

Decision No. 94

Frank Ronald Pavesich  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of P. Weil, President, A. K. Abul-Magd and E. Lauterpacht, Vice Presidents, and F. K. Apaloo, R. A. Gorman, E. Jimenez de Arechaga and Tun Suffian, Judges, has been seized of an application, received June 26, 1989, by Frank Ronald Pavesich, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on January 17, 1990.

The relevant facts:

(a) The Reorganization

2. The general facts relating to the 1987 reorganization are as stated in paragraphs 5 to 40 of Decision No. 40.

(b) The particular facts of the case

3. At the time of the Reorganization the Applicant held the position of Records Clerk, level 15, in the Support Services Section (S-3) of the East Asia and Pacific Region. On June 11, 1987, the Vice President, Asia Region, sent a memorandum to all staff to inform them of the various steps and timetable of the selection process. He also asked the staff to indicate their preferences as to where they would like to be placed in the new regional structure, and he added that efforts would be made to inform the support staff, prior to stating their preferences, as to where their most recent colleagues would be working.

4. Also in early June 1987, the staff of S-3 were informed of the appointment of their second-in-line supervisor, the Chief Administrative Officer. The latter, in filling the position of Chief of Unit S-3, decided not to choose for that position the then incumbent, but instead chose the night-shift supervisor, a person with whom the Applicant had clashed in the past. The choice of the Section Chief was, however, not communicated to the staff of S-3 before July 10, 1987, the date on which they had to submit their preference forms for the units to which they wished to be assigned.

5. Round 1 of the selection process, originally scheduled to conclude on July 15, 1987, was extended to July 22. On the latter date, the Vice President, Personnel, sent to all staff a memorandum informing that Round 1 selection forms were to be given to staff before the close of business that day. In another memorandum sent two days later, the Vice President reiterated that "all selection forms for Round 1 had to be completed by managers and given to staff by no later than July 22."

6. On July 27, 1987, the Applicant's second-in-line supervisor went on leave and his first-in-line supervisor, because of her father's death, had already left on emergency leave. The latter supervisor on July 23 had signed a Selection Decision Form stating that the Applicant was selected for the position of Records Clerk, grade 15, in Unit S-3 of the Office of the Regional Vice President, the position he had occupied prior to the Reorganization. The Applicant found this Selection Decision Form in his mail tray on July 28.

7. The Applicant decided not to accept the position offered, and requested that his name be placed on the

roster for consideration in Round 2. In a memorandum dated August 3, 1987 to his personnel assistant, the Applicant explained the reasons for his decision. He stated that he feared possible conflicts in his relationship with the newly appointed first-in-line supervisor and that he anticipated that he would have to work under highly stressful and oppressive conditions. He also expressed his disappointment with the selection of his new supervisor and criticized the manner in which her appointment was announced to the S-3 staff, in particular the fact that the staff learned about the appointment after they had already turned in their preference forms on the assumption that the incumbent of the Chief of Unit position would remain in that post.

8. By a memorandum distributed at the end of Round 1, the Bank informed all staff members, among other things, that the refusal by a staff member to accept an offer in Round 2 of a position at his or her grade or above would render the staff member ineligible for the Enhanced Separation Package. Staff members were also encouraged to consult with their personnel officers and staff advisors regarding any questions concerning Round 2, to identify positions in which they had an interest and for which they were qualified, and to check with their personnel officers to ensure that the concerned vice presidencies in which staff had an interest were also aware of the potential candidates. The Applicant received his Round 2 information package on August 6, 1987.

9. On August 9, the Applicant filled out an application for a vacancy for a position of Office Technology Assistant. During the week of August 17, the S-3 staff underwent the dislocation of moving their quarters to another building. During the short time before the end of the month of August, the unit resumed its word-processing business, the Applicant's staff advisor was changed, and his first- and second-in-line supervisors returned to Washington. It was not until September 8 that a permanent telephone extension was installed for the Applicant. That day, after receiving a memorandum in which his Vice President noted that some staff members seemed to be avoiding telephone and written communications from interested managers, personnel teams and staff advisors, the Applicant – who had been receiving no telephone calls – ascertained that the number listed for him in the telephone directory from August 17 onward was to an unconnected telephone.

10. The Applicant thereupon sent a memorandum to the Staff Association, recounting the difficulties he had undergone in Round 2. Among other things, he mentioned his move to a new location at the same time as having to train new users of the S-3 systems; his sharing of one telephone extension with fourteen staff members in the unit, at a time when all of the Asia Regional office staff had their own extensions; his inability to receive telephone calls since August 17; and the unhealthy physical environment in which he was working, due to poor ventilation and unpleasant odors.

11. On September 24, 1987, the Vice-President, Personnel, wrote to the Applicant to inform him that unless he accepted the position about to be offered in Round 2, or some other position at his grade level, he would be subject to termination of employment under Staff Rule 7.01 without being eligible for Package B. The next day, the Applicant's first-in-line supervisor renewed her offer to the Applicant of the grade 15 position previously held by him as Records Clerk. The same day, the Applicant wrote to the Manager of the Central Support Unit to inform her of his availability and of his specific skills.

12. On September 29, the Applicant's one-year-old son was hospitalized in an emergency. The same day, the Chief Personnel Officer for the Asia Region called the Applicant at his home to urge him to accept the offered position and to advise him that there were no other positions in the Asia Region for which he was eligible and that it was not possible to tell what other vacancies at his grade level might exist elsewhere in the Bank.

13. After his son's release from the hospital on October 1, the Applicant on October 2 returned to his office where he found a separation agreement dated September 30, 1987 and signed by the Director of Personnel and Compensation. The Applicant signed the agreement on October 4, 1987.

14. On October 6, the Applicant wrote to the President of the World Bank to explain that he could not accept the position offered. He cited his physical exhaustion from coping with his workload and with possible dismissal on performance grounds. He also mentioned his inability to compete for available positions in Round 2 because of the relocation of his unit, his telephone problems and adverse work environment, and his heavy workload. He stated that he was entitled to Package B since the offer he had received carried with it unacceptable conditions

of employment, and he contended that he had signed the separation agreement under duress, because he had no other choice in light of his family situation.

15. In response, the Acting Vice President, Personnel, sent a memorandum dated October 19, in which he empathized with the Applicant but noted that similar difficulties had been encountered by a number of other staff members as well. He stated, however, that for compassionate reasons the Applicant and others in a similar situation, who turned down offers in Round 2, could leave the employ of the Bank with a mutually agreed separation package instead of the standard termination procedure under Rule 7.01.

16. The Applicant's termination of employment was effective November 30, 1987. Because no automatic deposit was made to the Applicant's bank account, however, he was notified by his bank that he had been charged \$80 in penalty fees.

17. On December 3, the Applicant requested administrative review of the terms of his separation. On February 4, 1988, the Vice President, Personnel, informed the Applicant that he was ineligible for Package B because he had declined positions offered to him at his grade level in both Round 1 and Round 2. On January 26, 1988, the Applicant filed an appeal with the Appeals Committee which issued its report on March 20, 1989, recommending that the Applicant's appeal be denied. The Committee, however, urged the Bank to minimize problems during the Reorganization from a lack of adequate advisory services and communication facilities. On March 23, 1989, the Senior Vice President, External Affairs and Administration, informed the Applicant that he had accepted the Committee's recommendation denying his appeal.

#### The Applicant's main contentions:

18. The Respondent denied the Applicant the right to be treated fairly and, consequently, violated the Applicant's conditions of employment. The mutually agreed separation was not a negotiated settlement, but one concluded under duress because the Respondent who knew of the Applicant's son's hospitalization and illness used it as psychological leverage to threaten, intimidate and force the Applicant to assent.

19. The Respondent terminated the Applicant's appointment against the latter's will for none of the reasons listed in Staff Rule 7.01.

20. The Respondent abruptly dismissed the Applicant because of his unwillingness to sign the Decision Selection Form. However, the offer extended to the Applicant was not a bona fide offer. The Selection Decision Form was not given to the Applicant but was left in his mail tray for him to find. Moreover, it was dated July 23, 1987 instead of July 22, 1987. Furthermore, the Applicant was not given sufficient time effectively to participate in the Reorganization because of the relocation of his Unit which took place in the beginning of Round 2, the subsequent excessive workload, as well as the unhealthy environment of his Unit.

21. The Respondent committed several procedural irregularities in the selection process which caused the Applicant unnecessary and excessive harm.

22. During Round 2 the Applicant had no proper telephone connection nor was he properly listed in the telephone directory.

23. The Applicant was left to fend for himself without any help from the Respondent.

24. The Applicant's supervisors concealed the appointment of the new Unit Chief to prevent the Applicant and other staff from seeking selection elsewhere in the Bank during Round 1.

25. The Personnel Officer of the Applicant's department had knowingly or unknowingly misrepresented the facts in regard to vacancies suitable for the Applicant.

26. The procedure followed in the adoption of Staff Rule 5.09 was improper and the Applicant has suffered

from the defects in that Rule. The Rule yielded procedures that allowed prejudice and discrimination.

27. The Applicant has suffered great financial loss by losing his job and it took him one year to find a new suitable position. Moreover his son's health and the medical expenses that resulted virtually ruined him financially. He also had to spend his retirement funds to survive.

28. The Applicant requested the following relief:

- (i) rescission of the decision to terminate the Applicant's appointment;
- (ii) nullification of both sections 7.06 and 9.03 of Rule 5.09;
- (iii) reaffirmation of the invalidity of Section 12.01 of Rule 5.09;
- (iv) restitution (a) in the amount of \$17,980 incurred as medical and living expenses; and (b) in the amount of \$80 incurred as overdraft charges by reason of the Respondent's negligence;
- (v) award of (a) compensation in the amount of 12 months net salary for tangible and intangible injury; and (b) the Enhanced Separation Package.

#### The Respondent's main contentions

29. During the reorganization the Applicant was twice offered the position of Records Clerk at level 15 which he previously occupied. He refused both offers in the hope of securing a position he considered more favorable.

30. The appointment of the Chief of the S-3 Unit was not deliberately concealed from the Applicant and the staff of the S-3 Unit.

31. The fact that the words "has agreed with this decision" had been stricken from the Selection Decision Form which was given to the Applicant was not the result of improper motivation.

32. The Applicant's belief that the workload of the position he was offered might be excessive was speculative at best and certainly did not justify turning down the job offer. Further, the Applicant had ample time to consider his career prospects.

33. The Chief Personnel Officer for the Asia Region did not misrepresent the facts to the Applicant when he got in touch with him on September 29, 1987.

34. The Respondent was under no obligation to secure for the Applicant a new position because he was facing termination of his appointment. The Applicant himself delayed until late August to send applications for alternative positions.

35. The unfortunate inconveniences the Applicant experienced in the course of the Reorganization were short lived and were corrected promptly. Moreover, other staff throughout the Reorganization faced similar dislocation and disruption and still managed to find positions in the reorganized Bank.

36. The environmental quality of Bank offices is monitored by the Health Services Department and the Environmental Protection Agency has never studied the S-3 Unit or any other part of the E building or the areas surrounding the S-3 unit specifically.

37. Because the Applicant twice rejected the Respondent's offer to remain in the Bank in his former position and at his former grade, he was not an eligible candidate either for retraining or for separation with the Enhanced Separation Package.

38. In any case the Applicant left the Bank under the terms of a mutually agreed separation after receiving six

months net pay in excess of any amount the Respondent was legally obligated to pay him.

39. Staff Rule 5.09 was the subject of extensive consultations with the Staff Association and a serious endeavor was made to accommodate as much of the Staff Association's views as was deemed appropriate by the Bank.

Considerations:

40. In this case the Applicant contests the Respondent's decision to terminate his employment pursuant to the terms and conditions contained in a letter dated September 30, 1987, where he was awarded two months special leave and compensation equivalent to six months net pay. The Applicant claims instead the compensation and benefits accorded under the Enhanced Separation Package, plus other consequential forms of relief enumerated in para. 30 above.

41. The Respondent's answer is that the Applicant is not entitled to the relief requested because twice in the course of the Reorganization he was given and declined to accept an offer to continue in his position as a level 15 Records Clerk in the Asian Support Services Section S-3. According to the Rules applicable to the Reorganization, such a rejection rendered him ineligible for the Enhanced Separation Package since Staff Rule 5.09 provides that any staff member who, in the course of the Reorganization staff selection process, receives an offer at his prior grade and rejects it is thereby rendered ineligible to receive the Enhanced Separation Package.

42. The Applicant complains, however, that the Respondent failed to administer the provisions of Rule 5.09 concerning the Reorganization in accordance with its procedures and relevant collateral statements and was negligent in the performance of its obligations, resulting in a violation of existing contracts and conditions of employment. He contends that the offers he received were not bona fide offers, thus implying that he was entitled to refuse them without thereby rendering himself ineligible for the relief requested.

43. The Applicant's complaints refer separately to the procedures followed in Rounds 1 and 2 of the Reorganization. As to Round 1, the Applicant contends that the Bank did not comply with assurances to the effect that support staff, prior to stating their preferences, should be informed of where their most recent colleagues would be working. In particular, he complains that the selection of Section Chief was not communicated to the Staff of S-3 before all the staff had submitted their Round 1 statements of preferences for available positions and that this denied him the opportunity to make an informed choice. This grievance relates to the Applicant's dissatisfaction with the selection of his immediate supervisor – the new Section Chief – and his preference for the former incumbent. But the Tribunal does not find this allegation to be relevant, because no harm was caused to the Applicant by the fact that he learned only on July 28 of the name of the new Section Chief. As the sequence of actions shows, the Applicant had prior cognizance of the name of his new Section Chief and had time to consider that fact before deciding on August 3 to reject the position offered to him. Moreover, the fact that he signed a preference form before learning of the new supervisor had no damaging effect, since he retained the possibility of changing his mind and refusing the offer, as he in fact did.

44. In explaining his reasons for rejecting the offer the Applicant asserted that the new Section Chief "and I have not seen eye to eye on things over the years, which suggests future conflicts in our relationship". On the other hand, he recognized that her selection was "a logical one". But his disagreements with the new Chief and his preference for the former supervisor are not grounds for making the offer not bona fide or justifying his refusal to continue in his current position. Likewise, it is not a valid ground for justifying the Applicant's refusal or altering the bona fide nature of the offer that he was concerned that "the doubling of the Region size, as well as changes in its institutional structure and functions, would impose unprecedented operational problems" for which he would be almost solely responsible. Nor is it a valid ground for his concern that, as a consequence, "his experience and technical skills might be exploited without proper compensation". These fears and concerns might be justifiable grounds for declining the job offered, but not for claiming additional compensation after having refused to perform the additional tasks.



45. Similarly, the difficulties in ventilation in the new working quarters of Section S-3 did not constitute a valid reason for rejecting the offer, since it must have been obvious that these difficulties were of a transitory character and would soon be corrected by the Respondent. One of the findings of fact made by the Appeals Committee, which the Tribunal accepts, was that “although the physical environment was not conducive to a healthy working situation, the Respondent was taking steps to rectify the situation.”

46. With respect to Round 2 procedures, the Applicant alleges that he was deprived of opportunities to find a suitable position by reason of the failure of the Respondent to furnish him the assistance required by the applicable provisions concerning alternative placements in Round 2, in particular, the alleged failure to communicate vacancies for which he was eligible. The Applicant asserts that he “was never personally contacted by any member of the Personnel team from August 10 to September 29”. However, the record shows that he had a meeting with the Chief Personnel Officer for Asia on September 22. Besides, obtaining new placements in the Bank-wide roster for Round 2 did not depend exclusively on the initiative of Personnel Officers. It has to be seen as a two way effort, in which the staff member was expected to take a leading role. In a Model Memorandum addressed by the Bank to staff members participating in Round 2 they were advised as follows:

When you identify a position or positions in which you are interested and for which you are qualified or could become qualified with training, you should check with the personnel team for the appropriate vice-presidential unit to verify that they are aware of your interest and potential candidacy.

47. The Applicant deliberately decided to reject his former position in order, in his own words, “to look for something better in Round 2”, believing that “Round 2 offers the opportunity to market my organizing, analytical and report-writing, as well as my technical and training skills”. However, the record shows that the Applicant did not pursue the search for alternative positions with the required dedication and urgency. He sent off applications for other positions only after the end of August despite having decided to market his technical skills on August 3. For various reasons, some of them legitimate, he was absent from the Bank in the final crucial days in the Round 2 exercise, at the end of September. Taking into account all the circumstances, the Tribunal concludes that the lack of response or interest in selecting the Applicant cannot be attributed to a defective assistance by the Personnel services, nor to the absence of a correct telephone connection. As the Appeals Committee found, this latter fact alone “should not have prevented the Appellant from looking for other jobs”.

48. In any event, the Applicant was not properly qualified for the vacancy he identified in his reply as the one that should have been communicated to him by Personnel, since he lacked the required secretarial skills. This lack of secretarial skills could not be remedied by training, because he did not qualify for receiving secretarial training. Staff Rule 5.09 speaks of training only for those without the requisite skills (para. 1.06 c) . The fact that he was twice offered a position is in itself evidence that he possessed skills for which the Bank had a continuing need and which did not require additional training.

49. Each staff member participating in Round 2 was advised in the above referred Model Memorandum that if he refused

... to accept the offer of a position at your current grade or above, you will be ineligible for Package B and you would have to resign from the Bank or your employment could be terminated.

This formal advice was followed by a direct warning personally addressed to the Applicant by the Vice President, Personnel, on September 24, reminding him that:

... unless you accept an outstanding job offer, or agree to be placed in some other position, you will be subject to the relevant provisions of Staff Rule 7.01, related to termination of employment.

In that same letter the Applicant was asked to contact his Personnel Officer without delay. There is no record that the Applicant followed this advice.

50. Yet, the next day, September 25, the Applicant received from his supervisor, the Section Chief, the offer to retain his prior position at grade 15. The Applicant complains that the offer was communicated to him by the Section Chief and not personally by the Chief Administrative Officer. This is not a valid reason for not having answered. On September 29 the Chief Personnel Officer for the Asia Section called the Applicant by telephone at his home to urge him to accept the position which had been offered to him a second time. The Applicant was advised that in order to avoid being without a job, he should accept that offer even if he chose later to apply for other positions through the Vacancy Listing Service. His answer was to ask about separation benefits, and he was advised that at that time no provision had been made for severance payments to staff members who had been offered but had not accepted a position at their level.

51. Despite not being required by Rule 7.01, the Bank subsequently decided to offer six months compensation to staff in the Applicant's situation. Those were the conditions offered to the Applicant by close of business on September 30 and he accepted the offer, signing the Separation Agreement in October 1987. There was no duress in that mutual separation agreement, because the situation in which the Applicant found himself was of his own choosing.

Decision:

For these reasons, the Tribunal unanimously decides that the application be dismissed.

Prosper Weil

/S/ Prosper Weil  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary

At Washington, May 25, 1990