

## Decision No. 11

Martial M. M. van Gent,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, A. K. Abul-Magd and P. Weil, Vice Presidents, and R. A. Gorman, N. Kumarayya, E. Lauterpacht and C. D. Onyeama, Members, has been seized of a complaint, received January 27, 1982 by Martial M. M. van Gent against the International Bank for Reconstruction and Development. The Respondent filed an Answer. The Tribunal issued on May 25, 1982 an Order rejecting certain provisional or preliminary measures requested by the Applicant and reserving a decision on another request of the Applicant until it had received the Respondent's comments on the Applicant's request. The Respondent's comments were subsequently submitted. The Applicant submitted Observations on the Answer and the Respondent submitted an additional letter to the President. A decision rejecting the Applicant's remaining outstanding request was issued by the President on August 5, 1982. The Applicant later submitted an Additional Written Statement and the Respondent submitted comments thereon. The case was listed on September 27, 1982. The Applicant requested that certain witnesses be heard at oral proceedings pursuant to Rule 14 (l). The Tribunal decided that the hearing of witnesses in this case was unnecessary.

The relevant facts:

1. The Applicant, a fifty-six year old national of the Netherlands, was first employed by the Respondent in September 1965 as an Agriculturalist with the Agriculture Division of the Projects Department. In October 1970 he was transferred to the Personnel Division of the Administration Department as a Senior Personnel Officer. In October 1973 the Applicant was transferred as a Senior Engineer to the Tourism Projects Department at the "M" level and in January 1976, he was promoted to Division Chief in the Tourism Projects Department at the "N" level. The Applicant had a good record as Division Chief and was noted for "excellent managerial skills." In January 1978 the Respondent's top management decided to phase out its lending for tourism projects. In February 1978 the Vice President, Projects Staff, presented a phaseout plan in a memorandum to the Senior Vice President, which included provisions for the abolition of the Tourism Projects Department and the reassignment and treatment of its staff.
2. Staff were aware of management's intentions and there was substantial uncertainty about the implications of the decision to cease tourism lending. In early February 1978, the Vice President, Central Projects Staff, the Director of Personnel, and the Director of the Tourism Projects Department therefore met with the staff of the Tourism Projects Department, explained the personnel implications of the decision and the arrangements the Respondent would make for the staff in this situation, and answered questions from the staff. Staff were asked to meet with their Personnel officers to discuss their reassignment preferences. Shortly thereafter, efforts were commenced to find a suitable reassignment position for the Applicant. His functions as Division Chief in the Tourism Projects Department were scheduled to end on July 1, 1979. In March 1978 the Applicant was placed on a list for reassignment at the "N" level and by June of 1979, the Applicant had been placed on lists for consideration for ten "N" level positions.
3. The difficulty of finding a suitable place for the Applicant at the "N" level having become evident, the Respondent decided that the Personnel Department would continue to put him on lists for "N" level positions, but that it would also put his name on lists for appropriate "M" level positions which carried more than normal responsibilities for a senior staff officer in operations. These efforts were unsuccessful, and by September 1980

the Applicant had been presented for at least twenty different positions (sixteen of them at the “N” level) – three allegedly as the “sole candidate,” and two others as “priority candidate”. The Applicant was not forced over the objections of the supervisor holding the position (“force placed”) into an “N” level position, which is a management level position, because inter alia the selecting senior managers had preferred other candidates believed to be more qualified.

4. After unsuccessful efforts at locating an acceptable position for the Applicant and after he had been without an assignment for almost a year, the Director of the Personnel Management Department (PMD), on July 2, 1980, offered the Applicant alternatives to resolve the question of his next assignment. In the Director’s letter of that date, the Applicant was advised that he would continue to be placed on lists for “N” level positions but that he would not be forced into such a position and that, in the meantime, he could take up a regular assignment as Deputy Division Chief in the Latin America and Caribbean Projects Department. This was an “M” level position, but the Applicant was allowed to retain his “N” level salary and grade on a personal basis until he was selected for another assignment with which he agreed. As an alternative to accepting the Latin American position, the Applicant was offered a package of termination benefits which included seventeen months of special leave, during which he would be paid full salary, and other benefits (with the exception of accumulation of annual and sick leave) without any requirement that he report to work. In the event he were to take up full-time employment prior to the expiration of the special leave, the Applicant would receive a lump sum payment equivalent to his salary and dependency allowance, up to a maximum of seventeen months, for the period remaining of the special leave. As an alternative to such special leave, he could choose to take an equivalent lump sum payment.

5. In response, the Applicant, while reserving his right to appeal, accepted the position of Deputy Division Chief under protest and provisionally; he also rejected the termination arrangements, which he claimed to be inadequate. The Applicant requested the Vice President, Administration, Organization and Personnel (AOP) to review his reassignment problems. In the course of his review, the Vice President, AOP, asked for a briefing on the history of the reassignment problems following abolition of the Tourism Projects Department and, in particular, on the Applicant’s complaints. On September 12, 1980, PMD sent the Vice President, AOP, a memorandum explaining the history and course of events regarding the problems encountered in the Applicant’s reassignment. After a review of this history and of the Applicant’s complaints, the Vice President, AOP, found that the handling of the Applicant’s situation had been fair, reasonable and consistent with representations made to staff of the Tourism Projects Department with respect to their reassignments. The Vice President, AOP, also found that the Applicant’s complaints were not justified and that his demands for augmented termination benefits were not reasonable. The Vice President, AOP, also repeated that if the Applicant chose termination, the Respondent would provide professional outplacement assistance as part of the termination package. The Applicant was asked to decide whether to accept the Deputy Division Chief position or the proposed termination arrangements by October 17, 1980.

6. The Applicant reluctantly accepted the former and thereafter, on October 30, 1980, he filed an appeal with the Appeals Committee. After a review of the records, after listening to the testimony of a number of witnesses, and after hearing the arguments of the parties, the Appeals Committee found that there might have been specific instances where the Applicant’s candidacy could have been put forth more convincingly by PMD. In particular, the Appeals Committee, in its Report, dated November 13, 1981, noted that

“While the Committee is prepared to uphold the selecting manager’s final right to accept or to reject a candidate, it is not persuaded that Respondent presented the Appellant as effectively or as forcefully as it should have in the circumstances, particularly taking into account that at least some of the positions for which Appellant was considered, while being at management level, had very limited managerial content. It appears that Respondent accepted the reluctance of all the selecting managers to offer a position to the Appellant rather readily. It is hard to understand why Respondent did not except perhaps in one case, insist that the selecting managers interview the Appellant. Such interviews would have given Appellant the opportunity to try and dispel the managers’ reservations about his suitability. Also, there is no evidence that Respondent made any particular efforts to convince selecting managers that the Bank had special responsibilities toward displaced staff members. It is quite unfortunate in this context that apparently none

of the selecting managers explained their reasons for rejecting the Appellant in writing, and that Personnel did not seek and record by themselves those reasons.”

However, the Appeals Committee concluded that the Respondent acted reasonably when, in the summer of 1980, more than two years after placement efforts had begun and one year after the Applicant’s previous position had actually been abolished, it offered the Applicant the choice between the “M” level position as Deputy Division Chief and a termination package. The Appeals Committee recommended:

“(i) that Respondent invite the Appellant to withdraw his protest against being placed in the position of Deputy Division Chief, Agriculture 3 Division, LAC; (ii) that Respondent continue to place Appellant’s name on lists of candidates for N level positions for which Appellant is qualified and ensure that Appellant is interviewed by the selecting manager; (iii) that Respondent modify its offer of termination indemnity in case the Appellant should reject recommendation (i) by raising it by an adequate amount which, however, should be well below the three year net pay ceiling established by Article 12 (1) of the Statute of the Administrative Tribunal. The Committee has come to these recommendations after finding that while there is no clear evidence of discriminatory or unfair treatment of Appellant by Respondent, the Respondent’s efforts toward placing Appellant in an N level position fall short of what the Committee feels was required and possible in the circumstances.”

7. The President of the Bank accepted the Appeals Committee’s recommendations that the Applicant be invited to withdraw his protest against being placed in the position of Deputy Division Chief and that his name continue to be placed on lists of candidates for “N” level positions for which he was qualified. The President of the Bank rejected the recommendation that the termination indemnity offered the Applicant be increased and he granted the Applicant an additional ninety days within which to choose whether to resign and to accept the termination indemnities already offered. This decision was communicated to the Applicant on January 4, 1982. Applicant sought clarification regarding the outplacement assistance that would be afforded to him, and he was informed that the Respondent would pay a standard fee, not to exceed 20% of annual salary, to a professional placement firm, and that it would also pay for a maximum of three trips to Europe, and subsistence and local travel for up to twenty-one days while in Europe seeking employment.

#### The Applicant’s main contentions:

8. The Respondent did not follow or improperly interpreted, or unilaterally changed, the principles adopted by it for the fair treatment of Tourism Projects staff as explained to that staff and as stated in the memorandum of February 1978. Paragraph 25 of this memorandum, specifically written to ensure the protection of the legitimate rights and concerns of the Tourism Projects staff, stated the principles which should be applied so as to accord them fair treatment. Tourism Projects staff, including the Applicant, were repeatedly assured that this memorandum established the Respondent’s policy and it was intended to grant Tourism Projects staff a preferential position in reassignments. The drafters, sender and recipients of this February 1978 memorandum were fully aware of the discretion normally given to the supervisor to select his preferred candidate for reassignment, so it is clear that the memorandum was meant to alter this practice and to ensure Tourism Projects staff more favorable treatment than that given to staff being considered for normal reassignment. PMD’s interpretation and implementation of the principles of paragraph 25(a) of that memorandum (for the text of these provisions see paragraph 19 below) as merely a non-binding guideline to be followed as far as possible are contrary to the definition of the term “principle” used in paragraph 25 of the same memorandum. PMD’s interpretation is also illogical because, if paragraph 25(a) were not to provide the Tourism Projects staff with any preference over other staff, then the PMD interpretation of paragraph 25(e) would facilitate the placement of Tourism Projects staff in lower level positions, thus providing a worse standard of treatment for Tourism Projects staff than for other Bank staff. In none of the twenty-three cases in which the Applicant’s name was proposed for a vacant position did the Respondent adhere to the procedural principles of paragraph 25(a) of the February 1978 memorandum. Moreover, in early May 1980, it was decided at a meeting of the Operational Vice Presidents, without any prior discussion with Tourism Projects staff, that any such staff members should not be reassigned into an “N” level position unless they were acceptable to the selecting

Director. This decision was a most severe breach of the Applicant's rights since it undermined the preferential reassignment status Tourism Projects staff were ensured in the February 1978 memorandum. From this fact alone, it is quite clear that the Respondent made no reasonable effort to apply paragraph 25(a) of that memorandum and the principles set forth therein.

9. The Respondent breached and improperly interpreted several of the provisions of Personnel Manual Statement (PMS) No. 4.04 and the attachments thereto. Paragraph 7 of PMS No. 4.04 stated that "Every effort will be made to provide staff on reassignment with assignments which best utilize their talents and satisfy their expressed preferences." No efforts were made by PMD to take into account the Applicant's talents or expressed preferences. Paragraph 12 of PMS No. 4.04 stated:

"When filling vacancies at Headquarters particular consideration will be given to the need of staff returning from overseas assignments or external services ... to be placed in positions which will swiftly reintegrate them into their normal area of professional interest ... at an appropriate level of responsibility. It is clearly in the interest of the Bank that such reassignments be planned well in advance of the staff member's return."

Through the February 1978 memorandum, Tourism Projects staff were granted priority in reassignment even over staff returning from overseas assignments. Nevertheless, PMD did not reintegrate the Applicant in his normal area of professional interest at an appropriate level of responsibility. Nor did it make any advance planning for his reassignment, i.e., the Applicant's reassignment proposals were made only when a vacancy arose. Paragraph 19(d)(iii) of PMS No. 4.04 obliged PMD to "provide staff members seeking reassignment with information on vacancies and assist them in the identification of desirable assignments." This service was not provided to the Applicant, even after repeated requests. In fact "the whole spirit of PMS No. 4.04 has been violated."

10. The Respondent used unfair, inconsiderate and discriminatory practices in the reassignment process. The Vice President, AOP, and PMD and other staff "actively or by default, applied and approved practices which are contrary to the spirit of the Bank's personnel policies or inhumane in themselves." Specifically, the Vice President, AOP, did not properly fulfill his obligations when he was asked to act in conformity with PMS No. 7.01, paragraph 3(a), to review the Applicant's situation. He failed to grant the Applicant's request for an interview, and he neglected to seek amplification of the Applicant's request for the Vice President's review and of the supporting memorandum which was explicitly stated to be only a summary. Moreover, the reply of the Vice President, AOP, to this review request contained several statements which were not supported by evidence available to him. For example, his statement that in several instances the Applicant was proposed as the "sole candidate" later proved to be incorrect, as the Applicant was the "sole candidate" in only one of those instances, and in that instance the February 1978 memorandum was not followed since PMD withdrew the Applicant's name before the issue of his reassignment was submitted to the Vice President, AOP, for a decision. By proposing the Applicant's candidacy for reassignment to a position in the Department of which the Chairman of the Appeals Panel hearing the Applicant's case was the Director, PMD created a conflict of interest leading to the resignation of the Panel Chairman, thus causing a delay in the Applicant's administrative appeals procedure; it also prolonged his stay "in a degrading position", since he was demoted to an "M" level position under a Division Chief who had just been promoted to an "N" level position. If PMD created this conflict of interest intentionally it was "a serious breach of personnel policies"; if it was not intentional, it was, at least, unthoughtful and inconsiderate. Moreover, although the Applicant suggested that the Vice President, AOP – whose disposition of the Applicant's reassignment requests was being challenged and whom the Applicant had requested as a witness at the Appeals Committee hearing – should not decide again on the Applicant's appeal, the Committee excused the Vice President, AOP, from testifying at the hearing and sent its Report through him to the President of the Bank. Both these decisions were contrary to paragraphs 2 and 5 of the appeals procedures (PMS No. 7.01). In sending its report through the Vice President, AOP, the Appeals Committee delayed the Applicant's appeals process and gave the Vice President, AOP, the unfair advantage of knowing its recommendations and being able to discuss them with the President of the Bank. This was particularly unfair since the President of the Bank did not accept part of the recommendations of the Appeals Committee.

11. The pleas on the merits submitted by the Applicant are:

- a) rescission of the decision to place him in an “M” level position with the only alternative being resignation from the Bank with an inadequate termination arrangement;
- b) rescission of the decision made by the Respondent’s management in early May 1980 no longer to “force” him into an “N” level position.

Believing, however, that a rescission of the contested decisions would not provide an adequate solution, the Applicant requests the Tribunal to establish a fair and adequate arrangement for termination that would undo, and compensate him for, the consequences of the Respondent’s failure to perform its obligations. He claims compensation in the form of a lump sum payment of about US\$750,000. He also claims compensation for the period of uncertainty and for hardship, including illness and lack of career development, in an amount equal to his salary over the period July 1, 1979, to June 30, 1980, and three times his salary over the period July 1, 1980 to the date he will be relieved from the position into which he was forced. He requests a correction of the announcement of his demotion to an “M” level position, elimination from his file of any reference to such demotion and clearance by him of any references the Respondent may provide to potential future employers. Finally, he asks for adequate provisions to cover the cost of treatment for, and to alleviate the consequences of, the illness that has resulted from the stress caused by his unfair reassignment treatment, should such illness recur in the future.

The Respondent’s main contentions:

12. The Respondent made numerous efforts to find the Applicant a suitable position at the “N” level, but these efforts were unsuccessful because the selecting senior managers determined that he was not qualified for such positions and could not become qualified within a reasonable time. After prolonged and good faith efforts to find a suitable “N” level position for the Applicant, it was reasonable and appropriate to increase the positions in the search by including “M” level positions having management responsibilities. This was done with the understanding that if the Applicant took an “M” level position, he would keep his “N” level salary and grade on a personal basis and he would continue to be considered for “N” level positions. The position of Deputy Division Chief of an Agriculture Division in the Latin America and Caribbean Projects Department was a positive and sensible assignment for the Applicant. When the Deputy Division Chief position became available to the Applicant, he had been without an assigned position for more than a year and efforts to locate a suitable position had continued for two and a half years. It was the Respondent’s view that: “If performed successfully, it would give him a possibility for advancement which should be welcomed by someone who found it difficult to locate other management positions for which he is qualified. There was reason to expect that the Division Chief position in that Division would open up in one to two years’ time.”

13. The Applicant’s reassignment did not result in any material loss, since he retained his “N” level salary and grade on a personal basis. His complaint was that the position itself was graded at the “M” level. Accordingly, the Applicant’s claims are based upon his own personal loss of pride, a loss not subject to objective valuation. The Applicant’s emotional responses to the circumstances and to the practical solutions to his reassignment were not an appropriate basis for his claims of monetary damages against the Respondent.

14. With respect to the Applicant’s claims for payment of medical expenses incurred from his stress-related illness, the Respondent sponsors a medical insurance plan under which the Applicant was entitled to full benefits upon proper application. Medical advice was also available from the Bank’s Medical Department. Any payments to the Applicant not covered by the Bank’s insurance scheme would be an unwarranted gratuity from the Respondent to the Applicant.

15. The memorandum of February 1978, which described the implications of the abolition of the Tourism Projects Department, summarized the Respondent’s criteria and practices when reassigning staff as a result of reductions or abolition of offices, but it did not create any greater privileges for the Applicant or other Tourism Projects Department staff than those available to any other staff in similar circumstances. Subparagraph 25(a) of the memorandum was fully implemented, as the Applicant was appropriately considered for a number of vacancies. When a selecting manager or Vice President demonstrated that the Applicant was not qualified for a

position for which he had been suggested by PMD, he was not force-placed into that position.

16. Sub-paragraph 25(e) of said memorandum referred to reassignment. It provided that there would be no reduction in salary, even though the reassignment might be to a position at a different level. This specifically excluded any promise or guarantee of reassignment at the same level. It provided that, if reassignment were to a lower level position, the staff member would have the option of leaving with a termination indemnity and early retirement, as appropriate. The significance of this provision was that it allowed the termination indemnity to be paid to persons who qualified for and chose to take early retirement, while in other circumstances a person who opted to take early retirement would not have been entitled to an additional termination indemnity. The Applicant seems to argue that he should have been given early retirement (presumably at the regular retirement rate for persons who retire at the normal retirement age of 62, a rate which is greater than that for persons who take early retirement at age 55), at a time when he did not qualify because he was under 55 years of age. It was therefore, not appropriate that he be afforded early-retirement benefits. He was offered all that was appropriate: a generous termination package providing for seventeen months of special leave which would have brought him to the date when he could retire immediately on an early retirement pension, or an equivalent lump sum payment along with professional outplacement services and trips to Europe to seek other employment. There was no basis for his claim that he had a right to greater indemnities or additional reassignment preferences beyond those he had received already. Administrative Manual Statement (AMS) No. 1.08, Sections II(c) and VI(20), established the payments to which a staff member was entitled as a matter of right upon abolition of position resulting in termination. A staff member who was terminated for reduction in staff or abolition of position was entitled to no less than thirty calendar days' notice and, for those with more than two years of continuous service, a lump sum payment equivalent to one half month's salary for each year of continuous service, up to and including twelve years. The Applicant's employment was not terminated when his position was abolished but he was offered the option of reassignment, without any reduction in salary, or termination with substantially more generous termination benefits than contemplated by AMS No. 1.08. The Applicant's rights had been protected and, further, every reasonable effort had been made to accommodate his interests under the circumstances.

### Considerations

17. The Respondent's answer states that "the issues in this case concern whether or not the Respondent failed to observe the contract of employment or terms of appointment (of the Applicant) when it gave him the option of accepting an assignment as Deputy Division Chief in the Latin-America and Caribbean Projects Department or the termination package" While under Article II of its Statute the Tribunal must determine whether there has been non-observance of the contract of employment or terms of appointment of staff members, such a determination has to be made in the present case not just with respect to the particular decision referred to by the Respondent, but also with respect to the entire process of reassignment of the Applicant as a consequence of the phasing out of tourism lending by the Bank. The reason is that the Applicant complains, not just of that final decision, but of what he alleges constituted a continuous breach of the principles for treatment of Tourism staff as set forth in the memorandum of February 14, 1978 of the Vice President, Projects Staff.

18. The first question to be examined is the legal status of that memorandum. The Respondent, in its answer to the Appeals Committee, described that memorandum as a "non-binding guideline to be followed as far as possible". It is significant, however, that this observation has not been repeated before the Tribunal. In its answer the Respondent describes the relevant parts of that memorandum as summarizing "Bank considerations and practices in circumstances requiring reassignment of staff resulting from reductions or abolition of offices". The Chapter of the memorandum on "Personnel Considerations" begins in paragraph 23 with the following statement: "As this is the Bank's first major abolition of function, the approach used to the personnel aspects will need to be handled with particular care to ensure that the legitimate rights and concerns of the staff are properly taken into account". And paragraph 25, the one relevant in this case, is introduced by these words: "The following personnel principles should be adhered to in ensuring fair treatment for affected Tourism staff". This memorandum was discussed at the draft stage with the Tourism staff and was formally issued, so that it was believed by that staff to constitute a statement of applicable Bank policies on which they could rely. In essence, it constitutes a detailed set of provisions designed to implement, in respect of Tourism

staff, the fundamental policy stated in general terms in the Bank's Policies and Procedures on Termination of Employment. It is there provided that "in the case of reduction in staff, it is the policy of the Bank Group to reassign the incumbent, where practicable, to any existing vacancy for which he possesses the necessary qualifications". The Tribunal, therefore, concludes that paragraphs 23 to 25 of the memorandum constitute part of the conditions of employment of the Applicant, within the meaning of Article II of its Statute.

19. The next question which arises is the interpretation of paragraph 25 of the memorandum, and particularly the relationship between subparagraphs (a) and (e) which read as follows:

"25. The following personnel principles should be adhered to in ensuring fair treatment for affected staff:

(a) The Personnel Department should ensure that appropriate Bank vacancies are not filled either through promotion, normal reassignment or from outside the Bank (unless a formal commitment has already been made) where a Tourism staff member available for reassignment is qualified or could become so in 6 months (e.g., by intensive language training). Where Personnel believes such a Tourism candidate exists, his would be the only name proposed to fill the vacancy. If the Vice President holding the position disagrees, the issue would be decided by the VP/AOP.

....

(e) On reassignment, there would be no reduction in current salary. However, it may not be possible to ensure that the position to which the Tourism Department staff member is reassigned would have the same grade level that he held in Tourism. If the new position were at a lower grade level, the person would have the option of leaving with the termination indemnity and early retirement, as appropriate."

There is a tendency on the part of both parties in this case to emphasize and to rest their respective arguments on one of those subparagraphs, to the exclusion of and in isolation from the other: The Applicant invokes subparagraph (a), the Respondent subparagraph (e). The Tribunal does not find any inconsistency between these two provisions. According to basic principles of legal interpretation, the two subparagraphs must be read in context so as to be harmonized, and not so as to overrule or eliminate one of them. Such a contextual reading leads to the conclusion that subparagraph (e) applies after the provisions of subparagraph (a) have been implemented without achieving a successful outcome.

20. In order to determine whether there has been a proper application or observance of subparagraph (a), it is necessary to consider what are the rights, obligations and procedures emanating from this provision. As to the Applicant's rights one thing is clear. Paragraph 25(a) does not guarantee a Tourism staff member a definite result, namely that he will be reassigned to a position of the same grade level as the one he had in the Tourism Department. This interpretation is confirmed by the terms of subparagraph (e), where obviously the term "reassignment" is employed in a broad sense, rather than the narrower definition repeatedly invoked by the Applicant in PMS No. 4.04, para. 2, which defines reassignment as "a lateral transfer to a position at the same level".

21. Also, paragraph 25(a) does not impose upon the Respondent the obligation to secure what is described as "forced placement", i.e., a reassignment over the objection of the prospective supervisor. It is true that the final sentence of that subparagraph gives the Vice President, AOP, the authority to force place, as the final arbiter in case of disagreement. However, this sentence does not impose upon the Vice President, AOP, the duty to exercise this authority and consequently it does not guarantee any of the members of the Tourism staff that such a power will be exercised in their favor. The Vice President, AOP, could lawfully refrain from exercising such power if, for instance, he shared the view stated in the Respondent's answer, and also held by the Appeals Committee, that "forced placement" authority should not be exercised with respect to managerial positions. It is significant to recall that the Applicant himself agrees in general with this view. Consequently, paragraph 25(a) does not guarantee the Applicant a reassignment at the same level, and it thus cannot be concluded that there has been a violation of his rights simply because he did not secure a managerial position with the same grade level he had in the Tourism Projects Department. Since there is no such guarantee, it also follows that the Applicant could not expect to be allowed to wait indefinitely for an "N" level assignment, without accepting another position at a lower level.

22. On the other hand, paragraph 25(a) does impose certain well defined obligations upon the Respondent, to be discharged by PMD. Some of these obligations are of a discretionary nature, such as the judgment by PMD that “a Tourism staff member is qualified or would become so in six months”. However, other obligations derived from paragraph 25(a) are of a different character, and are subject to close scrutiny by the Tribunal as to their observance. Thus, paragraph 25(a) requires, once PMD believes that a certain candidate is qualified, that “his would be the only name proposed to fill the vacancy”. Another provision of paragraph 25(a) of this character is the requirement that, when the belief of PMD in the qualification of that single candidate (already manifested in submitting his name as the only one) is challenged by the Vice President holding the position, then “the issue would be decided by the Vice President, AOP”. Paragraph 25(a) thus requires the Respondent in good faith to use its best efforts to obtain the reassignment of the Applicant at his grade level, pursuant to certain prescribed procedures. Paragraph 25(e) will become applicable when these efforts, carried out in accordance with these procedures, have proven unsuccessful.

23. The record shows that these two above-mentioned procedures were not observed. On no occasion was the Applicant’s name put forward by PMD for an “N” level position as “the only name proposed to fill the vacancy.” In most cases his name was included in a list of names; in three of these cases he was relegated to category II (secondary candidates) and once he was included in category III (which has been described as a group of “also ran” candidates). The record shows that the four times his name was presented as preferred or sole candidate for an “N” level position other qualified names were on the list, but selection of them was prohibited unless satisfactory resolution of the Applicant’s candidacy took place. Apparently, “satisfactory resolution” meant that “given the circumstances, selection of any other candidate would have to be justified in terms of Bank interest as opposed to the above commitment.” As pointed out by the Applicant, this fell short of full compliance with the requirement of paragraph 25(a), for it was “an open invitation to supervisors to disregard my sole candidacy”. He also makes the valid point that including his name in so many lists of candidates was not really in his interest “since supervisors knew that if a tourism staff [sic] was really qualified, he should be the only candidate”.

24. The requirement in the final sentence of paragraph 25(a) that the Vice President, AOP, decide the issue in case of disagreement was also not observed. The Respondent alleges in its Answer that “once the Personnel Department understood and accepted why the selecting manager or Vice President found Applicant unqualified for a particular position, there was no longer any disagreement, and thus, no need to refer the issue to the Vice-President, AOP, for a formal decision of the dispute”. But this is not, in the view of the Tribunal, the proper manner in which paragraph 25(a) should have been interpreted and applied. After PMD had reached the conclusion that a member of the Tourism staff was qualified for a certain position, or could become so in six months, and had on that basis put forward his name as sole candidate, when the Vice-President holding the position disagreed, PMD was no longer competent to decide the issue by yielding to the views of that Vice President. According to the terms of paragraph 25(a) the existence of a dispute had already been established, and the issue could be decided only by the Vice President, AOP.

25. The non-observance of the procedures required by paragraph 25(a) gives legal support to and explains the surprise experienced by the Appeals Committee at the negative outcome of the reassignment proposals “considering the Appellant’s good previous record as a manager and the positive evaluation the Respondent had previously made of Appellant’s qualifications for those specific vacancies”. The Appeals Committee added in this connection that “it is not persuaded the Respondent presented the Appellant as effectively or as forcefully as it should have”. In this respect, the Appeals Committee also pointed out that: “It is hard to understand why Respondent did not, except perhaps in one case, insist that the selecting managers interview the Appellant... It is quite unfortunate in this context that apparently none of the selecting managers explained their reasons for rejecting the Appellant in writing, and that Personnel did not seek and record by themselves those reasons”. This is required by paragraph 11 of Personnel Manual Circular 4/80.

26. Likewise, placing the responsibility of the final decision at the high level of the Vice President, AOP, outside the chain of command, would have afforded the occasion for a deeper and more formal examination of the validity of the reasons, “in terms of Bank interest”, for rejecting the Applicant or for preferring another staff



member or outside person.

27. Of course, it must be realized that if the procedures required by paragraph 25(a) had been strictly complied with – that is to say, if only the Applicant's name had been submitted and any resulting disagreement had been decided by the Vice President, AOP – it is still possible that the outcome would not have been different because managerial positions were involved and by reason of the reluctance shown towards a forced placement in such positions.

28. Yet, the non-observance of the prescribed procedures gives the Applicant a legitimate ground of complaint, since it is possible that such nonobservance caused the whole re-assignment exercise to fail. It is, therefore, necessary for the Tribunal to determine an appropriate remedy for this non-observance of the conditions of employment. The Applicant has declared that rescission of the contested decision and specific performance of the Bank's obligations towards him would not, in his case, provide a practical solution. Accordingly, the Tribunal considers that the remedy in this case properly lies in the award of an appropriate termination package. One has already been proposed by the Respondent, but it must be revised and updated in order to take account of the increased length of the Applicant's services at the present date and of the circumstances of the case. The Tribunal believes that this updating and amending of the terms offered constitute a fair and adequate arrangement for the option offered to the Applicant to terminate his employment with the Bank.

29. In reaching this decision the Tribunal has also taken into account the fact that the Applicant entered the service of the Bank when he was 38 years of age and that he fulfilled the duties assigned to him in a satisfactory manner over a period of 17 years. He is now at an age in which he would find it difficult to secure employment outside the Bank inasmuch as he has been engaged in specialized duties which have no counterpart in most national administrations or private concerns.

30. However, in the circumstances of the case as have been described above, and taking into account the fact that the reassignment of the Applicant involved no reduction of salary, the Tribunal finds no justification for the very extensive pecuniary claims sought in the Application. As to the Applicant's claim for medical expenses already incurred or apprehended from his stress-related illness, the Respondent has indicated that it sponsors a medical insurance plan which covers costs of illness related to employment, under which the Applicant is entitled to the full benefits upon application. Consequently, the Tribunal finds it unnecessary to pronounce on this claim.

### Decision

For these reasons the Tribunal unanimously decides:

- (1) To reject, subject to paragraphs 2 and 3 below, the Applicant's plea to rescind the decisions contested, namely, those contained in the January 4, 1982 letter of the Vice President, AOP, and in the July 2, 1980 letter of the Director, PMD.
- (2) To fix the date of the present judgment as the starting day for the period of 90 days granted in the letter of the Vice President, AOP, within which the Applicant may exercise the option for the alternatives offered in both of those letters.
- (3) To extend the period of Special Leave referred to in the July 2, 1980, letter of the Director, PMD, to 24 months counted from the day the option is exercised.
- (4) To confirm the offer of outplacement assistance in the event the Applicant leaves the Bank, in the terms specified in the Memorandum of March 3, 1982 by the Acting Assistant Director, PMD, to the Applicant.
- (5) To dismiss all other pleas in the Application.

E. Jiménez de Aréchaga

/S/ E. Jiménez de Aréchaga  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary

At Washington, D. C., October 8, 1982