

Decision No. 97

Aziz A. Kassab,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of P. Weil, President, A. K. Abul-Magd and E. Lauterpacht, Vice Presidents, and F. K. Apaloo, R. A. Gorman, E. Jiménez de Aréchaga and Tun Suffian, Judges, has been seized of an application, received August 18, 1989, by Aziz A. Kassab, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on June 25, 1990.

The relevant facts:

2. The Applicant, a Swiss national, joined the Bank in December 1977 on a regular appointment as a Financial Analyst, level L (equivalent to current grade 23) in the Water Supply & Sewerage Division of the Europe, Middle East, North Africa Region (EMENA) Projects Department, where he worked up to October 1984 when he transferred to the Transportation Division I of the Eastern Africa Projects Department (EAP).

3. In the Applicant's Performance Review (PPR) for the period 1984-85 his supervisors noted, on the one hand, that his technical capabilities had been fully tested and proven and that he became a valued member of the Division and, on the other, that he needed to bring out more forcefully in his writing the essential issues. Accordingly, training arrangements were approved in September 1985. In the same PPR his immediate supervisor noted, in response to the Applicant's desire for promotion, that the latter would be entrusted with increased responsibilities and, in particular, would lead the appraisal of the Zaire River Navigation Project and manage its processing inside and outside the Bank until it was approved by the Bank's Board in June 1986.

4. In late 1985, the Personnel Management Department (PMD) had been requested by the Bank's senior management to assist in carrying out a Bank-wide skills mix review to determine whether the Bank had the proper mix of technical and professional skills to cope with the changing lending program, which had become more policy-oriented with emphasis on sectoral adjustment and macroeconomics. As of February 20, 1986 a time-table for the Skills-Mix Exercise was set.

5. By May 1986 the Vice Presidencies had compiled the data required and had communicated it to the Managing Committee which upon review decided that:

- (i) individual skills-mix cases would be dealt with in the normal Performance Planning and Review (PPR) process;
- (ii) to minimize disruption and because funds were limited, the effort in 1986 would begin in the Europe, Middle East, North Africa (EMENA) and Eastern and Southern Africa (ESA) Regions because these regions had the most current and complete PPR data; and
- (iii) because of changing requirements for loan officer, special emphasis would be placed on this career stream in all regions.

6. In the Applicant's PPR for the period 1985-86, which was written between May and July 1986, his supervisors stated that the Applicant had a difficult year. On the one hand, they described him as a man of tremendous dedication to the Bank's work, hard working, loyal and anxious to do well, and, on the other hand,

they noted that he had difficulties both as a leader of the Zaire Navigation Improvement appraisal mission and in his work as a financial analyst/project officer. It was also stated that the Applicant was replaced as mission leader during production of the White Cover Staff Appraisal Report (SAR), because of problems some of which were beyond the Applicant's control. However, there were other problems, such as inadequate coordination of the appraisal team, multiple changing of instructions to team members and substantive defects in the SAR which were attributable to the Applicant's deficiencies in the areas of report-writing and financial analysis skills for a level 23 professional. It was also explained that these deficiencies were identified and established after his Division Chief took the initiative to have other senior staff in the Department review the Applicant's work at issue.

7. The Applicant strongly disagreed with his supervisor's comments, save for their evaluation of his writing skills. In particular, he questioned the financial analysis made by senior colleagues who were involved in the Zaire Navigation Improvement Project (NIP) and he noted that he had submitted two incomplete draft SAR White Covers at his Division Chief's request. He, therefore, requested administrative review of his PPR.

8. On September 30, 1986 PMD issued the Skills-Mix Exercise Timetable which set certain deadlines for the Programs department of the EMENA and ESA Regions. After identifying those who were inadequate, and after consideration by and discussion with Personnel Officers by December 31, 1986, Directors and Division Chiefs were to agree upon proposals for individuals with mismatched skills.

9. In a memorandum, dated December 10, 1986, and addressed to the Director, the Applicant's Assistant Director who had carried out the administrative review of the Applicant's 1985-86 PPR stated both that there was no basis for the Applicant's request to have the evaluation and related documents removed from his file, and that the Applicant could be separated for obsolescence of skills within the framework of the Skills Mix Exercise on appropriate terms to suit his case. In particular the Assistant Director in his findings stated that (i) the preparation of the SAR for the Zaire NIP by the Applicant was delayed because of the late submission of the Economist's contribution; (ii) the Applicant undertook to prepare and submit an incomplete White Cover SAR which was found deficient and led to his removal as Mission Leader; (iii) there was no indication suggesting uncooperative attitudes from mission members; (iv) under the circumstances it was reasonable to expect the Applicant as Mission Leader and Financial Analyst to be able to prepare an incomplete White Cover SAR of satisfactory standards; (v) his Division Chief's judgment on the White Cover SAR draft was correct and had been confirmed by the Financial Adviser; and (vi) it was proper to assess the Applicant's performance as Mission Leader and Financial Analyst on the basis of the incomplete draft which was submitted on January 22, 1986.

10. By memorandum, dated December 22, 1986, the Applicant's Director informed the Applicant that there was no basis to revise his 1985-86 PPR.

11. Meanwhile, by memorandum dated December 15, 1986 to the Acting Director, PMD, sent through the Vice President, ESA, the Applicant's Director requested concurrence in declaring the Applicant redundant. In particular he stated:

[W]e have discussed Mr. Kassab's capabilities, limitations and work history at the divisional, departmental and regional levels and have concluded that over a period of time, his position has changed to such an extent that Mr. Kassab is no longer qualified to perform it.

12. On December 24, 1986 the Acting Director of Personnel approved the decision to declare the Applicant redundant and on January 7, 1987 the Applicant was informed by his Director that his position, as it currently existed, had become redundant under Staff Rule 7.01, Section 8.02 (c), that under Sections 8.05 and 8.06 of the same rule the Personnel Department would be actively working with him to identify a suitable alternative position, and that, should these efforts prove unsuccessful within six months, i.e. by June 30, 1987, it would be necessary to arrange for his separation from the Bank. The same day eight other staff members in the ESA Region were also declared redundant. However, on January 23, 1987 the Applicant was informed by his Director that the terms of the redundancy notice had been suspended because of the imminent reorganization.

13. On March 7, 1987 in a mid-year review covering the period July-December 1986 the Applicant's performance was evaluated by his Division Chief as being less than satisfactory in the areas of drawing conclusions and making recommendations, producing work regularly that did not require close supervision, teamwork and proper judgment. In reply, the Applicant in a memorandum, dated March 12, 1987, to his Division Chief, noted that because after July 1985 (the date of the 1984-85 PPR) the Applicant had lost direct contact with his Division Chief, the former's subsequent PPRs had deteriorated because others, in particular the newly appointed Assistant Division Chief, were reporting on the Applicant. In this respect the Applicant mentioned several constraints imposed on him by the Assistant Division Chief such as scheduling of missions, new work procedures and creating difficult working relationships between team members and himself. He concluded that he had greatly contributed to the good quality reports produced by the Zaire team and that denying this was unfair.

14. The Applicant's PPR for the period June 1986-May 1987 reflected the same less-than-satisfactory performance which was noted in the mid-year review. In addition it was stated that the EAP Management had decided not to send the Applicant on mission because of his insufficient skills as project officer and his difficulty in working on a team.

15. On May 5, 1987 the Applicant in a memorandum to his Assistant Director disagreed with the evaluation of his performance and requested that an additional review be done. However, on the same date his Division Chief denied his request as being unnecessary and informed the Applicant that the decision not to let him travel was based on the Assistant Director's report that during the latter's trip to Zaire senior Zairian officials had commented that the Applicant's performance had not been professionally satisfactory.

16. By June 1987 the Reorganization, the main facts relating to which are described in paragraphs 3 to 42 of The World Bank Staff Association, Decision No. 40 [1987], was underway.

17. On July 15, 1987 the Applicant's Division Chief confirmed to the Applicant that he had not been selected in Round 1 because of deficiencies in his performance, technical skills and "inter-personnel" (sic) relations.

18. Because the Applicant had been involved in the Skills-Mix Exercise in which he had been declared redundant and his redundancy had been thereafter suspended, when he became part of the Reorganization and was not selected during Round 1, he and eight others in EAP who were in the same situation were permitted the option of selecting Package B at the close of Round 1 without being required to participate in Round 2. Nonetheless, they were given the option of participating in Round 2. The Applicant elected to participate in Round 2 but without success.

19. On September 28, 1987 the Applicant wrote to the Vice President, Personnel, complaining about the unfair 1986 and 1987 evaluations of his performance and how these evaluations had prevented him from being selected during Round 2 of the selection process. He stated that he believed that the main reason for these bad evaluations was that, because he had complained to management about the arbitrary attitude of his Division Chief, the latter resented him, having actually told him that he would never forgive him for what he did. Furthermore, during Round 2 a Personnel Officer misinformed a manager who had shown interest in the Applicant that the Applicant had already applied for Package B and therefore was leaving the Bank. In addition, the Applicant's name mistakenly did not appear on the vacancy rosters for two weeks. Finally, the Applicant requested the Vice President to grant him the same fair treatment and conditions offered to one of the nine redundant staff members who had been the subject of the East Africa Skills Mix exercise and had already, without having participated in Round 2, elected to take and signed for Package B.

20. In reply, on October 8, 1987 the Vice President, Personnel (VPP), stated that the evaluations of the Applicant's performance were fair and that since the Applicant's skills no longer met the Bank's requirements, termination of his employment with Package B benefits was the only alternative available to him. In addition, the VPP expressed his regret that the Applicant's name had been taken off the rosters in Round 2, but he noted that since the Applicant had considerable exposure and opportunities during Round 2 this unfortunate

error did not render the selection process unfair.

21. Meanwhile, on October 6, 1987 the Applicant signed a Separation Agreement accepting Package B.

22. On December 31, 1987 he filed an appeal with the Appeals Committee against the decisions concerning his PPRs and salary increase for 1987 as well as his non-selection in Round 2 of the Reorganization process.

23. The Committee in its report, dated May 15, 1989, concluded that: (i) the Applicant had failed to substantiate his claims concerning abuse of discretion, tainting of his PPRs and his non-selection during Round 2, and (ii) the Committee could not substitute its judgment for that of the Administration regarding the Applicant's performance. Accordingly, the Committee recommended that the Applicant's request for relief be denied. However, because of some minor procedural irregularities committed by the administration in this case, and also because the Applicant was awaiting public housing accommodation in his home country, the Committee suggested that the Respondent favorably consider an appropriate extension to the Applicant's resettlement deadline.

24. On May 18, 1989 the VPP informed the Applicant that he had accepted the Committee's recommendation and that he had already extended the Applicant's resettlement deadline until June 30, 1989. He noted that the Applicant had been given compassionate consideration because the time limit for resettlement had been extended to 20 months after his active service ended.

#### The Applicant's main contentions:

25. The Applicant was denied the right to be heard because he was not given the opportunity to answer his supervisors' allegations of unsatisfactory performance and, in particular, he was never given a copy of the Assistant Director's memorandum, dated December 10, 1986, addressed to the Director. It was only in May 1988 that the Applicant found the said memorandum annexed to the Respondent's answer to his statement of appeal before the Appeals Committee.

26. The Applicant was denied the opportunity fairly to compete during Round 2 of the Reorganization, inter alia, because his name carelessly had been removed from the vacancy Roster for two consecutive weeks by a Personnel Officer, who, when she was asked by a manager whether the Applicant should be considered for possible employment, answered that he was not, because he had signed to leave the Bank with Package B.

27. The Applicant was discriminated against because of his nationality, since all his German colleagues who had been declared redundant like himself were able to find suitable positions in the reorganized Bank. In particular, he was not given the same treatment as one of them who had already signed for Package B and did not participate in Round 2 but who was thereafter offered a job for two years shortly before the closure of Round 2.

28. The Respondent had failed to demonstrate that the position of financial analyst in the reorganized Bank was any different from that of the same position in the "old" Bank.

29. The Respondent violated the Applicant's right to due process because it based the evaluation of the Applicant's interpersonal relations--one of the three reasons for which he was not selected in Round 1 -- and took decisions affecting him adversely on the basis of gossip that the Assistant Director brought back from Zaire, about which the Applicant was not told, and against which he was never given an opportunity to defend himself. Moreover, the Assistant Director contradicted himself in that he had told the Ombudsman that he had never told the Division Chief that the gossip concerned the Applicant's performance.

30. The Applicant's right to due process was also violated before the Appeals Committee whose hearing took place 19 months after termination of his active employment, at a time when none of the Applicant's witnesses was any longer available, while the Respondent's witnesses whom the Committee heard were those same officers who had condemned the Applicant. The Committee also failed to define the "flaws" which it found in the

selection process concerning the Applicant and in the administrative review.

31. The evaluation of the Applicant's performance reflected only the Assistant Division Chief's arbitrary attitude towards the Applicant. The former, who was not a financial analyst, violated the principle of good faith and abused his discretion, since in fact the Applicant had received oral and written congratulations for some of the financial reports on the basis of which his performance was found unsatisfactory.

32. The Respondent's arbitrary and abusive behavior precluded the Applicant from obtaining suitable employment within and outside the Bank. In particular, for several months the Applicant had, after the Ombudsman's intervention, fought unsuccessfully to obtain a "Letter of Recommendation" from his Assistant Director.

33. The attitude of the Applicant's Division Chief had been arbitrary and unfair towards the Applicant since 1987 as was proved by the sudden change in the content of his PPRs.

34. The Applicant requested the following relief:

(a) Rescission of the decisions:

- to declare him redundant;
- to remove his name from the vacancy Roster in Round 2;
- to stop him from going on missions;
- concerning his PPRs for 1986 and 1987; and
- of the Appeals Committee recommendation denying him relief.

(b) Specific Performance: the Respondent should

- correct his PPRs for 1986 and 1987;
- award him retroactively a normal merit increase for the period May 1985 to October 1987;
- designate an "External Financial Expert" to assess the work he produced from July 1985-1987; and
- postpone notifying the U.S. authorities of the Applicant's end of employment with the Bank, until the Tribunal has rendered a decision in his case.

(c) Compensation: in the amount of \$253,733 because of his age and the Bank's responsibility for his failure to obtain employment within or outside the Bank.

The Respondent's main contentions:

35. There was no violation of the Applicant's contract of employment or terms of appointment. The Applicant has failed to demonstrate that the Respondent discriminated against him or abused its power or managerial discretion.

36. The Applicant is barred from complaining of the decision to declare him redundant and the decision concerning his 1985-86 PPR and his salary increase for 1986, because he failed to exhaust his internal remedies with respect to these complaints and cannot now timely put them before the Tribunal. In the event the Tribunal considers these complaints admissible, they are unfounded. The decision to declare the Applicant redundant was based on the fact that his financial analysis and accounting skills proved to be too limited to allow him to perform the full range of duties required in his position. Moreover, this decision was suspended a few days after it was taken. The Applicant's PPRs for 1986 and 1987 reflected a collective judgment concerning his performance on the part of his managers and other independent persons who were asked to review his work. Moreover, he was given ample opportunity to make his views known and he was permitted to provide all the documentation he deemed relevant. Finally, the Applicant's salary increases were



commensurate to his less than satisfactory performance.

37. The decision that the Applicant should no longer travel was not arbitrary or improperly motivated. It originated solely from the operational concerns of his supervisors, because of his performance shortcomings and the complaints from certain Zairian officials.

38. The removal of the Applicant's name from the vacancy roster in Round 2 was no more than a harmless administrative error which was quickly corrected. There was ample opportunity for his candidacy for positions to be considered thereafter.

39. The Applicant did not receive "unequal treatment" because two in the group of the nine ESA staff members declared redundant remained in the Bank after the Reorganization. They remained because they were able to secure positions outside the Operations Complex because of their skills and not because of external intervention. Besides, in the group of nine, while three members were of the same nationality, it was not the nationality cited by the Applicant.

40. The Tribunal hears cases de novo and the Appeals Committee's Report is not the basis upon which the Tribunal reviews cases before it. Furthermore, the Applicant misunderstood the Committee's procedure and if the Committee did not address the issues of discrimination as well as the quality of the content of his work, this is because the Committee found these complaints without foundation.

41. The Applicant's record did not warrant an enthusiastic endorsement of his performance and ability. However, as he indicated himself, he has no proof, but only presumptions, that his managers gave poor references to entities outside the Bank which inquired about the Applicant.

42. The Applicant had no right to permanent employment with the Bank. He was holding a regular appointment which could be terminated for a number of reasons, redundancy being one of them.

43. The Applicant's request for compensation should in any case be denied, because he has failed to show that the alleged damage he suffered was in excess of the differential amount he received under Package B.

#### Considerations:

44. The issues for consideration are the following:

##### (a) The redundancy decision

45. The Tribunal has jurisdiction to determine applications by which a staff member alleges non-observance of the terms of his appointment. But no application is admissible unless the Applicant has exhausted all other remedies available to him within the Bank.

46. In fact the Applicant has never hitherto complained to the Bank of the decision declaring him redundant, of which he was notified on January 7, 1987. This was probably because the Bank suspended the redundancy decision a few days later, as the Applicant was advised on January 23, 1987. This was better for the Applicant than being separated for redundancy because as a result he came within the Reorganization policy and procedure: he then had the opportunity of being considered for retention and, failing that, for enhanced compensation under Package B which would have given him better compensation than if he had been separated for redundancy.

47. Nor did the Applicant when he complained to the Appeals Committee on December 31, 1987 ask for rescission of the redundancy decision. Thus he has not exhausted all the internal remedies available to him; this claim before the Tribunal must therefore be declared inadmissible.

##### (b) Removal of Applicant's name from the vacancy roster in Round 2

48. Another grievance of the Applicant is that he was denied the opportunity fairly to compete during the Reorganization because his name had been removed from the vacancy roster for two consecutive weeks. The Appeals Committee, regretting this “careless omission”, states in this respect that it was “disturbed by the fact that staff would have been omitted from two such lists without a thorough check as to whether the removal was correct.” It concluded, however, that the Applicant’s name was “included in two subsequent lists and ad hoc panels were given his name for consideration. In the light of the testimony heard by the Committee at the hearings, and the written record on his performance, the Committee did not find sufficient cause to conclude that the omission from such two lists was the material cause for the Appellant’s non-selection in Round 2”.

49. As the Tribunal observed Apkarian, Decision No. 58 [1988], para. 48:

[I]n the operations of a large and complex enterprise [the Bank] will predictably, on occasion, commit an oversight.

Moreover, it is the Tribunal’s view that the Applicant should have discovered this omission and have it immediately rectified, by means of a corrigendum, instead of allowing it to be repeated for two weeks. As the Tribunal has stated in Pavesich, Decision No. 94 [1990], para. 46:

obtaining new placements in the Bank-wide roster for Round 2 did not depend exclusively on the initiative of Personnel Officers. It has to be seen as a two-way effort, in which the staff member was expected to take a leading role.

50. The Tribunal is satisfied that the Bank corrected the oversight within a reasonable time, thus curing its negative effect. This claim is dismissed.

(c) The decision to stop the Applicant going on missions

51. The Tribunal has ruled in de Raet, Decision No. 85 [1989], para. 56, that:

[I]n matters involving the exercise of [managerial] discretion by the Bank, the Tribunal is not charged with the task of reexamining the substance of the Bank’s decision with a view to substituting the Tribunal’s decision for the Bank’s. The duty of the Tribunal is to assess the Bank’s decision – as to both its content and the manner in which it has been made – to determine whether it constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

52. In the circumstances the Tribunal is satisfied that the decision to stop the Applicant going on missions was made on purely operational grounds, was not manifestly unreasonable and should not be interfered with. This claim is accordingly dismissed.

(d) Concerning the Applicant’s PPRs for 1985/86 and 1986/87

53. The Applicant protested against the contents of his PPR for 1985/1986. In response to that protest an investigation was undertaken and, finally, by memorandum dated December 22, 1986, the Director informed the Applicant that he had decided to refuse to revise the Applicant’s PPR. The Appeals Committee in its report in May 1989 did say in paragraph 2 (a) that the Applicant asked “that the statements made in Sections II and IV of his Performance Reviews for fiscal years 1986 and 1987 be corrected.” However, the Bank in its reply categorically asserted that the Applicant never lodged an internal appeal against the 1985/1986 PPR and there was no assertion to the contrary by the Applicant. In these circumstances the Tribunal is satisfied that, indeed, the Applicant never did lodge an internal appeal against the decision refusing to change his 1985/1986 PPR. Since he has never exhausted the internal remedies available to him this claim too fails.

54. However, the Applicant did present a timely request for administrative review of his 1986/1987 PPR. This

complaint is devoid of merit. The 1986/87 PPR embodied the collective judgments of the Applicant's managers and independent persons within his department. During the administrative review he had ample opportunity to make his own views known. His managers took pains to look into his complaints and see that he had been fairly evaluated. The Tribunal is of the opinion that these factors are sufficient to dispel doubt regarding the report, and that the Bank's officers did not abuse their administrative discretion in assessing the Applicant's performance. Therefore, there is no basis for designating an "External Financial Expert" to assess the work produced by the Applicant from July 1985-June 1987. So this claim too is dismissed.

(e) Procedural flaws

55. The Applicant's main contention is that he was denied the right to be heard because he was not given an opportunity to answer a memorandum from the Assistant Director, EAP, dated December 10, 1986, which allegedly was the basis for declaring him redundant. The Applicant complains that he had access to it only during the procedure before the Appeals Committee. On this issue, the Appeals Committee found that "the Appellant was not given an appropriate opportunity to respond to statements or comments made by [the Assistant Director's] report." This report ends by stating that the Applicant should only be informed "of the outcome of the present review" but not of its contents.

56. The Tribunal has in a previous case expressed "its grave concern over certain procedural irregularities and other practices that did not conform with the requirements of due process of law. In no case, however, has it found them serious enough to warrant a finding that the substantive decisions based upon them were null and void." (Gyamfi, Decision No. 28 [1986], para. 47). The exception at that time was Gyamfi, where the situation was found to be different. The criterion adopted in that case to find fault with the procedures followed was the consideration that the "failure to inform the Applicant seriously impaired his ability to defend himself." (*Ibid.* para. 43).

57. The Tribunal considers that in the present case the administrative review conducted by the Assistant Director did not seriously impair the Applicant's ability to defend himself. The documentation submitted to the Assistant Director in charge of the review was also made available to the Applicant; he was invited by the Assistant Director to submit additional material that he might deem relevant and he did submit a folder; finally, the Assistant Director met with him on November 18, 1986 to complete the factual information. The memorandum or report which was not communicated to him is only a review of documents concerning the Applicant's performance in the preparation of a Special Appraisal Report for the Zaire Navigation Improvement Project. No additional facts unknown to the Applicant were included in that Memorandum and consequently the Applicant "had full knowledge of the facts necessary to argue his case properly". (Suntharalingam, Decision No. 6 [1981], para. 38).

(f) Retroactive award of a normal merit increase for the period May 1985 to October 1987

58. In view of the Applicant's unsuitability for the evolving needs of the growing Bank, as evidenced by the PPRs for 1985/1986 and 1986/1987, the Tribunal considers that the Respondent has lawfully exercised its administrative discretion. The Tribunal may not substitute its own judgment for that of the Respondent. This claim is therefore dismissed.

(g) The Applicant's request that the Bank postpone notifying the U.S. authorities of the Applicant's end of employment with the Bank, until the Tribunal has decided his appeal

9. In the light of the Tribunal's conclusions above this request has become moot.

Decision:

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



Prosper Weil

/S/ Prosper Weil  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary

At London, England, September 28, 1990