

Decision No. 166

Iradj Kahenzadeh,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on June 7, 1996, by Iradj Kahenzadeh 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 E. Lauterpacht (President of the Tribunal) as President, F. Orrego Vicuña (a Vice President of the Tribunal), A.K. Abul-Magd and Bola A. Ajibola, Judges. The usual exchange of pleadings took place. The case was listed on May 16, 1997.

2. The Applicant in this case contests the validity of the Bank's decision to declare his position redundant.

THE RELEVANT FACTS

3. The Applicant entered the employ of the Respondent on June 1, 1969 and was initially assigned to the Reports Desk. Later he was transferred to the Central Files Office and then to the Eastern Africa Information Center where he acted as Supervisor for two years until 1985. As of July 1986, he held the post of Senior Documentation Assistant (level 16). In November 1986, he was assigned back to the Official Documents Desk as staff in charge and reported directly to the Supervisor of Archives.

4. The Applicant claims that between 1969 and 1986 he received "excellent performance reviews, and... was recommended for promotion several times." During the Bank's reorganization in 1987 his position at the Official Documents Desk was down-graded. Because of this, the Applicant decided to leave the Bank as he was convinced that he "no longer had a future nor a career at the Bank." He claims that both his supervisor and Personnel Officer unequivocally indicated to him that he would be entitled to a redundancy package ("Package B") if the down-grading was not accepted and "if at the conclusion of the selection process" he had not received any job offer. In preparation for his disengagement with the Respondent he was even sent on a one-week Retirement Seminar organized by the Bank.

5. Relying on the Respondent's promise of a possible amicable separation, the Applicant, in 1987, put his house on the market and his wife resigned her job. He then travelled on leave with his family in order to make business contacts. In August 1987, while he was in Jerusalem, the Applicant received a call from his Division Chief advising him to return to Washington, D.C. and resume work immediately. Subsequently, the Assistant Archivist also phoned the Applicant urging him to return to his work as suggested by his Division Chief. The next day, the Applicant's Division Chief again phoned him and threatened to terminate his appointment with the Bank, without any entitlement under "Package B" as originally discussed, should he fail to return as instructed.

6. On his return to the Bank, as requested, the Applicant was asked to see the Director, Information Technologies and Facilities (ITF) who, according to the Applicant, praised him for his past satisfactory performance, promised to restore him to his former level and even promised him a promotion to level 17 within six months of the reorganization. The Director, ITF, has denied making such a promise. The Applicant claims that because of all these "false promises" he lost "the respect and dignity" of his family, which culminated in the commencement of divorce proceedings by his wife.

7. In 1989, the Official Documents Desk was moved to the Archives under the Vital Records Program and the Applicant was transferred there. Up till that time the Applicant continued to receive positive performance reviews (PPRs) and was even recommended for promotion.

8. In November 1994, the Applicant was moved from the Official Documents Desk to conduct a stock-taking operation of the Archives. Early in 1995, the Applicant received certain negative comments in his PPR. He complained about this report to his Director and mentioned some inconsistencies and errors therein. On April 5, 1995, the Applicant received a notice of redundancy.

9. On April 17, 1995, the Senior Vice President, Management and Personnel Services (MPS), asked the Vice President, Human Resources Development and Operations Policy (HRO), to carry out the administrative review of the decision of April 5, 1995. The administrative review concluded that the decision to declare the Applicant redundant was taken in accordance with Staff Rule 7.01, paragraph 8.02(b), and that the required procedure was followed.

10. The Applicant appealed to the Appeals Committee which, on February 5, 1996, decided that the selection of the Applicant's position for redundancy complied with Staff Rule 7.01, paragraph 8.02. In effect, the Appeals Committee agreed that the decision to declare the Applicant redundant was based on budget reduction needs as set out in the Rules and nothing else. The Appeals Committee, therefore, recommended that the Applicant's request for relief be denied. The Acting Vice President, MPS, informed the Applicant on February 6, 1996 that he accepted the Committee's recommendation.

THE APPLICANT'S MAIN CONTENTIONS

11. Two main issues are involved in this case. First, the Applicant claims that he sustained losses as a result of breaches allegedly committed by the Respondent in 1987 when he was recalled from his leave in Jerusalem and the claimed offer of a "Package B" Separation Agreement with the Bank was withdrawn. His return to the Bank, he claims, exposed him to humiliation among his colleagues in the office and loss of respect from his family.

12. The second issue raised by the Applicant concerns his redundancy as communicated to him on April 5, 1995. He contends that there was no justification for him to be declared redundant since his functions at the Official Documents Desk, which he claims to have performed "efficiently, effectively and successfully" well for more than twenty years, were taken from him and shared among two other staff members. He alleges that the management "maneuvered" him outside his normal work schedule into performing other jobs like temporary stock-taking and retirement of records in order to find an excuse to declare him redundant. He denies the existence of other "important functions" that he was supposed to perform for the Archives Unit jointly with the stock-taking exercise. He claims that as soon as the stock-taking assignment was completed, the management "conveniently abolished" the retirement of records on the demand function for what he refers to as "lack of client interest." The Applicant thus argues that this was a case of prejudice against him by his supervisor. He concludes that the policy of the management which resulted in his redundancy was unjust, prejudicial and discriminatory. The Applicant, therefore, seeks rescission of the notice of redundancy and payment of compensation.

THE RESPONDENT'S MAIN CONTENTIONS

13. The Applicant's claim for additional compensation for alleged past wrongs from 1987 is not properly the subject of this application.

14. The Applicant was not improperly declared redundant. His was but one of a number of redundancies declared in the Organization and Business Practice Department (OBP) on the basis of "need for service." Another reason that brought about the need for redundancies was the introduction of automated procedures for managing the Official Documents Desk. On March 17, 1995, the Director, OBP, recommended to the Vice

President, MPS, the need to declare redundant fourteen more regular staff of the Bank in addition to discontinuing the contracts of temporary employees and some consultants. The total number of people recommended for redundancy was thirty-two and this was based not on "performance or skills issues" but on "value of service criteria."

15. Proper procedure was followed in the implementation of the Applicant's redundancy. He received full redundancy benefits in accordance with Staff Rule 7.01, Section 8, and at the end of his special leave period he became eligible to draw an unreduced pension. The Applicant should not be treated differently from all others who were declared redundant and should not be paid any additional compensation.

CONSIDERATIONS

16. In this case, the Applicant challenges the decision of the Respondent to declare his position redundant, a move which, according to him, was first attempted in 1987 but was then abandoned and was put into effect only on April 5, 1995.

17. The first issue to be considered by the Tribunal is the claim by the Applicant that in 1987 the Respondent breached certain obligations owed to him resulting in damages to himself and his family.

18. Article II(2)(i) of the Statute of the Tribunal prescribes that an application is only admissible (except under special circumstances, not applicable in this case) if the Applicant has exhausted all other remedies available within the Bank Group. Article II(2)(ii) requires that an application be filed within ninety days after either the occurrence of the event giving rise to the application or "receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted." Thus, the Applicant ought to have exhausted in 1987 all these remedies available to him for administrative review and, if he was not satisfied, he should have appealed within ninety days of the exhaustion of all these remedies to the Appeals Committee before applying to the Tribunal. The Applicant did not do so. For this reason, the claims made by the Applicant concerning all of the personal and domestic injuries that he allegedly suffered are outside the scope of the jurisdiction of the Tribunal and are thus inadmissible. The Tribunal, therefore, dismisses these claims.

19. Next to be considered is the issue of redundancy that arose in 1995. The Applicant accuses the Respondent of discriminatory acts and prejudice, claiming that he ought not to have been declared redundant because the Official Documents Desk functions, which he performed for more than twenty years, were taken from him and shared among two other members of staff. He complains of negative comments in his PPR which he had discussed with the Archivist and about which he had agreed with the Archivist before he went on home leave but which was altered upon his departure.

20. The Bank's decision to declare a position redundant is an exercise of its managerial discretion which the Tribunal has consistently declined to review "unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure" (See *Durrant-Bell*, Decision No. 24 [1985], para. 25). The Tribunal finds no basis on which to hold invalid the exercise of discretion in this case.

21. A general policy decision was taken by the Bank in 1994 to reduce the Bank's budget. This gave rise to a question of redundancy in each department of the Bank. In a memorandum of March 17, 1995 addressed to the Senior Vice President, MPS, the Applicant's Director advised that:

1. You have endorsed the proposals contained in OBP's FY96 Business Plan dated February 17, 1995. Following your approval, I distributed copies to all OBP staff. I also wrote to them on February 28 (Attachment I) to explain that given the 10% reduction in our budget for FY96, the management team had determined which services would be cut, modified or reorganized on the basis of their relative value added. Correspondingly, redundancies would be driven by value of service criteria rather than performance or skills issues (which would be addressed in the PMP process).

2. I intend to adjust the OBP program to the constraints of the FY96 Budget through a combination of savings generated by eliminating services and by changing the way some of them are produced and/or delivered. As a result, there are several additional redundancies over and above those we have recently executed in the Telex and Fax services, Computer Operations, and Financial Management units. Now, in addition to discontinuing the contracts of a number of Consultants and Bank Temporaries, I am proposing that 14 more regular staff be made redundant. This brings the total to 32 so far this calendar year. The attached table (Attachment II) shows a breakdown by age, gender, years of service and nationality....

The memorandum also stated the reason why the Applicant in particular was declared redundant in the following terms:

Two jobs supporting the *Retirement-on Demand* service in the Archives Unit will be abolished. In the last two years, the Unit has met client requests to send someone to come to their site to sort, pack and list inactive records to be retired to the Archives. This service has relatively low value and will be discontinued.

Mr. Iradj Kahenzadeh, will be declared redundant. He is a Level 16 Information Assistant. Staff Rule 7.01, para. 8.02(b) applies.

22. It is clear that the Applicant's performance had nothing to do with the decision of the Bank to declare the Applicant redundant. The decision was based on the Bank's need or lack of need for service. The services performed by the Applicant, which were considered to be of a "relatively low value," were no longer needed and that was why he was sent to be trained on "a program designed to respond to client demand under chargeback arrangements, for cleaning out offices of material either to be kept in the Archives or discarded...." It is also clear from the evidence that the issue of the Applicant's PPR was irrelevant to the managerial decision to declare him redundant. The Applicant was in fact just one of the thirty-two staff members declared redundant at the same time and he is not entitled to be treated differently from the others. The Applicant was declared redundant under Staff Rule 7.01, paragraph 8.02(b), and due process was followed.

DECISION

For the above reasons, the Tribunal unanimously decides to dismiss the application.

Elihu Lauterpacht

/S/ Elihu Lauterpacht
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At London, England, June 10, 1997