

Decision No. 326

**Mauricio D. Perea,
Applicant**

v.

**International Finance Corporation,
Respondent**

1. The World Bank Administrative Tribunal has been seized of an application, received on April 27, 2004, by Mauricio D. Perea against the International Finance Corporation (IFC). The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Elizabeth Evatt (a Vice President of the Tribunal) as President, Robert A. Gorman, Sarah Christie and Florentino P. Feliciano, Judges. The Applicant requested the Tribunal to order the production by the Respondent of certain documents. These requests were granted in part, but the Respondent was unable to produce any of those documents. The usual exchange of pleadings took place. The case was listed on October 27, 2004.

2. The Applicant contests the decision to declare him redundant and the allegedly unfair denial to him of further employment. He seeks rescission of the redundancy, compensation and costs.

Background facts

3. The Applicant joined the IFC in March 1994 as an Information Officer in the Personnel and Administration Department, Corporate Relations Unit, on a one-year Consultancy contract. In January 1996, the Applicant joined the Financial Markets Division of the Latin America and Caribbean Department (hereinafter "CLAFM") as an Investment Analyst, Non-Regular Staff. In January 1999, the Applicant was appointed to an Open-Ended position as a Level 21 Investment Officer. One year later, he was confirmed in that position. Thereafter, he was promoted to Level 22 and then to Level 23 (which later became Level GG). The Applicant remained in this position until the IFC reorganization in 2002.

4. In January 2002, all IFC staff were informed by senior management of the need to institute cost-saving measures, including a freeze on new hiring. The IFC had posted losses in the first two quarters of FY02.

The Reorganization Plan, March 2002

5. In March 2002, IFC management announced a reorganization plan in which the total number of staff would be reduced. The regional Directors would be moved to the field, and the seven regional departments would be reorganized. The technical areas of Financial Markets, Manufacturing and Services would be removed from the regional departments and centralized in two new departments in Washington, DC: Global Financial Markets (CGF) and Global Manufacturing and Services (CGM). The financial markets divisions of each region, including CLAFM, in which the Applicant was employed, would be abolished. All financial markets activities would be concentrated in one new department, which would share its expertise across all regions, without internal barriers.

6. Staff whose units were to be abolished could apply for positions in the new and reorganized departments. They were asked to indicate their preferences for reassignment. Each affected staff member was guaranteed at least one interview, usually with a manager and a Human Resources Officer. The Respondent announced to staff in the Guiding Principles for the Reorganization that "[d]ecisions will be made based on an assessment of staff skills, knowledge, and performance record against job requirements." The reassignment process took

place in April and May 2002.

7. The Applicant expressed a preference to work in the newly formed CGF department, in Special Operations, or in the Power Department. He was interviewed in May 2002 for an Investment Officer position in CGF and for a position in the Power Department.

8. As part of the interview process, staff were to be rated under several categories on an interview form. This called for comparison with peers and colleagues at the same or similar grade level on a scale: A – Exceeds IFC standards for the position; B – Meets fully IFC standards for the position; C – Rates below IFC standards for the position.

9. In regard to his application for reassignment to a CGF position, the Applicant was interviewed by the Manager for Housing Finance in CGF and a Human Resources Officer. He was rated “B” in most sections, including performance. In regard to “ability and willingness to learn,” however, he was rated “C.” The interviewer wrote on the form that he showed “negativity on management and organization, ... frustration, not flexible, may not deal effectively with others.” The interview report was endorsed “[n]ot recommended for re-assignment.”

10. The interview results were referred to CGF management and were assessed by the Director of CGF at a management team meeting. According to the Respondent, the Director went through the list of candidates with the managers and interviewers and ranked them in terms of the Department’s priorities. The Director agreed with the recommendation not to appoint the Applicant.

11. As a result of the reorganization, the total staffing of the Latin America and Caribbean Department of the IFC (CLA) was reduced from 104 to 59. Many of the staff in units which were to be abolished were reassigned to positions in the two new departments, CGF and CGM. In all, six CLA staff were not reassigned. The Applicant says in his application that of nine Investment Officers in his own unit, CLAFM, six were reassigned to CGF, one left and two did not obtain reassignment.

12. On June 8, 2002, the Director of the Applicant’s department, CLA, sent a memorandum to the Vice President of Investment Operations, IFC, requesting approval for redundancies for six CLA staff who had not been reassigned, including the Applicant and another Investment Officer from the Financial Markets Division. The memorandum stated, in regard to the Applicant, that after interviews for Investment Officer positions in the CGF and in the Power Department, “candidates with better qualifications and credentials were selected after a competitive review.” It recommended that the Applicant be made redundant under Staff Rule 7.01, paragraph 8.02(a) (“abolition of organizational unit”). A Request for Approval of Severance Payment for the Applicant was made on May 28, 2002.

13. The redundancies were referred to the Severance Review Group (SRG), which approved the Applicant’s redundancy on June 11, 2002.

Redundancy – employment terminated December 31, 2002

14. The Applicant received a notice of redundancy from the Vice President of Investment Operations, IFC, on June 18, 2002, to take effect on July 1, 2002. The notice advised the Applicant that the redundancy decision was taken in accordance with Staff Rule 7.01, paragraphs 8.02(a) and 8.03. The Applicant was placed on administrative leave and was given until December 31, 2002 to find other employment with the Bank before his employment would be terminated.

15. On October 10, 2002, the Request for Approval of Severance Payment for the Applicant was approved by the Manager, Human Resources and Administration, Corporate Programs (CHACP), who was also the Chair of the SRG. The Applicant failed to secure another position in the IFC and his employment was terminated on December 31, 2002. He received severance pay of \$21,370, \$19,317 for unused leave, and pension credits for 756 days of service as a Non-Regular Staff member.

Applications during job-search period

16. After the Applicant received the redundancy notice, and during his period of administrative leave, he applied for six different positions in the IFC. He was interviewed for four positions but was not selected for any. One position for which he applied was that of Projects Officer in the Environmental Markets Group of the IFC.

17. Another position for which the Applicant applied was that of Senior Investment Officer in the Micro-Finance Unit (MF) of CGF. There had been an internal search in relation to this position, but the Applicant had not been informed about it, nor was the Manager of CGF informed of the Applicant's availability. The position was advertised internally and externally in November and December 2002 respectively, with a closing date of December 13, 2002. The Applicant applied. He was interviewed by phone on January 24, 2003 by the Principal Investment Officer (PIO), CGF, and was given positive ratings. On February 28, 2003, he was interviewed by the Manager of CGF. No report is available of this interview. The Manager later told him that he was one of two finalists, and that he, the Manager, would consult the Director of CGF.

18. On March 31, 2003, the position was re-advertised. The Applicant applied through the Human Resources (HR) Department as he had separated from the IFC by then. There were no additional interviews. On April 17, 2003, an external candidate, who had been on the earlier shortlist, was hired.

Appeals Committee – March 28, 2003

19. On March 28, 2003, the Applicant filed a Statement of Appeal with the Appeals Committee challenging the decisions of the IFC to: (1) declare his position redundant; (2) not select him to fill a position for which he applied during the six-month job-search period; and (3) terminate his employment. In regard to the second claim, the Appeals Committee limited its consideration to the Senior Investment Officer position in the MF Unit.

20. The Appeals Committee found that: (1) IFC management did abolish the Applicant's organizational unit, and therefore his redundancy was proper under Staff Rule 7.01, paragraph 8.02(a); (2) management did not abuse its discretion when it chose not to reassign the Applicant to the Investment Officer position in CGF prior to his redundancy; (3) management did not abuse its discretion when it did not select the Applicant to fill the Senior Investment Officer position in the MF Unit after his redundancy; (4) there was no evidence that management had discriminated against white males from the United States in filling any of the positions at issue; and (5) the evidence indicated that the IFC's reorganization process was fair and transparent. The Appeals Committee recommended that all of the Applicant's requests be denied.

21. On December 29, 2003, the Acting Vice President of HR accepted the Appeals Committee's recommendations.

Application to the Tribunal

22. The Applicant applied to the Tribunal on April 27, 2004. The particular decisions contested by the Applicant are:

- a. the basis of the redundancy (and the SRG process);
- b. the denial to him of reassignment;
- c. the unfair denial to him of the Projects Officer position in the Environmental Markets Group;
- d. the unfair denial to him of the Senior Investment Officer position in the MF Unit of CGF; and
- e. the failure of the IFC's HR Department to assist the Applicant in good faith.

The Respondent has raised non-exhaustion issues in regard to claims (c) and (e). These are considered in context.

The basis of the redundancy

23. The Applicant claims that the Respondent failed to apply the Staff Rules relating to redundancy correctly. He contends that the redundancy did not, as stated in the notice, fall under Staff Rule 7.01, paragraph 8.02(a) ("abolition of organizational unit"). He argues that if paragraph 8.02(a) had applied, all members of his division (CLAFM) should have been declared redundant on the abolition of their unit, until selected back into vacant positions.

24. In fact, the Applicant claims, CLAFM was not abolished, but had all its main functions transferred to the newly established CGF. It was, in effect, reconstituted in CGF with a reduction in numbers effected through the reassignment process. Most of the Applicant's colleagues were reassigned from CLAFM to CGF. Only those not so reassigned were declared redundant. The Applicant contends that because the number of Investment Officer positions was reduced, without a material change in their functions, the redundancy should have been effected under Staff Rule 7.01, paragraph 8.02(d), which deals with reduction of positions.

25. The Applicant argues that if paragraph 8.02(d) had been applied, the protections provided by paragraph 8.03 would have come into play, and there would have been a competitive process to determine who should be selected for redundancy, taking account of performance and following a call for volunteers. Staff Rule 7.01, paragraph 8.03, provides:

... Where positions are reduced in number under paragraph 8.02(d) above, the selection of staff members whose employment is redundant shall be made on the basis of managerial judgment about the skills needed by the Bank Group to carry out its work effectively, taking into account the following factors:

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

26. In support of his claim, the Applicant says that all CLAFM staff who sought reassignment and were successful in obtaining it were reassigned to CGF.

27. The Respondent contends that the redundancy process was entirely different from a reduction in the number of positions, as the Applicant's former division within CLA was not transferred as an entity, but was abolished and no longer exists. Staff in the Applicant's unit seeking reassignment competed not just with the other members of their unit as would occur under paragraph (d), but with staff throughout the IFC. After this process, which the Respondent describes as a transparent and competitive selection process for reassignment to newly opened positions, the Applicant's unit was abolished, and those who remained there were declared redundant. The Respondent argues that it was not necessary to apply paragraph 8.03 in this case as the selection process was not conducted for the purpose of deciding who would be redundant, but to fill vacant positions.

28. The Respondent agrees that some staff from the Applicant's division did transfer to CGF, but asserts that they did not transfer to the same unit in CGF, and that some performed different functions after their reassignment. Further, not all members of the Applicant's unit were transferred to CGF; some Administrative and Client Support (ACS) staff went to other areas of the IFC. The Respondent also points out that some of CLAFM's functions stayed with CLA and that they were not all transferred to CGF.

29. The Tribunal cannot uphold the Applicant's contention that his unit was reconstituted in CGF with a reduction in numbers. There are differences in the allocation of functions and in the roles played by some of the reassigned CLAFM staff in the new department. However, the essence of the Applicant's claim that paragraph (d) applied to him concerns the reduction in the number of Investment Officers. In the reorganization

process, the functions of the seven regional financial markets divisions were removed from the regional departments, and a new central financial markets department was created, which was not divided on a regional basis. Many of the Investment Officers in the regional financial markets divisions were relocated in CGF, including all but two of the Applicant's colleagues from CLAFM. The Applicant lists in his reply seven Investment Officers reassigned from CLAFM to CGF, six to the Transactions Group and one to manage the Portfolio Group. A Principal Investment Officer and a Chief Investment Officer were reassigned to other parts of CGF. One Senior Investment Officer did not seek reassignment, while another Senior Investment Officer and the Applicant were the only two not reassigned. All the Investment Officers in the Applicant's unit who were reassigned ended up in CGF.

30. One objective of the restructuring was to reduce the overall number of staff. Under the new structure, the financial markets operations were performed centrally, with fewer Investment Officers than had been employed in the regional departments. To that extent, there was a reduction overall in the number of financial officers in the organization. Those not reassigned were made redundant on the abolition of their departments. It is probable that many of the Investment Officers who were reassigned to CGF continued to do work which was similar to that which they had performed in their regional departments. This is not, however, the reduction in specific types or levels of positions usually envisaged by paragraph (d).

31. On the other hand, the process did not fall precisely under paragraph (a). In one sense, as the Respondent claims, the Applicant's unit was abolished : it no longer exists as such. However, the abolition affected only those who had not been selected for reassignment. Though the Respondent argues that the reassignment process was a positive process of selecting staff to fill vacancies, it was also a process which determined who would be declared redundant and which of the Investment Officers would continue to be employed. The rationale for the Applicant's redundancy set out in the June 8, 2002 memorandum requesting approval of the redundancies clearly connects the reassignment process and the redundancy following abolition of his unit.

32. The CHACP Manager and Chair of the SRG explained in his testimony that the reassignment process was conducted first because they did not want to declare, for example, 400 staff redundant if 350 were needed to continue the business. Therefore, to maintain continuity, people were placed in the new positions before the redundancies were declared and the units abolished. He said that overall, 120 positions were abolished, and out of those there were 80 forced redundancies. They were able to place 20 through the six-month job-search process, so that the number made redundant was 60.

33. The Tribunal observed in *Harou*, Decision No. 273 [2002], para. 34,

that there may be some degree of overlap between the four possible bases under paragraph 8.02 for deciding that a staff member's employment has become redundant, that these provisions are not completely separated or detached from one another, and that "[m]anagerial necessities must allow for more than mathematical and literal interpretation of the Staff Rules." (*Lee*, Decision No. 241 [2001], para. 26.)

34. Those observations seem apt in the present case, and lead the Tribunal to conclude that it was not an abuse of discretion or a violation of the Staff Rules for the Respondent to deal with the Applicant's redundancy itself under paragraph (a). Nevertheless, the extent of overlap with paragraph (d) also leads to the conclusion that since the redundancy was preceded by a competitive selection process, in which those candidates who were unsuccessful were marked for redundancy (subject to job-search outcomes), it was important that the selection process follow a fair and transparent procedure, comparable with that which is followed under paragraph (d). As the Tribunal said in *Yoon* (No. 2), Decision No. 248 [2001], para. 28: "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."

Challenge to SRG process

35. The Applicant challenges the approval of his redundancy notice by the SRG on several grounds. First, he complains that the SRG could not have evaluated the grounds for redundancy properly, as these referred to

the abolition of his unit, whereas, he insists, his unit was reconstituted in CGF and his redundancy should have been considered under paragraph (d). The Tribunal considers, however, for reasons outlined above, that there was no abuse of discretion in dealing with the redundancy under paragraph (a).

36. Next, the Applicant complains that the Request for Approval of Severance Payment form considered by the SRG contained no explanation or rationale for his redundancy. In response to his request, the Tribunal directed the Respondent to produce any additional pages of the form. The Respondent stated that in the IFC the form consists of only one page, which the Applicant already has.

37. The Applicant asserts that in the absence of any explanation of the redundancy in the form, the SRG failed to review the grounds for his redundancy, and was just a rubber stamp for IFC management decisions. He complains that the IFC procedures are less transparent than those of the Bank generally. Furthermore, he argues that the Vice President, IFC Human Resources and Administration (CHA), and the Executive Vice President, IFC, simply accepted the endorsement of the SRG.

38. The Respondent submits that the SRG's role is to ensure that the rationale provided for redundancies is consistent with the Staff Rules and Tribunal decisions, not to review the substance of each case. In this case, it considered the Applicant's redundancy on the basis that his unit had been abolished; it was not its task to consider job selection or reassignment.

39. The Tribunal does not consider that there was any lack of due process or abuse of discretion in regard to the actions of the SRG. Ideally, the rationale for the redundancy should form part of the documentation before the SRG. In the present case, those grounds were not part of the form requesting severance. The absence of any explanation in the form would be a concern, were it not for the fact that the reasons appeared in the comprehensive memorandum of June 8, 2002 from the Director of CLA to the Vice President of Investment Operations, IFC. This, presumably, was put before the SRG by the Vice President of Investment Operations.

40. The Tribunal accepts that it was not the responsibility of the SRG to undertake an inquiry into the reassignment procedures, but to ensure consistency. Here, all the members of the Applicant's unit who were not reassigned were made redundant under paragraph (a) ("abolition of the work unit"). The IFC acted consistently in that regard.

41. The Applicant also contests whether the SRG meeting took place in the period specified, i.e., June 8-18, 2002. His request for records of the meeting was denied by the Tribunal, as the record is clear that severance was approved on June 11, 2002. The letter of the Vice President of Investment Operations, IFC, notifying the Applicant of his redundancy is dated June 18, 2002. The Tribunal also takes the view that the fact that the CHACP Manager and Chair of the SRG did not sign off on the request for severance payment until October 10, 2002 was adequately explained by the possible outcome of the Applicant's job search.

The denial of reassignment in CGF

42. The Applicant challenges the reassignment procedure as unfair, lacking in transparency, a violation of due process and an abuse of discretion. An issue was raised in the Appeals Committee as to the timeliness of this claim, as the Applicant had not made clear that he was challenging his non-selection. However, the Appeals Committee concluded that as the redundancy was based on the decision that he was not selected in the reassignment process, the whole process could be considered. There is no obstacle to the exercise of jurisdiction by the Tribunal.

43. The Applicant submits that since the reassignment process determined who should be retained and who made redundant, there should be some accounting for the competitive process to show that it was fair and reasonable. The memorandum of June 8, 2002 requesting approval for the redundancies says only that the Applicant had not been reassigned because "candidates with better qualifications and credentials were selected after a competitive review." The Applicant claims that he had more extensive transactions experience than any of the CLAFM Investment Officers who were reassigned to the CGF Transactions Group. However, without

access to the ranking methodology or to the comparative evaluations, he could not establish why others were thought superior.

44. The Applicant complains that his performance record was not taken into account, that the interviewing manager did not have his performance reviews, and that she made no comparative analysis of his performance with that of other candidates. He lists his good ratings from recent performance reviews, and asserts that none of his reviews mentions any performance problems relating to unhappiness, negativity or frustration. He complains that the interviewing manager did not know him or his history. As a result, the report was inaccurate, inconsistent with his performance evaluations and misrepresented his situation. It was, to that extent, arbitrary and spoiled his chances of reassignment and of competing for other jobs. He complains, further, that the interviewer did not check with any of the Applicant's colleagues her assessment of his ability to work in a team. She sought views about other applicants, but not about him, so that a lesser standard was applied to him. The Applicant also complains that he had no chance to answer her assessment, as he did not get it until one year later.

45. The Applicant complains that the candidates were not informed of management's priorities in the selection process and that there is no record of the meeting held by the Director of the Department after the interviews were conducted. He contends that without an explanation of the selection decisions made at that meeting or a written record of comparisons, there can be no guarantee that the comparative evaluations were based on objective criteria and were fair and transparent, and that his past performance was taken into account.

46. In response to the Applicant's request, the Tribunal directed the Respondent to produce any records of "meetings and minutes of meetings, including written or electronic correspondence, conducted by [the] Director, Global Financial Markets, to discuss candidates for reassignment into the Department" The Respondent replied that it was unable to locate any such documents, and that it did not believe that there were formal minutes of the discussions of candidates. There had been an Excel spreadsheet, with the identity of all candidates and certain other information. The Director of CGF had retired and the Manager, IFC Human Resources and Administration, Client Services (CHACS), was on leave and could not be contacted.

47. The Respondent argues that as "the reassignment process was not a redundancy..., [it] is not subject to the same scrutiny as is imposed when the issue relates to the termination of a staff member." Reassignment was a competitive process, which in the Applicant's case compared his "qualifications, performance history and interview report" with those of other candidates, prioritized the candidates, and then selected those candidates who were rated higher than the Applicant. The Respondent contends that the Applicant's performance was relevant only to his ability to obtain reassignment, not on the issue of redundancy, which followed from the abolition of his unit. In the circumstances, the Respondent claims that there was no obligation to call for volunteers, and no obligation to document the comparisons or to produce the CVs of all candidates, as there would be when the number of positions of certain kinds are being reduced. The Respondent says that it is not required to explain to unsuccessful candidates for selection why they are considered less qualified than the successful candidate.

48. The Respondent argues also that the Applicant is not entitled to respond to the comments of the interviewers in the report, and that the interviewers were not bound to seek information from others about his performance. The Respondent contends that the interview was only one component of the decision. The fact that the interviewer recorded impressions of the Applicant could not be an abuse of discretion, as the Director of CGF and at least two of the other managers who took part in the meeting were familiar with the Applicant's work and past performance. It was the Director of CGF who made the final decision. The Respondent asserts that there is no evidence that the Applicant was better qualified than those who were selected, and that there is no allegation of bias.

49. The Tribunal observes that the selection of staff is a matter for discretion, and will be overturned only when there is abuse of discretion, such as arbitrariness, discrimination or improper motivation. Even if the Applicant's performance was good, he was not entitled to permanent employment just because of that. But in this case, the selection process in the reorganization determined who would be made redundant. It was in fact the trigger to

4% of the IFC staff being made redundant.

50. The CHACP Manager and Chair of the SRG at the time of the reorganization explained the process in his testimony before the Appeals Committee. He said that the reassignments were based on the skills and performance of staff, taking account of the performance evaluations. He said that those who had performed well had no problems in being reassigned. The task of the interviewing panel, he said, was to make recommendations. The Director of CGF would then decide how the best balance of skills would be represented, and would make choices if necessary. The interview report, which covered performance considerations, was an important factor. Senior management also had a view on who should be placed. But they did not measure each application against the others.

51. The Applicant's interviewing manager testified that she remembered that, relative to the other people she interviewed, the Applicant was negative towards, and frustrated with, the IFC. She agreed that the rating of "below average" that she gave to the Applicant in ability and willingness to learn was not consistent with his performance record and that others must have thought differently. She had had the Applicant's CV at the time of the interview and had reviewed the information provided to her, but she said that there was no preparation for the interviews.

52. The Tribunal observes that when redundancy occurs under Staff Rule 7.01, paragraph 8.02(d), as a result of reduction of posts, managers and interviewers comparing the candidates in order to decide whose position will be declared redundant should generally keep records of such discussions as well as of evaluations of candidates. (*Lee*, Decision No. 241 [2001], para. 37; *Harou*, Decision No. 273 [2002], para. 70.)

53. For reasons stated, the Tribunal considers that because the selection process in this case led directly to redundancy it required a fair and transparent procedure, comparable with that which is followed under paragraph 8.02(d) of Staff Rule 7.01. Furthermore, the Tribunal considers that the Respondent should at least have met the standards that it had specified for the reassignment process, and primarily that "[d]ecisions will be made based on an assessment of staff skills, knowledge, and performance record against job requirements" as set out in the Guiding Principles for the Reorganization.

54. The only written assessment relating to the Applicant's application for reassignment is the interview report. The interviewing manager affirmed in her testimony before the Appeals Committee that her impression was of a negative attitude on the part of the Applicant, but agreed that her written comment was not consistent with the performance assessments of the Applicant. She did not remember seeing these, and there is no evidence that she had them or that they were at the CGF Director's meeting. The interview assessments were supposed to be comparative, but the interviewing manager said that she did not carry out any comparisons, and that this was done at the CGF Director's team meeting, of which, however, there are no written records. The interview form indicates that overall ratings should be entered, but none was entered for the Applicant. The interviewing manager said that no recommendation was made until after the CGF Director's meeting, but she agreed that she wrote her thoughts on the interview form at the time. The hand-written comments on the form include "[n]ot recommended for re-assignment."

55. The Tribunal does not consider that the Applicant was entitled to respond to the interviewers' assessment, as he claims. Nevertheless, he was entitled to have all the factors previously specified by management taken into account in a transparent process. The interview form was only one of a number of factors that needed to be considered. The Respondent asserts that the final decision was made by the Director, who was familiar with the Applicant's work. But there is no record of the meeting at which candidates were compared to show how the comparative assessment was made of staff "skills, knowledge and performance." It is not clear whether the Applicant's performance assessments were considered, or how, if at all, his performance and skills were compared with those of other candidates, or what criteria were applied. There is only the evidence of the interviewing manager as to the procedure followed, and her evidence is unclear. As noted, the Director of CGF had retired and neither he nor the CHACS Manager at the interview was available to testify before the Appeals Committee.

56. The Tribunal recalls that in *Montasser*, Decision No. 156 [1997], para. 17, the panel which selected candidates for vacancies after a reorganization gave the applicant in that case “numerical ratings in each of eight specific criteria, and for the other position, there were fifteen specific criteria; in addition, consideration was given, inter alia, to the candidates’ PRRs [Performance Review Records] from the most recent three years.”

57. In the present case, the Tribunal is unable to determine how comparisons were made to select candidates on a competitive basis for reassignment, whether and, if so, how performance assessments were considered, or how the Respondent met the guidelines it had established for the process. In this regard, the Tribunal considers that there was a lack of coherence and transparency in regard to the selection process, a process which led directly to the Applicant’s redundancy. The Respondent failed to provide a fair procedure.

The unfair denial of a position in the Environmental Markets Group

58. The Applicant contends that the Respondent failed to fulfill in good faith its obligation to assist him in finding a new position after he was made redundant.

59. The Applicant claims that he was unfairly denied the position of Projects Officer in the Environmental Markets Group for which he had applied and been interviewed during his job-search period. He asserts that the hiring manager stated that he was too qualified for the job. He says, however, that he had the relevant skills and was willing to take the position, even though it was graded at Level F and he was at Level G.

60. The Respondent submits that the Applicant has failed to exhaust remedies in regard to this claim. The Appeals Committee declined to deal with this claim, as the issue was not clearly challenged in his Statement of Appeal. As to the merits of the claim, the Respondent contends that the Applicant lacked relevant experience in environmental matters.

61. The Tribunal observes that in his Statement of Appeal the Applicant indicated that he had been “unreasonably refused” this position. He put forward no specific arguments on the issue; he claimed rescission of the redundancy or compensation. The Tribunal considers that there was sufficient material in the Applicant’s Statement of Appeal to the Appeals Committee on which to base this claim, and that the Tribunal can deal with the issue.

62. The Tribunal observes that the report of the Applicant’s interview for this position, dated January 9, 2003, gives a fair and reasonable assessment of his skills and suitability for the position. It notes his lack of experience in certain areas, including the Global Environmental Facility, and his greater suitability for an Investment Officer position. Although the Manager stated that the Applicant was “too qualified,” he also expressed clear doubts about certain experience and skills which the Applicant did not have. The Tribunal considers that the decision not to appoint the Applicant to this position was within the scope of discretion permissible in relation to hiring decisions, and that there was no abuse of discretion in not accepting him for the position.

Non-selection for a position in the Micro-Finance (MF) and Small Business Group

63. The Applicant claims that there was an abuse of discretion in failing to appoint him to a Senior Investment Officer position in the MF Unit of CGF for which he had applied during his job-search period. He was interviewed and was on a shortlist, but ultimately an external candidate was selected for the position. He complains that the procedures lacked transparency and that the Respondent did not act in good faith. He was not informed of the internal search for the position, nor that the position had been re-advertised; no explanation was ever given for this. Nor had it been explained why he was told on March 21, 2003 that he was no longer a candidate for the position, and that none of the previous finalists was considered qualified, when one of these was later hired in preference to himself.

64. The Applicant contends that his own qualifications met the advertised criteria better than those of the

external candidate who was selected, and that the Respondent acted unreasonably in rating candidates under criteria different from the advertisement. He refers to the statement in the advertisement that “[a] proven track record in IFC’s investment activities in financial markets is indispensable.” The Applicant claims that he met this requirement, whereas an outsider could not have done so. He relies on *Pinto*, ILOAT Decision No. 1646 [1997], para. 11. In that case, the person appointed did not have the degree or the experience required by the notice. The ILO Administrative Tribunal stated that the cardinal rule was that the chosen candidate must have at least the qualifications stipulated in the notice. The Tribunal set aside the appointment and directed that the recruiting procedure be re-opened.

65. The Applicant in the present case requested the Respondent to produce the “[i]nterview report or other written or electronic correspondence by [the CGF Micro-Finance (CGFMF) Manager] evaluating [the Applicant’s] candidacy for [the] Senior Investment Officer position, Micro-Finance and Small Business Group, on or about February 28, 2003.” The Tribunal granted this request, but the Respondent replied that the CGFMF Manager had not made any such report, though he had received reports from others.

66. The Applicant argues that the lack of any such interview report casts doubt on the standard of care applied to the selection process. Further, the CGFMF Manager could not explain how the selected candidate met the indispensable requirement of IFC investment experience. The Applicant asserts that he was the most suitable candidate, and that the CGFMF Manager’s failure to recall the circumstances suggested that the process was not thorough and thus supported his claim that it was unfair and arbitrary.

67. The Applicant complains also that HR gave misleading advice to management about the effect of the severance payment he had received on his ability to be re-employed by the Respondent.

68. The Applicant submits, further, that the Respondent failed to give him preference in a situation where the external and internal candidates had similar qualifications. He relies on *Moreno de Gómez*, ILOAT Decision No. 1602 [1997], para. 4.

69. The Respondent does not contest that the Applicant had relevant qualifications for the position. However, it states that the “indispensable” “proven track record in financial markets” referred to by the Applicant was not part of the selection criteria, but was part of the “duties and accountabilities” of the position. The selection criteria stated that “[p]rior experience in micro-finance is also desirable.” The Respondent points out that the successful applicant had six years in micro-finance, while the Applicant’s experience in that area was limited. The Applicant was not entitled to be given priority as a staff member who was facing redundancy, as his qualifications were not the same as those of the external candidate. The CGFMF Manager added him to the shortlist “to go an extra mile” because the Applicant had worked in the IFC, and despite his having no micro-finance experience. The most qualified candidate was selected. The Respondent says that no consequences flowed from the second advertisement, as the Applicant remained on the shortlist. The Respondent denies that the Applicant was told that none of the original applicants was qualified.

70. The Respondent asserts that the receipt of severance pay by the Applicant did not prevent his employment. The Respondent submits that the advice given by the HR Officer about severance pay was correct. It submits that in any event, the hiring decision was based on the comparative qualifications of the Applicant and the selected candidate. The CGFMF Manager testified that he was not influenced by the severance payment; his interest was in the relative strengths of the candidates. Others were better qualified than the Applicant.

71. The Tribunal observes that there remain some uncertainties about the procedures followed in recruiting for this position. Neither the CGFMF Manager nor the HR Officer was able to remember why the job had been re-advertised. It does not appear, however, that this altered the position of the Applicant relative to the selected candidate. The HR Officer’s memorandum suggested that there would be further administrative hurdles to negotiate if the CGFMF Manager wanted to hire the Applicant. But the CGFMF Manager testified that for him, qualifications were the main issue. It is uncertain what, if any, impact the HR Officer’s memorandum had on the hiring decision.

72. Of concern to the Tribunal is the absence of any interview/evaluation report indicating why the Applicant was considered less qualified for the position than the other candidate. This is in contrast with the Applicant's earlier interview for the Environmental Markets Group position, for which there is a considered report. The PIO who had interviewed the Applicant on January 24, 2003 for the MF position had given him a high rating. On the face of it, the Applicant met the "indispensable requirement," mentioned in the statement of duties, of "[a] proven track record in IFC's investment activities in financial markets." The first selection criterion was a "thorough understanding of financial markets/commercial banking and experience in executing financial sector projects. Prior experience in micro-finance is also desirable." The Applicant was experienced in financial markets, but did not have micro-finance experience. However, there is no interview report for him or for the successful candidate to indicate how the different criteria were assessed.

73. The Tribunal observes that the selection of staff involves the exercise of managerial discretion (see Jassal, Decision No. 100 [1991], para. 30), and that it will not interfere in the exercise of such discretion unless there has been an abuse or improper motivation. As the Tribunal stated in *Montasser*, Decision No. 156 [1997], para. 15:

[T]he Bank was not obliged by its rules and regulations, or by basic principles of fairness and due process, to place the Applicant in such a position, in preference to the earlier incumbent or to some other candidate who might be properly found to be more highly qualified than the Applicant.

74. In this case, however, there was a material inconsistency between the advertised criteria for the position and the basis upon which the CGFMF Manager made his decision to offer employment to the other candidate. In his testimony before the Appeals Committee, the CGFMF Manager emphasized the micro-finance experience of that candidate and affirmed that he was looking for someone with experience and knowledge of micro-finance. The advertised duties of the position, on the other hand, emphasized experience in the IFC's investment activities in financial markets as "indispensable." The advertised job criteria mentioned experience in micro-finance as "also desirable" but gave greater prominence to an understanding of financial markets and financial sector experience. The Applicant appeared to possess the major skills and experience described in the advertisement though he had little experience in micro-finance. The CGFMF Manager apparently decided that such experience was the most important factor. This significant disregard of the advertised criteria, and the lack of any written evaluation of the skills of each candidate, lead the Tribunal to conclude that the selection process was lacking in transparency, and was arbitrary and an abuse of discretion. The Applicant should be compensated for the consequential damage he has incurred.

Allegations concerning the IFC's HR Department

75. The Applicant complains that the IFC's HR Department failed to act in a timely manner on his behalf pursuant to its good faith obligations during his job-search period. First, HR did not intervene to ensure that he got the Environmental Markets Group position for which he was well qualified, and which he was willing to take, even though it was at a lower level. Next, he claims that HR did not assist him in regard to the micro-finance position. It should have informed the CGFMF Manager of his availability and arranged an interview for him before the position was advertised. Allowing the job to be advertised a second time is, the Applicant argues, evidence of a lack of good faith, and of a failure to assist him in finding another position in the Bank Group.

76. The Respondent contends that these claims are irreceivable as the Applicant did not raise any specific issues about the HR Department before the Appeals Committee and therefore failed to exhaust his administrative remedies. In any event, the Respondent argues that it gave the Applicant appropriate assistance and identified a number of potential positions for him. He applied for six positions and had four interviews.

77. The Tribunal does not consider that these claims raise issues separate from those considered earlier in relation to the reassignment and redundancy process, and to the applications by the Applicant for other positions. They have been considered in that context.

Conclusions

78. For the reasons outlined, the Tribunal considers that the Respondent failed to follow appropriate procedures in regard to the Applicant's reassignment in the restructuring process and in the redundancy decision, and also that the selection process for the position in the Micro-Finance Unit involved an abuse of discretion. While the Tribunal does not consider that the decisions should be set aside, the Applicant is entitled to compensation for the lack of due process and the abuse of discretion which resulted in injury to him. The Tribunal assesses this at two years' net salary.

Decision

For the above reasons, the Tribunal decides that:

- (i) the Respondent shall pay the Applicant compensation assessed at two years' net salary;
- (ii) the Respondent shall pay the Applicant costs in the amount of \$12,500; and
- (iii) all other pleas shall be dismissed.

/S/ Elizabeth Evatt
Elizabeth Evatt
President

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

At Washington, DC, November 12, 2004