

Decision No. 189

Sam Niedzwiecki,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on July 16, 1997, by Sam Niedzwiecki 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, composed of R.A. Gorman (a Vice President of the Tribunal) as President, P. Weil, A.K. Abul-Magd and Thio Su Mien, Judges. The usual exchange of pleadings took place. The case was listed on March 9, 1998.
2. The Applicant joined the Bank in January 1981. He was assigned to the Administrative Services Department as Project Manager, level 23, in October 1985 and, in late 1986, he was assigned to the Information, Technology and Facilities Department (ITF). During this period he was responsible for overseeing the construction and the furnishing of the "J" building at Bank Headquarters in Washington, D.C. On July 1, 1987, the Applicant was promoted to Senior Project Manager, level 24, in ITF with the responsibility of managing the Bank's Main Complex Rehabilitation Project (MCRP) which consisted of the construction of a partially new building and the renovation of existing structures.
3. The Applicant's Performance Evaluations (PRRs) from July 1987 to April 1993 indicated that his performance in connection with his management of the MCRP was highly regarded by his direct managers in ITF. In light of his performance, he received, in late 1992 or early 1993, clearance to be promoted to level 25.
4. In May 1993, after it had been discovered that there were major cost overruns associated with the MCRP, the task of managing the MCRP was transferred from the Applicant to a Special Manager, who reported to the Managing Directors. Pending the outcome of two significant audits of the MCRP, various personnel involved with that project, including the Applicant, were put on administrative leave.
5. The review that was undertaken led to findings, among other things, of a major cost overrun, a budget overcommitment, late and inadequate reporting and the start of major unauthorized work. The performance of the Applicant, who had full financial management responsibility for the MCRP, was found to be "highly unsatisfactory." The Managing Director of the Executive Offices (MDEO) recommended to the President of the Bank that the Applicant be reassigned to a lower-level position pursuant to Staff Rule 5.06, Section 8, and that his performance be rated as unsatisfactory for the May 1993 salary review.
6. In October 1993, the Applicant was informed of the outcome of the review and of the decisions to reassign him to a new lower-level position at level 23 and to grade his performance as unsatisfactory in the performance review for the period of 1992-93 and in the May 1993 salary review. As the particulars of a new assignment had not been finalized, the Applicant was given a temporary assignment in the Personnel Management Department (PMD) in an untitled level 23 position. His clearance for a promotion to level 25 was withdrawn.
7. In March 1994, the Applicant was informed of the initiation of an investigation by the Ethics Officer regarding the Applicant's management of the art program aspect of the MCRP in order to determine whether the Applicant's actions amounted to misconduct warranting disciplinary action under Staff Rule 8.01.
8. Soon afterwards, on April 11, 1994, the Applicant undertook his new assignment as Section Chief of the

General Services Department (GSD) Printing Section Division, at grade level 23. The performance evaluations for his period of service in this position, from early 1994 until late 1995, reflected consistent praise from his supervisors for the Applicant's work as Section Chief, particularly with respect to his managerial accomplishments.

9. On February 6, 1995, however, the Applicant was informed by the Director, PMD, that on the basis of the findings and recommendations of the Ethics Officer, the Director had concluded that the Applicant's performance as Manager of the MCRP art program had been "highly unsatisfactory." This assessment was to be reported in the Applicant's PRR for 1992-93, the pertinent period concerning the MCRP problems.

10. The Applicant was later informed that, effective November 1, 1995, he was to be reassigned from his position as Section Chief, Printing Section, to a non-managerial position as Projects Officer in the Reprographics, Mail and Shipping Division of GSD (GSDRM) at his then current grade level 23 and at the same salary base. The MDEO later explained to the Applicant his reason for implementing this reassignment, as follows:

As you know, I was party to the review of the MCRP and am fully familiar with the facts that led to the President's October 1993 decision in your case. When it recently came to my attention that you had been assigned to the managerial position of Section Chief, Printing, I asked that you be transferred to a non-managerial position at your grade. At [the] instruction [of the Senior Vice President of Management and Personnel Services (MPS)], your reassignment was effected. I consider your reassignment to be in accord with Staff Rule 5.01, para. 2.03.

11. In November 1995, a request was made by the Division Chief of GSDRM to the Senior Vice President of MPS that the Applicant's position as Projects Officer be declared redundant as part of a reorganization of GSDRM. It was indicated that the Applicant had volunteered to leave the service of the Bank upon the restructuring and elimination of the Projects Officer position. The Applicant was informed on November 22, 1995 that his position in GSDRM was to be redundant with effect from September 1, 1996.

12. In February 1996, the Applicant wrote to the Director of GSD for an administrative review of the decision to reassign him from his position as Section Chief, Printing Section, to Projects Officer in GSDRM. The Director of GSD informed the Applicant that his request should have been directed to the Senior Vice President of MPS but that since he had left the Bank, the request for administrative review should be made to the MDEO. The Applicant did so, and the MDEO confirmed the decision to reassign him.

13. The Applicant appealed to the Appeals Committee against the decision made by the MDEO. The principal conclusion of the Appeals Committee was that: "While it is regrettable that it was not clearly communicated to Appellant and his managers at the time the 1993 demotion was effected that Appellant should not hold a managerial position, given Appellant's history of mismanagement, it was reasonable for Respondent to reassign Appellant to a position which did not carry managerial responsibilities." The Appeals Committee therefore recommended that the Applicant's requests for relief be denied.

14. The Applicant's active service with the Bank ended on April 30, 1997. He was placed on special leave from May 1, 1997 to December 31, 1998, during which time he is to receive severance payments totaling \$166,266.67. At the end of his special leave on December 31, 1998, the Applicant is to be eligible for an early retirement pension under the Staff Retirement Plan.

15. The Applicant filed his application to the Tribunal on July 16, 1997. He challenges the decision to reassign him effective November 1, 1995 from the position of Section Chief of Printing Services in GSD to a non-managerial level 23 position in GSDRM, on the ground that the reassignment was implemented in violation of Staff Rule 8.01. He claims that the reassignment was a disciplinary measure stemming from the MCRP and that the Bank failed to comply with the requirements of due process as set forth in that rule.

16. The Applicant seeks the following relief:

- (1) payment of compensation in the amount of \$1,200,000 for lost income and pension;
- (2) payment of compensation in the amount of \$500,000 for the damages caused to the Applicant's reputation and professional career and for the resulting stress and mental anguish;
- (3) reinstatement to the position of Section Chief of the Printing Services Division of GSD; and
- (4) reimbursement of reasonable attorney's fees and costs.

17. The Applicant views the reassignment from his position as Section Chief, Printing Services Division, as a disciplinary measure for misconduct, governed by Staff Rule 8.01. The Respondent, on the other hand, views his reassignment as an administrative measure governed by Staff Rule 5.01, which allows in paragraph 2.03 for reassignment "when the interests of the Bank Group require it." If the Applicant were correct in his characterization, the Tribunal would be presented with the question whether the Respondent had complied fully with the proper disciplinary procedures, within the proper time frame, in implementing his reassignment. It is not necessary, however, to decide this issue, for even if the reassignment of the Applicant to the Projects Officer position were to be treated and evaluated, as the Respondent contends, as an administrative measure governed by Staff Rule 5.01, the Tribunal concludes that the manner in which it was carried out constituted an abuse of the Bank's discretion, being unreasoned and arbitrary.

18. The Applicant had begun serving as Section Chief, Printing Section, after his demotion to level 23, beginning in April 1994, and he continued so to serve until November 1995. During that period, his performance was very positively evaluated by his supervisors, particularly with respect to his managerial contributions. For example, in his PRR for 1994, it was stated by his Division Chief that the Applicant "quickly responded to the challenges of his new environment and made several improvements. These included adjustments to staffing resources to meet changing client demand, enhancement of reports ... and efficiency modifications in the Print Shop operations. He also expanded the section's functions ... [and] initiated an intensive business process innovation (BPI) exercise to review printing services. This undertaking, which is still in progress, should produce cost savings and production efficiencies beginning in FY96." The Applicant was rated as "fully effective" with respect to such competencies as strategic leadership, resource management and people management. The areas for needed improvement, as set forth in the PRR, related not to managerial skills but rather to expertise in the fields of printing technologies and the like. In the same PRR, the Management Review Group concluded that the Applicant "performed well in the job and makes special note of the criticality of his directorship in the forthcoming BPI Report. This report will in large part set the stage for the future structure of the Print Shop."

19. The Applicant's PRR for 1995, almost all of which period was spent by him as Section Chief, had similar positive comments. His Division Chief stated, among other things, that the Applicant "was the principle [sic] author and overall supervisor in an exercise to determine, for the first time, if it was more cost effective to manage printing operations with in-house staffing or by outsourcing labor. The success of these projects contributed significantly to the Unit's effectiveness, principally because it allowed management to build on the lessons learned and to concentrate on future direction for printing operations. ... I commend him for his tireless and unselfish approach to his duties. ... [He] has been exceptionally effective in applying strategic leadership and focus. ... He has been fully effective in applying professional leadership ..."

20. It appears clearly to the Tribunal that, when the decision was made to reassign the Applicant to a non-managerial position in November 1995, none of these strongly positive assessments of his managerial accomplishments was given weight, or was apparently even considered. The decision effectively was made by the MDEO, who later informed the Applicant that "As you know, I was party to the review of the MCRP and am fully familiar with the facts that led to the President's October 1993 decision in your case. When it recently came to my attention that you had been assigned to the managerial position of Section Chief, Printing, I asked that you be transferred to a non-managerial position at your grade. At [the] instruction [of the Senior Vice President, MPS], your reassignment was effected." It was the Applicant's unsatisfactory performance in connection with the MCRP art program prior to 1993 that was the sole basis for his reassignment in November

1995, and his positive evaluations as a manager throughout almost all of 1994 and 1995 were ignored.

21. It was improper for the Bank, in determining whether the Applicant was capable of continuing as Section Chief, Printing, to consider only his managerial inadequacies in the very complex and comprehensive MCRP project of nearly three years before, while giving no weight to his significant period of service as Section Chief. Indeed, the Bank was aware of the adverse conclusions of the Ethics Officer concerning the art program in February 1995 but allowed him to remain in his managerial position until some nine months later before implementing his reassignment; the Bank points to no managerial inadequacies whatever on the part of Applicant, either in that interim period or before.

22. A reassignment decision so based must be deemed to be an abuse of discretion, which the Tribunal must quash. In light of this conclusion, it is not necessary for the Tribunal to address the other issues raised by the Applicant.

DECISION

For the above reasons, the Tribunal unanimously decides that:

- (i) the decision to reassign the Applicant shall be quashed;
- (ii) the Applicant shall be reinstated effective November 1, 1995 to his position as Section Chief, Printing Services;
- (iii) in the event that the Respondent does not reinstate the Applicant, it shall pay him a sum equivalent to two years' net base salary, in addition to the severance payments to which the parties have already agreed; and
- (iv) all other pleas are dismissed.

Robert A. Gorman

/S/ Robert A. Gorman
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At London, England, May 15, 1998