

Decision No. 147

Joseph Lopez,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Lauterpacht, President, R.A. Gorman and F. Orrego Vicuña, Vice Presidents, and P. Weil, A.K. Abul-Magd, Thio Su Mien and Bola A. Ajibola, Judges, has been seized of an application, received on May 26, 1995, by Joseph Lopez, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on March 20, 1996.

2. The Applicant has requested that his name be omitted from the report of the case. The Tribunal decided that because there are no circumstances to justify the Applicant's request the request is denied.

The relevant facts:

3. The Applicant, who joined the service of the Respondent on February 14, 1984, was a Senior Personnel Officer (PO), at level 24, on the Personnel Team for Latin America and the Caribbean Region (LAC) of the Personnel Management Department (PMD), having transferred from the Institutional Personnel Team of PMD (PMDIN) effective October 1, 1992, where he had acted briefly as Chief Personnel Officer (CPO) from March 1, 1992 to mid-April 1992. The Applicant had received good performance reviews during his career with the Bank but problems began to emerge in this connection as from 1991-1992.

4. From March 8 to March 19, 1993, the Applicant again acted for his CPO in his absence. On the return of the CPO a PO on the Applicant's Personnel Team, Mr. B, by note, dated March 11, 1993, addressed to the CPO brought to his attention certain problems that had arisen during the Applicant's acting assignment. Mr. B stated that he had come out of a discussion with the Applicant feeling as though he had been talked down to like a child and that there was no element of mutual respect or appreciation. He also said that at another meeting the Applicant was intimidating in his manner and language towards Mr. B's secretary. Mr. B, among other things, complained in this note that at a later meeting the Applicant had been "angry, pleading, defensive and aggressive" in turn, had continually attacked the people attending the meeting, and had spoken of the Applicant's medical problems and the stress he was undergoing, and concluded that "the Applicant was an extraordinarily disruptive force in the group and a force that would not be subdued." For his part, the Applicant in his "Hand-over Notes", dated March 21, 1993, to the CPO stated that on the subject of information technology needs Mr. B and his secretary had some concerns and that "We need to work on reducing [Mr. B's] and [his secretary's] anxiety level!" Mr. B's secretary complained to the Ombudsman about the problems she was having with the Applicant.

5. At the time of his performance review (PPR) for 1992/93 the Applicant had reservations about his previous CPO of PMDIN giving a supplemental review of his performance. Finally, that CPO, PMDIN, upon advice of the Legal Department, did prepare a supplemental review. In the PPR the CPO, PMDLC, commented that the Applicant's professional skills were good but that in the area of "interaction with other members of the Team" his performance needed improvement. The Management Review Team (MRT) decided to include in the PPR documents both the supplemental review and the Applicant's memorandum, dated May 21, 1993, to the Chairman of the MRT in which he objected in principle to the inclusion of the supplemental review. The MRT endorsed the assessment of the CPO, PMDLC, noting particularly that the Applicant had "been given feedback

on the need to improve his working relationships with his colleagues”, and that, according to his CPO, “he has responded positively to this feedback.”

6. On August 19, 1993, the CPO, PMDLC, held a meeting with his three POs (including the Applicant) to discuss the status of the Training Monitoring System. The other two POs recorded in notes to the CPO, dated August 19, 1993 and August 23, 1993 respectively, that the atmosphere at the meeting had become tense and that the Applicant's behavior was defensive, the conversation was heated and the Applicant became increasingly agitated and was at one point shaking and weeping. By memorandum to the Applicant, dated August 24, 1993, the CPO stated that the Applicant had done a good job of integrating into his client groups and providing service to them. However, he also stated:

At the same time, there are issues, which we discussed in March and through the PPR process, which have to do with your role as a member of the Team and your effectiveness in that role. Based on the events of last Thursday, I have to say that your performance in that area is not satisfactory. You and I will continue to work together and that aspect of your performance will need to remain under review.

Subsequently, the other two POs, in memoranda to the CPO, dated August 25, 1993 and October 8, 1993 respectively, complained about the Applicant's behavior and, inter alia, the anxiety and disturbance it was causing them. The Applicant, for his part, in a memorandum to the Managing Director, dated August 26, 1993, complained about his CPO's behavior towards him, which he described as being abusive and harassing, and asserted that he had been subjected to pressures from his CPO intended to influence his testimony on matters connected with the Main Complex Rehabilitation Project and that he was experiencing retaliation for resisting such pressures. He also, by memorandum, dated August 27, 1993, claimed that the CPO's criticisms regarding his contributions to PMDLC and his team orientation were unsubstantiated.

7. By memorandum to the Applicant, dated September 9, 1993, the CPO advised him that, effective October 11, Staff Rule 7.01, para. 11.02, which deals with termination for unsatisfactory performance, would be applied to him and that, unless by February 11, 1994 there was sharp and sustained improvement in the area in which the Applicant's performance was deficient, namely interpersonal relationships with colleagues in PMDLC, the Applicant should expect that the procedure specified in the Staff Rule would be followed and could result in termination. A work program and criteria by which to assess performance during the review period were attached. A subsequent extension of the review period to accommodate the Applicant's home leave brought the end of the period to March 31, 1994. The Applicant by memorandum to the Director, PMD, dated September 17, 1993, requested administrative review of several issues, stating:

1. My PPR for 1992-1993, including the issue of “interpersonal relations” raised by [the CPO, PMDLC and the CPO, PMDIN], the Management Review dated June 23, 1993, and the process employed in preparing it, is contested as involving abuse of power, arbitrary decisions and violation of due process ...
2. The salary award for 1993 was 3.80% for which I received the PAF (Personnel Action Form) on June 23, 1993.
3. Notice of a probationary period of four months with threat of termination under Staff Rule 7.01, 11.02 - memorandum dated September 9, 1993 from [the CPO, PMDLC].
4. Intimidation and harassment by two managers, [the CPO, PMDLC, and the CPO, PMDIN], Chief Personnel Officers.

8. In a memorandum to the Applicant, dated October 15, 1993, the CPO recorded both the discussions concerning the Applicant's work program held on October 6 which resulted in some agreed modifications in the program and the competencies which would govern the assessment of the Applicant's performance. In a memorandum, dated October 21, 1993, the CPO explained to the Applicant that during the former's absence on mission the CPO had decided that another PO than the Applicant would act for the CPO and gave reasons for this decision. This PO had problems with the Applicant during this acting assignment and by memorandum,

dated October 28, 1993, advised the CPO, PMDIN, that she had alerted security, because she was “scared, personally” of the Applicant’s eventual reaction. In a note to the Director, PMD, dated November 1, 1993, the Applicant, in reply to the Director, gave his explanation of the situation that had arisen in PMDLC. The CPO, PMDLC, then went on retreat and leave and appointed the same PO to act for him. She again had problems with the Applicant. When the Applicant was placed on administrative leave he was forbidden to return to his office and was permitted to retrieve personal effects only in the company of security guards. The Director, PMD, by memorandum to files, dated November 17, 1993, recorded that he had met with the Applicant and told him that the divisiveness of the PMDLC Team “was seriously undercutting its effectiveness”. He concluded that:

There recently seems to be a pattern of disturbances of this type surrounding Joe Lopez. It raises questions about Joe’s ability to function effectively as a personnel team member.

9. By memorandum to the Applicant, dated November 29, 1993, the Director, PMD, communicated to the Applicant the results of his administrative review, which had taken 73 days to be completed. He stated that: he had found no basis for deleting from the record the supplemental review of the CPO, PMDIN, or the Applicant’s memorandum to the Chairman of the MRT, or for endorsing a rewriting of the performance evaluation; the salary award was consistent with the performance evaluation; the decision to put the Applicant on a work program under Staff Rule 7.01 was in order, because “Harmonious relationships with team members are a critical competency for a Personnel Officer” and the Applicant was “seriously wanting in this competency”; and there was no evidence of personal or professional misconduct on the part of either the CPO, PMDIN, or the CPO, PMDLC. The Applicant subsequently filed with the Appeals Committee his first appeal against the decisions taken in the administrative review.

10. In a memorandum to the Applicant, dated January 7, 1994, the CPO, PMDLC, summarized the principal points of the discussion between them regarding the review of the Applicant’s work program and the incidents that had occurred in the CPO’s absence. The CPO stated that the Applicant had disagreed “with my assessment and the way I had managed the whole situation”, and that the Applicant thought that the CPO had treated him “unfairly and had given preferential treatment to others in the Team”, and that it was the CPO’s intent to get the Applicant out of the Bank. The CPO had concluded that at the stage of the review process that had been reached the Applicant’s performance had not met the required standards. In a memorandum to the Applicant, dated January 14, 1994, the CPO, PMDLC, concluded that “During this third month of the work program and review, your performance has been fully satisfactory and you have met the standards set out in my memorandum of September 9.”

11. By confidential memorandum to the Applicant, dated April 4, 1994, the CPO, PMDLC, gave his final assessment of the full four month period of the Applicant’s performance review period which had been discussed on March 31, 1994. Although he evaluated performance for the fourth month as satisfactory, the CPO concluded

My assessment of your performance over the full review period is that you have not met the standards of performance outlined in the memoranda mentioned above, specifically, I refer to the establishment and maintenance of effective interpersonal relationships with your colleagues in the Team, dealing constructively with adversity and promoting collaboration amongst Team members Based on this assessment, I do not believe you are able to function effectively as a Senior Personnel Officer in the LAC Personnel Team and that your continued presence in the Team seriously undercuts the effectiveness of the Team.

The CPO on the same day by memorandum to the Director, PMD, requested the removal of the Applicant from the PMDLC Team. The Director, PMD, in a memorandum to the Applicant, dated April 18, 1994, told him that the Director had decided that there was no possibility of the applicant’s being reassigned within the Vice Presidency with good prospects for satisfactory performance and

My review has revealed that the problem behaviors exhibited during your most recent assignment have been exhibited in previous assignments. These problem behaviors include not establishing and maintaining effective interpersonal relationships with your colleagues in the Team, not dealing

constructively with adversity, and not promoting collaboration among Team members. This is not an isolated situation but rather a pattern of performance. These are serious shortcomings for any Bank staff member, but particularly for a member of the personnel function. The ability to work collaboratively and constructively with other staff members is a basic requirement expected of all staff members. Interpersonal skills, team collaboration, resolving differences and team leadership are critical elements of level 21-25 positions in Personnel and elsewhere in the Bank.

Although inquiries about reassignment were made extensively, it was further concluded that there were no good prospects of the Applicant's performing satisfactorily anywhere in the Bank Group and the Applicant was notified "as provided in para. 11.03 of Staff Rule 7.01 that your employment with the Bank will be terminated with effect from June 30, 1994." By memorandum, dated May 26, 1994, the Director, PMD, placed the Applicant on administrative leave (with full pay) through June 30, 1994, on the ground that his continued presence in PMDLC was seriously disrupting the work of the Team.

12. In response to the Applicant's request for administrative review of the decision to terminate his employment effective June 30, 1994 on the ground of unsatisfactory performance, the Vice President, East Asia and Pacific Region (EAP), by memorandum, dated June 15, 1994, informed the Applicant that he had found that the decision contested was a reasonable one based on appropriate considerations and relevant facts. By memorandum, dated June 27, 1994, the Director, PMD, advised the Applicant that his severance payments would be increased to the maximum allowable for unsatisfactory performance under Staff Rule 7.01 and that the Applicant could opt to have the severance payments converted into special leave for six months.

13. In a letter to the Applicant's counsel, dated July 8, 1994, the Vice President, Management and Personnel Services (MPS), replied to an issue raised earlier by counsel relating to the appearance in the Applicant's career file of a memorandum from a previous Director, PMD, which, it had been decided, should have been removed from that file, stated that the review had found that no staff member knowingly violated the decision to place that memorandum under seal, and that consequently it could not be concluded that any staff member had committed misconduct.

14. The Applicant filed a second appeal with the Appeals Committee relating to the request to remove him from PMDLC and the decision of the Director, PMD, to notify him of the termination of his employment with the Bank, effective June 30, 1994. The Appeals Committee in its report, dated February 2, 1995, concluded in regard to both appeals of the Applicant that, among other things, (i) there was no abuse of discretion in the merit increase given the Applicant in connection with the 1992/93 performance evaluation; (ii) the inclusion of the supplemental review by the CPO, PMDIN, in the Applicant's 1992/93 performance evaluation did not constitute an abuse of discretion and there was no violation of due process; (iii) the decision to invoke Staff Rule 7.01, para. 11.02, did not constitute an abuse of discretion; (iv) the decision that there was no alternative employment available in the Bank where the Applicant could perform satisfactorily did not constitute an abuse of discretion; and (v) the decision to terminate the Applicant's employment did not constitute an abuse of discretion and did not suffer from lack of due process. The Committee recommended that the Applicant's request for relief be denied but that additional compensation in the amount of three months' salary be offered to the Applicant because there had been unnecessary haste in terminating the Applicant's employment and because the Applicant might have been moved to another unit while operating under Staff Rule 7.01, para. 11.02. By letter to the Applicant's counsel, dated February 28, 1995, the Vice President, MPS, stated that the Bank's management had decided to accept the Committee's recommendations.

The Applicant's main contentions:

15. There was a violation of due process in the conduct of the Applicant's 1993 PPR as regards the supplemental review and the management review.

16. There was no adequate basis for placing the Applicant on probation, the decision was retaliatory and there was no due process in that the Applicant had not been given adequate warning.

17. The final evaluation of the Applicant's performance was tainted with (i) substantive irregularity, insofar as inapplicable competencies were used and there was inadequate evidence to support it, and (ii) procedural irregularity, insofar as a full year's performance was not reviewed and the Applicant was not given an opportunity to defend himself. It was also not made in good faith.
18. There was improper motive on the part of the Applicant's managers, a conspiracy to harass him and a spirit of retaliation which influenced the final evaluations.
19. The Applicant's 1993 salary increase was based on insufficient evidence.
20. The administrative review process was tainted by procedural irregularity in that it took 73 days, and by substantive irregularity in that the reviewer failed to base his decision on a consideration of all the relevant facts.
21. The Applicant's right of privacy was violated by unauthorized disclosure and use of documents.
22. The Applicant has a right to invoke and found his case on evidence given by witnesses before the Appeals Committee.
23. The Respondent has made defamatory statements about the Applicant.
24. The resulting severance pay of two months salary after the Applicant's dismissal for unsatisfactory service was unfair in view of the Applicant's long and loyal service for the Respondent.
25. The Applicant made the following pleas:
 - (i) payment of compensation in the amount of three years net salary for wrongful termination, loss of career opportunity and loss of earnings potential;
 - (ii) on the grounds of exceptional circumstances, payment of an additional three years net salary for emotional stress, pain and suffering and loss of reputation; and
 - (iii) costs in the amount of \$37,200, covering costs arising from and after the submission of his first appeal.

The Respondent's main contentions:

26. Because the Applicant had been forewarned of his shortcomings and for other reasons, there was no violation of due process in the conduct of the 1993 PPR.
27. The decision to place the Applicant on probation taken after the 1993 PPR was based on appropriate and sufficient reasons, was not an abuse of authority, did not involve a denial of due process and was the result of a proper invocation of Staff Rule 7.01, para. 11.02.
28. There was sufficient evidence to justify the final evaluation of the Applicant after his four-month probation, it was properly done and there was no violation of due process or absence of good faith.
29. There is no evidence of improper motive, prejudice, harassment or retaliation on the part of his managers. Their actions and conclusions were based on fact and a faithful adherence to the proper procedures.
30. There was nothing improper in the determination of the Applicant's 1993 salary increase because the Applicant was experiencing serious problems of which he had been notified and he had failed to show sustained improvement.

31. The disclosure and use of confidential documents was the result of inadvertence and honest error.

32. There is an obligation of confidentiality in regard to evidence given before the Appeals Committee except to the extent that it is recorded in the report of the Appeals Committee.

33. Statements made about the Applicant in his PPRs and in other memoranda were based on sufficient grounds.

34. The Applicant has not shown any exceptional circumstances on the basis of which he may be awarded more than three years' net salary as compensation in the event that compensation is awarded.

35. Costs should not be awarded in this case because the Applicant did not include a request for them in his pleas. At any rate, they should not be awarded in respect of any proceedings other than those before the Tribunal.

Considerations:

36. The question for decision by the Tribunal is whether the Applicant's service was properly terminated by the Respondent for unsatisfactory performance in accordance with both the substantive requirements and the procedural guarantees required by the internal law of the Bank. The Tribunal has repeatedly stated that it will not substitute its judgment for the discretionary decisions of the Bank's management, particularly in terms of the evaluation of staff performance, and that the "Administration's appraisal in this respect is final, 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; Buranavanichkit, Decision No. 7 [1982], para. 26; Durrant-Bell, Decision No. 24 [1985], para. 25). It is within these limits that the Tribunal will consider the present case.

37. The essence of the Applicant's complaint on the substance is that Staff Rule 7.01, Section 11.02, governing termination for unsatisfactory performance, was improperly invoked by the Respondent. In the Applicant's view the requirement for such termination, that there should be serious and substantive performance problems, has not been met, nor has any allegation of such problems been adequately substantiated. It is further argued that remedial action could have been taken under this Rule only if no improvement of performance had taken place.

38. The Tribunal notes that serious problems regarding the Applicant's interaction with the various personnel teams involved in different stages of his career had emerged long before the decision was taken to terminate his employment. These problems had been adequately documented in the relevant PPRs. Specific commitments to improve his performance had also been given by the Applicant. These commitments negate any argument that the Applicant was unduly pressured into signing the pertinent PPRs. Quite true, as the Applicant argues, the working relationships with client groups of different departments were good and indeed no objections were raised as to this element of his work. But this positive aspect does not warrant overlooking negative team interactions, particularly to the extent that tense discussions and hostile attitudes emerged as a result.

39. The fact that client directors were not consulted in regard to the evaluation of his performance during his probationary period cannot be considered a breach of due process because this aspect of his work has not been in issue. Further, the Applicant took the opportunity to comment both orally and in writing on partial feedback provided during the probationary period.

40. An important issue in this case is the meaning of the provision of Staff Rule 7.01, Section 11.01, as then in effect, that "[i]f performance remains unsatisfactory" it can result in termination of employment. In the Applicant's view termination of service can be decided upon only if performance has remained unsatisfactory during the probationary period since the intention of this provision is not to bring about the termination of service of a staff member but to offer him a chance to improve his performance with the object precisely of

avoiding termination. The Respondent shared this understanding because, in the memorandum of September 9, 1993, invoking the Staff Rule, it was explained that termination could follow in the “absence of a sharp and sustained improvement”, an improvement which obviously had to take place during the probationary period.

41. Subsequently, a difference of opinion arose between the Respondent and the Applicant as to whether the necessary improvement had taken place. However, the determination of this question is within the Bank’s discretion. The Tribunal can find nothing in the circumstances of this case to support the view that the Bank had improperly exercised this discretion. The favorable feedback given to the Applicant in respect of his performance during two months of his probation does not fetter the Bank’s freedom to make a discretionary appreciation of the period of probation as a whole.

42. The Applicant has also made allegations of harassment and prejudice which, in his view, affected the outcome of the process as a whole, and in particular, resulted in an adverse evaluation in his PPRs and of his probationary period. Moreover, the Applicant contends that he was discriminated against on racial grounds. There is no evidence at all that this was a case and certainly no racial discrimination has been proved.

43. Turning now to the procedural aspects of the case, the Tribunal has stated on other occasions that “The very discretion granted the Respondent in reaching its decision at the end of probation makes it all the more imperative that the procedural guarantees ensuring the staff member of fair treatment be respected” (Salle, Decision No. 10 [1982], para. 50). Two basic guarantees have been defined by the Tribunal in connection with due process: “First, the staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached. Second, the staff member must be given adequate opportunities to defend himself” (Samuel-Thambiah, Decision No. 133 [1993], para. 32).

44. Because the problems of collegial interaction referred to above were present for quite some time, warnings were given to the Applicant by the Respondent on various occasions. It is not necessary that such warnings take a specific form as an advance notice of termination.

45. In relation to the Applicant, the possibility of termination under the terms of Staff Rule 7.01, Section 11.02, did not surface suddenly as if nothing had happened before. Indeed it was precisely because of the prior warnings that the Applicant agreed on more than one occasion to improve his performance shortcomings. There can be no doubt that the Applicant was informed of the exact position of the Respondent in regard to his performance. He received repeated and unequivocal indications as to the unsatisfactory character thereof. Also, the granting of a low salary increase clearly indicated to the Applicant that his performance was not entirely satisfactory, particularly in the light of the warnings mentioned above. The Applicant was certainly not deprived of the opportunity to improve his performance or rebut the criticisms that had been made.

46. As a consequence of Staff Rule 7.01 being invoked, a four-month probationary period and work program were defined in a memorandum of September 9, 1993, addressed by his Division Chief to the Applicant, with the specific warning that “[i]n the absence of a sharp and sustained improvement in the area where your performance is deficient by February 11, 1994, you should expect that the procedure specified in this Rule will be followed and could result in termination of service.” Here again, the requirement of due notice emphasized by the Tribunal was satisfied because the Applicant was clearly informed of the decision to impose a probationary period and of the level of performance expected of him.

47. The argument has also been made by the Applicant that few areas of required competence (in the Bank’s usage called “competencies”) were identified in the notice of probation and that in any event such criteria as were included were still being debated and had not been formally adopted by the Bank. The fact of the matter, however, is that these criteria were applied throughout the Bank, that those chosen were pertinent to the area of deficient performance covered by the probation and, most importantly, that the Applicant was informed in great detail of the criteria that would be used to evaluate his performance. Furthermore, these criteria were discussed with the Applicant and changes were made to accommodate some of his concerns. Therefore, in these circumstances the Tribunal does not find any evidence of discrimination against the Applicant.

48. Nor is there here an enforcement of a managerial standard before it had been formally adopted by the Bank since the criteria were already being applied throughout the Bank. The situation in this case is different from the application of amended Staff Rules that may change fundamental and essential conditions of employment or of retroactive application of new Rules which has been declared improper by the Tribunal in prior cases (de Merode, Decision No. 1 [1981], para. 31; Addy, Decision No. 146 [1995], para. 45).

49. The Applicant also argued that the decision was taken in retaliation against his involvement in prior cases decided by this Tribunal in which personnel issues were discussed. There is no evidence whatsoever that this was the case.

50. A further argument has also been made by the Applicant that no annual PPR was made for the last year of employment and that this was completed only four days after termination of service, with the result that the required managerial review was not carried out and the Applicant was not given the opportunity to respond. A PPR was indeed prepared subsequent to the decision to terminate service in order to record the evaluation for the whole year, but since at this stage the matter was governed by Staff Rule 7.01, such yearly evaluation, as the Applicant himself has acknowledged, could not take precedence over the assessment of the probationary period. Managerial review had already been conducted in connection with the decision to terminate service and did not have to be done again.

51. Another point raised by the Applicant relates to the Respondent's determination that there was no other place for him in the Bank, a decision which he questions on the basis of his experience. The Bank's decision in this regard is again a discretionary one and, in any case, all necessary efforts to secure him another position were made by the Respondent.

52. The question of the supplemental review incorporated in the 1993 PPR merits specific consideration. Such a review was objected to by the Applicant on the basis that it was prepared in advance of the PPR and that its subsequent introduction into the PPR involved reopening a procedure that had already come to an end. Supplemental reviews are expressly authorized under Staff Rule 5.03, Section 2.03 in order to complete a performance record, particularly if several persons have been supervising the staff member during a given year. There can be no doubt that the supplemental review may be appended after the supervisor has written his own evaluation, since the purpose of such a review is to make available additional material for consideration by the Management Review Team (MRT) which is the final authority under the PPR procedure. It would of course be inappropriate if the supplemental review were added after the MRT review was completed. In the present case the supplemental review was made before the management review stage. The fact that the supplemental review was completed prior to the date of the PPR signature does not in itself constitute a breach of due process because the Applicant was given an adequate opportunity to comment and eventually to rebut any adverse views. It should also be noted that the MRT provided an additional guarantee of due process in deciding that both the supplemental review and the Applicant's memorandum thereon should be made part of the record. The Tribunal concludes that the procedure relating to the supplemental review was not contrary to the requirements and guarantees of due process.

53. Although the evaluation of the Applicant's performance was rightly carried out by the Respondent, there are three procedural flaws that need to be mentioned.

54. The first relates to the fact that the first administrative review requested by the Applicant on September 17, 1993, objecting to the decision to put him on probation, was concluded not within the 30-day period mandated by Staff Rule 9.01 but only after 73 days. This delay infringed upon his procedural rights and his legitimate expectation to have a speedy disposition of his complaints. It constituted a failure of due process and as a consequence damage has been caused to the Applicant.

55. Another failure of due process is related to the handling of confidential information and records. Two instances of breach of the Applicant's rights to confidentiality have been documented in the present proceedings. The first concerns a document placed under seal by order of the Respondent to which, it had

been agreed, no access would be granted beyond certain limits without the Applicant's consent. A copy of this document available in the Ethics Officer's files was not destroyed as it should have been and was later removed from those files and placed in the Applicant's career file and could be seen by anyone with a right of access to the file. Even if, as the Respondent argues, the decision to terminate service was not influenced by the knowledge of the sealed document, the fact that confidentiality was breached remains, and this in itself is a violation of the Applicant's rights as guaranteed under Staff Rule 2.02, Section 2.01.

56. A second breach of confidentiality arose in regard to an investigation requested by the Applicant of harassment alleged against him. It appears that confidential medical records of the Applicant were given to the investigator in breach of a guarantee of confidentiality given in Staff Rule 2.02, Section 2.01. This breach of confidentiality was not explained in the Respondent's arguments before the Tribunal. The Applicant has been caused intangible injury for the violation of his right to confidentiality.

57. Finally, when the Applicant was placed on administrative leave in connection with the decision to terminate his employment unusual security measures were taken. He was forbidden to return to his office and, when he did, security guards accompanied him. During the probationary period security was also reinforced on one occasion. True, if there is any serious risk of violence or disruption, the Respondent is under a duty to take appropriate security precautions with a view to preventing any such occurrence. But in the present case, however tense and unpleasant the working environment surrounding the Applicant might have been, there was no evidence of him being violent or threatening any form of physical disruption. The Tribunal finds that in the circumstances of the case these measures were excessive and caused moral injury for which compensation is accordingly owed to the Applicant.

58. An issue of general interest also needs consideration, namely whether testimony before the Appeals Committee should be kept confidential in all circumstances. The Respondent has objected to the use of such testimony by the Applicant before the Tribunal on the ground that under the Rules of Procedure of the Appeals Committee "all hearings of the Panel shall be in camera" (Staff Rule 9.03, Annex B, Rule 1 and 15 (a)). The Tribunal finds that this requirement that hearings be held in camera refers to the privacy of the meetings of the Appeals Committee and to the general confidentiality of the proceedings before it but does not forbid the invocation of such testimony before this Tribunal, if relevant, particularly having in mind that proceedings before the Tribunal are also not made public. The objection by the Respondent is accordingly overruled.

59. The Tribunal regrets that certain arguments presented on behalf of the Applicant in this case include unjustified personal accusations and innuendoes that are offensive and which certainly have not advanced the Applicant's cause.

Decision:

1. For the above reasons, the Tribunal unanimously decides that the pleas in the application are dismissed, except in the following respects:
 - (i) there was undue delay in the administrative review requested on September 17, 1993;
 - (ii) there were infringements of the Applicant's right to confidentiality; and
 - (iii) excessive and unjustified security measures were taken.
2. The Respondent shall pay the Applicant compensation in the amount of \$20,000 for damage caused to him.

Elihu Lauterpacht

/S/ Elihu Lauterpacht
President

C.F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At London, England, May 14, 1996