

Decision No. 88

Arno Klempin,
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 June 20, 1989, by Arno Klempin, against the International Bank for Reconstruction and Development. The Tribunal rejected the Applicant's request for answers to interrogatories and production of documents as unnecessary. The usual exchange of pleadings took place. The case was listed on January 17, 1990.

The relevant facts:

(a) The Reorganization

2. The general facts relating to the 1987 Reorganization are as stated in paragraphs 5 to 40 of Decision No. 40.

(b) The particular facts of the case

3. At the time of the Reorganization the Applicant was an economist at level 23 in the Agriculture II Division of the East Asia and Pacific Projects Department of the Bank. At the outset of the Reorganization, by memorandum dated June 11, 1987, the Vice President, Asia Region (VP, AR), wrote to all staff in the Asia Region informing them of the steps that would be taken to implement the Reorganization. The memorandum described the selection process that was to be followed in Round 1. In describing the staff selection procedures that were to apply, the VP, AR, explained that "the main considerations in this process will be work program requirements, the nature of individuals' skills, continuity in current work, and personal preferences of staff"; "the first three factors are to be given the most weight, for the sake of our Borrowers and the well-being of most staff."

4. The Applicant was not selected for a position in the Asia Region during Round 1 on grounds that he did not possess the sector policy skills required and that there were other candidates available whose skills and experience more closely matched the staffing needs in the agriculture sector. Subsequently, the Division Chief of the newly constituted Agriculture Operations Division explained to the Applicant verbally the non-selection decision and offered advice regarding other possibilities within the Bank. The Applicant's non-selection and the reasons therefor were documented. The reason given was that there were too many better qualified candidates.

5. The Applicant, like all staff who had not been selected for a position in Round 1, was informed in writing of the schedule and steps of the Round 2 selection process. Staff were encouraged to identify positions in which they had an interest and for which they were qualified, and to "check with the Personnel Team for the appropriate vice presidential unit to verify that they are aware of your interest and potential candidacy" and to raise any questions about the selection process.

6. As a consequence of the Applicant's statements that neither his tertiary education in Germany nor his experience in his career to that date had provided him with the sector and project policy skills which were

among the generic criteria for sector economists and that his preference was therefore to leave the Bank with the Enhanced Separation Package (Package B), and after careful assessment of the likelihood of his receiving an offer of a position at his current level, the Asia Personnel Team recommended the Applicant for an early award of Package B. The opportunity of opting for Package B was offered to him in a memorandum dated September 18, 1987, from the Acting Vice President, Personnel (VPPER). The Applicant signed and accepted the terms outlined in that memorandum on September 21, 1987.

7. By letter dated February 4, 1988 the Applicant wrote to the VPPER requesting administrative review of the circumstances surrounding his separation from the Bank. The Applicant asserted that the compensation he received under Package B was "grossly inadequate" and requested a reasonable adjustment. The VPPER, in a letter dated February 22, 1989, denied the Applicant's request for additional compensation. He stated that the basis for calculating the benefits under Package B had been communicated to all staff and that the Applicant had personally expressed a preference to leave the Bank with Package B in the conviction that he lacked the sector and project policy skills required of a sector economist.

8. The Applicant thereafter filed an appeal with the Appeals Committee. The Appeals Committee recommended that the Applicant's request for relief be denied. It found that the Applicant's service with the Bank had been terminated in accordance with the Staff Rules and that the Applicant had not substantiated his claim that he had suffered injuries requiring compensation beyond that received under Package B. By letter, dated March 10, 1989, the Senior Vice President, External Affairs and Administration, communicated to the Applicant his acceptance of the Appeals Committee recommendation and denied the Applicant's request for relief.

The Applicant's main contentions:

9. An essential element of the Applicant's conditions of employment was that his employment could not be terminated solely to permit the promotion of the incumbent of a lower-level position. This condition was violated because the Applicant was passed over for selection to a position for which he was qualified in favor of incumbents of lower-level positions or those selected through external recruitment.

10. The Applicant's first choice was not to leave the Bank but to remain with it, provided that his right as a permanent staff member to a long-term career was reasonably assured. The Applicant believed that he was qualified for a position as an economist, particularly in the project area, but that in the light of future Bank needs and to ensure security in his employment, he would also need training in the appropriate skills.

11. The decision not to offer the Applicant training, and consequently to terminate his employment, was a violation of the Respondent's duty under the Principles of Staff Employment to provide the Applicant, a capable employee for many years, security in his employment.

12. The Applicant was not given reasons for his non-selection.

13. The Applicant requested compensation in the amount of three years' net salary for the mistreatment received and the intangible injuries suffered as a result, plus attorney's fees and costs incurred in his pursuit of relief.

The Respondent's main contentions:

14. The Applicant's non-selection resulted from a proper exercise of managerial discretion because his skills, qualifications and experience were found insufficient. There was no violation of any mandatory Bank policy or procedure or any abuse of discretion.

15. The Applicant was not passed over in favor of staff at lower grade levels. The selection process ensured that staff at or above the grade of the position being filled were the first to be considered for selection, although finally the Applicant was found to be unqualified.

16. The Applicant was given the reasons for his non-selection and they were explained to him. The Applicant realized his own limitations and for that reason elected to leave the Bank with Package B.

17. The Applicant was not considered for retraining because he did not have even the basic skills required and because he had expressed a clear desire to leave the Bank.

18. The Respondent does not, according to the Principles of Staff Employment, have to guarantee staff security of employment especially where separation from service is on the grounds of redundancy.

19. The Applicant has not shown that, according to the ruling in Harrison, the damage for which he seeks compensation exceeds the differential between what he received under Package B and what he would have received under the redundancy provisions of Rule 7.01.

20. Attorney's fees and costs should not be awarded. The Tribunal awards these only exceptionally. Normally, it leaves the parties to bear their own costs. This is a normal case.

Considerations:

21. The question is whether the Applicant's non-selection was unlawful, as he claims. The Tribunal is satisfied that on the contrary it was lawful. The decision not to select the Applicant was taken in the exercise of a discretionary power. As the Tribunal has held in several of its earlier decisions, when the Respondent exercises its discretion, "it is not for this Tribunal to substitute its own judgment for that of the competent organs of the Bank." (de Merode, Decision No. 1 [1981], para. 45; Pinto, Decision No. 54 [1988], para. 35). The Tribunal will not interfere with the exercise of such discretion "unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure." (Saberi, Decision No. 5 [1982], para. 24; Suntharalingam, Decision No. 6 [1982], para. 27; Thompson, Decision No. 30 [1986], para. 24; Pinto, Decision No. 56 [1988], para. 36). In this case there is no evidence of the operation of any of these vitiating factors.

22. The Bank had properly exercised its managerial discretion which it had not abused. The Bank acted reasonably in concluding that the Applicant did not have sufficient skills, qualifications and experience; his skills and experience were mainly those of a project economist controlling the operation of specific projects, while the Reorganization placed greater emphasis on sectoral functions and planning ability. The Applicant himself admitted that neither his education nor his experience provided him with the sector and projected policy skills which were the criteria for selection.

23. The reasons for the Applicant's non-selection were explained to him. He realized his own shortcomings, and that was why he elected to accept Package B and leave the Bank.

24. The Applicant was not passed over in favor of lower grade staff. He was found to be unqualified. He was not considered for retraining because, first, he did not even have the basic skills required, and second, he had clearly wanted to leave the Bank.

25. The Principles of Staff Employment do not require the Bank to guarantee security of employment where separation is on the grounds of redundancy. Principle 2.1(d) of Staff Employment cannot be construed as a guarantee of lifetime employment. It must be read in conjunction with Principle 7.1(b)(iii) which expressly recognizes the possibility of separation on the ground of redundancy, as occurred in this case.

Decision:

For the above reasons, the Tribunal unanimously decides that the application be dismissed.

Prosper Weil

/S/ Prosper Weil
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington, May 25, 1990