

Decision No. 226

Heather M. Marshall,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of Robert A. Gorman, President, Francisco Orrego Vicuña and Thio Su Mien, Vice Presidents, and A. Kamal Abul-Magd, Bola A. Ajibola, Elizabeth Evatt and Jan Paulsson, Judges, has been seized of an application, received on November 6, 1998, by Heather M. Marshall against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place and, pursuant to an order of the Tribunal, oral proceedings were held on January 27 and 28, 2000. In addition, the Respondent was ordered to produce certain documents and the Applicant was allowed to file an additional written statement. The case was listed on May 10, 2000.

2. The Applicant, who was initially employed by the World Bank in October 1974, and was terminated on August 1, 1996 on account of redundancy, contests several decisions by the Respondent: (a) the redundancy decision, “as being pretextual and constituting wrongful termination of employment”; (b) the 1996 merit award for the 1995 performance year “as being an abuse of managerial discretion”; (c) the Respondent’s failure to assist her in obtaining an alternative position; and (d) the “failure of Respondent to protect her staff rights by conducting an abusive Ethics investigation.” The Respondent’s principal contentions are that its actions were all properly taken and based on legitimate business reasons, that they were altogether consistent with the applicable Staff Rules and Principles of Staff Employment, and that they were neither an abuse of discretion nor a product of ill-will.

Relevant Facts

3. After being initially employed in 1974 as a Secretary at the equivalent of what was later a level 14 position, the Applicant rose through the ranks in both grade level and employment responsibilities. After promotions in 1976 and 1978, the Applicant was promoted again in 1982 into a position as Senior Staff Assistant in the Secretary’s Department (later, the Vice President and Secretary Department and now the Corporate Secretariat, herein referred to throughout the pertinent period as SEC). In 1989, she was promoted to the position of Administrative Officer, initially at level 18, then level 19 beginning in 1990, and then level 20 beginning in 1992. Her responsibilities as Administrative Officer included, among other things, Human Resources administration (e.g., coordinating performance and salary reviews, advising on recruitment, transfers and terminations) for SEC and for staff at levels 11-17 in the offices of the Executive Directors, as well as coordination of training, facilities planning (e.g., allocation and planning of office space), and assisting with the Bank’s Annual Meetings.

4. During the Applicant’s period of service in SEC, her work was consistently rated very highly, with commensurate high-percentage salary increases, by the then Vice President and Secretary (hereinafter “former VP and Secretary”) along with others including the Deputy Secretary from January to June 1995 (hereinafter “former Deputy Secretary”), and a Chief Personnel Officer. After 1992, there were repeated recommendations by the Applicant’s superiors that she be promoted to level 21, in light of what they perceived to be her performance at that level of competence already; but those recommendations were not implemented. In addition to her salary, the Bank extended financial support to the Applicant in order to facilitate the completion of her undergraduate degree and the beginning of graduate studies in fields that her supervisors regarded as pertinent to her anticipated contributions in her service to the Bank.

5. The Applicant asserts that during her period of successful service in SEC, there was some ill-feeling toward her, rooted in envy, on the part of some fellow staff members. Most pertinently, a staff member reported to the Bank in May 1995 accusations of possible abuses of benefits by the Applicant, in particular the improper collection of dependency, travel and education allowances, and allegedly excessive paid absences from work. These charges were referred to the Ethics Officer, who met with the Applicant in early September 1995, interviewed several staff members in September and October, and issued a report on October 18, 1995 and a related memorandum dated December 19, 1995. The Ethics Officer, although noting that there were reasonable grounds for the investigation, exonerated the Applicant of all wrongdoing. In the meantime, on September 11, 1995, the Applicant reported the theft from her office of a personal file containing materials bearing upon the then ongoing Ethics investigation, but a thorough investigation by the Respondent's Security Office – including interviews of 21 staff members – resulted in conclusions that the Applicant's suspicion of a break-in was unfounded and that no suspects had been identified. The Applicant has nonetheless asserted that both the Ethics investigation and the break-in were precipitated by at least two individuals who ultimately played effective roles in the abolition of her position and her redundancy in 1996.

6. On January 2, 1996, a new Vice President and Secretary of SEC (hereinafter "new VP and Secretary") assumed office. (In July 1995, there had already been a change of Deputy Secretaries.) The new VP and Secretary promptly decided to reorganize the Department, a principal reason being to "streamline and decentralize the Department so that individual Divisions could function on their own." In the first of three "phases" of the reorganization, there was to be a review at the Departmental level of existing and new functions and services, leading to a realigned structure and a revised mandate for each Division. This phase was completed by the end of February 1996, and SEC was reorganized from three Divisions into five, one of which was Program and Administration (SECPA). In March, the Applicant was reassigned from the SEC Front Office to SECPA, continuing to work as an Administrative Officer, although many of the Applicant's functions had been redistributed to other staff members in other Divisions. Her Division Chief had been, prior to the reorganization, a senior colleague. It is the Division Chief of SECPA whom the Applicant believes to have precipitated the Ethics investigation against her, participated in the break-in to the Applicant's office, and been willfully responsible for the Applicant's redundancy.

7. During the second phase of the reorganization, each Division was to map its functions and responsibilities, in order to perform the new departmental mandates more effectively. There would thereafter be, in the new VP and Secretary's words, "an assessment of staffing implications, including individual jobs, their titling and staff streams, etc., with a view to obtaining greater consistency with the rest of the Bank." The Division Chief of SECPA was informed in April 1996 that she was "to decide and make recommendations as to who within your current group of staff have (or could develop) the requisite skills and other requirements to perform the needed functions," and that she might suggest "transfers – in or out" for "career development reasons." The Division Chief was to be assisted in this staff-assessment process by a consultant and the Human Resources Officer for SEC (hereinafter the "HR Officer"). By the end of April 1996, studies had led to the conclusion that a number of tasks from SECPA should be transferred out.

8. In the meantime, on March 18, 1996, the Applicant's Performance Review Record (PRR) for the period January 1 to December 31, 1995, was completed by the former VP and Secretary who gave her a laudatory assessment. In April 1996, the Management Review Group (consisting of the HR Officer and the new SEC Deputy Secretary – hereinafter the "new Deputy Secretary") took note of the former VP and Secretary's assessment and encouraged the Applicant "to seek assignments in areas appropriate to her career aspirations." On the basis of her performance for 1995, the new Deputy Secretary assigned the Applicant a merit rating of 3 ("fully satisfactory performance"), which was a score on a scale of 2 through 5, and awarded her a 2.4% salary review increase (SRI) – the lowest for a category 3 merit rating – out of a possible 4.5% for her salary zone. After the Applicant challenged this 1996 merit rating through administrative review, the new VP and Secretary increased the SRI to 4% (which corresponded to a 3-plus merit rating).

9. By a memorandum to SEC staff dated June 27, 1996, the new VP and Secretary noted that the first phase of the reorganization had been completed, and that to insure the "integrity" of the ongoing second phase, a

small committee was being formed for each Division to make recommendations on the matching of individual staff with specific jobs. In the Applicant's Division, the Selection Committee was composed of her Division Chief, the Chief of another Division within SEC, and the HR Officer. During this second phase, which the new VP and Secretary viewed as resulting in "new configurations for jobs in most of the divisions," the Applicant's level 20 Administrative Officer position was identified for redundancy, along with two other positions in SECPA, one at level 17 and one at level 18. It indeed appears that by this time, the functions of the Applicant's Administrative Officer position had been fragmented and reassigned to others: the Human Resources services she had provided in SEC had been reallocated to the responsible Division Chiefs; her Human Resources functions with respect to the 11-17 staff in the Executive Directors' offices were to be handled directly by the responsible team from the Human Resources Department; the budget services that the Applicant had previously performed were delegated to another staff member; and the Applicant's facilities-planning function was determined by the Selection Committee to be appropriately handled by a level 17 staff member in the Division.

10. On July 16, 1996, the Division Chief of SECPA and the HR Officer apparently orally informed the Applicant that her position would be abolished with effect from August 1, 1996. The reasons given in a memorandum of the new VP and Secretary dated July 18 indicated that the second phase of the reorganization had led to "most of the associated functions" of the Administrative Officer position being redundant, with the "few outstanding duties ... being annexed to the functions of a program assistant."

11. On August 1, 1996, the new VP and Secretary gave the Applicant formal written notice that her position would be redundant effective from that date under Staff Rule 7.01, paragraphs 8.02(b) (abolition of post) and 8.03. The Applicant was immediately placed on administrative leave and began the usual six-month job-search period. After the second phase of the reorganization of SEC, there were – among the four Divisions which had at that point completed the second phase – 16 vacant positions, ranging from level 13/14 to level 23/24. Nonetheless, efforts to place the Applicant in another position were not successful. Although the Applicant was provided with some measure of outplacement assistance, there is a dispute between the parties as to its extent and as to whether the Respondent otherwise discharged its responsibilities in assisting the Applicant in finding alternative employment.

12. The Applicant's service with the Bank terminated on March 31, 1997, and on April 1, 1997 she began a period of special leave which extended through February 15, 1999. As a redundancy package, the Applicant received a total of \$123,412 in severance pay and \$16,455 for training and outplacement assistance.

13. Earlier, and shortly after having been informed of her redundancy by the new VP and Secretary on August 1, 1996, the Applicant requested administrative review of, *inter alia*, some elements of the redundancy decision as well as the merit rating category within which her 1996 overall SRI was administered, which she asserted should have been in category 4-plus or 5 rather than 3. Ultimately, as noted above, the new Vice President and Secretary increased the Applicant's 1996 SRI from 2.4% to 4% (which corresponded to a 3-plus merit rating), but he determined that the Applicant's position had been properly declared redundant.

14. The Applicant appealed both decisions to the Appeals Committee, which after a hearing rendered its Report on July 9, 1998. As pertinent here, the Appeals Committee concluded that her challenge to the 1996 merit rating and SRI had been adequately resolved through administrative review; that the reorganization of SEC was based on legitimate business reasons and was not intended to target any particular individual; that although there was some level of resentment against the Applicant within SEC (which could have explained the initiation of the 1995 Ethics investigation against her), she had failed to establish that her redundancy was attributable to that; but that, although it was reasonable for the Respondent not to consider the Applicant for a higher-level Budget Officer position in which she was interested, responsible Bank officials failed to make a "sufficient" or "appropriate" effort to place the Applicant in another position following her redundancy, and the Respondent made "no active, individual effort either to assist [the Applicant] in her Bank-wide search, or more importantly, to examine closely whether one of the SEC vacancies that resulted from the reorganization – even a vacancy at a lower grade level – might be a match for [the Applicant's] skills." The Respondent ultimately implemented the recommendation of the Appeals Committee that, as compensation for failing adequately to assist the Applicant in her job search, she be paid an additional training allowance to cover the additional tuition

costs of her Ph.D. program. This amounted to \$33,000.

15. The Applicant filed a timely application in which she challenges her 1996 merit rating and SRI, the decision to declare her position redundant, and the Respondent's efforts in connection with her job search.

1996 Merit Rating and Salary Review Increase

16. The Applicant challenges the 1996 merit rating and the contemporaneous setting of her SRI for her performance in 1995. She asserts that these were arbitrary, fundamentally and inexplicably inconsistent with her merit ratings and SRIs over many previous years, and indeed a product of ill-will.

17. In Part 2 of the Applicant's PRR for 1995, dated March 18, 1996, the former VP and Secretary gave her service extremely high praise, as he had consistently done in several previous years. Among other things, he wrote: "This was another exceptionally successful year in which she demonstrated mastery and the effective application of competencies for level 21 and beyond." In assessing her against five "competencies," he rated her "exceptionally effective" in four and "fully effective" in one. In a supplementary PRR for 1995, the former Deputy Secretary – who had served through June 1995 – confirmed that the Applicant was functioning at a higher level than her 20 grade, and that "she brought the same resourcefulness, energy, drive and competence to each facet of her job." In the Management Review Record that followed in the PRR, there was a more terse assessment dated April 16, 1996 by the new Deputy Secretary and the HR Officer responsible for SEC. They "noted the assessment of the outgoing Vice President for SEC," but stated that "The [Management Review Group] would encourage Ms. Marshall to seek assignments in areas appropriate to her career aspirations as indicated in Section 2 of the Performance Management Form." Also in April 1996, in the course of the salary review, the Applicant was awarded an SRI of 2.4%. This reflected a merit rating of 3 (fully satisfactory) – in a qualitative range from 2 (unsatisfactory) through 5 (exceptional) – and the award of the lowest possible SRI within the Applicant's salary zone (2.4% to 4.5%). As noted above, as a result of the Applicant's challenge in the administrative review process, the new VP and Secretary in September 1996 increased her SRI to 4%.

18. The Applicant, nonetheless, challenges the merit rating and resulting SRI, particularly in the light of her consistent merit ratings in the 4-plus and 5 category over several years. She attributes the low merit rating and SRI to ill-will on the part of the Division Chief of SECPA – who became the Applicant's new manager in March 1996 after Phase I of the reorganization – alleging that the Division Chief "influenced the [merit rating] decision away from the judgments of her 1995 managers of record" (i.e., the former VP and Secretary, the former Deputy Secretary and the new Deputy Secretary). The Applicant portrays the Division Chief and other highly placed staff members – principal among them the HR Officer for SEC – as hostile toward her and as eager to use every opportunity to oust her from her position and from the Bank. In this connection, the Applicant asserts that such highly placed staff were unhappy about the financial support provided by the Bank for her post-graduate education and by alleged favoritism on the part of the former VP and Secretary; and she charges that their displeasure was manifested, among other things, in the initiation of an unfounded Ethics investigation against her in May 1995 and in the secretive break-in to her office in September 1995.

19. It is the conclusion of the Tribunal that there is no evidence to support these latter accusations. Although the Applicant devotes a very substantial segment of her pleadings to allegations of severely flawed Ethics and Security investigations, which took place in the fall of 1995, those investigations were never challenged in a timely manner, and it is far too late to attempt to upset either their procedures or their findings in the instant proceeding before the Tribunal. Apart from that, with respect to the Ethics investigation, the Tribunal is satisfied that it was not initiated by the Applicant's Division Chief, as hypothesized by the Applicant, and there is no evidence at all that the staff member who did file the charge had any connection to the Division Chief, the HR Officer or any of the other staff alluded to by the Applicant as being eager to oust her from the Bank. With particular respect to the Division Chief, it is altogether unexplained why and how she would somehow instigate a campaign against the Applicant – allegedly designed somehow to get the Applicant out of the Bank – well before the Division Chief became the Applicant's supervisor. The only involvement of the Division Chief in the Ethics investigation for which there is evidence in the record is that, as a then senior colleague of the Applicant, she was interviewed by the Ethics Officer who soon after, in October 1995, effectively exonerated the Applicant

of all charges. The alleged office break-in was thoroughly investigated by the Respondent's Security Office, which interviewed 21 SEC staff. No evidence of a break-in was in fact found by that Office, and no likely culprits were identified. Moreover, although the Applicant points to her Division Chief as largely responsible for the contested merit rating and SRI, the record supports the Respondent's contention that, having just assumed that position in March 1996, the Division Chief did not participate in the evaluation exercise.

20. Having heard and examined the Division Chief of SECPA and the HR Officer in the course of the oral proceedings, the Tribunal concludes that their assessments of the Applicant's work were not motivated by ill-will. Earlier, the Appeals Committee reached the same conclusion, also after hearing testimony from the pertinent staff members.

21. Even if the merit rating and SRI were not a product of intentional ill-will, they might still be overturned by the Tribunal if they were arbitrary or capricious. As the Tribunal has often stated, it may review such decisions of the Respondent to determine whether there has been an abuse of discretion, in that the decision was arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure. In awarding a merit rating and SRI for a staff member, it is common practice for the Bank to rate that individual in comparison with others in his or her department. Deciding where to rank the staff member on a performance scale of 2 through 5, and then – taking account of the individual's salary zone – deciding whether the SRI should be a low percentage or a high percentage, are decisions that require familiarity with the work of all departmental staff members and the making of dozens of comparative qualitative judgments. These are prototypically discretionary decisions that are not to be readily overturned by the Tribunal. (Compare Montasser, Decision No. 156 [1997], para. 21.)

22. What are to be reviewed here are the SRI and the corresponding merit rating that were ultimately granted by the new VP and Secretary in September 1996, in the course of his response to the Applicant's request for administrative review. Initially, in April 1996, the Applicant was given a merit rating at the low end of 3 ("fully satisfactory performance") and an SRI of 2.4%. Because this 3-minus merit rating was so markedly different from the 4-plus and 5 ratings of the previous several years, it was understandable that the Applicant was surprised and disappointed, and that she invoked administrative review. In fact, this discrepancy also troubled the new VP and Secretary, who in a memorandum to the Applicant dated September 23, 1996, stated that he had considered the "quite laudatory" 1995 evaluations by the VP and Secretary and the Deputy Secretary (for the first half of the year), and that he had consulted as well the new Deputy Secretary and the Division Chief, who "consider your performance and contribution to be fully satisfactory, but not beyond that." He then concluded: "Taking both sets of views into account, I believe it would be appropriate to increase your 1996 SRI to 4% or \$2,531.60 retroactive to May 1, 1996." This 4% SRI corresponded to a 3-plus merit rating.

23. Although it appears not to be unusual to take into account a staff member's performance in the early months of a calendar year in setting the SRI to be put into effect the following May 1, it seems procedurally questionable to consider in this case the views of the Division Chief that were formulated after the March-April 1996 PRR and as late as September 1996. Nonetheless, this was a conscientious response on the part of the new VP and Secretary to the Applicant's request, in the course of administrative review, for a higher merit rating and salary increase – and that is precisely what the Secretary awarded to her. He overturned the 2.4% SRI which was at the bottom of the range for fully satisfactory performance, and granted instead a 4% increase (and a corresponding 3-plus merit rating), not far below the 4.5% top of the Applicant's SRI range.

24. Given the various decisional elements that are properly taken into account in making such a comparative assessment, it is difficult to support a claim of abuse of discretion. There is little doubt that the Applicant's managers in 1996 were less impressed with her performance than her managers in 1995; but a change in assessment by a new team of supervisors cannot in and of itself be regarded as an abuse of discretion. The 3-plus merit rating and the 4% SRI granted by the Secretary after hearing and weighing the views of the several managers seem to the Tribunal to have been a corrective that was within the discretion of the new VP and Secretary to make. In particular, the failure of the Applicant to point to plausible record evidence supporting her claim of "collusion" among at least the Division Chief and HR Officer buttresses the conclusion that the 1996 merit rating and SRI were determined in good faith and did not constitute an abuse of discretion. The Tribunal,

however, cannot fail to note the abrupt change in the Applicant's performance evaluation after many years of consistently high ratings, unaccompanied by any descriptive statement explaining the perceived slippage in the quality of the Applicant's performance. This suggests a disturbing degree of inconsistency in the exercise of managerial responsibilities.

The July 1996 Redundancy Decision

25. The Applicant contends that the Respondent's decision to declare her redundant was an abuse of discretion, and was in fact a product of a collusive arrangement on the part of her 1996 Division Chief and HR Officer. The Applicant clearly acknowledges that the new VP and Secretary who assumed responsibility for SEC on January 2, 1996 was entitled to alter the priorities and functions of SEC in order to achieve new objectives and efficiencies. In the words of the new VP and Secretary, there was a need to "streamline and decentralize the Department so that individual Divisions could function on their own." Phase I of this reorganization process, implemented in January and February 1996, was meant to review existing functions and services and to identify new ones, in light of the new emphases within the department, such as greater emphasis on policy support for the Executive Directors. These newly articulated functions and services were then reassigned through a new divisional structure of five divisions (two more than before).

26. The impact of this process upon the Applicant's position was described by the new VP and Secretary as follows, in a memorandum to the HR Officer dated July 18, 1996, in confirmation of the Applicant's redundancy as was apparently communicated to her two days before:

The AO's [Administrative Officer's] position was part of the front office of the VP. A major focus in this reorganization was to reduce overheads and simplify procedures in the VP's office. Consequently, there are now only the VP, Deputy Secretary, Senior Advisor, and three 11-17 positions in the front office. Two 11-17 staff formerly in the front office have been reassigned to other divisions. In the case of the AO however, the BPI [Business Process Innovation] process has lead [sic] to most of the associated functions being redundant. A few outstanding duties (e.g. coordination of facilities) are being annexed to the functions of a program assistant.

The Applicant appears not to challenge the determinations made in Phase I of the reorganization of the department, that extracted from her position as level 20 Administrative Officer the human resource tasks that she had performed before, and that redistributed those tasks through decentralization to the chiefs of the five new Divisions and their human resource personnel. Although the Applicant now perceives that this was the beginning of an intentional campaign to shrivel her position as a first step toward redundancy, there is no evidence to support any such surmise. Whether human resource functions are to be centralized within SEC or distributed to the managers of Divisions is quintessentially a decision to be made by Bank management subject to intervention by the Tribunal only in the most extraordinary circumstances of evident wrongdoing or capriciousness (compare *Garcia-Mujica*, Decision No. 192 [1998], para. 11 and *Arellano* (No. 2), Decision No. 161 [1997], paras. 36-38), none of which exist here.

27. Thus, when the Applicant was assigned to SECPA, the tasks that she retained from her pre-reorganization post were almost fully related to facilities planning, which were apparently insufficient in themselves to warrant a full position. In any event, Phase II of the reorganization promptly commenced, with each of the Divisions responsible for mapping its functions and responsibilities with a view, in the words of the new VP and Secretary, toward identifying "specific and possibly better ways of performing them under the new circumstances" by means of "an assessment of staffing implications, including individual jobs, their titling and staff streams, etc., with a view to obtaining greater consistency with the rest of the Bank." This phase was also known as the "Business Process Innovation" initiative.

28. With the aid of a consultant who was an expert in job content and definition, and the HR Officer, the Applicant's Division Chief produced a chart of new functions to be performed within the Division, along with a calculation of the amount of time across the year that would have to be devoted to those functions along with a determination of the accompanying grade levels. This first part of Phase II resulted in the identification of the jobs, descriptions and grade levels to be undertaken in SECPA. Although at the oral hearing, counsel for the

Applicant suggested that this reallocation of functions and identification of job structures might better have been, to the Applicant's advantage, channeled in a manner so as to produce one or more different jobs that would have been within the Applicant's competence to perform at level 20, it is once again the conclusion of the Tribunal that this process, supervised by an expert consultant whose objectivity has not been challenged, cannot be faulted as arbitrary, capricious or discriminatory. The choice between two or more reasonable configurations or linkings of job functions is clearly within the discretion of management in implementing a staff reorganization. (Compare Montasser, Decision No. 156 [1997], paras. 11-13.)

29. It is principally at the second stage of Phase II that the Applicant finds a purposeful campaign of ousting her from the Bank. At this second stage, each Division was to make recommendations on the matching of individual staff members with specific jobs. The new VP and Secretary declared that "[t]o ensure the integrity of the entire process," selection committees would be established to undertake this task; within each division, the committee would be composed of the Division Chief, an HR Officer, and a Division Chief from another Division within the Secretariat. In the Applicant's case, that third position on the selection committee was given to the Division Chief of the Policy and Support Division of SECPA; at the oral hearing before the Tribunal, he described his function as assuring a full and fair discussion of the matches between staff members and positions. The members of this Selection Committee testified before the Tribunal that they made no assessment of, and gave no consideration to, the performance evaluations of the affected staff members; the task was the more objective one of matching the job description and qualifications for each new position against the curriculum vitae of the individuals then assigned to SECPA, including the Applicant.

30. As a result of this matching process by the Selection Committee, in late June or early July 1996, three such individuals – including the Applicant – were left without a matched position in the reorganized SECPA. The recommendations of the Selection Committee were placed before the new VP and Secretary and the new Deputy Secretary, who by then had comparable recommendations from other Divisions within SEC, and who attempted to match the three displaced staff members from SECPA with vacancies elsewhere in the entire department. This was unsuccessful, and at the end of Phase II, four employees in the department were declared redundant: the Applicant, a level 17 Program Assistant, a level 18 Information Analyst, and a level 17 Budget Analyst.

31. The Applicant asserts that the Selection Committee for SECPA, and particularly the SECPA Division Chief and HR Officer, was biased against her, and that vacancies could have been identified to which she might well have been appointed. As to the allegations of bias, there is no record evidence to support this contention. The Tribunal gives particular weight to the testimony of the third Committee member, who asserted that the matching process was pursued objectively by considering job descriptions along with staff member experience and qualifications as manifested in their curricula vitae, that his two colleagues never in the Committee deliberations referred to the Applicant in a derogatory manner, and that in fact they made particular efforts to consider where among the SECPA openings she could be placed. The Tribunal also considers the Applicant's claim of personal bias to be significantly undermined by the fact that the same Selection Committee declared two other positions in the Division to be redundant at the end of the June-July 1996 exercise, and the fact that no position elsewhere in the Bank was found for either of these two staff members. The involvement of the new VP and Secretary and the new Deputy Secretary at the later stage in seeking to find matches on a department-wide basis was also an element that contributed to fairness in the process. (Although the Applicant asserted that she had been informed that the new VP and Secretary had announced at an early stage that he wished to see her out of the Bank, there were in the oral proceedings firm and convincing denials that any such statement had been made.)

32. In support of her claim of bias by the Respondent in the redundancy process, the Applicant points to the Bank's retention of Manchester Partners International (hereinafter "Manchester") to provide the Applicant with outplacement assistance. She claims that retaining them by late June 1996, before the Selection Committee had acted to recommend her redundancy, clearly indicates that the Bank had prematurely decided, for reasons of hostility, to terminate her. But it is clear that Manchester was retained because the Applicant herself sensed in the spring of 1996 that her position was in jeopardy after Phase I of the reorganization, and moreover because she had expressly sought aid from the Chief Personnel Officer. There is also some alleged basis for

suspicion surrounding the reference, in an internal Manchester document, to “chemistry/political” as the reason for the Applicant’s separation from Bank employment. This suggests, as the Applicant asserts, that Manchester was informed that her separation did not derive from a legitimate reorganization and abolition of position. Nonetheless, a Manchester representative has given this terminology a less menacing explanation; and in any event there is no evidence in the record as to who from the Bank might have given such an inculpatory explanation of the Applicant’s termination (apart from the Chief Personnel Officer, who firmly denies having done so).

Vacant Positions at the End of Phase II of the Reorganization

33. The Applicant also claims that – even if her Administrative Officer position was properly abolished, and apart from any charge of bias in the Selection Committee – it was arbitrary and unreasonable not to have placed the Applicant in any one of several positions that were open at or about the time of Phase II of the SEC reorganization, and for which she was qualified. As of July 1996, 16 positions in the reorganized SEC were vacant: 5 in SECPA, 5 in the Records Management Division, 4 in the Board Operations Division, and 2 in the Bank/Fund Conferences Division.

34. The Bank’s responsibility in reassigning staff members upon their declaration of redundancy is set forth in Staff Rule 7.01, paragraph 8.05, which at the time of the redundancy decision provided as follows:

The Bank shall assist staff in seeking another position among existing vacancies in his type of appointment within the Bank Group through the Job Search Center. This will include positions, the duties of which are commensurate with the staff member’s qualifications, or for which the staff member can be retrained in a reasonable period of time, as provided in paragraph 8.06. Placement may also be offered in a vacant lower level job for which the staff member is qualified and which he is willing to accept under Rule 5.06, ‘Assignments to Lower Level Positions.’ . . .

35. One such open position that the Applicant claims she was qualified to perform was a level 22/23 Budget Officer in SECPA itself. This position was apparently advertised during the first two weeks of July 1996, at the time the Selection Committee was recommending to declare the Applicant’s position redundant but before she was so informed at a meeting with her Division Chief and HR Officer on July 16. The Applicant claims that, given the timing and circumstances, she should have been informed by them of the opening and that she had the qualifications for the post. It is clear to the Tribunal, however, that the qualifications required by the Budget Officer position were quite demanding, and that although the Applicant had done some budget work for significant periods of time in her past work with the Bank, she lacked the requisite advanced degree in finance or business administration and experience with budgeting systems, so that the Bank did not act unreasonably in awarding the position to another individual. Nor was it unreasonable for the Respondent to believe that the shortfall in the Applicant’s qualifications was such that there was no need to call the vacancy to her attention.

36. The Applicant asserts that she should have been considered for, and that she was qualified for, two other somewhat related positions: namely, a level 18/19/20 Seminars Officer and a level 22 Conferences Officer. The former position, intended to be a “pilot” project, was filled in April 1996 (several weeks before the selection process leading to the Applicant’s redundancy) by a consultant, whose working experience and credentials could reasonably have been found by the Respondent to have been superior to those of the Applicant. The Conferences Officer position was filled in late 1996, again by a person whose experience and credentials could reasonably have been viewed by the Respondent as superior to those of the Applicant. In both instances, the Tribunal views the job descriptions as advertised to have been such that – given the necessary level of generality of description – the Applicant could reasonably have regarded herself as having the necessary qualifications. But at the same time, the Bank cannot be found to have abused its discretion in concluding that the individuals to whom those positions were ultimately awarded possessed comparatively superior qualifications.

37. The Applicant also contends that she should have been considered for the level 22/23/24 Board Operations Officer position. She puts weight on the fact that this position had derived from the Staff Officer position, and that the HR Officer had in fact expressed the view in 1995 or previously that she was eligible to fill that latter

position. However, the record is convincing that in the course of the evolution of the Board Operations Officer position under the new VP and Secretary, its functions had been made more demanding. Most pertinently, its job description as of 1996 (and since) requires experience in a responsible operational position, something that the Bank convincingly asserts the Applicant did not have. It was also reasonable for the Respondent to have concluded that the Applicant did not possess the technical qualifications needed to perform satisfactorily in the positions in the information technology stream: Information Officer at level 22/23/24, Information Analyst at level 18/19/20, Information Assistant at level 15/16/17, and Database Specialist level 20/21.

38. Even though the Respondent cannot be faulted for having ultimately chosen others to fill certain positions for which the Applicant claims to have been qualified, and for not considering her at all for other positions, there is a question whether in other respects the Respondent fully discharged its obligation to “assist staff in seeking another position among existing vacancies” as expressly required by Staff Rule 7.01, paragraph 8.05. The Applicant relies on Ezatkhah, Decision No. 185 [1998], for an interpretation of that provision. But that Decision, which resulted in a judgment favoring a staff member whose position in the Bank’s London Office was declared redundant, was based on a version of Staff Rule 7.01, paragraph 8.05, that was revised effective July 15, 1995. That earlier version had required that “The Director, Personnel Management Department, or a designated official, shall seek to place the staff member in another position among existing or known prospective vacancies in his type of appointment within the Bank Group, the duties of which are commensurate with his qualifications....” The version of the Staff Rule, as revised and as more fully quoted above, that was in effect at the time of Ms. Marshall’s redundancy provided: “The Bank shall assist staff in seeking another position among existing vacancies in his type of appointment within the Bank Group through the Job Search Center.”

39. A principal purpose of the revision was to centralize the search-assistance process by moving it to the Human Resources Group and in particular to the Job Search Center. Another purpose was apparently to attenuate the Bank’s obligation to “seek to place” a redundant staff member in one or another vacant position. But even though the Bank’s obligation is differently phrased in the revised version of paragraph 8.05, the Rule nonetheless still expresses an obligation to take a proactive role in assisting redundant staff in seeking other positions. This mandate is most reasonably interpreted to require more than merely a tacit assumption on the part of the Bank that the Applicant would take the initiative to pursue her own job search through the Job Search Center. Such a requirement for proactive measures by the Bank is reinforced by the additional language in paragraph 8.05, which appears clearly to require that it is for the Job Search Center (and not alone for the staff member) to identify positions “which are commensurate with the staff member’s qualifications, or for which the staff member can be retrained in a reasonable period of time.”

40. The Tribunal finds that the Respondent fell short of its responsibilities under the Staff Rule, particularly in light of the Applicant’s 22 years of service with the Bank, her several successive promotions in the past and her remarkably high performance evaluations in recent years, the identification of the Applicant by her superiors as a person of “high potential,” and the resulting support given to her academic studies in order better to qualify her for higher Bank service. The position descriptions and qualifications for certain vacant posts – such as the Seminars Officer and Conferences Officer – seem to the Tribunal to have been sufficiently within the obvious interest and potential capacity of the Applicant that the Respondent could reasonably have been expected to call them specifically to the Applicant’s attention. Even though the Seminars Officer position was filled in April 1996, before the Applicant was informed of her redundancy in July, it was clear to all involved as early as March and April, after the Applicant had been moved into SECPA in connection with Phase I of the SEC reorganization and had been evaluated by the Management Review Group, that the Applicant’s employment as Administrative Officer was seriously in jeopardy.

41. Moreover, although the Respondent could well have assumed that the Applicant, after her redundancy had been formalized, would have been reluctant to apply for any of the several vacant positions at lower grades than hers, the notion of “assistance” under Staff Rule 7.01 suggests that at least some of those positions should have been called to her attention so that she could herself have determined her degree of interest. Paragraph 8.05 indeed expressly provides that “Placement may ... be offered in a vacant lower level job for which the staff member is qualified and which he is willing to accept”

42. It is true that a Human Resources Counselor affiliated with the Job Search Center attempted to contact the Applicant on August 1, 1996, the very date on which her redundancy became effective, and that she left word that the Applicant should return the call – which the Applicant did not do. But the Tribunal notes that no further effort was made by the Human Resources Counselor to contact the Applicant either by phone or by other means until a full two months had passed, on October 1. Indeed, it was nearly two months after that before a third call was made by the Human Resources Counselor. This seems to fall short of a conscientious effort at assistance as required by the Staff Rule.

43. In addition to this contact made by the Human Resources Counselor, it appears that the only assistance provided from within the Bank to the Applicant in her job search was limited. The Division Chief mentioned giving some general advice and suggestions to the Applicant, and more pertinently the HR Officer testified to recommending her to two individuals engaged in hiring within the Bank. But these contacts bore no fruit. As already noted, the contact with Manchester was made by a colleague of the Applicant, in view of the latter's expressions of concern for the security of her employment in the spring of 1996; although Manchester's services proved short-lived for reasons that are not altogether clear, the Bank reimbursed Manchester in the amount of \$8,500.

44. The Tribunal therefore finds that, although the Respondent took some steps to assist the Applicant to find another position upon her redundancy, Staff Rule 7.01, paragraph 8.05, required it to do more to identify suitable positions.

45. The Tribunal notes, however, that the job-search exercise requires efforts from both sides, and that the Applicant was overly passive in this regard. She neglected to respond to repeated telephone calls from the Human Resources Counselor affiliated with the Job Search Center. Such calls were made on August 1, October 1, and November 21, 1996, but the Applicant did not respond until November 24. Moreover, the Applicant was indeed already familiar with the Bank's Job Posting System – available to staff members in updated computer and hard copy forms – and yet she failed to take full advantage of it. She acknowledges, for example, that although she may have been aware in late 1996 of the vacant Conferences Officer position, for which as noted above she may have been a suitable applicant, she chose not to apply for it, anticipating that it would not be awarded to her and unwilling to suffer the attendant humiliation. It also appears that, although the Applicant did inquire, unsuccessfully, about a small number of job openings that had come to her attention, she failed to apply for several lower-graded positions in SEC that were listed in the Job Posting System during her job-search period after August 1, 1996. These were positions for which the Applicant now – too late, in the view of the Tribunal – claims she should have been given consideration. The same is true for several positions, both lower-graded and higher-graded, in the information technology stream.

46. Moreover, although the Applicant places great weight on the Bank's failure to appoint her to – or at least consider her for – the level 22/23 Budget Officer position in SECPA, she could reasonably have taken timely steps to help herself with this position as well. The Applicant points out that the position was advertised during the first two weeks of July 1996, before she was informed of her redundancy at a meeting on July 16 with her Division Chief and HR Officer. But the Tribunal reiterates – even apart from doubts about her qualifications for the post – that the Applicant already knew in early July that her Administrative Officer position was clearly in jeopardy, that she could have learned of the Budget Officer position through the Job Posting System, and that she could have discussed it with her Division Chief and HR Officer in a timely fashion. Moreover, for reasons not satisfactorily explained, the Applicant did not make full use of the outplacement services that were placed at her disposal by the Bank through Manchester Partners International.

47. The Tribunal concludes that there is some fault to be borne by both parties for a failure to pursue with reasonable initiative and effort the task of finding a position for the Applicant immediately before and after the effective date of her redundancy. But although the Applicant's failure to discharge her personal obligation may properly be considered in assessing the extent of the remedy to which she is entitled, it does not absolve the Bank from its institutional obligation under Staff Rule 7.01. The Tribunal therefore is of the view that the Applicant should be compensated in the amount of \$50,000 net of taxes. The Respondent has already, in

response to the recommendations of the Appeals Committee, paid the Applicant \$33,000 with the expectation that this would be used by her to pursue her post-graduate education so as to improve her prospects for future employment. The difference of \$17,000 is therefore to be paid to the Applicant, as should her costs in connection with the oral hearings as well as a proportion of her other costs, in the total amount of \$11,000.

Decision

For the above reasons, the Tribunal unanimously decides that:

- (i) the Respondent shall pay compensation to the Applicant in the amount of \$17,000 net of taxes;
- (ii) the Respondent shall pay to the Applicant costs and expenses in the amount of \$11,000; and
- (iii) all other pleas are dismissed.

Robert A. Gorman

President

Nassib G. Ziadé

Executive Secretary

At Paris, France, May 18, 2000