

Decision No. 191

Antanasije Kocic,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on August 4, 1997, by Antanasije Kocic 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 R.A. Gorman (a Vice President of the Tribunal) as President, P. Weil, A.K. Abul-Magd and Thio Su Mien, Judges. The usual exchange of pleadings took place. The case was listed on March 9, 1998.

2. The Applicant requests the rescission of the Bank's decision to declare his employment redundant under paragraph 8.02(c) of Staff Rule 7.01 on the ground that his skills did not match the changing needs of the Bank.

3. The Applicant joined the Bank in 1986 on a consultant appointment which was converted to a regular appointment as a level 23 Power Engineer in 1988. After his promotion in 1991 to Senior Power Engineer, level 24, he was, in 1994, transferred along with four of his colleagues to the Infrastructure Operations Division of Country Department I of the Europe and Central Asia Region. On December 26, 1995, he was informed that his position would become redundant with effect from January 1, 1996, in accordance with Staff Rule 7.01, paragraphs 8.02(c) and 8.03, and that the Bank would attempt to reassign him to a suitable position. This attempt having proved unsuccessful, a notice of termination was given to the Applicant on June 27, 1996.

4. On March 6, 1996, the Applicant requested an administrative review of the decision to declare his position redundant. This request having been rejected on April 10, 1996, the Applicant filed an appeal with the Appeals Committee on June 7, 1996. In its Report of April 11, 1997, the Appeals Committee concluded as follows:

(a) The decision to declare the Appellant's employment redundant was based on legitimate business criteria: *i.e.*, the determination by Appellant's manager, and the concurrence of those in the management chain, that the changing needs of the Division's client countries required a different skills mix among staff in the Division, and that Appellant's skills, although clearly strong and beneficial to the Bank in the past, did not meet the new requirements.

(b) Neither the testimony nor a careful review of the documentation submitted by the parties revealed any clear evidence of improper bias in the selection of Appellant as a candidate for redundancy.

Accordingly, the Appeals Committee recommended that the Applicant's request for reversal of the redundancy decision should be denied. The Appeals Committee found, nevertheless, that, although the Bank had done a sufficient job in assisting the Applicant in his search for an alternative position in the Bank, his file had been "incomplete and out-of-date during his job-search period, which could have had an adverse impact on his likelihood of being matched for certain vacancies." The Committee recommended, therefore, that in the light of the "special and unusual circumstances surrounding Appellant's case" (danger and financial hardship involved in a return to Yugoslavia; difficulty in finding a position in other international organizations due to Yugoslavia's lack of membership; strong performance of the Appellant as a power engineer), the Bank should waive certain limitations upon eligibility for consultancy and permit Mr. Kocic to be considered for consultant positions on an unlimited basis.

5. On April 23, 1997, the Vice President, Human Resources, accepted the Appeals Committee's recommendation to deny the Applicant's request for reversal of the redundancy decision. Regarding the time limitation on consultancy, the Vice President waived the 30-day limitation and allowed the Applicant to work up to 120 days per year beginning July 1, 1997 but refused to waive the 120-day per year limitation. After his termination, the Applicant was engaged twice by the Bank as a consultant, in October 1996 and from April through September 1997.

6. The Applicant requests the Tribunal to quash the Vice President's decision of April 23, 1997 and to order his reinstatement as a staff member of the Bank Group. He also requests, among other things, adjustment of his salary from October 1, 1996 to the date of his reinstatement; compensation for the loss due to the "forced sale" of his house; reinstatement of pension rights; moving costs from Belgrade to Washington; an article on his case to be printed in *Bank's World*; travel costs from Belgrade to Washington for the hearings of the Appeals Committee; and legal fees.

7. The Applicant maintains that the decision to declare his employment redundant constituted an abuse of discretion and was procedurally flawed. He also asserts that the Respondent did not comply with the statutory requirement to assist him in his search for reassignment in another position in the Bank Group.

ON THE SUBSTANCE

8. Staff Rule 7.01, paragraph 8.02, provides as follows:

Employment may become redundant when the Bank Group determines in the interests of efficient administration that:

....

(c) A position description has been revised, or the application of an occupational standard to the job has been changed, to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position.

9. The Tribunal has ruled that the decision to declare a position redundant is "within the discretion of the Bank, subject only to limited review by the Tribunal" and that, consequently, "[it] will not interfere with the exercise of such discretion unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, [or] improperly motivated...." (*Montasser*, Decision No. 156 [1997], para. 10; see also *Kahenzadeh*, Decision No. 166 [1997], para. 20.)

10. The Applicant maintains that the decision to declare him redundant constituted an abuse of discretion because it was not made "in the interests of efficient administration" as required by Staff Rule 7.01 but was both discriminatory and improperly motivated. It was discriminatory, so he argues, because he was the only power engineer in his Division to be declared redundant although he had more knowledge and experience than his colleagues. The contested decision, he asserts, was also improperly motivated since he was declared redundant "not because there was no work for me" but as a result of the abuse of managerial powers by his Division Chief. The grievances aired against the Division Chief are manifold. He "ignored him from the beginning." He "manipulated the work program, 'skill mix' and 'performance' in order to fire [him]." He wanted him "out of his division, and possibly out of the Bank." He even "tried of finding a way to prevent me of getting any job anywhere."

11. As to the reasons behind the redundancy decision, the Applicant maintains that it was "a mix of the following factors: age, ethnic and professional discriminations." He was "expelled," so he also asserts, "because position was for somebody else," *i.e.*, "to create space for less qualified, protected staff." The Division Chief, so he also alleges, wanted him redundant because "he wanted to be rated as a 'tough' manager in order to be promoted to the Director position (what really happened)." To sum up, the Applicant's contention is that the Respondent's decision to declare his employment redundant constituted an abuse of discretion because it was not based on "the interests of efficient administration" but on what the Applicant describes as the Division Chief's "shameful manipulation."

12. If the Applicant's basic allegation that his employment was declared redundant for improper motives, unrelated to "the interests of efficient administration," were substantiated by the record, the Respondent's decision would constitute an abuse of discretion. This, however, is not the case.

13. It is to be noted in this respect that the Applicant acknowledges that he has serious doubts about the motives behind the alleged discrimination against him. In his pleadings before the Tribunal he writes: "I am not able to understand what was his [the Division Chief's] motive to do this not logical, completely absurd firing without any rationale reason." Notwithstanding his avowed uncertainty, the Applicant nevertheless jumps from mere assumptions to outright assertions of an abuse of discretion, and to the gravest accusations against the Bank: "some of the actions and events may be categorized as a crime," so he writes, and he adds insulting grievances against the Bank's legal department. Such allegations and insults do not, however, amount to producing evidence.

14. More importantly, however, the Tribunal has found nothing in the record to substantiate the Applicant's allegation of an abuse of managerial discretion. Indeed, the Tribunal's conclusion is quite to the contrary.

15. The Division Chief's evaluation of the Applicant in the Performance Review of 1994 did not in any way attempt to cast doubts on his performance; rather it was full of praise. It is the Management Review Group which, while addressing this evaluation, added, on February 7, 1995:

The group also discussed the possibility that, subject to developments in the policy front, the work program in the energy sector for the countries in the Department may not justify two power engineer positions, in which case Mr. Kocic should be alerted to the possibility that his position may be declared redundant.

16. In an All-in-1 note of September 29, 1995 to the Acting Director, the Division Chief explained in detail that the changing needs of his division had prompted him to advise the Applicant of his likely redundancy. The countries with which his department was working (Bulgaria, Rumania, Turkey), so the Division Chief explained, were "going through transition processes" and the expertise they now needed was "primarily ... privatization, regulation in market economies or management in well run utilities." The Applicant, the Division Chief added, is "an expert in the use of planning models for investment decisions in the power sector" and "has also acquired experience in procurement," but he "does not meet these [new] requirements and I do not consider that retraining is a viable option: what he is missing is hands-on experience in areas that require many years of exposure before it may be argued that one has acquired expertise in them."

17. The assessment that the Applicant's skills did not meet the changing needs of the countries involved was not the Division Chief's alone but had been discussed with, and was shared by, various levels of management. This belies the Applicant's allegation that the motive behind his redundancy was the Division Chief's personal or ethnic prejudice against him. It may be noted in this respect that after the Energy Sector Staffing Group met on January 16, 1996 to assess the Applicant's "fungibility as a Power Engineer in the Bank and [his] chances of securing a position in [his] current job search," it advised the Applicant as follows:

To effectively pursue the Bank's agenda in the sector, the Bank requires Power Engineers who have, in addition to strong technical background, experience in utility management and can provide leadership on policy and institutional issues, such as power sector restructuring and promotion of private participation. These guiding principles are now embodied in all the staffing group's deliberations and decisions. With this background the group concluded that your technical background is fairly narrow compared to many of the Bank's energy staff. The Group also concluded that while you obviously have had experience in power sector reform and restructuring your capacity to provide the necessary professional and intellectual leadership in this area, again relative to other sectoral staff, is limited.

In light of the above, as well as the need to strengthen your communications skills as reiterated in your last two PMPs, it is the Group's assessment that your chances of being selected for Power Engineer vacancies in the competitive staffing process are not promising. However, the Group has recommended to the Staffing Center that you should continue to be given due consideration for Power Engineer vacancies. We have also

proposed that the Staffing Center consider you for future Procurement vacancies.

The Applicant's allegation that this statement was "fabricated only as additional support for [the Division Chief's] unjustified decision" is not supported by the record.

18. The Applicant points to the quality of his performance as a power engineer and to the overall positive evaluation made of his performance by his supervisors and the Bank's clients. This, however, is not relevant to the case. The Applicant's employment was not terminated on the grounds of unsatisfactory performance but because of redundancy, his skills being regarded as no longer matching the needs of the Bank which were less for pure engineering and more for economics and management. In the words of a previous judgment, "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" (*Kahenzadeh*, Decision No. 166 [1997], para. 22). The Bank's assessment that the Applicant's expertise was no longer of the kind called for because of the situation then arising in the interested countries is "an exercise of its managerial discretion" (*id.* para. 20), and it is not for the Tribunal to substitute its own assessment for that of the Respondent.

19. The Applicant insists on a comparison with his colleagues in the Division who were not declared redundant even though, so he maintains, "I do have more knowledge and experience in all mentioned fields than [my four colleagues] combined" and even "than entire management of EC1IN." However, as the Respondent rightly points out, the issue before the Tribunal is not whether the Applicant's qualifications were better or worse than those of his colleagues, but rather whether his skills met the changed needs of the Bank. His employment was declared redundant not under paragraph 8.02(d) of Staff Rule 7.01, i.e., that is to say, because of a reduction in the number of specific positions, but under paragraph 8.02(c), i.e., as a consequence of the new requirements of the position. As the Tribunal has found previously, "[t]he question of identifying the specific provision of Staff Rule 7.01 under which the position of the Applicant was declared redundant is of considerable importance, since the Respondent's obligation vis-à-vis the staff member under paragraph 8.02(d) of Staff Rule 7.01 is different from that under paragraph 8.02(b)" (*Arellano*, Decision No. 161 [1997], para. 31; *Aziz*, Decision No. 162 [1997], para. 31). In accordance with paragraph 8.03 it is only "[w]here positions are reduced in number" that "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 ... [t]he performance of staff members." In the present case, where the decision to declare the Applicant's employment redundant was based not on a reduction of the number of power engineer positions in his Division but on the fact that the Applicant did not meet the changed needs of his position, a comparison with his colleagues was, and is, irrelevant. The Tribunal, therefore, neither has to examine the Applicant's plea that his qualifications were higher than those of his colleagues nor the Respondent's plea that they were in effect lower.

20. The Applicant's allegations of bias and discrimination are, moreover, belied by the way the Bank's management, including his Division Chief, appears to have taken into account the Applicant's personal situation and the hardship that the redundancy decision would cause to him and to his family. Already at the start of the process the Division Chief indicated in his note of September 29, 1995 to the Acting Director that he had been alerted to the Applicant's difficulty as a Yugoslav national "to obtain residence in any country other than Serbia, where ... living conditions are extremely hard" and where he had lost his former home. The Division Chief expressed the hope "that an effort can be made to identify a position where his [the Applicant's] skills can be put to productive use," in particular "as a power engineer in countries facing more conventional 'pure engineering' issues... or as a procurement officer, since he has acquired experience in this area." These observations were repeated almost word for word in the letter of October 18, 1995 by which the Vice President, Europe and Central Asia Regional Office (ECA), sought approval of the Applicant's redundancy from the Manager, Human Resources. In a memorandum of December 28, 1995 the Personnel Officer noted that the Applicant's "situation is rather desperate because he cannot return to his country, having lost everything during the war.... This fellow will need all the help we can give him." It was with a view to alleviating the Applicant's hardship that he was given on August 6, 1996 an additional ten months to search for an alternative job within the Bank Group.

21. It is also important to note, with respect to the Applicant's claim of discriminatory treatment, that, as the

Respondent observes, at about the same time as the Applicant's redundancy a large number of Bank staff members (more than 400) were declared redundant.

22. In the light of the above, the Tribunal concludes that the Applicant's allegation that the decision to declare his employment redundant under paragraph 8.02(c) of Staff Rule 7.01 was made for reasons other than "the interests of efficient administration" and, consequently, constitutes an abuse of discretion, is not borne out by the record.

PROCEDURAL ASPECTS

23. Paragraph 8.03 of Staff Rule 7.01, as it then provided, stated as follows:

A decision that a staff member's employment is redundant shall be made by a vice president responsible for administering the position, with the concurrence of the Manager, Human Resources, or Manager, Human Resources Service Center....

24. The Applicant complains that this requirement has not been complied with.

25. The Applicant first argues that while the Personnel Officer informed him on December 27, 1995 that his employment had been declared redundant under paragraph 8.02(c) of Staff Rule 7.01 because his qualifications did not meet the requirements of the redesigned position, "[t]here is no document which show that decision was made and when was made." This assertion is belied by the record. Attached to the letter of the Personnel Officer was the All-in-1 note of the Division Chief, already referred to, by which the latter informed the Department Director of his proposal to initiate the procedure towards redundancy and detailed the reasons for this initiative. In accordance with the statutory requirements, the formal decision to declare the Applicant's employment redundant was then made by the Acting Vice President, ECA, in a memorandum to the Applicant confirming that

with the concurrence of the Manager, Human Resource Services, your position has become redundant with effect January 1, 1996. This decision has been taken in accordance with Staff Rule 7.01, paragraphs 8.02(c) and 8.03.

26. The Applicant also asserts that "the decision of only one manager, Division Chief, was enough to complete the expelling process and ... redundancy was never approved in accordance with Staff Rule 7.01." Not only is this allegation inconsistent with the allegation, discussed in the preceding paragraph, that no decision was actually ever made to declare him redundant, but it appears baseless. The record shows that the decision was discussed at various levels within the management and met with general approval. In particular, as early as October 18, 1995 the Vice President, ECA, had requested the concurrence of the Manager, Human Resources Service Center, as provided for in Staff Rule 7.01, and this concurrence was given on October 31, 1995 in the form of a request for approval of severance payment. The Applicant questions the authenticity of this document because it bears the date of October 31, 1993 and not of October 31, 1995 -- which, so he alleges, shows "the way the Bank's managers operate using falsified documents." It appears, however, from the document itself that this was beyond question no more than a clerical error. The Applicant further argues that even if the document were not a forgery it was not an approval of the redundancy but only a request for approval of severance payment. This observation is true, but it overlooks the fact that this request, as the Applicant acknowledges, "anticipated that the person was already declared redundant" and necessarily implied its author's concurrence with the redundancy decision.

27. The Tribunal concludes that the Applicant's allegations of procedural flaws are without basis.

ASSISTANCE IN REASSIGNMENT

28. Paragraph 8.05 of Staff Rule 7.01, as it then provided, stated as follows:

The Bank shall assist staff in seeking another position among existing vacancies in his type of appointment within the Bank Group through the Job Search Center and the Internal Staffing Process. This will include

positions, the duties of which are commensurate with the staff member's qualifications, or for which the staff member can be retrained in a reasonable period of time, as provided in paragraph 8.06....

29. The Applicant asserts that not only did the Respondent "not give [him] any assistance in the job search for an alternative position in the Bank" but that "[q]uite opposite" the Bank "did everything possible to prevent him to get an alternative position...." He "submitted number of applications for the positions within the Bank," so he alleges, but "because of 'prearranged' vacancy processes, paternalism, favoritism, corruption and number of similar non competitive categories" he "was not able to get any of them" because "[a]ll of them [were] reserved."

30. The record does not substantiate these complaints. As early as September 29, 1995, when the Division Chief informed the Department Director of his intention to have the Applicant's employment declared redundant, he pointed to the hardship that such a decision would cause the Applicant and his family and added:

I hope that an effort can be made to identify a position where his skills can be put to productive use.

He suggested a position either as a power engineer in countries still facing pure engineering issues or as a procurement officer.

31. A few days later, but still before the decision of redundancy was made, the Human Resources Officer started her search for an alternative position for the Applicant. In a letter dated October 2, 1995 she noted that "[t]he skills requirement[s] in the region have changed and this staff [the Applicant] does not possess the current requirements." She proceeded then to detail the Applicant's skills and experience in power projects and in procurement and inquired whether "there are current or future needs for his background in other regions."

32. On December 26, 1995, when giving the Applicant a formal notice of redundancy in accordance with Staff Rule 7.01, the Vice President, ECA, wrote:

The Bank will attempt to reassign you to a suitable position among existing or known vacancies in your type of appointment. I would like to encourage you to work closely with the staff in the Job Search Center (JSC) in this endeavor.

33. Meanwhile, the Human Resources Officer pressed her efforts. On December 28, 1995, for instance, she wrote to the Manager, Staff Services, as follows:

We have been trying very hard to find him something else in the Bank. He recently went on mission for EC3 with [a] view that he might work out there. Unfortunately he did not do well and the Div[ision] Chief isn't going to offer him a job.

34. Moreover, as previously noted, on January 16, 1996, *i.e.*, a few weeks after the notice of redundancy had been given to the Applicant, the Energy Sector Staffing Group held a meeting to review his qualifications and experience. In a memorandum to the Applicant dated January 26, 1996, the chairman of the Group wrote that "your chances of being selected for Power Engineer vacancies in the competitive staffing process are not promising."

35. On April 18, 1996, the Human Resources Officer sent to the Applicant a memorandum detailing her efforts to find him an alternative job within the Bank. The efforts, she informed him, had failed because the skills and experience needed were not limited to those of a power engineer and because his fluency in English was not sufficient.

36. As a result of the failure to find the Applicant an alternative job, the Manager, Human Resources Service Center, gave him the notice of termination in accordance with Staff Rule 7.01.

37. The Applicant alleges that all the efforts to find him an alternative position within the Bank, as relied upon by the Respondent, are "only words." Nothing in the record substantiates this allegation. True, the Respondent's efforts did not succeed, but the Bank's obligation to assist the Applicant in seeking an alternative position did not imply any guarantee that such a position could be identified and that he would be reassigned. The decisions made by the various departments of the Bank to which he had turned not to offer him a position

cannot be reviewed by the Tribunal unless there is evidence of an abuse of discretion, which is not the case here.

DECISION

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

Robert A. Gorman

/S/ Robert A. Gorman
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At London, England, May 15, 1998