

Decision No. 32

Frank H. Lamson-Scribner, Jr.,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and A.K. Abul-Magd, Vice Presidents, and R.A. Gorman, E. Lauterpacht, C.D. Onyeama and Tun M. Suffian, Judges, has been seized of a complaint, received May 28, 1986, by Frank H. Lamson-Scribner, Jr. against the International Bank for Reconstruction and Development. The Applicant objected to the Respondent's answer because it contained data inadmissible on the grounds of confidentiality. Having considered the arguments of the parties on the objection the Tribunal ordered that (i) the Answer of the Respondent be accepted as part of the pleadings, (ii) the issues pertaining to the confidentiality of evidence be addressed by the Tribunal in considering the merits of the case, and (iii) the Applicant formulate his claim in regard to such issues in his Reply. After the usual exchange of pleadings, the case was listed on February 27, 1987.

The relevant facts:

2. The Applicant, after some twenty-five years of service with the Bank, retired from his position as Division Chief on July 16, 1984. As a national of the United States, the Applicant's gross income from the Bank was subject to federal and state tax. Although the Bank, pursuant to the prevailing compensation policies, included in the Applicant's gross 1984 pay a "tax allowance," the Applicant upon filing his tax returns for that year in April 1985 concluded that he was entitled to an additional "safety net" payment and made a request for such payment from the Respondent's Tax Office on April 12, 1985. Upon being denied such a safety-net payment, the Applicant filed an appeal with the Appeals Committee on August 16, 1985. The Bank's challenge to the Committee's jurisdiction (on the ground that the Applicant was seeking to have the Bank's compensation rules changed rather than enforced) was rejected by the Appeals Committee which, after a hearing on the merits, recommended that the Applicant be given a safety-net tax allowance that would not disadvantage him for having retired in midyear. On February 28, 1986, the Vice President, Personnel and Administration (PA), stated in a letter to the Applicant that, although he agreed that the prevailing method of calculating safety-net payments for part-year staff should be reconsidered, he would await the results of a forthcoming comprehensive review of the tax allowance system at the Bank and the International Monetary Fund (the Fund), and would give the Applicant the retroactive benefit of any change in such system. The Applicant, declining to delay until then the pursuit of his remedies within the Bank, filed his application with this Tribunal on May 28, 1986.

3. A fundamental element of the Respondent's compensation policies since December 1946 has been the payment to staff members of salaries computed on a "net of tax" basis in recognition of the fact that nationals of almost all Bank members pay no taxes on their Bank income, and the payment to nationals of the United States (and a small number of other countries) of an additional amount as reimbursement for taxes on Bank income. This policy, and its purpose, were articulated by the Executive Directors of the Bank in their recommendation adopted December 10, 1946:

Reimbursement of the United States Federal income taxes payable on the salary of any employee of the Bank would be made currently in the year in which such salary is paid by paying to such employee, in addition to his net salary for such year, an amount which when added to such net salary will yield a net income for the year, after deducting United States Federal income taxes thereon, at least equal to such net salary.

The “after tax” salary of U.S. nationals would, through this tax-reimbursement system, thus be equivalent to the salaries of comparably situated non-U.S. staff members. The tax reimbursement was to be paid in four installments so as essentially to coincide with the deadlines under U.S. tax law for the payment of “estimated taxes” by U.S. nationals whose taxes were not being withheld by their employers from their periodic income payments.

4. The Executive Directors adopted two other recommendations which in broad outline have prevailed to this day in the implementation of the Bank’s tax-reimbursement policy. One recommendation was that in computing the amount of reimbursement there should be deducted from gross income the amount of exemptions (based on number of family members) reported by the taxpaying staff member as well as “the amount of the standard deductions from such salary which are allowable under the United States Federal income tax law and regulations issued thereunder.” The so-called standard deduction (presently known as the “zero bracket amount”) has historically been available to U.S. taxpayers as a means of reducing gross income in order to calculate taxable income, as an alternative to specific “itemized deductions” for such taxpayer expenses as charitable contributions, state taxes, and medical and interest payments. The other pertinent policy endorsed by the Executive Directors in December 1946 concerned the tax-reimbursement calculation for staff members who – like the Applicant in this case –commence or terminate employment during the calendar (or tax) year:

In the case of an employee who is employed by the Bank for a part of a year, the amount of such tax reimbursement payable to him for that year should be the amount of tax reimbursement which would be payable to him on his Bank salary if he had been employed by the Bank for the entire year pro rated for such part of the year as he is in the employ of the Bank.

The effect of the “annualization” calculation for part-year employees was to maximize their tax-reimbursement payment. Rather than treat their part-year salary as their total salary, taxable at a lower percentage in the U.S. graduated system, the staff member was treated as though he received a full year’s salary at the same rate, thus placing him in a higher tax bracket and resulting in a higher pro-rated tax reimbursement.

5. Within two years, these recommendations of the Bank’s Executive Directors were reflected in a formal statement in the Respondent’s Administrative Manual, issued on September 13, 1948. The Manual stated: “Since the United States income tax is payable during the year when the taxable income is earned, reimbursement will be paid quarterly by the Bank during that year, and will be in an amount sufficient to pay the tax on the total of the net-of-tax pay plus the reimbursement.” The Manual also adopted the assumption that the taxpaying staff member utilized the “standard deduction” in computing his taxes, rather than itemizing his deductions. Because the standard deduction was the minimum deduction available to U.S. taxpayers, this assumption had the effect of generating the maximum taxable income and thus the maximum possible tax-reimbursement payment. Employees who accumulated greater deductions by itemizing them, and who thus further reduced their taxable income, would therefore receive a higher tax reimbursement under the “standard deduction” assumption than the amount of taxes they actually paid on Bank income. The Administrative Manual also provided that the part-year staff member was to have his tax-reimbursement computed as if “he had worked for the Bank for the entire year at the same rate of salary, but prorated for the part of the year that he worked for the Bank.” The Manual gave an example of a staff member who started to work for the Bank on July 1 and whose total net salary for the six months was \$1500. Annualizing this salary to \$3000, and assuming that the taxpayer was single and with no dependents, it would have been necessary to add to such an annual salary a tax reimbursement in the amount of \$425 in order to yield \$3000 net of tax; the staff member’s tax reimbursement for his six months of service would thus be \$212.50.

6. The principle features of the Respondent’s tax-reimbursement program were reiterated in Personnel Manual Statement (PMS) 3.05, issued in December 1973. It is that PMS, as amended, that is in effect today. PMS 3.05, para. 10, provided:

The Bank Group will reimburse taxes on net-of-tax salaries and on allowances and other non-salary payments which are required to be included in taxable income Tax reimbursement will be computed on

the basis of normal filing of tax returns at the applicable tax rates and the exemptions and the standard deduction which a staff member is entitled to claim on his tax returns.

PMS 3.05, para. 15, preserved the principal of annualization that had been a part of the Bank's tax-reimbursement system since 1946:

Except in the case of a Bank staff member who has transferred from or to the Corporation, or a Corporation staff member who has transferred from or to the Bank during the year, the reimbursement payable by the Bank Group [to] a staff member who is in its employ for only part of the calendar year will be computed by prorating for that part of the year the amount to which he would have been entitled if he had worked for the Bank Group for the entire year at the same average rate of regular salary.

7. In May, 1979, the Executive Directors of the Bank decided to modify certain of the elements of the Respondent's longstanding tax-reimbursement system, while preserving the basic principle that after-tax income of taxpaying staff members should be equivalent to the compensation of peers paying no tax on Bank income. The Directors adopted a decision that, should the Bank fail to convince the United States and other governments to exempt their nationals from taxes on Bank income, "the present system of tax reimbursement should be replaced, effective January 1, 1980, subject to a satisfactory resolution of technical problems, by a system based on average deductions with a five-year transition period for existing staff." Rather than base its tax-reimbursement calculations upon the assumption the U.S. staff members claimed only the standard deduction, the Bank would henceforth utilize published tax information of the U.S. Internal Revenue Service to determine the average deductions (typically, itemized deductions) being claimed by U.S. taxpayers in the various income brackets comparable to those of Bank staff members. This change from using the standard deduction to using the average deduction would predictably have the effect in most cases of reducing staff members' tax-reimbursement payments, now referred to as the "tax allowance." This action by the Bank was challenged in de Merode (Decision No. 1 [1981]), in which the Tribunal decided that this modification in the formula for calculating tax allowances was not a violation of the staff members' contracts of employment or terms of appointment.

8. After the Executive Directors reached final decisions on the detailed arrangements for the implementation of the new system, the Bank issued Manual Circular Pers./1/80 on January 21, 1980. That Circular referred to PMS 3.05, reiterated that it was the intention of the Executive Directors to replace the longstanding tax-reimbursement system with "a system of tax allowances based on average deductions," and declared that "this Circular, therefore, amends and supersedes in part the provisions of Personnel Manual Statement 3.05." Pers./1/80 explained in detail the reasons underlying the change to the average-deduction assumption, and the relationship between the tax assumptions underlying the process of "netting down" from gross taxable comparator salaries and "grossing up" from the Bank's net salaries to compute the tax allowance. The Circular provided for a gradual "phasing in" of the new average-deduction calculation over a period of five years. The Circular acknowledged that some members – by virtue of their family situation (e.g., marital status and number of dependents) and the amount of deductions they actually claim – would pay more tax on their Bank income than the amount of tax allowance they would receive from the Bank utilizing the average-deduction system. Paragraph 18 of Pers./1/80 accordingly stated that the Executive Directors had "decided that the Bank will continue to apply to existing staff, for the duration of their service with the Bank, a safeguard so as to ensure that, as a minimum, such staff are reimbursed for the taxes they are required to pay on their income from the Bank." (Emphasis in original.) Paragraph 19 set forth the details of this safeguard, which was also referred to as the "safety net":

19. Thus, any existing staff member who, after preparing the final income tax returns for the year, considers that the total amount of the tax allowance received (including any supplemental amount received as a result of the transitional provisions described at paragraph 15 above), is less than the taxes due on Bank income may choose to apply for a supplementary payment as provided below.

(a) The staff member should submit to the Bank's Tax Office prior to September 30 of the year in which the final tax returns are due a copy of his/her federal and state tax returns, together with a statement of

total spouse income for the year in question (if this is not readily apparent from the returns) and a certificate that these are the final returns on which taxes were actually paid.

(b) Normally it would suffice for the staff member to submit federal tax form 1040 (or 1040A as appropriate) and the corresponding state tax form with only the relevant supporting schedules (e.g. schedules A and B of the federal tax return). However, the Bank may require such further documentation as may be necessary to substantiate the claim of under-reimbursement.

(c) All documents submitted by the staff member will be held in the strictest confidence.

(d) Provided the staff member has filed in the most economical manner, a calculation will be made as follows:

(i) that portion of the actual deductions claimed which is attributable on a pro-rata basis to the staff member's own outside income will be subtracted from the total deductions claimed;

(ii) a revised tax allowance will then be calculated, taking account of the staff member's actual filing status, actual number of exemptions claimed and state of residence, in the same manner as in the basic system except that actual deductions claimed (pro-rated between Bank and spouse income where necessary) will be substituted for average deductions.

(e) Where the revised tax allowance so calculated is greater than the amount of tax allowance already paid (including any supplementary amount as a result of the transitional provisions) the Bank will reimburse the additional amount involved.

The final paragraph of Pers./1/80, number 21, provided: "Personnel Manual Statement 3.05 will be revised in due course. In the meantime, its provisions will continue to apply except to the extent necessary to reflect the changes announced in this Manual Circular."

9. Manual circular Pers./1/80 of January 21, 1980 was accompanied by a Manual Transmittal Memorandum of the same date, signed by the Vice President, Administration, Organization and Personnel Management (AOP). A major purpose of the Memorandum was to address the concerns of staff members that the new tax-allowance system would have an adverse impact upon their compensation. The Vice President gave his assurances:

For existing staff most importantly, the safety net provisions (see paragraphs 18 & 19 of the attached Manual Circular) will ensure that, so long as they continue in Bank employment, existing staff will, as a minimum, be reimbursed for the taxes they are required to pay on their Bank income. This will effectively minimize for many staff, and in some cases eliminate entirely, the impact of the new system.... Finally, the amendment to the By-Law [providing for the tax-allowance system] has no implications whatsoever for existing staff since the safety net provisions ensure that, for them, the Bank will continue to provide tax allowances which fully conform to both the letter and the spirit of the earlier By-Law.

10. In a memorandum addressed to "All US Staff Members," dated December 29, 1980, the Director, Compensation Department (COM), provided further information about the calculation of, and the procedures for claiming, supplementary tax allowances under the safety-net provisions. The memorandum reiterated that if a staff member's tax allowance based on the average-deduction assumption "is less than the taxes attributed to your Bank income, you may apply for a supplementary payment under safety net provisions." Illustrative calculations were set forth in twelve annexes for the purpose of explaining how staff members in differing tax situations were to calculate their tax liability on their Bank income. The staff member's "actual deductions will be used in calculating your tax allowances under the safety net provisions." Because the minimum actual deduction to be used in this safety-net calculation was the standard deduction (zero bracket amount), "no staff member will receive in total a greater tax allowance now than he would have received under the former system of tax reimbursement based on standard deductions." Staff members claiming under the safety-net provisions

were to provide the Bank's Tax Office with a copy of their federal and state income tax returns. Assurances were given regarding the confidentiality of that information:

Information from the tax returns will be used only for the purpose of administering the safety net provisions Because of the personal and sensitive nature of these data, the Bank will take due care to ensure the security and confidentiality of all material you provide and will return all copies of tax returns to you. No one, other than the staff of the Tax Office and the Bank's Internal Auditors, will have access to any individual data which could be ascribed to you.

11. Staff members applying for the safety-net reimbursement were expected to fill out Form 1734, which required disclosure of the three basic elements of the safety-net computation; adjusted gross income, number of exemptions, and actual deductions for the tax year in question. The staff member was also to certify that his appended tax forms were "true and correct." A sheet of instructions attached to Form 1734 reiterated verbatim the assurances regarding confidentiality and return of the staff member's income tax material, as set forth in the memorandum of the Director, COM, quoted in paragraph 10 above.

12. In none of the formal documents or other statements pertaining to the conversion in 1979-80 from the system of using the standard deduction to compute the tax reimbursement, to the system of using average deductions to compute the tax allowance, was any mention made of the "annualization" formula for part-year staff members as set forth in PMS 3.05, para. 15, dating back to 1973. For example, the document that formally amended the Personnel Manual Statement – Manual Circular Pers./1/80, dated January 21, 1980 – made no explicit reference to the annualization practice for part-year employees. Nor did any of the twelve annexes to the Director's memorandum of December 29, 1980 – designed as exhaustive examples of safety net calculations for staff members in varying tax situations – incorporate any example involving the part-year employee. Pers./1/80 did however provide, as noted above, that in implementing the safety-net provisions,

[A] revised tax allowance will then be calculated, taking account of the staff member's actual filing status, actual number of exemptions claimed and state of residence, in the same manner as in the basic system except that actual deductions claimed....will be substituted for average deductions. (Emphasis added).

It also stated that the provisions of PMS 3.05, until formally revised, "will continue to apply except to the extent necessary to reflect the change announced in this Manual Circular."

13. The Respondent does continue to use the annualization principle of PMS 3.05, para. 15, when computing the basic tax allowance (as distinguished from the safety-net allowance) for part-year staff members. The staff member's salary is assumed to have been paid at the same rate over the entire year, and then a tax allowance is computed based on the average deductions of comparable U.S. taxpayers, and that tax allowance is then pro-rated for that part of the year actually worked at the Bank. The Applicant's tax allowance for 1984 – the tax year during which he retired from the Bank, on July 16 – was calculated on the basis of such annualization of his part-year Bank income. As the annualization procedure is designed to do, the Applicant was given the benefit of having his tax allowance computed at the higher tax rate applicable to taxpayers with greater income than the total Bank income he actually received through slightly more than the first half of 1984.

14. The Applicant nonetheless concluded that he was entitled to a supplementary safety-net payment, because his actual deductions for the 1984 tax year were less than the average deductions imputed to him when calculating his tax allowance. In effect, the Applicant concluded that the annualization principle of PMS 3.05, para. 15, should be employed in determining entitlement to a safety-net payment as well as in calculating the ordinary tax allowance, and that the former calculation should incorporate his actual deductions for 1984. On April 12, 1985, he therefore filed Form 1734, stating his adjusted gross income, his exemptions (only one, for himself) and the total of his actual deductions for 1984, and he enclosed copies of the required pages of his federal tax return (Form 1040) and his state tax returns. The Applicant accompanied these documents with a short letter asking that his request be processed promptly; "If I am to receive no safety net, I would like to get the Appeals procedure underway sooner rather than later." His request for safety-net reimbursement was denied by the Respondent's Tax Office in June 1985, and subsequent efforts to have the decision reconsidered

were not fruitful.

15. On August 16, 1985, the Applicant filed an appeal with the Appeals Committee. After securing an adverse ruling in its challenge to the Committee's jurisdiction, the Bank on October 31, 1985, filed its answer which included copies of the Applicant's tax returns, containing information (such as alimony payments and contributions to individual retirement accounts) which the Applicant contends was confidential and irrelevant to the computation of his tax allowance and to the issues in his appeal.

16. The Appeals Committee, without commenting on the propriety of the Bank's disclosure of the Applicant's tax returns, sustained the appeal from the denial of safety-net reimbursement. It concluded that the Bank's refusal to annualize the Applicant's part-year income for purposes of the safety net, while at the same time using actual deductions in computing safety-net payment for full-year employees, resulted in a lower net-of-tax salary rate for the Applicant than the rate at which he would have been paid had he worked all of 1984:

It is an obvious principle of employment (which finds expression in paragraph 15 of PMS 3.05) that a staff member should receive a salary at the rate fixed for him or her in his or her contract whether he or she works a whole year or only part of a year. At the hearing of this Appeal, the Bank readily acknowledged the application of this principle and yet it appears that in this case the use of the Bank's "safety-net" calculation procedure has had the effect of excluding the principle..... In the Committee's view, if Appellant had [prior to his retirement] come to know that he would receive a "net of tax" income from the Bank at a lower rate if he separated during the year than if he separated at the end of the year, this would have had an important bearing on the subsequent agreement between the Bank and Appellant on a mutually satisfactory termination date for Appellant's special leave.... The Committee, therefore, recommends that the Director (COM) reconsider Appellant's claim for a "safety-net" tax allowance for 1984. In so doing, the Committee recommends further that the Director (COM) use a calculation procedure which is consistent with, and gives effect to, the principle that staff should receive a "net of tax" salary at the same rate fixed for them whether they work part year or full year....

17. By a letter to the Applicant dated February 28, 1986, the Vice President, PA, stated: "I agree with the Committee's recommendation that the present method of calculating safety net payments for part-year staff should be reconsidered." He also stated that such reconsideration would be carried out in connection with a joint Bank/IMF comprehensive review of the tax-allowance system scheduled to be undertaken in the future.

18. Prior to receiving this letter, the Applicant had written to the Vice President, PA, to complain about the Bank's breach of confidentiality in dealing with the tax data he submitted along with his request for safety-net reimbursement. On March 14, 1986, the Vice President responded: "When you requested the safety-net calculation, your letter stated your intention to appeal if the result was not satisfactory to you. It is a common rule of law that obligations of confidentiality cease for the purpose of litigation and the like when disputes arise between a person who provides confidential information and the recipient of the information." The Vice President also invoked PMS 4.015, dated November 1982, dealing with the Bank's Personnel Information Policy. Paragraph 4(d) of PMS 4.015 provides that among the staff records to be maintained by the Bank is "information necessary to make compensation and related payments," and paragraph 20 provides that "All staff records are available for Bank use in connection with any matters which may involve legal, quasi-legal, or internal or external administrative proceedings." The Vice President in his letter to the Applicant acknowledged a conflict between these provisions in PMS 4.015 and the assurances of confidentiality of tax information reiterated on Form 1734 for safety-net reimbursement. He stated:

Thus, an ambiguity was created.

Now that all pertinent facts have been analyzed and the source of the misunderstanding established, I conclude that a very regrettable incident affecting you has occurred.... I want to assure you that I am taking steps to see that this cannot happen again....

19. One month later, on April 14, 1986, as a result of discussions between Bank Management and the Staff Association concerning the use by the Bank of tax information assumed to be confidential, a joint statement

was promulgated. It pointed out the inconsistency between PMS 4.015, para. 20, concerning Bank use of staff records in connection with legal or administrative procedures, and the assurances of confidentiality on the safety-net application. The joint statement provided:

In order not to discourage legitimate applications for additional compensation under the safety net, the Bank has removed the inconsistency by: (a) reaffirming the statement on the back of the safety net application form, and (b) exempting information derived from tax returns solicited in connection with safety net applications from the provisions of Section 20 of PMS 4.015 ... [T]he Bank wishes to assure all US nationals eligible for additional compensation under the safety net that no information that could be ascribed to tax payers is being extracted or has ever been extracted routinely from tax returns. Moreover, a directive is being given that the tax files be reviewed and purged immediately of any such information which may have been retained inadvertently.

The application to the Tribunal was filed six weeks later.

The Applicant's main contentions:

20. The letter and spirit of the documents circulated to staff require that part-year employees be permitted to invoke the "annualization" principle embodied in PMS 3.05, para. 15, for the purpose of calculating the supplementary safety-net payment based on actual deductions for that part year.

21. The method of calculation applied to the Applicant's part-year tax reimbursement discriminates against him and others in his position. Under this method of calculation the employee who works part of a year receives a lower "daily wage" than those who work for the whole year.

22. Since proration for part-year employees is in the basic system, it follows that the revised tax allowance for part-year employees calculated under the safety-net provision would also be in that system.

23. Revision of the Respondent's tax allowance system by the Tribunal is not requested. It is the Respondent's non-conforming calculation practice that is disputed.

24. Not to recognize the Applicant's contentions would result in permitting the Respondent to change its conditions of employment without informing staff in the appropriate way. Since elimination of the annualization/proration procedure for safety-net tax allowance calculations for part-year staff was a principal change, it should have been mentioned in the written codification of the tax-allowance system.

25. The Respondent has violated its undertaking given in various documents and at different times to keep certain information contained in the Applicant's tax returns confidential, by using this information in the proceedings before its Appeals Committee and by including it in its answer to the Tribunal. The Applicant has not implicitly or explicitly waived his right to confidentiality.

26. The Applicant claims

(i) payment of a net sum as reimbursement of taxes for 1984 (for part of which he worked for the Respondent), as calculated by the proration principle referred to in PMS 3.05, para. 15, and amounting to \$17, 459 as total gross reimbursement;

(ii) payment of a sufficient sum so that he will receive after income taxes an amount equal to the social security taxes he will be required to pay on income received from the Bank as a result of this Application to the Tribunal, which sum is calculated at \$2,449;

(iii) payment of interest on sums due at an appropriate rate;

(iv) damages amounting to 22 1/2 months salary for Respondent's breach of contract in not respecting its obligation of confidentiality, and rejection of the Respondent's answer or in the alternative expurgation of all

confidential information; and

(v) costs based on documentary evidence of expenses.

The Respondent's main contentions:

27. The history of the safety-net provisions in the Respondent's tax-reimbursement system shows that they are not applicable to part-year employees. PMS 3.05, para. 15, as interpreted in light of Pers./1/80 and related explanatory documents introducing the safety-net system, reflects this.

28. There was no discrimination because the rules applied to the Applicant were applied also to other staff members in his position.

29. The claim for reimbursement of social security payments should be disallowed.

30. No interest should be levied, as the Tribunal has never done this and the omission of the Respondent was not in bad faith.

31. The Applicant implicitly waived his right to the confidentiality of certain information contained in his tax returns when he stated his intention to appeal. He also explicitly waived that right in his application to the Tribunal. There is, therefore, no reason why the Respondent's answer should be rejected. The Respondent is willing to expurgate in these proceedings any information contained in Annex 12 of its answer. The Applicant has not demonstrated any compensable injury resulting from the alleged breach of the Respondent's obligation of confidentiality. Hence no compensatory or punitive damages should be awarded on this account.

32. Costs should not be awarded, because the Applicant did not nominate counsel as provided for by the Rules of the Tribunal.

Considerations:

33. The first issue that the Tribunal must address is whether the Respondent's failure to pay to the Applicant a "safety-net" tax allowance violates his contract of employment or the terms of his appointment. In articulating the sources of the Respondent's obligations to its staff members, the Tribunal stated in de Merode (Decision No. 1, para. 22, 1981): "Further elements of the legal relationship between the Bank and its personnel are..... to be found in the Personnel Manual, the Field Office Manual, various administrative circulars and in certain notes and statements of the management." In the instant case, the Tribunal has been invited by both the Applicant and the Respondent to interpret the provisions of PMS 3.05 as amended by Manual Circular Pers./1/80. Both parties have also placed into the record a number of documents issuing from the Vice President, PA, and the Director, COM. Pursuant to the de Merode decision, all of these statements, circulars, and the like define the rights of the Applicant. The central question presented to the Tribunal is the interpretation to be given to these documents.

34. The Applicant contends that both the letter and spirit of these documents compel the conclusion that part-year employees may invoke the "annualization" principle of PMS 3.05, para. 15, not only for purposes of calculating the 1984 tax allowance based on average-taxpayer deductions, but also for purposes of calculating his supplementary 1984 safety-net payment based on his actual deductions for that year. The Respondent, however, contends that the annualization provision in PMS 3.05 was superseded by Pers./1/80 and related explanatory documents introducing the safety-net concept, the purpose of which was to ensure that no staff member would pay more actual taxes on Bank income than he would receive under the prevailing tax-allowance calculation.

35. The basic provisions of PMS 3.05 and Pers./1/80 should be recalled. PMS 3.05, para. 15, provides in pertinent part:

[T]he reimbursement payable by the Bank Group [to] a staff member who is in its employ for only part of the calendar year will be computed by prorating for that part of the year the amount to which he would have been entitled if he had worked for the Bank Group for the entire year at the same average rate of regular salary.

At the time this PMS was issued, in December 1973, the Bank's tax-reimbursement formula was based on the assumption that each staff member was claiming only the standard deduction on his income tax returns, which was the minimum deduction allowed by the law; this had the effect, as noted above, of generating a tax-reimbursement payment equal to or greater than the amount of taxes actually paid by the staff member on his Bank income. The Bank was fully aware that in many instances this would result in over-compensation for the payment of taxes, but this was a consequence that at least until 1980 the Bank was willing to bear in the interests of administrative simplification in handling tax reimbursements.

36. Although the Respondent contends that a basic reason underlying the annualization formula of PMS 3.05 was also that of administrative simplification, the more fundamental reason appears to have been one of fairness and equality as between the part-year employee and the full-year employee. Paragraph 15 treated alike, for purposes of computing tax-reimbursement payments, the staff member working at a particular net monthly salary rate for a fraction of a calendar or tax year and the staff member working at that same salary rate for the entire year. For example, had tax reimbursement for the part-year employee been calculated only on the income earned from the Bank for one or two months in the calendar year--without annualization--this would have resulted in the application of a low tax rate, given the escalating tax rates in the graduated U.S. tax system, and thus a lower tax reimbursement than a pro-rated tax reimbursement paid by the Bank to the full-year employee. Differences in tax-reimbursement payments for part-year and full-year employees would, of course, result in different "grossed up" salaries, and ultimately therefore to a lower monthly net salary for the part-year employee than for the full-year employee.

37. The disparity that PMS 3.05, para. 15, thus avoids should be understood in the broader context of the Bank's fundamental policies of computing a uniform "net of tax" salary for all employees regardless of nationality, and of "grossing up" the salaries of U.S. nationals through tax-reimbursement payments. The purpose of these policies has been to ensure that there are uniform net-of-tax salaries for all comparable Bank staff members. Through the annualization principle of paragraph 15, the Bank has ensured that all U.S. nationals – whether they work an entire calendar year or only part of a calendar year – receive the same net salary as their peers from other countries, which will be uniform regardless of whether those peers work for a full year or for only part of the year.

38. Although the Respondent contends that the annualization principle of PMS 3.05, para. 15, is not part of the "basic" tax-reimbursement system of the Bank, but is rather designed to deal only with an "extraordinary" situation, the above explanation shows that such is not the case. That is confirmed by the fact that the annualization principle has been a part of the Bank's compensation and tax-reimbursement program since as long ago as December 1946 when the Executive Directors of the Bank adopted a recommendation that part-year employees were to have their Bank income computed on an annualized basis and that a pro-rated reimbursement should be calculated accordingly. This principle was reaffirmed in the Respondent's Administrative Manual issued in September 1948 and was promulgated even more formally in 1973 in PMS 3.05. By the time the Respondent in 1979-80 replaced its system of tax reimbursement based on the standard deduction with the system of tax allowances based on average deductions, the annualization feature had been an unquestioned element of the Bank's compensation policies for more than thirty years.

39. Under those circumstances, the Tribunal cannot accept the Respondent's argument that annualization for safety-net calculation purposes must be deemed to have been rejected by Bank management because neither the Executive Directors in 1979 nor Manual Circular Pers./1/80 explicitly endorsed annualization under the system of tax allowances and safety-net payments. To the contrary, there is not the slightest suggestion in the 1979 and 1980 deliberations or documentation that Bank management had adverted to – let alone had discarded – the very longstanding principle of annualizing the salary of part-year employees. Barring a

compelling inconsistency between the tax-allowance system adopted in 1979-80 (including the safety-net) and the policy of annualization, the presumption must be that the latter policy was meant to be continued. There is, in the judgment of the Tribunal, no express or implied repudiation of that policy.

40. Indeed, all inferences to be drawn from the pertinent statements made by the Respondent's officials strongly suggest otherwise. Manual Circular Pers./1/80 related only to the substitution of the average-deduction assumption for the standard-deduction assumption, the need to protect staff members claiming lower-than-average deductions through the device of the safety-net, and the need to protect staff members more generally through a gradual phasing in of the new system. In only these respects was PMS 3.05 clearly superseded. The situation of the part-year employee was not mentioned at all in Pers.1/80. The Tribunal concludes that the governing policies regarding the part-time employee were not intended to be changed.

41. That conclusion is confirmed by two express provisions in the Manual Circular. Paragraph 19(d) provides that eligibility for the safety-net allowance is to be determined by utilizing the staff member's exemptions and actual deductions "in the same manner as in the basic system except that actual deductions claimed...will be substituted for average deductions." The Respondent concedes that the basic tax allowance that was granted to the Applicant was properly calculated by annualizing his part-year salary, then determining what his annual tax allowance would have been utilizing average deductions, and then pro-rating that for the period in 1984 he actually worked. Yet the Respondent fails to explain why PMS 3.05, para. 15, is properly used in this manner to calculate the basic tax allowance but cannot properly be used to compute the safety-net allowance. It strikes the Tribunal as inconsistent for the Bank to argue that the 1979-80 actions of management must be construed so as to preserve paragraph 15 for one calculation but not for the other – especially in view of management's silence, if not inattention, concerning the rights of the part-year staff member. The Tribunal concludes that this provision of PMS 3.05 is part of the "basic system" explicitly preserved by Pers./1/80, para. 19(d).

42. Even were there some doubt in that regard, it would be dispelled by paragraph 21 of that Manual Circular, which provides: "Personnel Manual Statement 3.05 will be revised in due course. In the meantime, its provisions will continue to apply except to the extent necessary to reflect the changes announced in this Manual Circular." This clearly demonstrates an intention to preserve all aspects of the tax-reimbursement program announced in PMS 3.05 except those clearly displaced by Pers./1/80. Nothing in that Manual Circular renders "necessary" the displacement of the annualization provision of PMS 3.05.

43. This reconciliation of PMS 3.05 and Pers./1/80 is supported by the Manual Transmittal Memorandum, signed by the Vice President, AOP, that accompanied the Manual Circular of January 21, 1980. To assuage the concerns of those staff members who feared that the new tax-allowance system would have an adverse impact upon their compensation, the Vice President gave assurances that present staff members would continue in the future to be reimbursed, at a minimum, for the taxes actually paid on Bank income. He continued:

This will effectively minimize for many staff, and in some cases eliminate entirely, the impact of the new system... Finally, [the amended Bank By-Law contemplating tax allowances] has no implication whatsoever for existing staff since the safety net provision ensures that, for them, the Bank will continue to provide tax allowances which fully conform both to the letter and the spirit of the earlier By-Law.

This language could surely be understood, and reasonably so, to mean that an employee who under the former tax-reimbursement system would have been able to retire in mid-year while securing the benefits of annualization using the highly favorable standard-deduction assumption, could look forward under the new system, upon mid-year retirement, to getting similar benefits of annualization using low actual deductions pursuant to the safety-net formula.

44. Such an understanding by a staff member would have been confirmed some months later when, in December 1980, the Director, COM, issued a memorandum stating, among other things, that a staff member's "actual deductions...will be used in calculating your tax allowances under the safety net provisions." It is true that nothing was said in the memorandum to the effect that the part-year staff member was to be a beneficiary

of this calculation. Obviously, however, neither was the part-year employee excluded, and the generality of the language in the memorandum thus precludes the inference that although the full-year employee could use his actual deductions in calculating his safety-net allowance, the part-year employee could not. Yet that is the position of the Respondent: that the part-year employee whose salary is annualized for purposes of computing his tax allowance must be deemed to have used the average deduction for his salary level when paying his income taxes, even when in fact he has claimed fewer deductions in the tax return he has actually filed.

45. It is true that on occasion – and perhaps more often than not – permitting the part-year staff member to incorporate his low actual deductions in the safety-net calculation will result in his being paid by the Bank a total tax allowance in excess of the tax actually paid on his Bank income. As noted above, that will occur because annualizing the part-year income will result in subjecting his imputed full-year income to tax at a higher percentage rate than the rate at which his smaller actual income is in fact taxed. The Respondent has attempted to show that the Applicant's total tax allowance for 1984, had he been permitted to use the safety net, would have reimbursed him for almost all of his actual 1984 taxes including taxes on a significant amount of non-Bank income.

46. There are several weaknesses in the Respondent's position. First the Tribunal doubts that the Bank's tax-allowance policies permit the Bank, when calculating the safety-net allowance, to give any weight at all to the taxes actually paid by a staff member, whether full-year or part-year, as distinguished from the deductions actually claimed by him. Under the pertinent circulars, manuals, and other documents, the safety-net calculation is based simply upon adjusted gross income, exemptions and deductions, and not upon taxes actually paid by the staff member (which may be drastically affected by business income and investments having nothing to do with his service with the Bank). Second, although certain income patterns on the part of part-year staff members will, if the Applicant's claim is sustained, lead to the kind of windfall mentioned by the Respondent, there are others that will not. The Applicant has demonstrated that high non-Bank income can result in under compensation of taxes on part-year Bank income when the latter is annualized. Third, the possibility of over-reimbursement is very much a part of the current tax-allowance system and was known to be so from its inception (although of course one of the purposes of the change to the new system was to minimize or eliminate the more frequent windfalls resulting under the previous system based on the standard-deduction assumption). Even a full-year staff member can be over-reimbursed by the basic tax allowance if, for example, he claims more family members as exemptions than the prevailing tax-allowance calculation assumes, or if he claims a greater number of deductions than is average for his income level. Moreover, even when annualization of income for part-year staff members is used in a context concededly approved by the Bank – i.e., for computing the basic tax allowance using average deductions – there is considerable likelihood that the tax allowance paid by the Bank will exceed the taxes actually paid on Bank income. If the Respondent regards such over-reimbursements as troublesome anomalies, then the appropriate manner for minimizing or eliminating them is not through strained interpretations of the governing Bank policy statements but rather through the amendment of those policies by means consistent with this Tribunal's guidelines set forth in de Merode.

47. The Tribunal therefore concludes that the Respondent violated the Applicant's terms of employment by failing to treat him as eligible for a safety-net tax allowance for 1984 based upon the deductions actually claimed by him for that tax year. The appropriate remedies for this violation are discussed below, in paragraphs 58 to 60.

48. The Tribunal must also decide whether the Respondent has committed a further violation of the Applicant's terms of employment by breaching certain assurances of confidentiality given by Bank officials in the handling of tax data submitted by staff members claiming the safety-net reimbursement.

49. Such assurances have been a feature of the safety-net system since its inception. The first year in which the tax allowance replaced tax reimbursement was 1980; staff members seeking the safety-net allowance would thus be in a position to file the request form and accompanying tax documentation in early 1981. Procedures for filing were first set forth on December 29, 1980, in a memorandum to all staff members from the Director, COM. Claimants were to complete and file Form 1734 with the Bank's Tax Office, were to include a

copy of certain pages of their federal and state income tax returns, and were to certify that those forms were "true and correct." Form 1734 set forth the three basic elements of the safety-net computation: adjusted gross income, number of exemptions, and actual deductions for the previous tax year. Both the Director's memorandum and Form 1734 included the following assurances:

Information from the returns will be used only for the purpose of administering the safety net provisions...Because of the personal and sensitive nature of these data, the Bank will take due care to ensure the security and confidentiality of all material you provide and will return all copies of tax returns to you. No one, other than the staff of the Tax Office and the Bank's Internal Auditors, will have access to any individual data which could be ascribed to you.

50. In November 1982, the Bank issued PMS 4.015, dealing with its Personnel Information Policy. Included among the staff records to be maintained by the Bank under paragraph 4(d) is "information necessary to make compensation and related payments." All such "staff records" were declared by paragraph 20 to be "available for Bank use in connection with any matters which may involve legal, quasi-legal, or internal or external administrative proceedings." By providing for the retention and the use in legal proceedings of information "necessary" to make compensation payments, PMS 4.015 created a potential conflict with the assurances of confidentiality being given contemporaneously to safety-net claimants. Any potential conflict could reasonably have been assumed by a person filing Form 1734 to be resolved in favor of confidentiality by virtue of the explicit written assurance to that effect that accompanied the form.

51. Nonetheless, the answer filed by the Bank in the proceeding before the Appeals Committee in this matter, on October 31, 1985, contained references to tax data that had been obviously retained by the Bank from the tax returns filed by the Applicant the previous April. The Applicant claims that much of this information was not "necessary" for computing his 1984 safety-net reimbursement and were thus not properly a part of his staff records at all, as defined in PMS 4.015. He also claims in any event that even "necessary" tax data should have been kept confidential within the Respondent's Tax Office and that his tax forms should have been promptly returned to him after the Respondent denied his safety-net request in June of 1985. Similarly strong objections were raised by the Applicant when, in its answer of July 29, 1986 to his application to this Tribunal, the Respondent once again reiterated the allegedly confidential tax information and went even further and included as an annex a copy of the Applicant's Form 1734 and the appended federal and state income tax returns.

52. The Applicant requested that the Tribunal refuse to accept the Respondent's answer entirely, or at least that it strike the offending data and the related passages from the answer and its annexes. The Applicant rested his challenge not only on the language of Form 1734 and of the memorandum of the Director, COM, of December 1980, but also upon two other declarations by the Bank that were precipitated by his case before the Appeals Committee and that were issued shortly before the initiation of this proceeding. On March 14, 1986, the Vice President, PA, after noting an "ambiguity" in the Bank's confidentiality policy, stated: "I conclude that a very regrettable incident affecting you has occurred... I want to assure you that I am taking steps to see that this cannot happen again." On April 14, 1986 – six weeks before the Applicant filed his application here, and some two and one-half months before the answer was filed – Bank Management and the Staff Association issued a joint statement to the effect that information in safety-net applications would indeed henceforth be kept confidential, would be excluded from the scope of those staff records that the Bank has a right to retain and use in legal proceedings under PMS 4.015, and would in fact be immediately purged.

53. The Respondent's arguments favoring its retention, use, and photocopying in this proceeding of the Applicant's tax-return information are unpersuasive.

54. It is formalistic and draconian to assert that any confidentiality right that the Applicant might otherwise have had was lost when he accompanied his request for safety-net reimbursement with the comment: "If I am to receive no safety net, I would like to get the Appeals procedure underway sooner rather than later." Nothing in the pertinent Bank policies suggests that such early and informal speculation regarding the invocation of the right of appeal accorded to all staff members warrants the loss of the important right of confidentiality widely

declared to attach to safety-net information. Nor is the Respondent correct in contending that – assuming PMS 4.015 to be controlling – information about the Applicant's 1984 taxes beyond adjusted gross income, exemptions and actual deductions are "necessary" in computing his compensation. See paragraph 46 above. Even were it true that the Respondent might have had some justification for requesting that the Tribunal direct the Applicant to disclose this information, that does not eliminate the need for such a request by the Respondent and a decision by this Tribunal as a predicate to such disclosure.

55. The Tribunal also finds altogether untenable the Respondent's assertion that the assurances given by the Vice President, PA, in his letter of March 14, 1986, and by Bank Management in its joint statement a month later, were not reasonably intended to apply to the Applicant because his claim for safety-net reimbursement was already sub judice, having been pressed before the Appeals Committee and most likely to be brought to the Tribunal. It is obvious that these assurances were made regarding conduct by the Bank in all future cases without exception. Moreover, the statement in March 1986 from the Vice President that "I want to assure you that I am taking steps to see that this cannot happen again" was made to the Applicant himself at a time when the Vice President (as the Respondent acknowledges) was fully familiar with his proceeding before the Appeals Committee and with the possibility of future proceedings; the Applicant surely should have been able to assume that the Respondent would act consistently with such a personalized assurance in this case.

56. Finally, the Tribunal rejects the Respondent's contention that, whatever proper objection the Applicant might have had to the Bank's retention and use of his tax information, he in effect waived that objection when, in his application to the Tribunal, he suggested that the Respondent was free to include such information in its forthcoming answer. The Applicant contends that the referenced statement in his application was not properly to be understood as an invitation to the Respondent to set forth and use his completed income tax returns, but rather as a reluctant comment on the Respondent's physical ability to produce and annex the data, which the Bank had included in its answer to the Appeals Committee and had obviously retained in his personnel files. The Tribunal finds that statements made by the Applicant in his initial pleading – particularly in the context of his insistent challenges to the legality of the Bank's retention of any and all tax data beyond his adjusted gross income, his exemptions and his actual deductions – cannot reasonably be understood as an acquiescence in the Bank's position on the issue of confidentiality. But even if it were, the Applicant could only have been understood to acquiesce in the Bank's use in this proceeding of the specific data that were extracted from his 1984 income tax returns for use before the Appeals Committee (i.e., Annex 5 to the Respondent's answer herein), and not in the inclusion in the Respondent's answer of complete photocopies of pages from his federal and state tax returns (i.e., Annex 12) which contained detailed information going beyond that disclosed by the Bank before the Appeals Committee.

57. It is, therefore, commendable that the Respondent has stipulated that it will strike the annex to its answer (Annex 12) that contains photocopies of the Applicant's federal and state returns, and that it will purge such returns from its records and destroy them. The Applicant, however, would have the Tribunal strike as well those other portions of the Respondent's pleadings (especially Annexes 3 and 5 to its answer) that reveal data from his tax returns improperly retained by the Bank. The Tribunal concludes that the offending portions of these Annexes should be stricken, as containing information not strictly pertinent to the issue before it, and which were retained and used by the Bank in violation of assurances of confidentiality. It is also appropriate to Award the Applicant a sum of money to compensate him for the intangible injury caused by the Respondent's breach of these conditions of his employment.

58. In view of the conclusion of the Tribunal above on the entitlement of the Applicant to a tax allowance for 1984, the Applicant has a right to have his taxes attributable to that part of the year during which he worked for the Respondent annualized for purposes of a safety-net calculation utilizing his actual income tax deductions. Because the Respondent has paid him a tax allowance already taking into account average deductions, he is entitled to payment of an additional allowance amounting to the difference between what he would have received had a safety-net allowance been paid to him and what he actually received. This amounts to a net figure of \$6,993.

59. The Tribunal also finds meritorious the Applicant's claim for an allowance to cover an appropriate share of

his social security taxes calculated on the basis of his income after the safety-net allowance has been paid. The Applicant claims that he could have been paid the safety-net allowance in 1984, which would not have resulted in an increased exposure to the social security tax; he therefore claims that the Respondent should reimburse him in an amount equal to his full social security tax payment for the safety-net differential paid pursuant to the Tribunal's order. It is clear, however, that even had the Bank been timely in making its safety-net payment to the Applicant for the 1984 tax year, this would not have been expected until the 1985 tax year, when the Applicant would himself have been liable for a freshly calculated social security tax payment. Accordingly, the Respondent's liability in this connection – as set forth in pertinent Bank documents (PMS 3.05, para. 6) and as the Applicant appears to concede –is for the difference between the tax payable by one who is self-employed (the social security tax imposed on U.S. nationals employed by the Bank, 12.3% of income in 1986) and the tax calculated at the rate applicable to employees of private organizations (7.15% in 1986). This differential in rate would operate upon the safety-net differential awarded above, and would itself generate an additional tax allowance payment to the Applicant.

60. The Tribunal has an inherent power to award interest on payments due which have not been made in circumstances in which the fault for failing to pay is attributable to the Respondent. Awards of interest are compensatory and not punitive. Hence the rate of interest levied should approximate the return of money invested in the open market. In the circumstances of this case, the Tribunal considers that interest should be paid by the Respondent at the rate of 9% per annum on the sums due to the Applicant and not paid, such interest to run from June 8, 1985, the date on which these sums would normally have been paid to the Applicant (rather than one year earlier, as the Applicant seeks), to the date on which the payment is actually made.

Decision:

For these reasons the Tribunal unanimously decides that:

- (i) \$6,933 be paid to the Applicant as the net sum due to him as a safety-net allowance;
- (ii) a sum determined according to paragraph 59 above be paid to the Applicant as an allowance for social security taxes;
- (iii) interest on sums due to the Applicant under (i) and (ii) above be paid at the rate of 9% per annum levied from the date on which payments should have been made, namely June 8, 1985, to the date of actual payment;
- (iv) the amount of \$10,000 be paid to the Applicant as compensation for all additional injury suffered by him as a result of the Respondent's violation of his conditions of employment, including compensation for the injury resulting from the Respondent's breach of confidentiality in dealing with the Applicant's tax information and for the expenses of pursuing his claim;
- (v) tax-return information improperly included in Annexes 3, 5 and 12 to the Respondent's answer be removed by the Respondent from all its files and destroyed; and
- (vi) all other pleas be dismissed.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At London, May 21, 1987