

Decision No. 16

Mr. X,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, A. K. Abul-Magd, Vice-President, R. Gorman, N. Kumarayya, E. Lauterpacht and C. D. Onyeama, Members, was seized on May 17, 1983 of a complaint by Mr. X against the International Bank for Reconstruction and Development. After the usual exchange of pleadings, the case was listed on January 24, 1984.

2. The Tribunal has made several procedural decisions in this case:

(i) The Applicant has requested that the Respondent be ordered to produce certain documents and tape recordings. He has also requested the holding of oral proceedings for the examination of witnesses. The Tribunal considers that the pleadings and documents before it are sufficiently full to enable it to deal with the issues and accordingly the Applicant's requests are rejected.

(ii) The Applicant has also requested that his name should not be published. The Rules do not expressly cover this point beyond providing in Rule 24 that the decisions of the Tribunal shall be published. But Rule 25 gives the Tribunal the power to "deal with any matter not expressly provided for in the present rules". Although the practice of the Tribunal has in the past been to include the names of applicants in its Reports, the Tribunal recognizes that exceptional circumstances may arise which would justify a departure from this Rule. The Tribunal has concluded, not without hesitation, that the circumstances of the present case are such as to justify the non-publication of the Applicant's name. This request of the Applicant is granted.

The relevant facts:

3. The Applicant took up a part-time appointment with the Respondent in October 1979 but resigned from this position in May 1980 before his contract ended. On August 5, 1980, the Applicant was reappointed to the Respondent's staff on a two-year fixed-term appointment as a Research Assistant, Level F, in the Economic Analysis and Projections Department (EPD) under the usual terms and conditions. His interim evaluation in February-March 1981 reflected some problems he was having in regard to performance. Consequently, the judgment of his suitability for Bank work was postponed to the end of his probation. The Applicant's Anniversary Evaluation (AER), prepared in August 1981, recorded essentially the same difficulties with performance and attitude as had been noted in the interim evaluation. His managers recommended against confirmation in EPD.

4. By letter dated August 31, 1981, the Applicant was assigned to the position of Research Assistant in the Financial Operations Department Capital Markets and Economic Studies Group (FOD/CAMES). The letter stated as follows:

"I am pleased to confirm your assignment as a research assistant in the Capital Markets and Economics Group, Financial Operations Department, effective September 1, 1981. You will transfer at your current salary and level F.

In view of the fact that your appointment was not confirmed in EPD your probationary period is being extended by six months. Your assignment to the Financial Operations Department, therefore, is subject to review on or about February 28, 1982. Continued employment by the Bank beyond that date is subject to

fully satisfactory performance in your new assignment.

Please indicate your understanding of the above by signing and returning the attached copy of this letter.”

5. On January 14 and 15, 1982, FOD prepared a preliminary review of the Applicant’s performance. It was expressly stated that no final evaluation of the Applicant’s competence for present or future jobs was being made at that time. FOD stated that his probationary period as Research Assistant would be extended to June 30, 1982 at about which time a final evaluation would be made of his performance in light of the original description of his job. At the time of his final evaluation, consideration of the Applicant for a new position of Financial Assistant, the creation of which was contemplated, was also to be given should the new position become available.

6. The Applicant was not satisfied with the January 1982 evaluation and objected to the extension of his probation. However, the extension was confirmed by the Personnel Management Department (PMD).

7. In February 1982, the Applicant, with FOD’s approval, decided to travel to China in order to participate for the period April 15-May 28, 1982 in a Development Banking course related to China organized by the Economic Development Institute (EDI). As a result, the due date for his final performance review was, at his specific request, moved to April 15, 1982. This review was in fact, for various reasons, completed in March 1982. The Applicant’s immediate supervisor indicated performance improvement in the past two months, hard work on the part of the Applicant and the belief that he could be trained to perform the functions of an FOD/CAMES assistant. However, he also noted that bringing the Applicant to an appropriate operational level for the purpose of the position of Research Assistant in CAMES would involve extensive and concentrated training which could not be given at that time. The Director of FOD agreed with this appraisal but recommended that in recognition of the Applicant’s efforts and contribution to FOD’s work his contract with the Bank be extended an additional four months for work within FOD, until October 31, 1982 but no further. He gave as a reason the fact that the Applicant should be given extra time to make up for the period of his absence in China, a period which would otherwise have been available for him to seek other job opportunities within the Bank. The Director of FOD also recommended that the Applicant should be assisted by PMD to identify current and new job opportunities and that if an exchange of the Applicant for an assistant in another department could be arranged he would be agreeable to this. It was further noted that the proposed new position of Financial Assistant was unlikely to materialize and that, therefore, the Applicant could not be considered for it.

8. On April 5, 1982, the Applicant received a letter from PMD which stated:

“With reference to your letter of appointment dated August 5, 1980, this is to advise you that your fixed-term appointment of two years to the staff of the World Bank has been extended to October 31, 1982 and is confirmed as from April 1, 1982.

For the period through October 31, 1982, you will remain assigned to the Financial Operations Department, Funded Debt and Borrowing Operations Division III. After careful consideration of current and anticipated FY83 work program requirements we regret to inform you that we are not in a position to offer you a regular appointment.”

9. The Applicant was dissatisfied with the arrangements and raised the matter with PMD in a memorandum dated April 6, 1982. On April 9, 1982, the Deputy Treasurer confirmed to the Applicant that the action referred to in the letter from PMD dated April 5 would stand.

10. At the end of May, while the Applicant was in China, PMD advertised through the Vacancy Information System (VIS) a permanent position as a Research Assistant in FOD, similar to that being held by the Applicant. Because there was only one internal applicant for the position, a temporary staff member who FOD concluded was inadequately qualified, FOD on June 14, 1982 requested that PMD authorize the recruitment of an external candidate.

11. The Applicant returned from his mission to China on June 16, 1982 and on June 17 raised with his managers and PMD the question of the advertisement of the Research Assistant position during his absence. He requested that a decision to fill the position be postponed. He also asked that no further action be taken to fill the advertised position before his case had been reviewed by the Senior Vice President, Finance (SVPF). Ultimately, on July 6, 1982, PMD agreed to receive an application from the Applicant, but on July 9, 1982, in a memorandum to PMD, the supervising manager in FOD stated that he found the Applicant not sufficiently qualified.

12. In the meantime, by memorandum dated June 18 and June 21, 1982, addressed to his managers and PMD with copies to the Vice Presidents concerned, the Applicant raised the issue of his fixed-term status in the context of the Respondent's F/I policy statement issued on November 26, 1980, and requested that he be confirmed as permanent in his position in FOD. The above statement laid down the following preconditions for offering a regular appointment to F/I staff on fixed-term:

- “(i) budgetary provision for each such position;
- (ii) actual and proposed work assignment being of an ongoing or continuing nature (into the foreseeable future);
- (iii) fixed-term staff member meeting the requirements of the position; and
- (iv) fixed-term staff member satisfactorily completing the Bank's normal entry requirements.”

The Applicant also took issue yet again with his performance reviews.

13. By memorandum of August 20, 1982, the SVPF stated that he concluded that there was no basis upon which to question the judgment of the Applicant's managers that the Applicant did not meet the specifications of the position; nor did he find that the applicant had been treated unfairly. The same day, this decision was communicated to the Applicant by memorandum from the Deputy Division Chief, PMD, and the Acting Vice President, Personnel and Administration (PA). The Applicant was granted a month of paid administrative leave, to November 30, 1982, to give him more time to seek alternative employment; and it was confirmed again that the decision was final and that no additional extension would be granted.

14. The Applicant continued to apply for positions inside the Bank. On September 7, 1982, the Applicant accepted an oral offer of a six-month research position in the Industry Department (IND). When PMD subsequently expressed concern that the Applicant's file had not been reviewed before the oral offer was extended, IND telephoned to the Applicant on September 10, 1982 to tell him that the offer was being withdrawn. After having reviewed his file, the Division Chief of IND, by memorandum to the Applicant of September 14, 1982, confirmed its decision not to hire him. On September 17, 1982, the Applicant requested an explanation from the Director, PMD, for the withdrawal of the offer. The latter responded on September 30, 1982 that the reasons were based on a careful review of his employment history in the Bank. He was encouraged to continue his search for a suitable position outside the Bank, while being free to apply for Bank positions through the VIS, if he so wished.

15. The Applicant was informed by memorandum of October 7, 1982 that, although he had asked for an extension of his leave for a further period of four to six months, no further extension of his leave beyond November 30 would be granted. It was confirmed that he would be considered, among other candidates, for any appropriate temporary assignments up to the expiration of his administrative leave.

16. Previously, on September 17, 1982, the Applicant had filed an appeal with the Appeals Committee challenging the Bank's refusal to accord him a permanent position in FOD or to renew his fixed-term contract. Because the Appeals Committee hearings extended beyond the expiration of the Applicant's administrative leave, the Respondent prolonged the Applicant's fixed-term contract until January 15, 1983. On January 12, 1983, the Applicant was informed that it had come to PMD's notice that he had taken up full-time employment with another international organization effective December 16, 1982. He was advised, however, that no

disciplinary action would be taken at that time because his fixed-term appointment would automatically expire on January 15, 1983, but that there would be no further extensions of his contract.

17. The Appeals Committee's Report of January 18, 1983 rejected the Applicant's appeal, but recommended that he be given assistance to find a suitable position outside the Bank. The Respondent's acceptance of the recommendations made in the Appeals Committee's report was communicated to the Applicant by letter from the Vice President, PA, dated January 20, 1983.

18. Pursuant to the recommendations of the Appeals Committee, arrangements were made by PMD to provide the Applicant with the services of a professional career placement consultant to assist him in his search for a position outside the Bank. The Applicant was informed by letter of February 25, 1983 that because of his refusal to cooperate with the consultant the Respondent was freed of any further obligation and that the Respondent saw no possibility of reemploying him.

The Applicant's main contentions:

19. The time allowed for the filing of an application under the "exceptional circumstances" provision of Article II, paragraph 2 of the Tribunal's Statute should be extended by reason of the withdrawal of his first counsel.

20. The Applicant's performance in his position in FOD, coupled with the Respondent's assurances before and during the Applicant's tenure in FOD, entitled the Applicant to permanent employment in the Bank. The Applicant's performance which led to the confirmation of his appointment in April 1982 warranted the conversion of his fixed-term appointment into a permanent appointment pursuant to the Bank's F/I policy promulgated in November 1980. Moreover, the Applicant had, by the actions of the Bank and the circumstances of his employment, been given a legitimate expectation of continued employment with the Bank beyond the expiration of any fixed-term contract.

21. The Respondent did not act in good faith in regard to the Applicant, particularly because (i) it failed to make reasonable efforts to relocate the Applicant in a suitable position with the Bank; (ii) it advertised the Applicant's position in the absence of the Applicant on an official mission; and (iii) its actions in relation to the verbal offer made by IND were further evidence of the lack of reasonable efforts on the part of the Respondent to find a position for the Applicant within the Bank.

22. The Appeals Committee's recommendations should be rejected because it is in the interest of equity and fairness to do so.

23. The pleas originally submitted were that:

- (i) the applicant be reinstated in his position in FOD or, alternatively, in a suitable permanent position elsewhere in the Bank;
- (ii) the Applicant be awarded full back pay for the period from the date of termination of his employment to the date of his reinstatement; and
- (iii) the Applicant be awarded full attorney's fees and costs incurred in presenting his case before the Tribunal.

24. Subsequently the pleas were amended so as to request that:

- (i) in lieu of reinstatement the Applicant be awarded \$24,000, which was the equivalent of 18 months salary at the time of termination;
- (ii) the Applicant be awarded full back pay for the period from the date of termination of his employment to the date of the Tribunal's decision; and
- (iii) the Applicant be awarded full attorney's fees and costs incurred in presenting his case before the Tribunal.

The Respondent's main contentions:

25. The Applicant had a fixed-term appointment in FOD, subject to a probationary period, on the understanding that the appointment would be converted into a permanent one if his performance warranted it. Although the Applicant was confirmed in his appointment, it was decided that his performance did not warrant conversion to a permanent appointment.

26. The failure to convert the Applicant's appointment to a permanent one was not a violation of the Respondent's F/I Policy promulgated in November 1980.

27. There was no evidence that the Applicant had a legitimate expectation of continued employment with the Bank.

28. The Respondent did not have an obligation arising out of its policy to find the Applicant alternative employment within the Bank. Nonetheless, the Respondent tried to help him locate a position inside or outside the Bank.

29. The advertisement of the Applicant's position was perfectly in order as FOD was in need of a staff member for its work program at the time the position was advertised. The procedure followed in connection with the advertisement was also in accordance with regular Bank practice. Indeed, the Applicant was permitted to apply for the position after his return from his mission and his application was given due consideration.

30. There was no irregularity in the withdrawal of the verbal offer made by IND. It is in the interest of the Bank that a proper review be made of the evaluations of prospective candidates.

31. The request for rejection of the recommendations of the Appeals Committee is not in order since the case before the Tribunal is a de novo proceeding and not an appeal from the Appeals Committee.

32. The Applicant's pleas should not be entertained. Particularly, the Applicant cannot claim full "back pay" from the date of termination of his employment because he has been employed full-time with another international organization since December 16, 1982 and has had a permanent position there since December 23, 1983.

Considerations:

33. The Tribunal must consider first whether the application in this case is admissible, having regard to the fact that it was filed on May 6, 1983, more than ninety days after the Applicant received notice on January 20, 1983 of the Respondent's acceptance of the recommendations of the Appeals Committee. Article II(2) of the Statute of the Tribunal permits the admission of a late application "under exceptional circumstances". It appears that the lawyer who had originally assisted the Applicant informed the Executive Secretary of the Tribunal on March 24, 1983 that he could no longer act for the Applicant. Arrangements for the engagement of new lawyers were completed only on April 19, 1983. The Tribunal notes that the Respondent has raised no objection to the late filing of the application. Having regard to all the circumstances of the case – particularly the shortness of the delay – the Tribunal concludes that the application is admissible.

34. On the merits of the case the Applicant first contends he was entitled to permanent employment (an expression apparently used by the Bank as interchangeable with "regular appointment") with the Bank by virtue both of the Respondent's assurances before and during his FOD assignment and his satisfactory performance in his FOD position.

35. The Applicant was given a fixed-term appointment of two years, of which the first six months were probationary. A fixed-term contract is just what the expression says: it is a contract for a fixed period of time – in this case two years if the probationary period is satisfactorily passed. There is nothing in the facts of this



case that supports a different reading of the terms of the written agreement. Whatever may be the character of the work which a member of the staff performs, his legal position is controlled by the terms of his appointment. The possibility exists, of course, that the character of the work may encourage a staff member to seek some formal amendment of his standing. But that is a matter of negotiation; such modification cannot come about automatically.

36. In this particular case the terms of appointment of the Applicant to the position of Research Assistant in FOD/CAMES clearly indicate that he was assigned to that position on the basis of a transfer, carrying over his previous contract, which was a fixed-term one. Furthermore, he continued to be subject to a probationary period, which was extended by six months. The terms of this transfer made it crystal clear to the Applicant that his "continued employment by the Bank beyond this date is subject to fully satisfactory performance in your new assignment". Although the Applicant expressed reservations and objections to the terms of his assignment, he indicated his understanding of the decision by signing and returning the copy of the letter containing it and he accepted the assignment by moving into the new job.

37. The Applicant also contended that the conduct of the Bank amounted to the conversion of his fixed-term contract into a permanent one. There is no basis for this contention. The Applicant has stated that his appointment was confirmed and rendered in effect permanent when he received a "personnel action form" on April 1, 1982 and a letter from the Personnel Department dated April 5, 1982. But the "personnel action form" clearly described the position as "fixed-term until August 17, 1982". Moreover, the letter of April 5, 1982, although it used the word "confirmed", clearly stated that "your fixed-term appointment" was extended and confirmed. What is confirmed is the fixed-term contract. The final phrase of the letter leaves no room for doubt: "We regret to inform you that we are not in a position to offer you a regular appointment".

38. The possibility exists also that there may be something in the surrounding circumstances which creates a right to the conversion of a fixed-term appointment to a permanent one. The Applicant invokes in this connection the criteria for determining whether to offer regular appointments to staff which were set out in the November 26, 1980 statement of the Director of PMD. While this statement would no doubt give the holder of a fixed-term appointment hope that he might receive a regular appointment, it is necessary to stress that this possibility was clearly made subject to conditions. One such condition was that the fixed-term staff member should meet the requirements of the position. The fixed-term staff member thus had no absolute right to a regular appointment but was necessarily exposed to the exercise of the Bank's discretion as to whether he met the requirements of the position.

39. As to the Applicant's contention that his performance was satisfactory, it is not for the Tribunal to substitute its own judgment for that of the Respondent. The Respondent's appraisal is final unless, as a result of a review of the exercise of the Bank's discretion, the Tribunal finds that there has been an abuse by the Bank in that its actions have been arbitrary, discriminatory or improperly motivated, or have been carried out in violation of a fair and reasonable procedure. (See Suntharalingam, WBAT Reports 1982, Decision No. 6, paragraph 27.)

40. The Tribunal finds that there has been no such failure on the part of the Respondent. At all material times the Applicant's performance was carefully evaluated and fully discussed with him. His superiors identified the respects in which his performance or capacity fell short of what was required. There were two relevant evaluations – one on January 14-15, 1982 and the other on March 19, 1982. The first evaluation resulted in the extension of the Applicant's period of probation and of his stay in FOD, in expectation of the creation of an assistant position with less demanding requirements. As to the second evaluation, it is true that it contains expressions to the effect that the Applicant's "performance has improved considerably in the past two months" and that it was "satisfactory on all assignments given to him". However, the heart of the matter is the supervisor's judgment that "his skills are not appropriate for the job" and the Director's conclusion that he should "remain in his present position for the period previously stated but be authorized to pursue appropriate placement objectives elsewhere". There is no question of the Applicant having misunderstood the negative tenor of these evaluations. He objected to each in turn; he cannot now say that they were evidence of satisfactory performance.

41. The Applicant has also contended that the Bank acted in bad faith as regards its efforts to relocate the Applicant in a suitable position within the Bank and as regards the advertisement of and appointment to an alternative post in which he was interested. As regards the first suggestion, the Tribunal finds in the conduct of the Bank which the Applicant has criticized evidence not of bad faith but only of the discharge of their functions, with appropriate care, by the different Bank departments. The Bank made every reasonable effort to find the Applicant another suitable position in the organization. At one moment the Bank even yielded to his request to bring his probationary period to an end and confirm him in his fixed-term appointment with a view to enhancing his chances of obtaining a position in another department of the Bank should a suitable one become available.

42. The Applicant specifically complains of the role which he claims was played by officials of the Personnel Department with respect to the withdrawal of a verbal offer he received on September 7, 1982. For the Personnel Department to remind the relevant department that before formalizing an oral offer of employment, it should take into account the entire written record of employment within the Bank of prospective candidates constitutes a proper administrative action.

43. As to the advertisement and filling of an alternative post, the Applicant is not justified in preferring his assessment of the requirements of the post and of his own merits to that of the Bank. It may nonetheless be noted that the Applicant was permitted to file a late application for the post and that the application was duly considered, although it was ultimately unsuccessful.

44. On the basis of these considerations the Tribunal finds that the Bank has not failed to observe the contract of employment or terms of appointment of the Applicant.

45. In view of the Tribunal's rejection of the substance of the claim, the pleas relating to compensation and damages do not, strictly, fall to be considered. Nonetheless, it may be noted that even before the Applicant's period of service with the Bank had ended he took up full-time service with another international organization. The Applicant has not alleged that his salary in his new post is any less than the salary which he had been earning at the Bank. He has thus not shown any loss arising from the termination of his employment by the Bank, even if (as is not the case) such termination had been unlawful. Nor has the Applicant shown any basis on which his claim for compensation unrelated to loss of earnings can be substantiated.

Decision:

For these reasons, the Tribunal unanimously decides that:

- (1) it has jurisdiction to entertain the application; and
- (2) on the merits, the pleas and requests of the Applicant are dismissed.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga  
President

C. F. Amerasinghe

/S/ C.F. Amerasinghe  
Executive Secretary

At London, England, June 5, 1984