

Decision No. 357

**Gregory George Prakas,
Applicant**

v.

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

1. The present judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Jan Paulsson, President, Robert A. Gorman and Sarah Christie, Judges. The application in this case was received on 12 May 2006.
2. The Applicant has asked for anonymity for the proceedings and judgment on the ground that his future employment may be adversely affected. The Respondent objected to anonymity. The Applicant's request was denied on 31 October 2006 on the basis that it was not established that the publication of the Applicant's name was likely to be seriously prejudicial to him.
3. The Applicant challenges the decision of the Bank to declare his position redundant and to terminate his employment.

Factual background

4. The Applicant joined the Bank in 1979 as a Cartographic Technician. By the time of his termination, he had been promoted to Senior Cartographer, Level F, in the Printing, Graphics and Map Design Unit of the General Services Department ("GSDPG"). GSDPG includes the Map Design Unit, the PhotoLab, the Printing Unit and the Graphic Design Unit. It is part of the General Services Department ("GSD"), a support department. From 1999 until early 2003, the Applicant exercised responsibility for supervising cartography staff and for assisting in the supervision of the PhotoLab staff.
5. In August 2003, the then Director of GSD, Mr. Luis Descaire, commissioned a Business Process Review ("BPR") for all business units within GSD in an effort to improve their efficiency. GSDPG operates on what the Bank calls "chargeback," which means that when it provides printing, graphics, cartography and other services to different units and departments within the Bank, those units and departments are required to pay for them. GSDPG thus competes with service providers outside the Bank. The BPR was conducted between August and November 2003 by two consultants who are Bank employees, namely Messrs. Gordon Munson and Alfonso Caamano. The consultants interviewed staff, and examined and analyzed data relating to production and cost. At the time of the BPR, the Map Design Unit had four staff: the Applicant, Messrs. Hugh Fisher and Jeff Lecksell, cartographers, and Mr. Jose Clavecillas, part-time Production Assistant.
6. On 3 November 2003, Mr. Munson sent Ms. Jane Bloodworth, Manager of GSDPG, a draft overview of the "findings and opportunities for improvement" relating to the Map Design Unit ("Draft BPR").
7. The Draft BPR showed that the staff complement in the Map Design Unit comprised 3.2 Full Time Equivalents (FTE). The Applicant was construed as 0.8 FTE (with 0.2 unit of his time spent in the PhotoLab), Messrs. Fisher and Lecksell were each 1 FTE, and Mr. Clavecillas was 0.4 FTE because a portion of his time was spent in the PhotoLab where he worked as a dark room technician (0.5 FTE) and in the Graphic Design

Unit (0.1 FTE).

8. The main findings in the Draft BPR relevant to this matter were that the operating costs in the Map Design Unit were far too high in relation to the amounts the Unit was able to recover from its clients. Although the Unit was meant to operate as a sustainable business unit, its costs were two and a half times higher than its revenue. The Draft BPR identified a number of factors that contributed to the high service delivery costs and recommended a number of remedial steps:

Based on the productivity levels it appears that the Map Design Group is overstaffed. The planned retirement of the production assistant and one cartographer provide an opportunity to review competency requirements and the overall staffing level.

The staffing strategy should focus on and leverage the planned move to a completely digital operation, minimum coverage requirements and succession planning to reach an eventual staffing level of 2 FTE. The following alternative could be considered:

Replace the retiring cartographer with recent graduate with cartographer skills *and* with information analyst skills to free up the more senior cartographer [sic] time currently dedicated to the Mapviewer project. [Emphasis in original.]

Require the recent graduate to be responsible for the map reference room materials and perform manual duties currently performed by the production assistant. Eliminate the part-time production assistant position.

Expand the scope of vendor arrangements once digital operations are in place and determine the feasibility of adjusting the staffing level to 2 FTE.

9. The BPR consultants prepared a PowerPoint presentation to accompany their Draft BPR. This presentation suggested that GSDPG should review some of the management practices that were perceived to involve a high level of manual processes and which were not cost-effective. It specifically recommended that there be a “[r]eview [of] the need for all jobs sent to external vendors to go through the Sr. Cartographer [the Applicant].” This work constituted a large part of the Applicant’s oversight functions. Although the Draft BPR seems to be silent on this point, it appears that a suggestion was made to create a new Level G manager position in order to consolidate all the contract administration work of GSDPG and the oversight of the Map Design Unit and the PhotoLab.

10. The BPR consultants prepared an action plan for implementing the recommendations contained in the Draft BPR. The first action plan was issued on 3 December 2003. (It was updated monthly from December 2003 to May 2004.) Mr. Lecksell assumed full-time implementation of the digital Mapviewer project, which was to be launched in June 2004. Day-to-day cartography was assigned to the Applicant and Mr. Fisher. The scope of duties of the part-time Production Assistant, Mr. Claveillas, would be reassessed pending the move to a fully digital operation via Mapviewer. The Draft BPR recommended that in January 2004 GSDPG recruit a recent graduate to administer Mapviewer. Once these steps had been implemented, the Draft BPR contemplated a GSDPG review of its staffing strategy. It was envisaged that Mr. Fisher would retire within a year. At the time of the first action plan it was not known when this would be. On 14 January 2004, Mr. Fisher gave notice of his intention to retire, and he did so on 1 March 2004.

11. On 11 November 2003, Mr. Descaire informed Ms. Bloodworth that he agreed with much of the Draft BPR recommendations and urged that the Unit move quickly to implement them. He clarified the next day that he agreed with the recommendations to create a third lead position, to reorganize the Map Design Unit, to have all maps in digital form, and to staff the Unit with a principal cartographer and a junior cartographer. With respect to the creation of a third lead position, Ms. Bloodworth responded: “I was not aware of this recommendation as it was not in the draft I saw – I know Gordon made [revisions] over the weekend. In fact, there is a third lead position (Greg’s) [the Applicant’s] although I would agree, as you and I have discussed, that it needs some attention (or a better person in it).” In another e-mail to Ms. Bloodworth, Mr. Descaire responded that “there would be no lead position in mapping,” rather that there would be a “new lead position” at a higher level, and

that the Applicant “would either become a ‘real working’ cartographer or we [sic] would go. I agree with that wholeheartedly.”

12. On 14 November 2003, Mr. Descaire, who was aware that Ms. Bloodworth was in the process of completing the Applicant’s Interim Review, e-mailed her as follows:

It is imperative that in his Interim Review you indicate that he has [n]ot done a good job “managing” photography: he has not properly recorded the issues, and instead of [trying] to create a good atmosphere he has polarized it (Gordon’s words but you and I agree). This will allow us to pursue the other plans.

13. On 26 November 2003, Ms. Bloodworth met the Applicant to discuss the Interim Review which she had prepared. She noted in the Interim Review that the Applicant “[i]s meeting or exceeding expectations for technical cartographic goals and responsibilities,” but that he “[i]s not meeting expectations in the area of team building, people management and management responsibilities.” She also noted that in response to his own comments regarding his workload (he had told her during his previous Overall Performance Evaluation (“OPE”) process that he found managerial responsibilities somewhat burdensome), “his position has been reviewed as part of a unit wide business process review” and “will be restructured to eliminate managerial oversight, responsibility for the Photolab, and will revert to a more technically oriented, cartographic position.” The Applicant was not pleased with the OPE and refused to sign it.

14. On 4 December 2003, Ms. Bloodworth briefed the staff on the general findings and recommendations of the BPR and its implications for staffing levels. She did not distribute the Draft BPR text to the staff. Later that day, she recounted her assessment of the meeting in an e-mail to Mr. Descaire. She stated that she had invited participation in the review and feedback on its recommendations. She “gave an overview of the structural changes focusing on adding a ‘Team Lead’ position to allow us to make a more logical grouping of all the contract management functions” and “to free up Greg’s [the Applicant’s] capacity so we could focus resources on improving digital capabilities in cartography. ... I let the group know that there were some recommended staffing goals for both cartography and the photolab that, in the longer term, might reduce the numbers as people retired, but did not cite specifics as I had when I met with the individual units.”

15. Meanwhile, on 20 November 2003, Ms. Bloodworth had prepared a draft job description for the new lead post at Level G. This was finalized on 1 December 2003. When the job was advertised, the Applicant did not apply. Ms. Patricia Sullivan was appointed and assumed duties on 20 January 2004.

16. On 10 February 2004, Ms. Sullivan met with the cartography staff and provided them with a slightly revised copy of the Draft BPR, which suggested “minimum coverage requirements and succession planning to reach an eventual staffing level of 2 FTE,” and in the alternative, the following: recruit a consultant to administer Mapviewer on a temporary basis; one cartographer would focus on launching an updated version of Mapviewer and all other cartographers would take over other cartography work; the consultant would be responsible for the map reference room materials until the position of the part-time production assistant had been determined; once the digital operations in the Unit had been implemented, vendor arrangements would be expanded. There was no mention of any redundancies. This proposal appears to have envisaged that after Mr. Fisher’s retirement a little short of three weeks later, both the Applicant and Mr. Lecksell would remain as the two cartographers.

17. On 25 February 2004, before the implementation of the BPR had been completed, GSD management and the managers of other departments met with Managing Directors of the Bank to discuss the Bank’s Business Plan for Fiscal Years 2005-07. At the meeting, it was noted that GSD’s administrative budget had “already declined since 1995 at a much faster rate than the administrative budget for the rest of the Bank,” and it was agreed further that the prevailing cost-effectiveness savings would remain unchanged. On 5 April 2004, Ms. Thyra Riley, Manager, GSD, instructed by e-mail all the relevant managers in GSD to identify any opportunities to reduce costs in Fiscal Year 2005. As for staffing, she asked managers to explore opportunities to:

- a) eliminate positions as people retire

- b) [m]ove a position, or tasks from an existing staff position to a contractor
- c) combine tasks of currently under utilized staff
- d) you have staff who are not fully occupied in a productive way and have some available time, or will have as we make various improvements
- e) you have a need for additional staff (or portions of a staff), and for what purposes/tasks.

18. On 6 April 2004, Ms. Bloodworth forwarded Ms. Riley's e-mail to managers in her Unit noting that "the budget cutting days are back." However, she also stated:

I believe we are not in bad shape as we have been diligently watching our costs for the past several years. We've actually have [sic] had reductions every year to the budget we receive from the front office. Since we spend more than twice the budget we receive, and because we have a successful chargeback program that fully recovers all our costs (budgeted or not) I have really had us focus more on watching expenses vs. revenue and so the budget cuts have really been seamless to you, as well as the rest of the staff.

Ms. Bloodworth directed Ms. Sullivan to "include savings projected from some of the BPR reviews." On 9 April 2004, Ms. Sullivan submitted a draft Business Plan for Fiscal Years 2005-07. There was only one item under staffing plans: "Per the BPR, one additional FTE was envisioned for the Photo Lab, and a consultant for Cartography." She made no reference to redundancy or staff reduction.

19. At this time, there were a number of e-mail exchanges between GSD and the Strategy, Finance and Risk Management Vice-Presidency (SFRM) stressing the need for GSD to achieve budget reductions. On 15 April 2004, Mr. Descaire wrote to the GSD managers: "we are entering the famine part of the cycle and while [Fiscal Year 2005] may be bearable the outer years will not so must prepare for it. This does not mean that we have to 'kill the palace guard,' but it means that we will have to tighten our belts and look for efficiencies." He specifically asked them not to share the e-mail with staff because "I don't think we want to hit the panic button ... although you can tell them that the budget is getting tight and that we are being asked to reduce our costs."

20. On 7 May 2004, Mr. Descaire wrote to all the staff in GSD:

You may have heard that this year the budget discussion at the Board have [sic] been difficult. I therefore want to share with you the implications for GSD of the budget decisions that have been made. GSD's budget will be reduced by 2.5% in discretionary and 1% in overhead in each of the next three years. ... In the next few weeks your managers and I will be discussing ways to meet this considerable reduction in funds; your manager will provide you with periodical updates on how this decision may affect our particular unit. At the same time, feel free to provide your manager with any suggestions that you may have in helping to meet this objective.

We have been through this road before and I am sure we will be able to do it again. Undoubtedly, changes will have to be made but we will try to do them in the best way we can keeping in mind the needs for both the Bank and the staff.

21. Mr. Descaire and Ms. Bloodworth were informed on 6 April 2004, the day after the GSDPG managers learned of the budget cuts, that the Applicant had filed an appeal (in fact, on 2 April) before the Appeals Committee (Appeal No. 1310) challenging his managers' decision to reassign all of his supervisory functions to Ms. Sullivan on 20 January 2004. When Mr. Descaire heard of the Applicant's appeal, he wrote to Ms. Bloodworth: "Given the individual, I am not surprised. I hope that he does not have to regret this decision." On 11 January 2005, the Appeals Committee dismissed the Applicant's petition and he did not pursue the matter before the Tribunal.

22. On 14 April 2004, Mr. Descaire wrote Ms. Elfreda M. Baptist in Human Resources that based on the BPR findings the Applicant's position "should be declared redundant." Mr. Descaire wanted to know whether to "proceed to implement the report and declare his position redundant, or does the appeal give him a reprieve?"

She replied on the same day that she had been given legal advice and that:

the ongoing appeal does not stop you from implementing the report and declaring the position redundant; [and]

you must alert him sufficiently in advance of your intention to declare the position redundant, so as to give him sufficient time to start his search for another job.

23. Soon after, Ms. Bloodworth began drafting the redundancy letter that was ultimately sent to both the Applicant and Mr. Lecksell. The 10 February 2004 Draft BPR had recommended among other things that the Unit should “reach an eventual staffing level of two FTE,” and that a consultant be recruited “to administer the Mapviewer on a temporary basis.” Unable to find precise language in the Draft BPR about redundancy, Mr. Descaire asked Ms. Bloodworth to elicit a “clarification” from Mr. Munson that would deal more explicitly with the positions of the cartographers. On 30 April 2004, Ms. Bloodworth e-mailed Mr. Descaire that “I am hearing that Jeff [Mr. Lecksell] is finding Greg’s [the Applicant’s] behavior very difficult and is concerned that we are going to say the heck with the whole unit and get rid of both of them. So, I’d like to move forward quickly as we are all agreed to give him a level of comfort as quickly as possible.” On 7 May 2004, Mr. Munson produced the “clarification” as requested. In an accompanying e-mail, he stated that “[t]he detailed findings of the our [sic] review indicate that the Sr. Cartographer is performing duties that are either redundant or not cost effective and in order to achieve the envisaged cost savings should be relieved of these duties.” The clarification stated that:

The envisaged two FTE staffing of the Map Group requires staff with the right competencies to implement the recommendations

The competencies required to leverage the digital technology inherent in the Mapviewer are a mix of information analyst and cartography skills. Currently, one cartographer (JL) [Jeff Lecksell] has been the driving force behind the development and implementation of the Mapviewer. In order to enhance the application of this tool and accelerate the full access of the tool to clients and vendors it is recommended to recruit a recent graduate with cartography skills and “information analyst skills” in order to provide the right mix of competencies to leverage the Mapviewer and achieve the goal to reduce service delivery costs by approximately \$150,000.

The implementation of this cost effective staffing strategy also shows the *redundant nature of the Sr. Cartographer position* for the following reasons. [Emphasis added.] The incumbent:

Does not have the right competencies to accelerate the full implementation of the Mapviewer to leverage digital technology.

Did not demonstrate the right competencies to lead or supervise the Map Design Group and the PhotoLab Group staff and has been relieved of that responsibility. The incumbent dedicated approximately 40% of his time to those duties in the previous FY.

Required all cartographers to send map requiring clearances to him for processing and he dedicated approximately 55% of his time to map clearances. The map clearance process does not require the skill level of a Sr. Cartographer. It can be performed by a lower graded staff with the guidance of cartographer for more complex cases. The process being implemented in the previous year was not cost effective.

24. On 25 May 2004, Ms. Bloodworth wrote to the Applicant and Mr. Lecksell informing them that management had decided to declare one of them redundant, inviting them to volunteer for redundancy, and advising them that if neither one volunteered, one of them would be selected for redundancy at a later date. Neither of them volunteered.

25. On 7 June 2004, senior managers in GSD met to select the staff member who would be made redundant. They compared the Applicant and Mr. Lecksell in six categories and used a range from 1 (weakest) to 5 (strongest) in each category. In all but one category Mr. Lecksell was found to be stronger than the Applicant, and in the remaining one, fungibility, they were considered to be equal.

26. The first category considered was the “Results Assessments and Developmental Actions Assessments” of the candidates’ OPEs for 2001-02 and 2002-03. The managers also considered the Applicant’s last Interim Review dated 26 November 2003, which indicated certain areas needing improvement. (These related to team building, management and conflict resolution.) As a manager, the Applicant was rated as “Superior” or “Fully Satisfactory.” The only negative comments he had received during his years as supervisor related to his management of the PhotoLab, the perceived problems he had had in managing “difficult staff,” and his failure to attend training in conflict management. The Applicant’s last OPEs, including his Interim Review in November 2003, noted some weakness in team building. The team allocated scores of 37.5 for Mr. Lecksell and 22.5 for the Applicant in this category on the basis of their OPEs.

27. The second category used for the comparison was salary review increases (SRIs) for which the team considered the four years from 1999 to 2003. When these were compared, Mr. Lecksell received a score of 36.5 and the Applicant 25.0.

28. The third category concerned Mapviewer skills, for which Mr. Lecksell was rated 36.0 and the Applicant 28.0. In the fourth category, Data Analysis Skills, Mr. Lecksell scored 28.0 and the Applicant 26.0. Fifthly, in the fungibility category, they were rated at identical scores of 7.0. The sixth and final category compared the staff members’ interpersonal skills. Mr. Lecksell received a score of 28.0 and the Applicant 21.0.

29. On 14 June 2004, Ms. Bloodworth notified the Applicant by e-mail that, based on its assessment, the senior management team had decided to declare his position redundant with effect from 1 July 2004. Mr. Descaire confirmed this decision on 25 June 2004 and the Applicant’s employment was terminated on 31 December 2004, in effect granting him six months to find alternative employment.

30. On 28 April 2005, the Applicant filed his Statement of Appeal before the Appeals Committee (Appeal No. 1360) challenging the decision to declare his employment redundant. After conducting a hearing, the Appeals Committee concluded on 19 December 2005 that the Bank did not abuse its discretion when declaring the Applicant’s employment redundant; that the decision was not arbitrary; that his selection was not a sham and was not discriminatory for any whistleblowing activity; and that the process had been transparent. It recommended that the appeal be dismissed. On 11 January 2006, the Vice President of Human Resources accepted this recommendation and advised the Applicant that his claim for relief was denied.

31. Before the Tribunal, the Applicant challenges the Bank’s decision to declare his position redundant on a number of grounds: (a) the Applicant’s redundancy was in retaliation for the filing of his 2 April 2004 appeal (Appeal No. 1310); (b) the comparison between the Applicant and Mr. Lecksell was a sham because his managers had already made the decision to terminate him rather than Mr. Lecksell; (c) the redundancy process was not transparent and the Applicant was denied due process when the Bank refused to provide information on the scoring mechanisms or details of the comparison with Mr. Lecksell; and (d) the redundancy process was improperly used to terminate the Applicant for alleged performance issues. The Applicant seeks salary retrospective to the date his employment was terminated, compensation for emotional pain and reputational harm, and costs.

The relevant Staff Rule

32. Paragraph 8.02 of Staff Rule 7.01 deals with redundancy and provides as follows:

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

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

- c. A position description has been revised, or the application of an occupational standard to the job has been changed, to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position;
- d. Types or levels of positions must be reduced in number.

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

Alleged retaliation

34. Paragraph 2.03 of Staff Rule 8.01 provides that:

Retaliation by a staff member against any person who in good faith provides information about suspected misconduct, or who uses the Conflict Resolution System, is expressly prohibited and can subject a staff member to disciplinary action under this Rule.

35. Staff members are entitled, indeed encouraged, to use the Bank's appropriate conflict-resolution mechanisms, including the filing of an application with the Tribunal. Even if their claims lack merit, they are protected against reprisal and retaliation. Nevertheless, "the burden lies with the Applicant to establish facts which would bring his claim within the Staff Rules' definition of retaliation." (*F*, Decision No. 313 [2004], para. 50.) A staff member who relies on para. 2.03 must establish a causal nexus between his or her complaint of suspected misconduct, or recourse to the Conflict Resolution System, and the alleged retaliation. (See *Moss*, Decision No. 328 [2004], para. 51.) If there is no evidence that the alleged perpetrator was aware that a complaint had been lodged before the apparently retaliatory action, the burden is not satisfied. "A staff member's subjective feelings of unfair treatment must be matched with sufficient relevant facts to substantiate a claim of retaliation, which in essence is that the allegation of poor performance is a pretext to mask the improper motive." (*O*, Decision No. 337 [2005], para. 47.)

36. Paragraph 8.02 of Staff Rule 7.01 enables the Bank to declare a position redundant for a genuine business reason. When the Tribunal scrutinizes the conduct of the Bank, it does so not to second-guess the business efficacy of the decision itself, on which it is not qualified to pronounce. The focus of the scrutiny is rather on whether the ultimate decision was genuine in the sense that the Bank's decision to declare an applicant redundant was informed and justified by a proper business rationale. If so, that is the end of the inquiry – even if the decision might not have been optimal under the circumstances. The Tribunal noted that "[a]lthough staff members are entitled to protection against reprisal and retaliation, managers must nevertheless have the authority to manage their staff and to take decisions that the affected staff member may find unpalatable or adverse to his or her best wishes." (*O*, para. 49.) In *Fidel*, Decision No. 302 [2003], para. 29, the Tribunal further noted that:

In reviewing the legitimacy and genuine character of a reorganization and redundant employment on the basis of work program needs, the Tribunal held in *Ezatkhan*, Decision No. 185 [1998], that "the factors determining whether a reorganization is efficient include not only the staff budget, but also the redefined work strategies and the priorities resulting from the new structure."

37. A decision to terminate a staff member for reasons of redundancy frequently arises out of the restructuring of a unit's or department's operations. If there is a restructuring, management may not in advance isolate a position in order to declare it redundant, and only subsequently construct a business justification or otherwise "invent post hoc rationalizations. The incumbent must be affected by a conscious prior *redesigning* of his position." (*Mahmoudi (No. 2)*, para. 27. Emphasis in original.) Although *Mahmoudi (No. 2)* related to redundancy based on paragraph 8.02(c) and not 8.02(d), the reasoning is nevertheless applicable in this case. The question is whether there was a prior genuine business reason to reduce the types or levels of positions.

38. The Applicant's claim of retaliation is narrowly based on an alleged direct link between his redundancy and his appeal against the decision to remove his supervisory functions as of January 2004. That appeal, also based on alleged retaliation, related to concerns that the Applicant had expressed for some time about a staff member who, according to the Applicant, had misused Bank resources for personal gain. The Applicant claimed that the Bank did not respond adequately to his concerns and thereafter retaliated against him by removing his supervisory responsibilities. The Bank denied those allegations. A preliminary investigation conducted by the Department of Institutional Integrity ("INT") resulted in a finding that there was insufficient evidence to conclude that the staff member accused by the Applicant had been engaged in an "illegal private enterprise." INT did not conduct a formal investigation. The Appeals Committee considered that Mr. Descaire had acted properly by creating the new senior position and reassigning the Applicant's managerial duties; that there had been a good business reason for the decision; and that there was no violation of the Applicant's rights to due process. Although the Appeals Committee expressed concern that management had avoided dealing with the Applicant's allegations, it concluded that there was no evidence that the decision to reassign the Applicant's managerial functions had been tainted by any improper motive towards him.

39. The Applicant contends that in the present case, the required causal nexus is established because as soon as Mr. Descaire learned of the Applicant's April 2004 appeal, he indicated that the Applicant might "regret" having lodged it. Mr. Descaire informally made the decision to declare the Applicant's position redundant only a few days later, and subsequently initiated significant changes in the Draft BPR to "legitimate" his prior decision. The Applicant asserts that "[t]here is simply no explanation for Mr. Descaire's extraordinary sequence of statements and actions in April and May of [2004] other than retaliation," and he concludes that this was "an egregious abuse of discretion."

40. The Applicant asserts that the timing of the redundancy was inexplicable other than by reference to Appeal No. 1310. The factual basis for this contention is that the November 2003 Draft BPR did not mention redundancy and it was not anticipated in any versions of the BPR drafted between November 2003 and February 2004 which, as far as staffing levels were concerned, envisaged nothing more drastic than natural attrition. He claims that Mr. Descaire conceded as much because he wrote to Ms. Bloodworth on 3 May 2004 that "the quote from the review seems to imply that we should replace the retiring cartographer (Hugh Fisher?) not either Greg [the Applicant] or Jeff [Lecksell]. Is there not another paragraph where it says that we only need one cartographer and a junior person to do data management?" In her reply, Ms. Bloodworth noted that "[b]oth Abel [Caamano] and I reviewed the BPR and, although the one cartographer plus a junior person to do data management was widely discussed, it does not actually say that in the BPR." The Applicant contends that it was only after Mr. Munson drafted the "clarification" at the managers' request nearly six months after the initial Draft BPR, that the decision was taken to declare one of the cartographers redundant. By then Mr. Fisher had retired, Mr. Clavecillas was no longer in the Unit and the Applicant was informally designated for redundancy. The Applicant claims that out of 40 staff members in GSDPG, he was the only person to be declared redundant at that time. Accordingly, he concludes that his redundancy was not an inevitable consequence of the November Draft BPR, which "cannot explain away the retaliatory discharge."

41. The Respondent rejects the Applicant's claim of retaliation. The recommendation to reduce staffing levels was taken in November 2003, as a result of the BPR. This was long before Appeal No. 1310 was filed in April 2004, and even before the budget pressures became known in February 2004. The reduction in staffing levels was also emphasized on 5 April 2004 in the senior management budget meeting. All these occurred before management was informed of the Applicant's appeal on 6 April 2004. The Respondent submits that there is no evidence that management's implementation of staffing changes was caused or motivated by the Applicant's appeal. The fact that several sequences of events unfold simultaneously does not mean that they are causally related. The mere absence of the word "redundancy" from the Draft BPR and the budget-cut communications is not conclusive.

42. The Tribunal notes that succession planning and natural attrition appear to have been the mechanism by which GSDPG initially intended to reach the recommended staffing level of 2 FTE, and that this was certainly how it was understood by staff. Nevertheless, the record shows that between November 2003 and May 2004, senior management of the Bank had informed GSD management that there would be further budgetary

constraints in Fiscal Years 2005-07. Furthermore, the first Draft BPR, the several PowerPoint presentations, as well as the several Action Plans stated that the staffing needs of the Unit would be reconsidered after the recommendations were implemented. The first Draft BPR noted that “[t]he planned retirement of the production assistant and one cartographer provide an opportunity to review competency requirements and the overall staffing level.” This was also emphasized in a PowerPoint presentation to management. Furthermore, an alternative course of action suggested in the Draft BPR recommended the hiring of a junior cartographer but left open the way in which the 2 FTE staff complement would be achieved.

43. The Tribunal further notes that as early as November 2003, the Draft BPR put in doubt the utility of some of the tasks performed by the Applicant as the Senior Cartographer, and identified the need to “[r]eview the need for all jobs sent to external vendors to go through the Sr. Cartographer,” a function that constituted a large part of his work. This was well before the supposedly improper “clarification” some months later, and the Applicant’s filing of Appeal No. 1310.

44. The record also reveals that after the budget cuts were announced in April 2004, there was a further need to reduce costs in the Applicant’s Unit. Management therefore reasonably took the opportunity to reassess staffing levels. Although the word “redundancy” was not discussed until then, and natural attrition may have initially been contemplated as the way to achieve a reduction in staff, the Tribunal accepts that management is not required to predict from the outset how a certain level of staffing is to be reached. The fact that initial communications do not discuss redundancy does not preclude its later use to achieve budget and staffing goals. Even if the redundancy was not a necessary and inevitable consequence of the Draft BPR in November 2003, it was certainly foreshadowed in the decision to create the new Level G lead position at the same time. The Applicant’s challenge to the creation of that post was rejected by the Appeals Committee in Appeal No. 1310 and is not the subject of this application.

45. The Tribunal is satisfied that there was a genuine business rationale for a staff reduction which was crystallized in advance of the Applicant’s managers’ learning of the filing of his first appeal. Accordingly, it cannot be found that the declaration of redundancy was retaliatory.

The evaluation process

46. Staff Rule 7.01, para. 8.03, provides in relevant part as follows:

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

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

47. It is well established that the evaluation of the relative performance of staff members is a matter of managerial discretion and that the Tribunal will not interfere in the exercise of that discretion or substitute its own judgment unless the evaluation was an abuse of discretion. (*Taborga*, Decision No. 297 [2003], para. 36. See also *Jassal*, Decision No. 100 [1991], para. 37.) Whether a redundancy decision complies with Staff Rule 7.01, para. 8.02(d), must be assessed by reference to all the relevant circumstances surrounding the decision. For example, in *Fidel*, para. 54, the Tribunal found that

[g]iven the totality of the circumstances, ... the decision on the Applicant’s redundancy did not adequately take account of work program needs in the interests of efficient administration, as required by Staff Rule 7.01, para. 8.02(d). The Respondent failed to take account of essential factors when the

Applicant's position was initially declared redundant. Furthermore, the managers did not take adequate care to ensure that the Applicant's redundancy could not be interpreted as pretextual.

48. The Applicant submits that the comparison between him and Mr. Lecksell was a sham because his managers had already made the decision to terminate him and not Mr. Lecksell on 14 April 2004, long before the managers met to decide the redundancy question on 7 June 2004. The Applicant asserts that justification for the redundancy was developed after the fact, in a "rubber-stamping formality." The way he was compared with Mr. Lecksell was unfair because the Applicant was evaluated on the basis of both his cartography and supervisory skills, whereas Mr. Lecksell was evaluated only on his technical cartography skills. The assessments of the Applicant's performance of his supervisory tasks had been substantially lower than his evaluations as a cartographer, and the basis for the comparison therefore "unfairly prejudiced" him.

49. The Bank asserts that as expressly provided in Staff Rule 7.01, para. 8.03(a), relative performance is always a proper consideration when deciding who should be declared redundant among various staff members. It points to the fact that several GSD management members participated in the comparison, which was based on clear and objective criteria. The process was "an important step in ensuring that the selection of Applicant [for redundancy] was justified." The Bank asserts that the fact that there may have been a preliminary, informal assessment identifying the Applicant as the likely person to be declared redundant does not in itself nullify the process. Managers rate their employees every year to award SRIs. They know the relative strengths and weaknesses of their employees long before any focused comparison is made, and "the validity of the result of the objective comparison performed by the GSD senior management team is not undermined by the fact that the result may have been predictable." The management team looked at several categories of factors to determine that, overall, Mr. Lecksell should be preferred in the light of the operational requirements of the Unit to move to a fully digital operation and to prioritize implementation of Mapviewer. Although the Applicant's performance as a manager was not the focus of the assessment, the Bank contends that it was nevertheless appropriate for the managers to consider interpersonal skills because "interpersonal skills and workplace behaviors are relevant in deciding who would be the senior member of a small team."

50. The Bank contends that the redundancy process had been framed by Human Resources for use by management and, as reflected in the record, "the past performance data was compared mathematically, and skills and fungibility were discussed." This process was conducted "in the interest of efficient administration and strictly in accordance with applicable rules," and management determined as early as November 2003 that "efficient administration of its cartography work called for reducing the cartography staff from 3.2 FTEs to 2 FTEs, with one of the remaining staff members having only entry level cartography skills but having higher level information technology skills to support increased reliance on automation." This determination did not change in April 2004.

51. As the Tribunal remarked in *Martin del Campo*, Decision No. 292 [2003], para. 68, "any complainant in a redundancy case is likely to castigate the method applied in his case; and ... the Bank's managers have substantial latitude to make evaluations, which are necessarily in part subjective, as to which individuals should be retained when an array of positions are reduced." The Tribunal is not persuaded by the Applicant's claim that merely because Mr. Descaire and Ms. Bloodworth already had him in mind as a candidate for redundancy, the 7 June 2004 process was a sham and thus an abuse of discretion. The Applicant's managers were not required to disabuse themselves of their existing perceptions of the relative strengths and weaknesses of the Applicant and Mr. Lecksell.

52. The Tribunal is not persuaded that the comparison of the Applicant with Mr. Lecksell was improper on the basis that the management team considered the Applicant's performance of supervisory responsibilities. The Tribunal notes that SRIs do reflect the candidates' overall comparative performances. True, the Bank did not tender any record of its detailed assessment derived from the OPEs, and it is not clear which of the results assessments in the OPEs were compared, or whether any supervisory functions were compared to non-supervisory functions. The record of the scoring method is somewhat opaque.

53. However, the Tribunal notes that even if the team considered conflict management in its assessment of

“interpersonal skills and workplace behaviors,” there is no bright line between conflict management as a colleague and as a supervisor. The Tribunal further concludes that there is merit in the Bank’s submission that “interpersonal skills and workplace behaviors” are relevant in deciding who is to be the senior member of a small team. Moreover, it does not appear that consideration of the Applicant’s supervisory skills was central to the overall assessment of the two candidates in such a manner that the validity of the assessment process was improperly tainted by consideration of irrelevant factors and omission of relevant factors.

54. The remaining categories that were used to evaluate the candidates are uncontentious. The team relied on the candidates’ Mapviewer and data-analysis skills, fungibility and interpersonal skills. It is true that the evidence submitted by the managers before the Appeals Committee is unclear as to who attended the meeting and how the scoring was reached. However, a review of the unredacted version of the scoring sheet shows that the management team considered several categories for comparison purposes, and specifically considered the elements required in paragraph 8.03 of Staff Rule 7.01. Mr. Lecksell’s scores were higher than the Applicant’s in every category, except fungibility, and in some categories significantly so.

55. The Applicant challenges the fungibility assessment, the one category in which both the Applicant and Mr. Lecksell were assessed as equal. He claims that because his own skills are more narrowly cartographic, whereas Mr. Lecksell has better computer skills, Mr. Lecksell is more fungible. He considers that because Mr. Lecksell would have been more likely to find work elsewhere in the Bank than he would, Mr. Lecksell should have been identified for redundancy as the consequences for him would not necessarily have led to the termination of his employment. This is a misapprehension of the concept of fungibility. Management is required pursuant to paragraph 8.03(b) to consider “[w]hether the abilities and experience of staff members can be used elsewhere in the Bank Group.” The more fungible a candidate’s skills, the more generally useful the candidate. The Tribunal does not consider that the team’s assessment of the fungibility of the candidates was flawed.

56. The Tribunal finds, based on the evidence in the record, that Mr. Lecksell’s SRIs were higher for the last four years, that his OPEs appear to have been rated higher overall, that his experience with Mapviewer was more extensive, and that his technical skills, including computer skills, were more developed. The Tribunal concludes that there is insufficient evidence to find that the comparative assessment of Mr. Lecksell and the Applicant was arbitrary or capricious, or a violation of Staff Rule 7.01, para. 8.03.

Transparency of the redundancy process

57. The Tribunal has on a number of occasions stressed the need for transparency, e.g., in *Martin del Campo*, para. 49:

[T]he implementation of the Staff Rules dealing with redundancy must be effected with strict observance of fair and transparent procedures lest managers pay no more than lip-service to the required standards
....

58. The Applicant claims that the redundancy process “lacked transparency and was riddled with violations of due process.” The Bank did not “provide information on the scoring mechanism employed or the details of its comparison,” appears not to have kept a proper written record of the 7 June 2004 meeting, and has provided only a “heavily redacted” version of the composite scores used to retain Mr. Lecksell rather than the Applicant.

59. The Bank argues that a “transparent process does not mean that Applicant must see all the performance data of the other staff with whom he was compared, or that every detail of the process needs to be recorded and shared.”

60. The Tribunal finds that the Applicant’s claim based on a lack of transparency in relation to the evaluation of the candidates is not well established. Although at first the Bank provided the Applicant and the Tribunal a composite of the scores and a redacted version of the comparison, it later disclosed the unredacted scores of both candidates, and the Applicant failed to comment upon or challenge those unredacted scores.

61. It may be argued that the overall process leading to the redundancy decision lacked transparency because

the Applicant's managers did not inform him that redundancy was a likely consequence of the restructuring within the Unit. The Tribunal is, however, sensitive to the fact that in relation to redundancy decisions, informal announcements before compliance with proper procedures can be premature and prejudicial, and thus in violation of the Staff Rules. Furthermore, the decision to make a staff member redundant is not that of individual managers. Mr. Descaire or Ms. Bloodworth had to consult with Human Resources and did so consistent with Bank practice, and a panel including several other staff members was properly convened to make the comparison required by Staff Rule 7.01, para. 8.03. Although the Tribunal has held that "a basic guarantee of due process requires that the staff member affected be adequately informed with all possible anticipation of any problems concerning his career prospects, skills or other relevant aspects of his work" (*Garcia-Mujica*, Decision No. 192 [1998], para. 19), the Applicant has not pleaded that he ought to have been informed earlier. Nor is there any evidence that the Applicant suffered any prejudice as a result of learning of the redundancy in May 2004 rather than at some earlier time.

62. Accordingly, the Tribunal finds that the Applicant's claim of a lack of transparency in the redundancy process has not been established.

*Allegation of redundancy process improperly
used to deal with performance*

63. In *Taborga*, para. 42, the Tribunal confirmed that "the redundancy provisions must not be used to deal with unsatisfactory performance, but this does not mean that the performance or skills of a staff member may not be taken into account when deciding who should be rendered redundant in the context of a redundancy procedure (See *Jassal*, Decision No. 100 [1991], para. 31; *Hoezoo*, Decision No. 181 [1997], para. 6; and *Harou*, Decision No. 273 [2002], para. 37.)" The Tribunal noted in *Martin del Campo*, para. 50:

When a redundancy is decided under para. 8.02(d), the issue is not whether the Applicant is performing satisfactorily. It may well be that every person in the "type" or "level" of position targeted for reduction is more than able to fulfill his or her job requirements. The issue is whether the basis upon which a particular individual is chosen for redundancy is legitimate.

64. The Applicant maintains that the redundancy process was improperly used to terminate his employment as a solution to his perceived unsatisfactory performance, and that this is contrary to established precedent which provides that "[r]edundancy is not a tool that may be used to deal with unsatisfactory performance." (*Martin del Campo*, para. 56.)

65. The Bank retorts that "[r]elative performance is always a proper consideration when deciding who among staff members will be declared redundant when the Bank is reducing the number of similar positions pursuant to section 8.02(d)."

66. The Tribunal in *Martin del Campo* distinguished between the selection of a staff member for redundancy because of perceived poor performance, which is impermissible, and consideration of the relative "performance of staff members" as part of an exercise to select one individual rather than another. The Tribunal there stated at para. 57:

The first of the criteria permitted under para. 8.03 is the "performance of staff members." That perforce means *comparative* performance evaluation. So when the Applicant was told of critical comments about his performance, it was not by way of explaining why he was being terminated, but rather why it was that others had been preferred when it came to saving their positions. The distinction may be irrelevant to the effective outcome from the redundant staff member's perspective, but it is crucial in assessing the lawfulness of the decision. [Emphasis in original.]

The evidence does not support a finding that the Applicant was selected for redundancy because of allegedly unsatisfactory performance. His good performance as a cartographer has never been in doubt, but the evidence does show that the Bank in good faith assessed Mr. Lecksell's skills and attributes as being more valuable to it within the restructured Unit. The Tribunal therefore concludes that the Applicant was not selected for redundancy for poor performance.

Decision

For the above reasons, the Tribunal dismisses the application.

/S/ Jan Paulsson
Jan Paulsson
President

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

At Washington, DC, 3 February 2007