasons, the Tribunal decides that:

- (i) the Respondent shall pay the Applicant compensation assessed at six months' net base salary;
- (ii) the Respondent shall pay the Applicant costs in the amount of \$1,500; and
- (iii) all other pleas shall be dismissed.

/S/ Elizabeth Evatt  
Elizabeth Evatt  
President

/S/ Nassib G. Ziadé  
Nassib G. Ziadé  
Executive Secretary

At Washington, DC, November 12, 2004