

Decision No. 292

Antonio Martin del Campo,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on July 25, 2002, by Antonio Martin del Campo against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Francisco Orrego Vicuña (President of the Tribunal) as President, Jan Paulsson, Sarah Christie and Florentino P. Feliciano, Judges. The usual exchange of pleadings took place. The case was listed on January 6, 2003.

2. The Applicant contends that he was improperly made redundant. He requests reinstatement, compensation in the amount of three years' net salary "for loss of career and employment opportunity and moral damages for acute mental suffering," as well as costs.

**Factual summary**

3. The Applicant is an economist holding a Ph.D. degree. He joined the Bank in 1989 as a mid-career professional. His performance was rewarded by two promotions and several commendations. By the time of the events relevant to his grievance, he was a lead management specialist in the Latin America and Caribbean Region Public Sector Group (hereinafter referred to as "the Sector Group").

4. On June 30, 2000, the very last day of fiscal year 2000 ("FY00"), the Latin America and Caribbean Region ("the Region") learned of a large and unanticipated budget overrun for the year. It appears that a newly introduced data system had generated drastically understated projections. In July 2000, shortly after the end of FY00, the Region was instructed that it would have to absorb one-half of the FY00 overrun from funds earmarked for spending in FY01. The practical result was a 16% cut of the Region's budget, and, it appears, a state of crisis as the Region had to reduce expenditures by US\$22 million (from US\$138 million).

5. The Region's Poverty Reduction and Economic Management Department (hereinafter referred to as "the Department") comprised four constituent Sector Groups, including that of the Applicant. The Regional Management Team, comprised of Sector Directors, Country Directors, and the Regional Vice President, analyzed the required cuts which were prorated across Sectors in proportion to the FY00 overrun. All staff were summoned to a Department-wide meeting on September 6, 2000, during which the Director explained the problem and described the envisaged solutions. The PowerPoint presentation notes for the meeting, under the heading "Our Starting Point," contains the following stark warning: "This year is NOT Business as usual." Among the materials prepared for the meeting was a revised FY01 budget showing substantial reductions of the budget lines for staff salaries and benefits, a decision not to fill seven vacated positions, and also the need to consider "further reductions, including staff reallocating to other parts of the Bank," with respect to "8-9 positions," in the light of forthcoming reviews of work programs and action plans. The Director called for volunteers for redundancy. (The Applicant questions whether he in fact did so, but a document prepared at the time, well before this grievance, records that there was indeed a call for volunteers on this occasion.) The minutes of a subsequent meeting (September 19, see below) indicate that the determination of the "number and types of positions which have to be reduced in number" had been effected "in preparation" for the September 6 meeting. (The expression "types of positions," as shall be seen, tracks the text of the relevant para. 8.02(d) of Staff Rule 7.01.)

6. The request for volunteers and notice of the “8-9” reductions were repeated in Sector Group meetings on September 7, 2000.

7. The Director of the Department had, quite properly, been in contact with Human Resources (“HR”). On September 19, obviously after prior consultations, an HR Officer communicated to him a detailed “revised schedule” for the redundancy program. Annexed to her e-mail was a memorandum containing, *inter alia*, the following paragraph:

4. Describe how the staff member was selected for redundancy.

The following factors MUST be considered and weighed with regard to the staff member:

(1) Performance relative to others in the same types of positions or levels

(2) Whether the staff member’s experience can be used elsewhere in the Bank Group and

(3) Existence of volunteers for redundancy

Address each factor in the description.

The HR Officer’s e-mail rehearsed the required actions, including the following key steps:

1. Communicate with staff and ask for volunteers.

Done

2. Determine number and types of positions which have to be reduced in number.

Done

3. Ask for volunteers in affected units/positions. Tuesday, September 19

4. Finalize analysis and ranking of staff. Tuesday, September 19

5. Management meeting with selected staff. Wednesday, September 20

6. Seek Network [Public Sector Board Committee] clearance for Sector staff. Prepare redundancy write-ups. Drafts completed by Friday, September 22

7. RLT Review of all proposed redundancies. Wednesday, September 27

8. Advise affected staff. Wednesday/Thursday, September 27/28

9. Finalize write-ups and obtain signatures and submit [Severance Request Proposals].

Wednesday/Thursday, September 27/28

8. In the afternoon of September 19, 2000, Department managers met. Three of four Sector Groups and all seven Country Management Units were represented. The HR Officer was present. The minutes reflect that only one staff member had offered to consider a mutually agreed separation. Therefore a redundancy process would have to be implemented. The Director of the Department, referring to the advice from HR, noted that steps 1-3 had been completed (although step 3 remained to be carried out with respect to two Groups, including the Applicant’s, in which staff would receive requests for volunteers “via email”). Six staff members were identified for redundancy (in addition to the volunteer), after consideration of rankings based on the two previous years’ Overall Performance Evaluations (OPEs). Much emphasis was given to perceived so-called fungibility (including effective adaptability in new working environments).

9. The Bank has submitted the statistical study of rankings that were used in this meeting, in the form of spreadsheets comprising 19 dense pages and reflecting the rankings of numerous staff members on the basis of evaluations by many supervisors, as well as the averages thereby obtained. The record of the meeting recites that the Applicant was “reviewed and discussed” and found to have a low ranking. Nevertheless, he was not identified for redundancy. The uneven feedback on his performance during that year was recognized as being “in sharp contrast to his performance the previous year.” Some country teams valued his contribution and would consider his departure to be a “major loss,” but others had complained of his not being a “team player” and preferred not to work with him. It was noted that “behavioral issues” had been discussed with the Applicant during the 2000 OPE process, but there was agreement to give him “a chance to show that he can deliver not only in terms of results but behavior.”

10. The next day, September 20, the Manager of the Applicant’s Sector Group informed the members of the Sector Group by e-mail that six positions within it were going to be cut, including one at Grade H (the

Applicant's grade). According to the Applicant, the Manager subsequently (on September 26) met with a number of staff members, not including the Applicant, and informed them that they had been declared redundant.

11. On September 28, the Regional Management Team met to discuss further staffing matters with respect to the whole Region. The Applicant was discussed, but had not been placed on the list of redundancies put forward by his Sector Group. Directors had different views as to the demand for his services.

12. On October 2, 2000, the Director of the Department wrote to the Bank's Public Sector Board Committee, requesting that the possibility of redeploying elsewhere in the Bank five staff members, including the Applicant, be explored at the Board's meeting on October 4. The reason given was that "approximately" seven redundancies had been found necessary.

13. On October 2 and 3, the Applicant met with the Director of the Department and was told that the Regional Management Team had discussed his possible redundancy. The Applicant alleges that in the context of those discussions the view had been expressed that he did not coordinate satisfactorily "across boundaries with other sector staff." The Sector Group Manager was present for part of the meetings with the Applicant; she recorded on October 6 that the Applicant had been told that the Regional Management Team had "recommended to consider his name for redundancy" as "there wouldn't be enough demand for his work."

14. On October 4, at the Public Sector Board meeting, the members of the Board found that the Regional Management Team did not have "current and anticipated future demand for his work."

15. In the evening of October 5, the Applicant and the Department Director met again to discuss his prospects. The Sector Group Manager was also present. The Applicant says he was told that the Regional Management Team would be asked whether he might be allowed to remain in his position with managerial support to handle any potential problems he might have with coordinating across boundaries.

16. The next day (October 6), the Regional Management Team decided to declare the Applicant's position redundant on the basis of his relatively low performance rankings and lack of fungibility. Three Country Directors who had previously had work programs for the Applicant stated that they would not have a full work program for him in the next two years; a fourth Country Director could not confirm a need for the Applicant. That evening, the Department Director informed the Applicant of the decision by telephone. The Applicant asked to meet the Director the following week. The meeting took place on October 11. According to the Applicant, he was then told that two Country Directors had expressed negative views as to the demand for his services.

17. In the meanwhile, the formal "Request for Approval of Severance Payment" had been signed, and the Severance Review Group approved the redundancy.

18. On October 18, the Applicant received formal notice of redundancy. The next day, he was offered transitional assistance by Human Resources.

19. On October 27, the Applicant wrote to the Regional Vice President to complain about the decision, the rationale of which he found "impossible to understand." He requested "detailed, complete and written" information about the process that had led to the decision, which he felt should be reconsidered.

20. On November 10, the Applicant received a statement of the terms and conditions of his redundancy.

21. On November 16, the Regional Vice President provided the Applicant with a detailed description, prepared by the Department Director, of the process that had led to the decision.

22. On January 12, 2001, the Applicant filed an appeal, which was heard by the Appeals Committee on October 23 and December 14 that year. In its Report, the Appeals Committee recommended the denial of the

Applicant's claims. The Committee found that the budget deficit of the Applicant's Sector Group had provided reasonable grounds for the decision to reduce staff, and was "in line with the interests of efficient administration." It moreover concluded, *inter alia*, that the "criteria created and utilized by the Respondent in the redundancy process did not constitute an abuse of managerial discretion." On the other hand, it recommended that the Applicant be awarded \$14,419.40 in attorney's fees due to what it considered to be the "difficult and unique circumstances" surrounding his appeal.

23. The Bank accepted the Committee's recommendation; the Applicant brought his grievance to this Tribunal.

### **The relevant Staff Rule**

24. Paragraphs 8.02 and 8.03 of Staff Rule 7.01 deal with redundancy and read as follows:

#### **Definition of Redundant Employment**

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

- (a) An entire organizational unit must be abolished;
- (b) A specific position in an organizational unit must be abolished;
- (c) A position description has been revised, or the application of an occupational standard to the job has been changed, to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position; or
- (d) Specific types or levels of positions must be reduced in number.

#### **Decision on Redundant Employment**

8.03 A decision that a staff member's employment is redundant shall be made by a vice president responsible for administering the position, after consultation with the applicable Sector Board or Staffing Group and with the concurrence of the Manager, Human Resources Service Center, for Bank or MIGA staff, or the Vice President, Personnel, Administration and Corporate Business Development, for IFC staff. Where positions are reduced in number under paragraph 8.02 (d) above, the selection of staff members whose employment is redundant shall be made on the basis of managerial judgment about the skills needed by the Bank Group to carry out its work effectively, taking into account the following factors:

- (a) The performance of staff members;
- (b) Whether the abilities and experience of staff members can be used elsewhere in the Bank Group; and
- (c) The existence of volunteers for termination who are willing to accept severance payments pursuant to paragraphs 8.08 or 8.09.

In the present case, the Applicant's redundancy was effected pursuant to Staff Rule 7.01, para. 8.02(d) and para. 8.03.

### **The contentions**

25. The Applicant's challenge to the redundancy decision has taken the form of a series of objections and allegations presented in a somewhat unfocused manner. The presentation is not helped by the considerable differences in approach and nomenclature between the Application and the Reply, which present the

Applicant's case in rather different ways. After several close readings of the pleadings, the Tribunal understands the Applicant's case as being comprised of the following elements:

- (a) there was no lawful basis for the decision, in that the budgetary rationale was a pretext and the claimed lack of a work program was artificial;
- (b) the method used to identify candidates for redundancy was flawed;
- (c) the decision did not comply with the procedural requirements of para. 8.03; and
- (d) the process was not carried out in good faith, as it allowed individual managers to introduce personal criticisms or prejudices which the Applicant was not given the opportunity to rebut.

These complaints will be summarized *seriatim*.

#### **(a) legal basis**

26. The Applicant denies that his redundancy was in fact based on a budgetary constraint. Instead, he asserts that the managers "relied on the false and spurious claim that I lacked a work program."

27. In support of the first proposition, he asserts that the Regional Vice President admitted before the Appeals Committee that

the redundancies were due to an order from his superiors to reduce staff. *Budget was actually not the issue.* (Emphasis in original.)

The Applicant moreover argues that

with proper management there was no imperative to reduce staff in [the Region] as provided in SR 8.02(d).

28. In support of the second proposition, the Applicant accuses Management of seizing the pretext that "there was no demand for my services." He continues:

To begin with, that is not a rationale found in SR 7.01, §§ 8.02 (d) and 8.03. Those rules apply where there is a contraction in budget or a contraction in work which impacts groups of staff or the entire staff of a unit.

He adds that he indeed did have a work program with 11 different projects in five countries.

29. The Bank responds by noting that the deep budget cuts resulted in the reduction of anticipated work programs. The "fungibility assessment" was a valid exercise of managerial discretion, because it stemmed from the desire to give priority to retaining those staff members who were likely to be the most flexible in terms of being capable of contributing throughout the remaining work programs. At any rate, the Bank observes, both the choice of the criteria applied and the evaluation of individual staff members' ratings by reference to those criteria are matters which are not to be second-guessed by the Tribunal unless a complainant adduces "clear evidence" of improper motivation (the phrase is quoted from *Lysy*, Decision 211 [1999], para. 71). If the redundancy decision had been based on relative performance alone, the Applicant would have been immediately selected for redundancy because he was the lowest performer in his grade. He was given a reprieve, but then failed to overcome the low ranking in light of his fungibility assessment. The fact that the Applicant disagrees with the managers' evaluation of the relative qualities of potentially affected staff members, the Bank submits, does not constitute a cause of action before the Tribunal.

30. Noting that staff cuts from FY00 to FY01 were "almost 25%" whereas "planned consultant use" increased 16%, the Applicant complains that this violated the policy of preferring staff over consultants. The Bank answers that the objective of the Applicant's unit, in the interest of sustainably sound finances, was to achieve a long-term reduction of fixed costs from 75% to 60% of its budget; it was not surprising that as a result short-term variable costs went up marginally to compensate for the loss of fixed-cost resources; such costs "tend to go up or down depending on the Department's needs."

#### **(b) method used to identify staff to be made redundant**



31. The Applicant challenges the process used in ranking the staff as unreasonable and prejudicial to him. He asserts that the “analytical basis and the specific methodology that they should have carefully developed does [sic] not appear to exist.” He refers to “clear indications of incompetent management,” particularly with respect to the person he felt was “very productive and cost-effective” and should not have been declared redundant (see para. 10). He argues that the number and selection of positions to be declared redundant should be “based on a well informed, analytically sound evaluation of the existence of redundancies ..., the impact of eliminating those positions and the possibility of implementing alternative measures.” As a result, the process did not ensure “thorough administrative analysis,” but rather left the following “unanswered issues:”

- The approach and methodology used to identify and select candidates for redundancy was the “easiest procedure” as stated by [the Sector Group Manager] in our departmental meeting on October 5, 2000 presided by [the Regional Vice President]. And in fact it was just that since it followed the Roman principle of decimation, simply eliminate across ranks evenly. [The Sector Group Manager] appeared to adopt an approach that was easy, but not geared to the Staff Rule;
- “relative performance” was judged/evaluated solely on the basis of the past two years’ OPE’s [sic] and SRIs (Salary Rate Increases), and the main factor in assessing “relative performance” was a rote use of assigned numbers without any weighing, instead of *the proven track record, capacity to deliver and productivity*: that should have been considered. This does not agree with the mandate of the Rule that the reductions are to be in the interest of efficiency.
- The approach and methodology selected is supposed to minimize potential errors and ensure that only the least productive would have to leave.
- A written clarification of the process has never been given. This has been requested by several staff through various channels. Staff should have been openly consulted in developing the regional approach and the methodologies at the regional departmental and group levels.
- The “fungibility” criterion remains obscure and could not serve as a standard for redundancy.
- Particular consideration should have been given to the sources of the budget overrun and those directly responsible for it.

32. Although at first accepting that the factors “to be considered” in selecting redundancies under the Staff Rules are “comparative performance” and “fungibility,” the Applicant in the next paragraph of his Application asserts that the Rules do “not require that staff performance be compared to decide on redundancies.” He concludes:

But Management chose comparative performance, although there were no guidelines for its application, Management was held to implement it in a fair and equitable manner. Instead, Management had a lower level assistant attribute arbitrary numbers to subjective categories such as “outstanding”, “fully satisfactory”, etc. There was no weighting for productivity, complexity of tasks, etc. And furthermore, a fair selection of annual performance evaluations was not made. Thus I was placed in competition with two staff members whose ratings were given based on their work at a full grade below mine.

33. The Applicant states that the methodology “must not be a mechanistic application of undifferentiated scores reflecting subjective judgements,” and refers to the facts of *Montasser*, Decision No. 156 [1997] as an example of “an apparently well conceived process for deciding who would ultimately be made redundant.” In that case, a panel was composed of managers and a representative from outside the relevant department which referred to numerical ratings involving a range of criteria – eight criteria for one position and fifteen for another. Annual performance evaluations for the three most recent years were used.

34. He also contends that responsibility for generating the ranking spreadsheets was left to an “office assistant” having “no guidance” from HR. With respect to fungibility, he complains of “the most perfunctory consideration.”

35. The Bank answers that the managers properly based their decision on a study of OPEs: “It would have

been far less appropriate to use some other indicator of performance than the very system that the Bank has put in place to evaluate staff performance.” Although the Applicant argues that instead of focusing on the OPEs, the managers should have considered his “proven track record, capacity to deliver and productivity,” he fails to demonstrate, in the Bank’s view, what documentation should have more properly been used to demonstrate those qualities.

### **(c) procedural legitimacy**

36. The Applicant contends that the Regional Management failed to explain the process by which redundancy would be determined; the “process was not transparent and there was no proper basis for staff to judge the fairness of the decisions taken.”

37. He complains that he was not given the occasion to put his case to the Vice President of the Region, and that he was told that in any event such a meeting could not take place before the important management meeting on October 6 (see para. 16).

38. He argues that the October 6 meeting was unfair to him because persons who, he believes, would have expressed favorable views of him were not present. As a result, “negative comments” of the Country Directors for Central America and Argentina were not “tempered.”

39. The Department Director had already forwarded the Applicant’s name to the Public Sector Board Committee when he met with the Applicant on October 5 (see para. 15) and told him that there would be an effort to retain him. This, the Applicant argues, “certainly amounts to flagrant deception.” Moreover, he asserts that the Board could not possibly have “endorsed fair and due process in his case” before the process of making the Applicant redundant had even concluded.

40. Finally, the Applicant alleges that there were no serious efforts at obtaining volunteers; “by the time [the] staff was informed that redundancies were being considered, they had actually been decided.” As for the Sector Board’s role in the redeployment of potentially redundant staff, he argues that it has been revealed as “totally unconvincing.” He believes that he should have been shown any dossiers reviewed by the Board, failing which one must conclude that there was “no documentation.”

41. The Bank responds that since any minutes of the Public Sector Board would be available on the Bank Intranet, parts of meetings dealing with redundancies are not minuted or recorded “because redundancies are sensitive and involve confidential personnel information.” At any rate, says the Bank, the Tribunal has recognized that it is not necessary for all elements of the process to be memorialized. (See *Hoezoo*, Decision No. 181 [1997], para. 14.)

### **(d) good faith**

42. The Applicant attributes motives of prejudice to the conduct of managers who he considers contributed to the decision in his case. Thus, he asserts that the Sector Group Manager “seemed keen to escalate the problem” of his allegedly insufficient coordination. He also detects bias in what he believes to have been an invidious inconsistency in the versions of a report from a Country Management Unit. Specifically, the Applicant alleges that his Sector Group Manager told him in late September that the Country Director for Central America had recently proposed that the Applicant be removed as Task Manager for projects in that area, but that the Director of the Department told him on October 3 that it was his Sector Group Manager who had taken the initiative to ask that Country Director whether her preference was that the Applicant not continue as Task Manager.

43. The Applicant also alleges that the Department Director told him on October 2 or 3 that one reason for his possible redundancy discussed on September 28 (see para. 11) had been his “insufficient coordination across boundaries with other sector staff.” Noting that both the Director and the Sector Group Manager were new in their functions, the Applicant contends that their predecessors, in his 2000 OPE, had not treated this as a serious problem, but as something which might have resulted from his “over-extended work program.”

44. He also complains that the Sector Group Manager's e-mail of September 20 (see para. 10) was "actually deceptive" because at the previous day's meeting the Departmental managers had already decided on the roster of redundant staff members. He considers that "evidence of arbitrariness" is to be found in the fact that the number of redundancies was subsequently increased without justification.

45. The Applicant levies serious accusations of "abuse of power" and "blackballing" against three Country Directors. One of them is said to have claimed that work programs in Guyana would not provide the Applicant with a long-term assignment although there was in fact work there to which he was assigned. Another reportedly said she would not use him due to a lack of coordination across boundaries; the Applicant accuses her of "retaliating" on the basis of a "personality issue." The third is said to have made the comment that she would never give the Applicant work, an irrelevant comment since the Applicant had no assignment in her area, and moreover unfair because her reason was an "unsupported, unverified allegation about an Argentina Government complaint."

### **Considerations**

46. Staff members do not have a promise of permanent employment; to the contrary, the very existence of rules concerning redundancy make it clear that involuntary severance may occur. Nor can there be any assurance that a redundancy decision will not cause upset and disruption; to the contrary, such an event may well cause bitter disappointment.

47. The legitimate expectations of staff members concern the *process* leading to redundancy and to the *conditions* associated with it. The Applicant here makes no complaint about the latter; there is no suggestion that the terms of his severance, including financial elements and the offer of career counseling, fell short of his entitlements.

48. This case is therefore about the legitimacy of the decision itself. The applicable standards have been enunciated on a number of occasions by this Tribunal, for example in *Marchesini*, Decision No. 260 [2002], where the matter was put thus (at para. 26):

The Tribunal on several occasions has recognized the discretionary nature of redundancy decisions and that the Bank's powers in this respect are subject only to limited review by the Tribunal. The Tribunal will not invalidate a redundancy decision except in the case of an abuse of discretion or where the decision is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure (*Saberi*, Decision No. 5 [1982]; *Mahmoudi (No. 2)*, Decision No. 227 [2000]; and *Yoon (No. 2)*, Decision No. 248 [2001]).

49. On the other hand, the implementation of the Staff Rules dealing with redundancy must be effected with strict observance of fair and transparent procedures lest managers pay no more than lip-service to the required standards; "prerogatives of discretion must be exercised exclusively for legitimate and genuine managerial considerations in 'the interests of efficient administration.'" (*Yoon (No. 2)*, Decision No. 248 [2001], para. 28.)

50. When a redundancy is decided under para. 8.02(d), the issue is not whether the Applicant is performing satisfactorily. It may well be that every person in the "type" or "level" of position targeted for reduction is more than able to fulfill his or her job requirements. The issue is whether the basis upon which a particular individual is chosen for redundancy is legitimate.

51. Any notion that a complainant could resist redundancy on the basis of his good performance would imply that if he were correct on that account the Bank could not make him redundant. That is obviously not so. If he is one of several persons in the relevant category, a reversal of his redundancy would imply that the correct decision should have been to declare someone else redundant – even if that other person was also performing satisfactorily. In other words, the reference in para. 8.03 to "performance" as a factor to be taken into account when making the selection does not address the issue of whether an individual's performance has been satisfactory or not in the sense of a minimum required standard, but whether an individual is *relatively* more



likely to contribute to the Bank's effective operations. If there are two absolutely first-class performers in a relevant grade, the Bank may nevertheless have to face the unpleasant choice of deciding whose loss would be *relatively* less disruptive of effective operations.

52. Thus, while unsatisfactory performance alone cannot furnish a basis for terminating service on the ground of redundancy (because such a termination would not be properly classifiable as a redundancy), "performance or skill" may be taken into account when deciding who should be retained; see *Hoezoo*, Decision No. 181 [1997], at para. 6. As the Tribunal held in *Jassal*, Decision No. 100 [1991], at para. 37, the Bank's assessment of a staff member's performance and qualifications is an important exercise of its managerial discretion, and the Tribunal will review such an assessment only for *abuse* of discretion.

53. In the light of these principles, the Tribunal analyzes and evaluates the Applicant's grievances as follows:

#### **(a) legal basis**

54. The Tribunal is not persuaded by the Applicant's insistent rejection of the proposition that his redundancy was caused by budget constraints. In the first place, the Tribunal is not convinced from reading the transcript of the Appeals Committee hearings that the Regional Vice President made the admissions attributed to him by the Applicant. Secondly, the issue is not whether there were budget constraints (although the record makes that conclusion overwhelmingly obvious). This issue is whether there was a managerial determination "in the interests of efficient administration" that "specific types or levels of positions must be reduced in number." If so, the Tribunal will interfere only if a complaint can show that this was done in violation of the Staff Rules. What the Tribunal will not do is to second-guess managerial policy decisions, including management's perception of the proper mix of fixed and variable costs within particular work units.

55. The Applicant asserts that in his meetings of October 2 and 3 with the Department Director (see para. 13), the latter told him that his redundancy was being considered because managers had "mentioned some allegations about my insufficient coordination across boundaries with other sector staff." The Applicant appears thereby to conclude that his redundancy was improperly based on allegedly unsatisfactory performance.

56. If this conclusion were well-founded, the Applicant could win his case. Redundancy is not a tool that may be used to deal with unsatisfactory performance; and if one were in a situation of examining unsatisfactory performance as a ground for severance, any "allegations" must be the subject of an adversarial debate between the parties.

57. But the Bank rejects the Applicant's conclusion on this point, and the Tribunal considers that the Applicant has not satisfied his burden of proof. The consistent evidence from the relevant managers is that they did not consider that *any* of the staff they had to declare redundant were performing unsatisfactorily. To the contrary, they found the process especially painful precisely because they felt they had a splendid team. It was nonetheless necessary to make cuts, and that involved comparisons. The first of the criteria permitted under para. 8.03 is the "performance of staff members." That performance means *comparative* performance evaluation. So when the Applicant was told of critical comments about his performance, it was not by way of explaining why he was being terminated, but rather why it was that others had been preferred when it came to saving their positions. The distinction may be irrelevant to the effective outcome from the redundant staff member's perspective, but it is crucial in assessing the lawfulness of the decision.

58. If the Applicant had been declared redundant because of his deficient performance, the decision would be clearly unlawful. The same would in all likelihood be true if the Tribunal found that the decision had been based on his particular under-employment; that would be wrong because the stated basis was a compelling need to effect broad cutbacks. In the context of the evidence of this case, however, the Tribunal concludes that the Applicant's perceived future under-employment was not discussed or relied upon as the reason for his redundancy, but rather as a reason to include him in a cohort of redundant staff members, based on comparative merits. As there was some hesitation about the perceived value of his contribution in various country units, the relevant managers suspended judgment. There is no warrant to sanction the Bank because

managers briefly postponed the Applicant's inclusion on the roster of redundancies in order to determine, in his interest as well as that of the Bank, whether there was a basis to save his position. The situation was thus similar to the one considered in *Denning*, Decision No. 168 [1997], where, as the Tribunal put in para. 27, "the extent of the Applicant's skills was indeed considered by the Respondent, not to justify the redundancy on these grounds but, on the contrary, to consider whether she could be kept in the new structure of the Division."

59. The Applicant explicitly acknowledges (see para. 28) that paras. 8.02(d) and 8.03 apply "where there is a contraction in budget or a contraction in work which impacts groups of staff or the entire staff of a unit." Conceding the applicability of para. 8.02(d) when budget constraints affect staff groups, he instead challenges the way it was applied to his individual case, i.e. the process by which he came to be selected as part of such a group.

60. Once it is accepted that the relevant Bank managers were engaged in a permissible redundancy program pursuant to para. 8.02(d), the Applicant's complaint misses its target. The Applicant understandably focuses on the September 19 meeting at which six staff members, and not he, were selected for redundancy. If he did in fact learn of the identities of the six and of the fact that they had been informed by the Group Manager of that decision, he might have thought that the danger was over for him; his discovery in early October that he was under consideration after all, and soon thereafter that he would indeed be declared redundant, may have been an appalling surprise. The circumstances could plausibly have caused him to view his redundancy as an isolated event, i.e. as a separate and arbitrary decision based wholly on dissatisfaction with his performance, and thus an impermissible ground for a redundancy decision.

61. But the fact is that the original determination had been made as of September 6, when it was established that "approximately" *eight to nine* positions would be considered for further reduction. The meeting on September 19 in effect reflected an effort to save the Applicant's post. It would be paradoxical for the Applicant to develop a grievance against the Bank because of this effort in his favor. Of course well-intentioned actions may well backfire in such sensitive matters; the creation of false hopes may be worse than immediate and unequivocal bad news. Instead of announcing the first six reductions on September 20, the managers may have done better to wait until a comprehensive final outcome could be announced. If that was unfeasible due to time pressures, the message could have made it clearer that the decision was not yet final, and that there might be further reductions.

62. The final decision on the number of redundancies was made on October 4; the number ended up being seven rather than six. This was of course still within the estimate of 8-9 made a month earlier. Focusing on the September 20 announcement, the Applicant may well have concluded that he, and he alone, was being *added* to the contingent of redundancies on the basis of criticisms of his performance, and that that is contrary to the Staff Rules. But the true sequence of events demonstrates that already on September 6 he was part of the group considered within the approximate range of redundancies; that there had been an attempt to save his post; but that it was ultimately deemed insufficient to eliminate six positions.

63. The Tribunal does not reach this conclusion without hesitation. The fact that the redundancies appeared to take place in two stages, with the second phase affecting only the Applicant, understandably made the Applicant distrustful of the process, and it gives pause to the Tribunal. Clearer identification of "specific types or levels of positions," as well as evidence of specific analysis of the need for redundancy by "type" and "level," could have established beyond peradventure the managers' respect for para. 8.02(d), and dispelled any suggestion that the redundancy mechanism was used as a pretext against the Applicant's interests. But in the circumstances of this case, the Tribunal concludes that there was no pretext. The two "stages" were not devised to harm the Applicant, but resulted from an effort to preserve his position. If the managers had been looking for a pretext to remove the Applicant, it is far more plausible that they would have included him with the initial batch of redundancies.

64. The crisis situation in which the decisions were made appears to have resulted in some confusion and in unfortunately timed announcements. Certainly the comment recorded in the September 19 meeting to the effect that the Applicant was being given a chance to improve his performance could, if viewed in isolation, be

inappropriate in a redundancy process. The only way in which performance could legitimately have been taken into account on September 19 was to examine whether the Applicant's record, in some rational and non-discriminating manner, justified placing him among the cohort being considered for redundancy. In the context and viewed in its entirety, the record of that meeting supports the Bank's position. The Bank should not be sanctioned because the managers sought to save the Applicant rather than to declare him redundant as soon as they were in a position to establish the staff rankings. The Bank must have the ability to reorganize work units in response to budget constraints. (See *Montasser*, Decision No. 156 [1997], para. 12.) Staff members cannot use the Tribunal as a court of appeal simply because they disagree with the way managers have chosen to deal with a budget crisis. The Applicant has fallen well short of demonstrating that the steps taken by the many managers who struggled through the obviously difficult and stressful period of September 2000 constituted improper procedure vitiated by impermissible motivation.

**(b) method used to identify staff to be made redundant**

65. The Applicant challenges the method by which he was included in the cohort of persons susceptible to be declared redundant, i.e. whether para. 8.03 was correctly applied. Here the position is clear. The Applicant has proposed a number of interesting procedures which plausibly would have been superior to those used by the Bank managers in this instance. Such criticisms do not create a cause of action before this Tribunal, which does not in principle interfere with managerial discretion absent abuse thereof. The Staff Rules do not establish timing requirements for a redundancy decision; the process might be elaborate and slow, or responsive to a legitimate urgency. There is no numerical requirement for the persons to be consulted. There is always a conceivably better way. What matters is that the requirements of due process are met, and that forms are not used to cover improper motives.

66. The Staff Rules contain no requirement that the persons who prepare the raw data for performance comparisons must be of a particular level of seniority. Even if there were such a requirement, the Bank appears to have met them in this case. Far from the picture painted by the Applicant of a junior office assistant indiscriminately compiling the data, the evidence shows that it was handled by the Sector Group Office Manager – who supervises nearly 30 support staff – and that the ranking grid was discussed and agreed at the highest relevant level, i.e. the Unit Management Team presided by the Department Director.

67. Essentially, the Applicant feels that a better method would have yielded a better result. "Better," of course, is in the eye of the beholder. Characteristic of his criticisms is the following phrase: "[T]he position Applicant occupied was needed because the work program required senior staff who could lead operations in the dialogue with governments." Similarly, he insists that his native Spanish-language capability was not given sufficient weight. Such comments may be plausible, but they pertain to a domain where the Tribunal will not trespass. It is not permissible for the Tribunal to consider whether managerial discretion could have been exercised more wisely; what a complaint must show is that the discretion was abused, or otherwise transgressed Staff Rules.

68. The fact that the Applicant in this case seems to approve the method used in *Montasser* (see para. 33) should be contrasted with what the complainant in that case said, as recorded at para. 11 of that decision; he called the managers' analysis vacuous and unconvincing, its conclusions ill-defined, and the plan they were implementing "opaque and tendentious posturing." The Tribunal found at para. 12 that the plan at issue in *Montasser* was not so "lacking in cogency" as to make reliance upon it equivalent to an abuse of discretion. This precedent illustrates two propositions: first, that any complainant in a redundancy case is likely to castigate the method applied in his case; and second, that the Bank's managers have substantial latitude to make evaluations, which are necessarily in part subjective, as to which individuals should be retained when an array of positions are reduced – subject, as always, to review for arbitrariness, retaliation, discrimination, or other types of abuse.

69. The Applicant evidently accepts (see para. 59) that the Bank may determine that it is contrary to "efficient administration" to tolerate a large budget overrun, and it may conclude that one of the remedies must be to reduce "specific types or levels of positions." That being the case, para. 8.02(d) may be satisfied even if the

selection of those types or levels could have been carried out better. Of course there can be no discrimination or other abuse of the process, and proper procedures must be followed. But such issues need to be examined under other headings.

### **(c) procedural legitimacy**

70. There were undoubtedly aspects of the process that reflect haste in its implementation. Given the undoubted painfulness of the steps the Bank's management decided it had to take to ensure financial soundness, it is understandable that the managers thought it undesirable that the process be drawn out. When so many staff members are potentially affected by cutbacks, it would be highly disruptive to maintain the staff in anxious uncertainty for a period of months. In the case of a single position, it may be easier to proceed with very detailed deliberation.

71. The essential point is that para. 8.03 does not establish a specific timeframe, and that the relevant managers obviously deployed significant efforts to implement the process rapidly. The issue is not whether things could have been done better, but whether the process satisfied the fundamental requirements to which managerial discretion is subjected.

72. The Applicant's allegation of "flagrant deception" on the part of the Department Director (see para. 39) is unconvincing. The Department Director's conduct is typical of an administrator who wishes to have laid the groundwork for as many eventualities as possible. Moreover, the testimony of both the Department Director and the Sector Group Manager is that the Applicant was told on October 2 that his name was being put forward for possible redundancy (i.e. in advance of the Board meeting). This evidence is not disproved by the Applicant's unsubstantiated allegation to the contrary.

73. The Bank is right in observing that all steps in the redundancy process do not have to be recorded. (See *Hoezoo*, Decision No. 181 [1997], para. 14.) The Applicant himself recognizes this in his pleadings, where he explicitly writes: "Actions taken need not always be recorded in specific memoranda, but the Tribunal must be satisfied by the evidence proffered that the rule was observed." That statement of principle is correct in both parts. In the present case, the Tribunal is satisfied in the light of all the circumstances that the Bank complied with the requirements of the Staff Rules.

74. Whether the Public Sector Board's determination of the absence of positions elsewhere in the Bank took place just before or just after other elements of the redundancy process had been concluded is immaterial; the issue is whether it was done. And as the Bank plausibly argues: "It would be illogical to have the Sector Board undertake its due process review prior to the redundancy being finalized because its determination as to whether it is able to place the staff member elsewhere in the Bank has a direct impact on the final redundancy decision." The Applicant suggests that the absence of documentation of the Board's attention to his case should be taken as indicative that no bona fide effort was made. The Staff Rules do not impose particular formalities on the Board; the burden of proof is on the Applicant to demonstrate that his case was not given due consideration. This he has failed to do.

75. As for the Applicant's complaint about the calls for volunteers, the allegation in his application that staff were informed too late is not credible given the fact that a volunteer actually was found; the more technical complaints in the Reply to the effect that more efforts should have been deployed – such as calling for volunteers "both generally and category by category," and with descriptions of "benefits offered under mutually agreed separations" – may well suggest fine ideas, but belong to the prerogative of management and are not to be examined judicially.

### **(d) good faith**

76. When the Applicant refers to his Sector Group Manager's message of September 20 (see para. 44) as "actually deceptive," he fails to persuade.



77. The Tribunal finds no evidence of prejudice in the Sector Group Manager's treatment of the Applicant. It finds inappropriate the Applicant's sweeping criticisms of her on account of her inexperience at the Bank – e.g. she “did not understand or know her staff, her work program and the processes of the Bank.” (The Tribunal particularly deplores the fact that his application, dated July 24, 2002, continued to make suggestive references to her premature departure from the Bank after 20 months of a 24-month contract when the uncontradicted evidence from the Appeals Committee hearings, nine months earlier, had been that she returned to her country of origin to deal with a tragic and debilitating illness in her immediate family.)

78. Nor is the Tribunal convinced by the Applicant's accusations of “blackballing” on the part of three Country Directors (see para. 45), let alone his pointed but unexplained reference to the fact that “significantly” all three were women, and that “the two principal ones” were North American. With respect to Guyana, the Applicant suggests that the lack of prospects of long-term assignments was inconsistent with the fact that he had on-going tasks there. This is a *non sequitur*. As for the manager who expressed a reluctance to work with him because of coordination problems, the Applicant seeks to transform her comment into a matter of unexplained “retaliation” on account of an undescribed “personality issue.” The evidence does no more than demonstrate why the Country Director in question indicated she would *prefer* to work with others – quite a normal comment in the context of comparing staff members exposed to the possibility of redundancy. The word “blackball” is, in this context, misplaced. Finally, the complaint regarding Argentina, which in the Applicant's Reply was escalated to an accusation of “defamation” and “misuse of the performance evaluation system,” does not hold up when one considers the evidence. In the Reply, the Applicant affirms that there is “clear evidence” that the relevant Country Director was “motivated by some ancient grudge” and that she acted “with the intent of doing immediate damage to Applicant.” This is a grave accusation. The Tribunal fails to see the “clear” evidence. She noted only that she was “reluctant” to have the Applicant “take on major ... responsibility ... based on the prior negative experiences,” making it quite clear, however, that those experiences had occurred “much earlier.” Her recollection was that he was “professionally competent, if unimaginative.” Her reference to “negative feedback” from the government related to difficulties in communication; it is found in a parenthesis which is given no emphasis or prominence. Such comments in the context of a performance evaluation may well have required that the Applicant be given an opportunity to rebut them. But the satisfactory nature or otherwise of the Applicant's performance was simply not in issue; when a redundancy choice must be made among individuals whose satisfactory performance is a given, the choice may have to be made on the basis of perceptions of relative strengths or weaknesses – such as communications skills or “fungibility” – although such perceptions in the context of a performance evaluation might not in themselves justify a negative rating.

79. The Applicant's complaint that persons he believes would have expressed favorable views of him were not present at the October 6 meeting is immaterial. There is no requirement that all directors of a region, or that all of a complainant's former managers, be consulted prior to a redundancy decision. The appropriate authority was vested in the managers who approved the decision: the Department Director, the Regional Vice President, and the relevant HR Account Manager. The Severance Review Group also gave its approval. The persons whose views the Applicant surmises might have rescued his post were not required participants at the October 6 meeting. One of them was no longer a Country Director; two others were no longer based at Bank Headquarters. (Nevertheless, the fact is that one of them did express his views in an e-mail and another was present at the September 28 meeting and thus in a position to express her views.)

80. In sum, none of the Applicant's complaints prove a violation of the Staff Rules. The Tribunal therefore has no basis to interfere with the managerial discretion that led to his selection for redundancy.

81. As for costs, the Tribunal notes that the Appeals Committee was generous with the Applicant notwithstanding its rejection of the substance of his grievance, and thus recommended that the Bank pay his legal fees. (The Bank accepted that recommendation.) The Applicant has nevertheless persisted, but unsuccessfully. His request at this stage for recovery of further costs is not well founded.

## **Decision**

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



/S/ Francisco Orrego Vicuña  
Francisco Orrego Vicuña  
President

/S/ Nassib G. Ziadé  
Nassib G. Ziadé  
Executive Secretary

At London, England, May 20, 2003