

Decision No. 372

**Massoud Moussavi (No. 2),
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Jan Paulsson, President, and Judges Zia Mody, Stephen M. Schwebel and Francis M. Ssekandi. The application was received on 26 February 2007. The Applicant challenges the Salary Review Increase (SRI) rating and low salary increase he received in July 2005 and the Bank's decision to declare his position redundant on 6 July 2005.

Factual Background

2. The Applicant joined the Bank in March 1979 and remained a staff member until his position was declared redundant effective as of 5 January 2006. Beginning in 1996, he was graded at Level G. He was serving as a Senior Information Officer in the Information Solutions Group (ISG) at the time his position was terminated.

3. The Applicant's managers informed him for the first time in 2000 that his position would be declared redundant due to a reduction in the number of positions in his unit. As an alternative to redundancy, he asked that he be allowed to participate in a Staff Exchange Program (SEP) in Cambridge, England, and his managers agreed. After a three-year assignment in Cambridge through the SEP, during which he was given SRI ratings and related salary increases for each year, he was assigned to work in the Bank on a Knowledge and Learning Environment (KLE) project in the Enterprise Business Systems group within ISG (ISGEB).

4. Soon after his return from Cambridge, he noticed that there was a substantial "disparity between [his] salary and that of [his] peers."

5. After requesting unsuccessfully that his managers grant him a salary increase, the Applicant asked for a salary review in April 2004. A draft preliminary analysis prepared by the Department of Human Resources Services (HR), dated 24 June 2004, concluded that the Applicant's current salary derived from his relatively low performance ratings over the years.

6. The Applicant consulted the Ombudsman, who determined that the Applicant's salary was \$30,000 to \$40,000 lower than that of his peers. After the Ombudsman discussed the issue with HR managers, HR offered the Applicant an *ad hoc* 5% raise or, in the alternative, the option to request a formal salary review.

7. Due to a restructuring of the office, the Applicant rejoined the Operations Solutions team within ISG in July 2004. He continued working on the KLE project until around mid-to-late 2004, when he was removed from the project because, according to Mr. Rakesh Asthana, Senior Manager, ISG, the project had reached a phase which required a set of skills different from those of the Applicant.

8. The Applicant then requested a formal salary review from the Compensation Management Unit in HR (HRSCM), which, in a report dated 27 October 2004, concluded that the Applicant's SRI ratings were "a significant factor in his relatively low salary compared to his peers." In light of the conclusion of this 2004 salary review, the Applicant's managers denied his request for an *ad hoc* salary increase.

9. In October 2004, a memorandum was issued to Bank Vice Presidents advising them of the need to increase productivity in order to redeploy up to 5% of the budget to meet strategic priorities for the next fiscal year. On 24 January 2005, the ISG Senior Leadership Team (ISGSLT) met to discuss resulting budget pressures, and began planning for budget cuts mandated by the Strategy, Finance and Resource Office. The ISGSLT specifically discussed the need for a reduction of positions across ISG and the Applicant was identified as one of five candidates to be considered for redundancy. The ISGSLT decided to implement the budget cuts in April 2005, when managers typically met with their staff to discuss Overall Performance Evaluations (OPEs) as well as staff members' long-term plans. As explained by the Bank, staff members traditionally discussed any plans to leave the Bank voluntarily during the discussions about their OPEs. Such voluntary plans would make staff reductions easier.

10. In February 2005, management informed the staff of the impending budget cuts. During a hearing before the Appeals Committee, Mr. Asthana testified that he had hoped at that time that some staff members would voluntarily offer to leave, but none did in the Operations Solutions Team.

11. On 24 January 2005, the Applicant filed his first appeal with the Appeals Committee (Appeal No. 1350) contesting the denial of his request for an *ad hoc* salary increase.

12. On 30 March 2005, the Bank filed its Answer to Appeal No. 1350, in which it stated that his lower rating had made "him a vulnerable candidate for redundancy in an environment of budget-mandated reduction in the ISG workforce."

13. As planned, Management began the redundancy process in May 2005 by drafting the proposed Staff Severance papers for the Applicant with the help and advice of HR.

14. Several communications ensued during May and June 2005 between the Applicant's managers and HR. The initial Staff Severance draft envisaged a redundancy under Staff Rule 7.01, paragraph 8.02(b) (abolition of position), but it was later modified to fall under paragraph 8.02(d) (reduction in number of positions). Several issues were raised by HR, including the need to ask for volunteers and to allow for searches for alternative placements within the Bank. The Applicant's managers were advised that they did not need to ask for volunteers, but rather need only determine whether there were any volunteers. HR also informed them that they needed to prepare a comparison chart of the relative performances of other staff members within the Applicant's work group that would justify the Applicant's selection for redundancy. The group identified for the selection process consisted of the seven staff members at level G who worked in the Operations Solutions Team.

15. On 15 June 2005, the Applicant met with his supervisor and signed his OPE. There was no mention of the redundancy during the meeting.

16. On 22 and 23 June 2005, the Applicant's manager received confirmation that there were no open positions for the Applicant within the Information Solutions Network (ISN). The ISN Board approved the Applicant's redundancy on 30 June 2005. On 6 July 2005, the Vice President of ISG informed the Applicant of the decision to declare his position redundant.

17. In a Report dated 30 August 2005 with respect to Appeal No. 1350, the Appeals Committee concluded that HR's method of conducting the 2004 salary review was not "observable" and that it was not possible to determine whether the failure to adjust the Applicant's salary upward was reasonable. The Appeals Committee found a lack of clear standards, a lack of written rules and procedures governing the salary-review process, and inconsistencies in the testimony of those involved in the process.

18. The Appeals Committee recommended that: (1) the Bank "promptly obtain an independent review of the Applicant's salary, without the involvement of any of the parties who played a role in his prior salary review"; (2) the Bank "provide the Applicant with a detailed written explanation of the methodology used, and [the] basis for

the conclusions reached” in the new salary review; (3) ISG management “consider afresh whether, in light of the new salary review, a salary adjustment” was warranted; (4) any such adjustment be made retroactive to 27 October 2004; and (5) the Applicant be awarded attorney’s fees. As noted in *Moussavi*, Decision No. 360 [2007], para. 8, the Vice President of Human Resources Services (HRSVP) informed the Applicant on 19 October 2005 that he had accepted the recommendations of the Appeals Committee.

19. On 13 December 2005, the Applicant filed a second appeal with the Appeals Committee (Appeal No. 1382), disputing the redundancy decision of 6 July 2005.

20. As described in *Moussavi*, para. 12, on 22 December 2005, in compliance with the Appeals Committee recommendation following Appeal No. 1350, the Applicant was provided with the results of the second review of his salary

along with a detailed written explanation of the methodology used. ... [The review] concluded that the Applicant’s low salary was consistent with his SRIs over recent years, and thus that “[t]he results do *not* support the proposition that [the Applicant’s] salary is inappropriately positioned relative to his peers.” ... The 22 December 2005 memorandum to the Applicant also informed him that ISG management “has decided not to adjust [his] salary.”

21. The Applicant’s employment was terminated on 5 January 2006, pursuant to the Notice of Redundancy of 6 July 2005.

22. On 21 April 2006, the Applicant challenged before the Tribunal his 2005 salary review and the resulting decision of ISG management not to grant him a salary increase.

23. On 18 September 2006, the Appeals Committee issued its decision in respect of the Applicant’s second appeal, Appeal No. 1382. The Appeals Committee found the redundancy decision not to have been unreasonable on the merits but, in light of procedural violations of the Staff Rules concerning redundancy, recommended compensation in the amount of 18 months’ net salary, allowed the Applicant to apply for jobs within the Bank Group, and awarded him costs in the amount of \$10,000.

24. In particular, the Appeals Committee found that the redundancy decision had been made on an observable and reasonable basis and therefore was not arbitrary. The Appeals Committee also found that the composition of the group of seven Level G staff members in the Operations Solutions Team was not unreasonable. Although the group could have been larger or different, in part because there was some degree of fungibility among Level G staff members within ISG, the ISG management had to “draw a line somewhere” and the line it had drawn was not unreasonable. As to the methodology, the Appeals Committee was troubled that the 2005 OPEs had not been considered in the comparison. It found that his performance between 2002 and 2004 had been lower than that of his colleagues, but not substantially lower than that of at least one of his colleagues. As to fungibility, the Appeals Committee found that although the Applicant had argued that the assessment was only done after he had been identified for redundancy, the ISG management testified that it had made the assessment in May 2005. No evidence was presented to contradict its testimony.

25. With respect to the request for volunteers, the Bank had acknowledged that it did not explicitly ask for volunteers, but noted that none had come forward after the management informed the staff of impending budget cuts. Furthermore, the Bank asserts that it would not have accepted any volunteers other than the Applicant because the Bank required the continued services of all of the staff in question. Relying on *Taborga*, Decision No. 297 [2003], para. 46, the Appeals Committee concluded that the Bank is not obligated to accept an offer to volunteer, but that it must consider the existence of volunteers in making its determination and the best way to “meaningfully” consider their existence is to notify staff members of a prospective redundancy and give them the opportunity to volunteer. The Appeals Committee found that the Bank’s failure to solicit volunteers for redundancy was “suggestive of a larger procedural problem,” and gave the appearance that the Applicant had been “targeted” for redundancy by the Bank, which then tried to “justify and assure his selection.” Accordingly, the Appeals Committee found the Bank’s approach contrary to the letter and spirit of Staff Rule 7.01, paragraphs 8.02 and 8.03.

26. With respect to the claim of retaliation, the Appeals Committee found that it was not supported by the evidence. The Appeals Committee also could not conclude that the award of a 3.2 SRI rating had been carried out in such an unobservable manner as to be arbitrary.

27. The Appeals Committee concluded that the Bank had abused its discretion in declaring the Applicant's position redundant. The Appeals Committee found that although the Bank had based the redundancy decision on a legitimate business rationale and had made it in the interest of efficient administration, the Bank had not followed a proper process. The Appeals Committee, however, did not find that the Bank had abused its discretion in relation to the Applicant's SRI ratings.

28. Before the Tribunal issued its judgment in respect of the merits of what had earlier been Appeal No. 1350, and although the Bank had accepted the Appeals Committee recommendations in Appeal No. 1382, the Applicant filed this second application with the Tribunal challenging his redundancy.

29. The Tribunal issued its judgment in the Applicant's first case, *Moussavi*, Decision No. 360 [2007], on 28 March 2007, dismissing the Applicant's challenge to the 2005 salary review on the basis that the Bank's methodology had been "fully and clearly explained in [the] written report that was provided ... to the Applicant." (*Moussavi*, para. 46.)

The Parties' Contentions

30. The Applicant argues that: (1) the Bank failed to follow proper Bank procedures in declaring the Applicant's position redundant; (2) the redundancy decision was improperly motivated; (3) his managers did not treat him fairly, in violation of Principles 2.1 and 9.1 of the Principles of Staff Employment; (4) his managers gave him an unfairly low SRI rating for 2005; and (5) the relief granted by the Appeals Committee was not adequate. The Applicant requests, in particular, reinstatement, costs, back pay and benefits, a salary increase, and compensation for stress and emotional suffering. In the alternative, he requests at a minimum the pension credit he would have received had his position not been terminated.

31. The Bank responds to the contrary that: (1) it followed proper procedures in declaring the Applicant's position redundant and terminating his employment; (2) it was not improperly motivated; (3) his SRI rating for 2005 was fair; and (4) the relief granted by the Appeals Committee was adequate. The Bank requests that the application be dismissed and his request for additional relief be denied.

The Tribunal's Analysis and Conclusions

32. In cases of redundancy, the Tribunal has noted many times, most recently in *Prakas*, Decision No. 357 [2007], para. 33, that

it recognizes the discretionary nature of redundancy decisions and that such decisions are subject to only limited review. The Tribunal will invalidate a redundancy decision only in cases of abuse of discretion or where the decision was arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure (*Mahmoudi* (No. 2), Decision No. 227 [2000]; *Yoon* (No. 2), Decision No. 248 [2001]).

33. The Tribunal noted, however, in *Yoon* (No.2), Decision No. 248 [2001], para. 28, that

[a]t the same time, however, it must be recognized that it may be exceedingly difficult for a staff member to substantiate his or her allegation of arbitrariness or lack of fairness amounting to abuse of discretion. It is, therefore, incumbent on the Tribunal to require the strictest observance of fair and transparent procedures in implementing the Staff Rules dealing with redundancy. Otherwise, ill-motivated managers would too often be able to pay lip service to the required standards of fairness, while disregarding the principle that their prerogatives of discretion must be exercised exclusively for legitimate and genuine managerial considerations in "the interests of efficient administration."

34. The Applicant's first argument is that the Bank failed to follow proper procedures in declaring his position

redundant.

35. The applicable Staff Rules in this case are paragraphs 8.02 and 8.03 of Staff Rule 7.01. In particular, paragraph 8.02 provides in relevant part as follows:

Employment may become redundant when the Bank Group determines in the interests of efficient administration, including the need to meet budgetary constraints, that:

...

b. A specific position or set of functions performed by an individual in an organizational unit must be abolished;

...

d. Types or levels of positions must be reduced in number.

Paragraph 8.03 of Staff Rule 7.01 provides in relevant part as follows:

Where positions are reduced in number ..., the selection of staff members whose employment is redundant will 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

36. In *Malekpour (No. 2)*, Decision No. 363 [2007], para. 22, citing *Prakas*, the Tribunal described the focus of its scrutiny of redundancy decisions in the following terms:

Paragraph 8.02 of Staff Rule 7.01 enables the Bank to declare a position redundant for a genuine business reason. When the Tribunal scrutinizes the conduct of the Bank, it does so not to second-guess the business efficacy of the decision itself, on which it is not qualified to pronounce. The focus of the scrutiny is rather on whether the ultimate decision was genuine in the sense that the Bank's decision to declare an applicant redundant was informed and justified by a proper business rationale. If so, that is the end of the inquiry – even if the decision might not have been optimal under the circumstances. The Tribunal noted that “[a]lthough staff members are entitled to protection against reprisal and retaliation, managers must nevertheless have the authority to manage their staff and to take decisions that the affected staff member may find unpalatable or adverse to his or her best wishes.” [Emphasis added. Citation omitted].

37. Specifically, the Tribunal held in *Prakas*, para. 47, that

[i]t is well established that the evaluation of the relative performance of staff members is a matter of managerial discretion and that the Tribunal will not interfere in the exercise of that discretion or substitute its own judgment unless the evaluation was an abuse of discretion. ... Whether a redundancy decision complies with Staff Rule 7.01, para. 8.02(d) must be assessed by reference to all the relevant circumstances surrounding the decision. For example, in *Fidel*, [Decision No. 302 [2003].] para. 54, the Tribunal found that

[g]iven the totality of the circumstances, ... the decision on the Applicant's redundancy did not adequately take account of work program needs in the interests of efficient administration, as required by Staff Rule 7.01, para. 8.02(d). The Respondent failed to take account of essential factors when the Applicant's position was initially declared redundant. Furthermore, the managers did not take adequate care to ensure that the Applicant's redundancy could not be interpreted as pretextual.

38. With respect to the performance of staff members, the Applicant argues that the pool of seven staff

members chosen for comparison was too small. Four of the seven were team leaders who had written the OPEs of the other three, including the Applicant. Out of 45 staff members working under the same manager, he was the most versatile and could work on any project with relative ease. He was not even in the Operations Solutions Team during the three OPE cycles used to compare him to the other staff members. He contends that the scoring methodology was arbitrary because it failed to include, without any explanation by the Bank, the staff members' 2005 OPEs, although management had waited until the end of the cycle to begin the comparison process, and 2005 was the only year during which the Applicant had worked in the Operations Solutions Team. In addition, he notes that his performance had always been satisfactory, that he had not been given any indication that his position would be declared redundant or that his performance was weak or needed improvement. Had it not been for the budget cuts, he would still be employed.

39. The Bank explains that the Applicant had worked in the Operations Solutions Team both before he went on the SEP, and soon after his return, that the Operations Solutions Team was the group where the number of staff members needed to be reduced, and that the skills required in that group were different from those required in other groups.

40. The Bank also maintains that the Applicant was not selected for redundancy because his performance was weak, but because it was weaker than that of the others in the group. As noted in *Prakas*, para. 66, the Tribunal in *Martin Del Campo* "distinguished between the selection of a staff member for redundancy *because* of perceived poor performance, which is impermissible, and consideration of the relative 'performance of staff members' as part of an exercise to select one individual rather than another." It explained that

[t]he first of the criteria permitted under para. 8.03 is the "performance of staff members." That perforce 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.

41. The Tribunal recognizes that the Applicant was mostly on an SEP during the period in question, and no other staff member was on a similar assignment. The Applicant did not appear to have spent any substantial amount of time in any particular group in the last four or five years within ISG. When he returned from his SEP, he worked in ISGEB. About a year later, he was back on the Operations Solutions Team. It appears unlikely under the circumstances that the Bank could have selected a comparison group composed of staff with similar experience and qualifications. Accordingly, in view of the history of the Applicant's work within ISG as well as his SEP, the Tribunal finds that that the group selected for the comparison was not unreasonable.

42. The Tribunal is, however, perplexed as to why the Bank did not include the staff members' 2005 OPEs, especially considering the Bank's assertion that if it had done so, the result would have been the same. It appears that management had intended to wait until the end of the cycle to begin the comparison process, but after doing so failed to take the 2005 OPEs into account. This inconsistency gives the appearance of an improper process, for as the Tribunal noted in *Fidel*, Decision No. 302 [2003], para. 54, "the managers [must] take adequate care to ensure that the Applicant's redundancy could not be interpreted as pretextual."

43. With respect to the second element under paragraph 8.03(b), i.e., fungibility, the Applicant argues that his managers did not conduct the analysis for his colleagues, but only conducted that analysis for him, after he had been selected for redundancy. Furthermore, the analysis was incomplete and failed to consider positions that might have been available to the Applicant elsewhere, notably the Informatics Unit. The Bank differs with this, and notes that its obligation was not to find the Applicant another position within the Bank, but to try to find him one. It has demonstrated that it so tried on multiple occasions.

44. The record, however, indicates that the Bank failed to respond fully to the Applicant's argument. It is not clear that the Bank did in fact compare the fungibility of the seven staff members that were part of the comparison group. The Bank only determined, without any transparent basis, that the other six staff members in the comparison group were crucial to the proper functioning of the Operations Solutions Team. While it

attempted, albeit unsuccessfully, to find the Applicant a position in another group within ISG, its compliance with all of the requirements of paragraph 8.03(b) was not clear.

45. The last element under paragraph 8.03 concerns the availability of volunteers. The Applicant stresses that the Bank failed to ask for volunteers. The Bank argues that management relied on HR's advice and believed that it was permissible to take into account the fact that no volunteers had come forward after they were made aware of the impending budget constraints. In fact, the Bank stated, while two ISG staff from outside the Operations Solutions Team had volunteered, none had volunteered in the Operations Solutions Team. Furthermore, the Bank argued that in view of the Applicant's performance, management believed that it could exercise its discretion not to ask for volunteers because it was not disposed to accept volunteers other than the Applicant himself. Management had decided that it would be in the Bank's interest to retain the best performers in the group and it was determined that the other six staff members were crucial to the team.

46. The Tribunal cannot support that contention. Paragraph 8.03(c) clearly requires that management consider the existence of volunteers prior to selecting a staff member for redundancy. This consideration would not be valid without the existence of volunteers. If volunteers do not come forward on their own, the Bank should ask whether any would come forward. The Applicant's performance was satisfactory based on his OPEs, and his position would not have been terminated had it not been for the budget cuts. The requirement to consider the existence of volunteers is different from the requirement to compare relative performance. If the former is ignored every time management believes that other staff members are more qualified, then it would become superfluous. This cannot be the intent of the Staff Rule. The Bank should weigh all the requirements of paragraph 8.03, and only on that basis should it be able to determine which staff member's position should be declared redundant.

47. Accordingly, while the Tribunal does not find that the Bank violated Staff Rule 7.01, paragraphs 8.02 and 8.03, it is not satisfied that the Bank appropriately followed all recognized procedures. While the Bank consulted with HR, it did so only after it had identified the Applicant for redundancy, giving at least the appearance that the decision had been made first and the justifications were determined later. It is of the utmost importance for the Bank to follow established procedures closely so as to ensure transparency and avoid the appearance of unfairness.

48. The Applicant further alleges that his termination was improperly motivated. As soon as he raised questions about his salary, he notes, he was removed from the project on which he was working and was assigned to a smaller project which his managers in ISG knew was overstaffed. In fact, the Applicant notes that the proposed Staff Severance in preparation for the termination of his position was submitted just one day after the appeal hearing in the salary review case. His name, he argues, was identified for redundancy before the Staff Rules were applied, and the justification was only found later. Furthermore, at the same time his position was declared redundant, a consultant was hired in the group. Finally, the Applicant contends that the timing of his redundancy is suspect because he was removed from his project at a critical time, just before its launch. In fact, his immediate supervisor, who was not aware of the redundancy, denied his request for home leave at the time. Accordingly, he argues, the basis for the redundancy could not have been the budgetary constraints alleged by the Bank.

49. The Bank contests the Applicant's assertions and argues that they are not supported by the evidence. The Bank's decision was based on a legitimate business rationale and was in the interest of efficient administration. In fact, as of October 2004, senior Bank management had begun discussing certain budget issues. In January 2005, budget cuts were mandated. The evidence, explains the Bank, suggests that management decided to abolish several positions within ISG, including one in the Operations Solutions Team, for which the Applicant was identified as a possible candidate. The Bank argues that it protected the Applicant's job in 2000 when it sent him on an SEP where he could develop his skills at considerable expense to the Bank. With regard to engaging a consultant, the Bank explains that he was hired after his retirement from the Bank to finish a short-term project. The Bank did not remove the Applicant from his project at a critical time as the redundancy decision did not become effective until six months after he received notice thereof, well after the launch of his project.

50. There is no doubt that the Bank was under budget constraints and considered a reduction in staff throughout ISG. ISG management considered it necessary to reduce the number of staff in ISG by five positions on five different teams in ISG, including the Applicant's. Furthermore, when the possibility of the Applicant's redundancy first arose, the Bank showed generous support for the Applicant when he was allowed to participate in an SEP at great expense to the Bank. As noted earlier, there is also evidence that the Bank made considerable efforts to find him an alternative position in the Bank. Accordingly, there does not appear to be any evidence in the record to support the argument that the Bank acted with improper motivation. While the record confirms that the Applicant was removed from his project before it was completed, the arguments put forward by the Bank are not unreasonable, especially in view of the restructuring in ISG.

51. The Applicant also contends that his managers treated him unfairly, in violation of Principles 2.1 and 9.1 of the Principles of Staff Employment. He contends that ever since ISG was created, he was excluded from the "tightly knit and favored group around Mr. Muhsin and Mr. Asthana." His managers had attempted to declare his position redundant as far back as 2000, but instead he was assigned to an SEP from 2001 to 2003. He was told he "did not blend in well" with his supervisors but was never given any feedback about his shortcomings. He was then targeted for redundancy again in 2005 and identified as a possible candidate before the three-step analysis required in Staff Rule 7.01, paragraph 8.03, was performed.

52. The Applicant further argues that he was only informed of the impending redundancy two months after the Bank identified him in January 2005, in the Bank's Answer to the Applicant's Appeal No. 1350. In addition, when he discussed his OPE with his supervisor in late June, right before he received the redundancy notice, there was no mention of the redundancy. Relying on *Garcia-Mujica*, Decision No. 192 [1998], para. 19, he asserts that while he did not expect advance notice, he was entitled to expect "a basic guarantee of due process" such that "the staff member be adequately informed with all possible anticipation of any problems concerning his career prospects."

53. The Bank accepts that the Applicant's performance was satisfactory, as a result of which he received positive feedback. His position, however, was declared redundant only because his performance relative to other staff members at his level was weaker, not because he was a weak performer. The Bank acknowledges that it was required to keep him adequately informed of any problems that would potentially affect his career prospects, and it did so on 30 March 2005, in its Answer to Appeal No. 1350, when he was warned about becoming a likely candidate for redundancy. The Bank denies that he was targeted for redundancy and explains that when he was identified in January 2005 as a possible candidate for redundancy, the Bank was not locked into its choice. Identifying a staff member for possible redundancy does not mean that an objective comparison will not be performed according to the Staff Rules. The Bank argues that when it was time to make a selection, the ISG management consulted with HR to obtain procedural advice.

54. The Tribunal has noted recently in *Prakas*, para. 51, that

any complainant in a redundancy case is likely to castigate the method applied in his case; and ... 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.

55. Accordingly, the fact that the Applicant was singled out early on in the process does not necessarily imply that the Bank abused its discretion. The Tribunal continued, at para. 51, that "[t]he Applicant's managers were not required to disabuse themselves of their existing perceptions of the relative strengths and weaknesses of the Applicant and [the other staff in the comparison group]."

56. The evidence suggests that the Bank may not have adequately notified the Applicant of an impending redundancy that would affect his career at the Bank. The notice, provided only in its Answer to Appeal No. 1350, was indirect and only warned him of the likelihood of being a candidate for redundancy. When he met with his supervisor about his 2005 OPE, which the Bank itself noted was a time typically used to discuss issues such as termination and mutually agreed separation agreements, he was not told anything about the possibility of a redundancy. That was only a few days before he received the notice of redundancy. The selection process

was almost completed. The Bank failed to explain why it did not mention anything about the redundancy during the OPE meeting. While the Bank did not “deliberately” disregard the Staff Rules, it failed to comply with all of its requirements.

57. The Tribunal declared in *Prakas*, para. 61, that it is “sensitive to the fact that in relation to redundancy decisions, informal announcements before compliance with proper procedures can be premature and prejudicial, and thus in violation of the Staff Rules.” However, the Tribunal cannot agree that when the Applicant discussed his OPE with his managers a few days before he received the notice, and after the process was almost completed, it was premature to give him some notice. To the contrary, it would have been appropriate to give him notice of the impending redundancy at that time.

58. The Applicant's fourth contention is that although he received a good OPE in 2005, he was awarded only a 3.2 SRI rating, which was unfair, arbitrary, and retaliatory.

59. While he concedes that the award of SRI ratings is discretionary and cannot be readily overturned by the Tribunal, the Applicant argues that in this case the Bank has established a record of abusing its discretion. He argues in particular that if his SRI rating was not the lowest in the group, he could not have been the weakest in the group, and therefore should not have been selected for redundancy. However, he argues, it appears that the comparison group for SRI purposes was different from the one for the redundancy process.

60. The Bank answers that assigning SRI ratings is a “prototypically discretionary decision that [is] not to be readily overturned by the Tribunal” as noted by the Tribunal in *Marshall*, Decision No. 226 [2000], para. 21. In that case, the ratings had been properly vetted by two layers of management.

61. The Tribunal finds no evidence in the record of any irregularity in the determination of the SRI rating. The comparison groups for SRI ratings and redundancy are understandably different. SRI ratings determine the salary increases assigned to staff within a unit across various grade levels, whereas a redundancy decision under paragraph 8.03 applies to a particular group at the same grade level and with similar functions. To assign different groups according to different management decisions does not in itself constitute a process that is unfair or arbitrary.

62. The Applicant finally notes that while he appreciates the award given by the Appeals Committee, he does not find it to be adequate under the circumstances. Failure to follow rules and procedures, failure to afford him due process, and treating him unfairly are serious violations of Staff Rules that require rescission of the decision to declare him redundant and compel only one remedy: reinstatement. He argues that a monetary remedy could be considered by the Bank as simply the “cost of doing business.” Reinstatement will restore him to his rightful position, and “forces the ill-motivated managers to recognize and face the consequence of their non-compliance with the staff rules.”

63. The Bank contends that reinstatement is not an appropriate remedy for the Applicant. According to the Tribunal's Statute, Article XII(1), reinstatement is warranted when it is practicable and in the institution's interest in the circumstances. The Operations Solutions Team has operated satisfactorily with six Level G staff members, and since the redundancy of the Applicant's position, the budget pressures have not eased. In fact, over the last three years ISG has reduced its staff by ten percent.

64. In addition, argues the Bank, the award of 18 months' compensation is hardly inadequate in light of Tribunal precedent. In *Harou*, Decision No. 273 [2002], for example, the Tribunal awarded six months' net salary to compensate for the Bank's administrative irregularities in making its redundancy decision. The Bank also has waived the restriction on the Applicant's future employment with the Bank. Pursuant to Article XII(2) of the Tribunal's Statute, an award of damages is intended to be compensatory for “actual damages suffered.”

65. Article XII of the Tribunal's Statute provides:

If the Tribunal finds that the application is well-founded, it shall order the rescission of the decision

contested or the specific performance of the obligation invoked unless the Tribunal finds that the respondent institution has reasonably determined that such rescission or specific performance would not be practicable or in the institution's interest. In that event, the Tribunal shall, instead, order such institution to pay restitution in the amount that is reasonably necessary to compensate the applicant for the actual damages suffered.

66. In this case, the Bank did not follow the procedural requirements for redundancy in every detail. The Tribunal takes note, however, of the fact that the Appeals Committee recommended that the Applicant receive a generous award to compensate for these lapses, and that the Bank implemented this recommendation. The Applicant did not present evidence establishing that the redundancy was wrongful. To the contrary, the Bank showed that the redundancy was justified by budgetary constraints and considerations of efficient administration. In these circumstances, rescission of the redundancy decision would not be appropriate. Nor does the Tribunal find that additional compensation should be awarded to the Applicant.

Decision

For the above reasons, the Tribunal dismisses the application.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Zakir Hafez
Zakir Hafez
Counsel

At Washington, DC, 14 December 2007