

Decision No. 208

J.C. Peter Richardson,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on December 11, 1997, by J.C. Peter Richardson against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Robert A. Gorman (President of the Tribunal) as President, Thio Su Mien (a Vice President of the Tribunal), A. Kamal Abul-Magd and Jan Paulsson, Judges. The usual exchange of pleadings took place and each party, pursuant to an order of the Tribunal, produced certain documents that were requested by the other party. In addition, a filing by the World Bank Group Staff Association of an Amicus Curiae Brief was accepted by the Tribunal and both parties commented on this Brief. The case was listed on November 12, 1998.

2. The issues presented by this application relate to the Staff Rules that provide for the payment of a "tax allowance" to staff members who are obligated under the laws of their home country, principally the United States, to pay taxes on their income from the World Bank. Staff members who pay no such income tax in their home country are paid income on a "net of tax" basis; United States nationals, such as the Applicant, are also paid their salary and other benefits on a net basis, but the Bank supplements this with a tax allowance that is intended to generate a "gross" income which, after the payment of U.S. taxes, leaves the U.S. staff member with the same net pay as his non-U.S. staff colleagues. The tax allowance is intended to help the U.S. staff member pay the relevant federal, state, local and social security taxes on Bank income. This tax-allowance system, in its general terms, has been found by the Tribunal to be a "fundamental and essential term of employment" of staff members. (*de Merode*, Decision No. 1 [1981].) The regulations that govern the computation of the tax allowance are set forth in Staff Rule 6.04. The Applicant contends that the pertinent provisions of Staff Rule 6.04 have been misapplied in his case, resulting in the payment to him of an inadequate tax allowance for the year 1996. He seeks compensation in the amount of \$145,000 for the allegedly inadequate tax allowance, along with interest and tax-allowance payments that pertain to any Tribunal judgment in his favor, and expenses in excess of \$43,000 in the prosecution of his case.

3. The Applicant, who began his employ at the Bank in April 1971, was serving in December 1995 as a level 26 Adviser in the Organization Design Division of the Organization and Business Practices Department. On December 1, 1995, that position was abolished and the Applicant was declared redundant; that declaration is not challenged here. Because his age (61) and his years of service (25) satisfied the Bank's so-called Rule of 85, he was entitled to receive an immediate unreduced pension. As a redundant staff member he was also entitled, under Staff Rule 7.01, to a six-month job search period and a two-month notice of termination period; because he had served beyond 18 years, the same Staff Rule also provided for severance payments totaling 22.5 months' salary. Had he wished, the Applicant could have continued to serve formally as a staff member receiving regular monthly payments during this total post-redundancy period of 30.5 months (during the latter 22.5 month period, he would have been treated as on "special leave"). Instead, the Applicant in early December 1995 chose not to request special leave and also requested that the two notice periods be converted into a lump-sum payment, accompanied by an accelerated termination date.

4. Accordingly, the Bank moved his termination date forward to January 13, 1996, which was the end of the first pay period of calendar year 1996. On that date the Applicant was paid net salary for the first two weeks of January 1996 (\$5,100), and he also received a total separation package in the approximate amount of

\$422,500 net of taxes (most of the amounts set forth hereafter will be approximate). This separation package was made up of: the Applicant's salary during the remainder of the two notice periods (\$73,000); a lump-sum severance payment of 22.5 months' net salary (\$252,800); accrued annual leave (\$31,100); a separation grant (\$57,000); and a dependency allowance (\$8,600). Some weeks after, the Applicant was also paid an additional net amount of \$4,300 as what is known as a "safety net" payment relating to his 1995 taxes; a staff member is eligible for such a payment if the income taxes actually paid by him in a given year exceed the tax allowance paid to him by the Bank (in view of the fact that the tax allowance is based on certain generalized and averaged assumptions rather than upon each staff member's actual tax payments). Therefore, the total net compensation paid to the Applicant in 1996 amounted to some \$432,000.

5. In addition, the Applicant received from the Bank two other large payments that are very much at the heart of this case. Effective January 13, 1996, the Applicant received a *gross* annual pension benefit of approximately \$126,000. The Bank does not consider pension payments, provided for under the Staff Retirement Plan (SRP) and paid from an SRP Fund, to be compensation for services currently rendered, and so these pension benefits are paid on a gross, rather than net-of-tax, basis, to all staff members, with the expectation that all will be liable to pay taxes on these benefits in their home country. Pursuant to the SRP, as shaped by the pertinent U.S. federal and District of Columbia tax laws, only \$110,000 (90%) of that pension was subject to national and state (D.C.) taxes. The second substantial payment made to the Applicant – on April 8, 1996, just shortly before the April 15 due date for the filing of his 1995 tax returns and the payment of his first "estimated" quarterly installment of 1996 taxes – was his 1996 tax allowance. The Applicant, who was subject to U.S. federal and D.C. income taxes, received a tax-allowance payment of approximately \$378,000. This was intended to cover the federal and state taxes on his net 1996 compensation of \$427,600 (two weeks' salary and separation package) and reimbursement of one-half of his medicare/social security tax liability (the latter, pursuant to Staff Rule 6.04, paragraph 7.01). A later tax allowance relating to the safety-net payment of \$4,300 (on account of 1995 taxes) added some \$4,000, for a total 1996 tax allowance of \$382,000.

6. To summarize, the Applicant's combined gross compensation received in 1996 and subject to U.S. federal and D.C. taxes totaled \$924,000 – with the principal components being \$427,600 for the net pay for the first half of January and the net separation package, \$382,000 for the tax allowance and medicare/social security reimbursement, and \$110,000 for the gross pension income.

7. It is essential to understand how the Bank calculated the basic tax allowance for federal and D.C. taxes, in view of the fact that the Applicant was employed by the World Bank in 1996 for only two weeks. Staff Rule 6.04, paragraph 3.05, sets forth the calculation for Part-Year Staff:

The tax allowance of a staff member whose appointment becomes effective or whose appointment terminates during a year will be calculated under this Section as if the staff member received Bank Group net salary during the entire year at the same rate net salary was received during the part of the year the staff member held an appointment. The tax on Bank Group net salary so calculated will be multiplied by the fraction of the year the staff member held an appointment, except that periods for which the staff member received Bank Group compensation gross and the gross compensation will be disregarded. A tax will also be calculated on all benefits, allowances, and other payments which are subject to taxation at the applicable marginal rates. The tax so calculated will be added to the tax calculated on net salary and the amount resulting will be the tax allowance.

In the Applicant's case, his two-week net salary in January 1996 was "grossed up" to amount to a notional gross annual salary of some \$168,000. A tax allowance was first computed on this salary, taking into account the average "itemized deductions" (\$84,000) that are claimed by U.S. taxpayers in this salary range (based on statistics from the U.S. Internal Revenue Service), such deductions operating so as to reduce taxable income. This notional annual tax allowance is then multiplied by the fraction of the year in which the staff member actually worked (a process referred to hereafter as "pro rating"). In addition to the tax allowance calculated on the part-year's salary, the above-quoted staff rule provides for an additional tax allowance being computed on the Applicant's separation package. The Respondent interprets the phrase "applicable marginal rates" in the third sentence of the paragraph to mean the higher marginal rates that begin with the annualized gross salary figure; thus, in calculating the tax allowance for the Applicant's separation package, the Bank used the marginal

tax rates corresponding to income *exceeding* the annualized grossed-up salary of \$168,000. The sum of the pro-rated tax allowance on the annualized salary plus the tax allowance on the severance package was the total tax allowance (i.e., \$382,000) paid to the Applicant.

8. This “annualization” process is important to and favorable to staff members, in light of the increasing marginal tax rates that are applied under U.S. and D.C. law as income increases. Most pertinently, the U.S. federal income tax rates were in 1996 as follows: (i) \$0-40,100 (15%); (ii) \$40,100-96,900 (28%); (iii) \$96,900-147,700 (31%); (iv) \$147,700-263,750 (36%); and (v) over \$263,750 (39.6%). Comparable marginal rates, between 6 and 9.5%, applied in the District of Columbia, with that highest rate applying to all income over \$20,000. Thus, in the Applicant’s case with respect to his 1996 Bank income, had the Bank looked only to his actual salary of \$5,100, the marginal federal tax rate of only 15% would have applied, and the tax-allowance payment would have been so limited; through annualization, the applicable marginal tax rate would have been as high as 36%, with the tax-allowance payment being increased accordingly. In effect, the annualization principle in Staff Rule 6.04 treats the part-year departing staff member as continuing to earn equivalent non-Bank gross income for the remainder of the year; whether or not that is fiction, it results in the application of the highest marginal rate that the staff member can reasonably expect, and accordingly a relatively high tax allowance. The fact that the higher marginal rate applies to additional Bank income beyond the staff member’s salary – such as the Applicant’s separation package including 29 months’ severance pay – is also beneficial to the staff member from the perspective of the calculation of the tax allowance. Rather than treating such severance pay as what the Bank refers to as “bottom tranche income,” i.e., income subject to the very lowest marginal tax rates, the Bank treats them as “top tranche income,” subject to the higher marginal rates that begin where the annualized salary leaves off. This too results in a higher tax allowance paid to the departing staff member.

9. In the latter part of 1995, prior to the Applicant’s decision to take all of his leave time and severance pay in a single lump-sum payment, rather than in monthly installments, the Applicant had numerous meetings with the Tax Section in which there were extended discussions of the various options open to the Applicant with regard to the timing and calculation of his benefits upon leaving the Bank’s service. That the Applicant was fully versed in such matters is evidenced by the fact that, after receiving on April 8, 1996 reimbursement of approximately \$378,000 for his tax allowance and medicare/social security reimbursement, the Applicant on April 10 transmitted a memorandum to the Chief of the Tax Section, in which he raised two matters. The principal claim, and the one that is at the core of this proceeding before the Tribunal, was that he was entitled to an additional \$30,000 by way of reimbursement for what he viewed as an enhanced tax liability on his 1996 annual pension payment resulting, he asserted, from the receipt of his large separation package:

Because of the [severance] package, my pension (about \$120,000 for 1996) will be subject to a federal tax increase from about \$20,000, without the package, to nearly \$50,000 after the package This \$30,000 increase in taxes is clearly and directly contrary to the intent of the Bank’s tax reimbursement policy to keep U.S. staff whole after U.S. income taxes attributable to Bank earnings (which include, for tax purposes, severance packages) For that reason, I believe the tax increase on the pension that is caused by the severance payments should be reimbursed too – that in such cases the severance package should not be treated as the bottom tranche of Bank-related income, but rather that an average of Bank pension income, package income, and Bank salary income should be used for the tranche calculation related to the package.

The Applicant also addressed a question to the Chief of the Tax Section, as to whether – rather than paying to the District of Columbia the full amount of the 1996 D.C. tax allowance paid to him on April 8, 1996 – he could pay as estimated taxes only the far smaller amount required by the District as a minimum payment, so that he could “(a) earn more (tax free municipal bond) investment income from the deferred tax payments, (b) recover a larger amount from the safety net applicable to 1996 receipts from the Bank, and (c) apply a larger deduction to my 1997 taxable income.” That is, although the Bank in determining the federal tax allowance assumed that all state (D.C.) taxes due in 1996 would be paid by the staff member and thus be deductible in calculating and reducing federal taxes – through the use of the tax-allowance funds in hand – the Applicant wished to retain the bulk of those D.C. tax-allowance payments, invest them, and in addition pay the minimum estimated taxes to the District in 1996 so as to reduce the deductions in his federal taxes and thereby enlarge his claim to a

“safety net payment” for unusually high federal taxes actually paid. In closing, the Applicant stated to the Chief: “Thanks so much for your patient advice and provision of information over the past few months. It has helped substantially in my financial planning.”

10. In his response on May 21, 1996, the Chief of the Tax Section rejected, with an explanation, the Applicant’s claim that he should have been reimbursed for what he viewed as excess income tax on his gross pension payment, allegedly resulting from his high severance package; but he acknowledged that there was no rule barring the Applicant from paying the minimum estimated D.C. taxes in 1996 and claiming an additional safety net tax-allowance payment the following year if his actual 1996 itemized deductions were less than the deductions assumed by the Bank. Further communications followed among the Applicant, the Chief of the Tax Section, and the Director of the Accounting Department, and these were treated as the equivalent of administrative review. Ultimately, on December 1, 1996, the Applicant submitted an appeal to the Appeals Committee, in which he stated: “I seek reimbursement only for the increase in taxes on Bank pension income – and the resulting reduction in the severance package’s after tax value to me – that is caused by payment of that package.” The Appeals Committee appointed a “neutral tax advisor,” who wrote a report and concluded “that the tax allowance provided to the appellant was properly calculated in accordance with the Staff Rule,” and that, if anything, the Bank had overcompensated the Applicant. The Appeals Committee held a hearing, at which the Applicant raised a number of new issues relating to the calculation of his tax allowance; the Respondent objected on the ground of untimeliness, but the Appeals Committee in its report proceeded to address those issues as well as the basic question concerning the Applicant’s pension. It filed a thorough report, in which it concluded that the Bank had not abused its discretion, and it recommended that the Applicant’s requests for relief be denied. This recommendation was accepted by the Bank. A timely application was filed with the Tribunal, and a brief *amicus curiae* was later filed by the Staff Association and accepted by the Tribunal.

11. The principal question for decision is whether, under Staff Rule 6.04 relating to tax allowances, or under some more general principle governing the rights of staff members, the Applicant is entitled to an increase in his tax allowance in order to reflect the increased tax on his 1996 pension that resulted, so he asserts, from the large severance package also paid to him in early 1996. The Applicant contends that Staff Rule 6.04, particularly paragraph 3.05 relating to Part-Year Staff, properly interpreted so entitles him; but that in any event the underlying principle of equitable treatment between U.S. and non-U.S. staff (i.e., those paying income taxes on Bank income and those who do not) dictates such a conclusion. For the reasons set forth immediately below, the Tribunal concludes otherwise, and rejects the Applicant’s claim for additional tax reimbursement stemming from his severance package.

12. The governing text is found in Staff Rule 6.04, paragraph 3.05, already quoted above. For a part-year staff member such as the Applicant, paragraph 3.05 clearly provides for a two-step calculation of the tax allowance. The first component is the part-year net salary that is annualized, followed by the calculation of the pertinent tax allowance for that annualized salary, and then the calculation of the pro-rated tax allowance for the fraction of the year in service. The second component, in which the tax allowance is to be calculated at marginal rates beginning where the annualized salary left off, is for “all benefits, allowances, and other payments which are subject to taxation.” These two components – the salary-based tax allowance and the benefits-based tax allowance – are then added together to constitute the total tax allowance to which the staff member is entitled. The Applicant’s interpretation of this provision vacillates. At some points he acknowledges that the staff rules do not provide for a tax allowance “as such” on his pension payment, but that his severance-based tax allowance should be enlarged on account of the allegedly high taxes on his pension. At other points he asserts that he is indeed entitled under Staff Rule 6.04 to a tax allowance on his pension (even though it was explicitly paid to him on a “gross” basis).

13. At its broadest, the claim of the Applicant is that his 1996 pension payment, calculated at \$110,000 as pertinent here, is a benefit “which [is] subject to taxation,” so that it should be part of the second component on which a tax allowance is properly calculated. This was clearly not intended by paragraph 3.05. It is true that the pertinent language might perhaps have been drafted somewhat more carefully so as to exclude pension payments; in some sense they are undeniably benefits subject to taxation. But it is clear from the entire context

of paragraph 3.05 – and indeed from all of Staff Rule 6.04 – that the taxable benefits upon which a tax allowance is to be based are meant to be those benefits paid to the staff member on a net basis and not to those benefits, such as the pension, which is paid on a gross basis. The very purpose of the tax allowance is to effect the “grossing up” of salary, benefits and other net income, in order to assure that staff members paying income taxes on that “grossed up” amount will be left with the same net pay as is in the hands of their non-U.S. counterparts who pay no income taxes to their home country. Gross pensions are apparently widely taxed by the member nations of the Bank, and it is obviously expected that the staff member will pay income taxes on such pensions from the gross payment itself (or otherwise from “out of his pocket”). To allow the Applicant, as he would claim, to have an already grossed-up pension payment grossed up yet again, at the second stage of the tax-allowance calculation in paragraph 3.05, would provide a windfall for which there is no logical or policy justification. It would also create an anomaly between the first and second components of the tax-allowance computation thereunder, as well as between the various elements of the second component (most of which would be net payments while others will be gross). There is no language in the Staff Rule that supports such a favored treatment for gross pension payments. Moreover, there is no evidence that the Bank has ever computed a tax allowance so as to augment gross pension benefits – whether for full-year staff members or for part-year staff members – and that is compelling evidence of the well-understood and well-accepted interpretation of the pertinent Staff Rule.

14. When the Applicant is not arguing for a tax allowance “as such” on his 1996 pension payment, he contends that either Staff Rule 6.04, paragraph 3.05, or the more general principle of equitable treatment between U.S. and non-U.S. staff should be applied so as to entitle him to an enhanced tax allowance with respect to his severance package, in order to compensate for an increase (assertedly some \$30,000) in the income tax upon his pension payment that allegedly resulted from the unusually high severance package. To understand why this position is untenable, it is necessary again to review the structure and purpose of Staff Rule 6.04, paragraph 3.05. As already noted above, the first component of the tax allowance under that paragraph is based upon the annualization of the two-week salary paid to the Applicant in mid-January 1996, when his employment with the Bank formally terminated at his request. This annualization resulted in the tax allowance for the pro rated two-week salary being computed at the higher marginal rate that would be appropriate for a staff member working the entire year – whether working in the Bank or working for another employer after terminating his Bank service. The annualization becomes a notional salary figure, rather than an actual one, that assumes gross income – such as gross pension income – that continues after the termination of the part-year Bank salary. This assumption will almost always be to the benefit of the staff member who, like the Applicant, will typically receive less after-tax income, through employment or pension, after leaving the Bank’s service. Not only will the staff member benefit through a tax allowance at the higher marginal tax rates for the shortened period worked at the beginning of the year; those marginal tax rates will also serve as the “floor” for any additional net Bank income paid at the time of termination of employment, including the severance package (as well as, in the Applicant’s case, imputed income from group life insurance plans, social security tax reimbursement, separation grant, and a safety net allowance).

15. The formula set forth in Staff Rule 6.04, paragraph 3.05, thus has the effect of treating pension payments as equivalent to the notional annualized salary, and thus as “bottom tranche income,” while severance benefits are treated as “top tranche income” resulting in a correspondingly higher tax allowance paid thereon to the staff member. It was obvious from his own words that when the Applicant complained on April 10, 1996 about his allegedly inadequate tax allowance paid two days before, he believed at that time that his severance package was being treated as bottom-tranche income on which his tax allowance was being computed at the lowest marginal tax rates; and that his gross pension payments were being taxed at top-tranche marginal rates against which he was being inadequately insulated by the Bank. In fact, this was the opposite of the truth. The Bank calculated the tax allowance on the severance package at the higher marginal rates suitable for top-tranche income, so that the income tax payable on the Applicant’s gross pension payment was essentially unaffected by the large lump-sum severance package. If the Bank were to take into account, in computing tax allowances, *both* the notional grossed-up annualized salary *and* actual amounts of post-separation gross compensation, U.S. staff would consequently receive in the final year of employment a tax allowance that far exceeds tax liabilities.

16. The Applicant contends that the U.S. taxing authorities treated *all* of his income as “fungible,” regardless whether it was net salary, net severance benefits, tax allowances or gross pension benefits, so that the above analysis is artificial. But the issue is not how the U.S. tax authorities treated the various components of the Applicant’s income (including pensions) but rather how the Bank treated them, in determining whether to pay the staff member a larger tax allowance based on higher marginal rates, or a smaller tax allowance based on lower marginal rates. Given the Bank’s assumption regarding the continuation of Bank salary through its annualization calculation, and the attendant application of a relatively high marginal tax rate (and resulting tax allowance) to additional income such as severance packages, the Bank’s formula will rarely if ever work out to the disadvantage of a staff member and will rather consistently inure to his benefit. This was also the conclusion of the Appeals Committee and its independent tax expert. As the Appeals Committee stated:

Regardless of whether Appellant feels that he was actually over- or under-compensated for his tax liability in 1996, the Committee found that the Bank’s interpretation of the requirements of paragraph 3.05, as applied to Appellant and others, follows logically from the language of the Rule, and it will generally work to the advantage of retiring staff members. To accept Appellant’s interpretation would be grossly unreasonable.

17. Yet another way to test the soundness of the Applicant’s position – that he suffered an overall reduction in his pension income because of the large contemporaneously paid severance package – is to compare his actual after-tax situation in 1996 with what it would have been had no severance package been paid to him at all in that year. (This might have been the case, for example, had the Applicant received his lump-sum severance package in the closing days of December 1995, and begun to claim his pension in the first days of January 1996.) Little more than a month after the Applicant had raised his objections in April 1996 to the calculation of his tax allowance, the Chief of the Tax Section wrote as follows:

I have calculated your tax hypothetically assuming your only income for 1996 was your \$120,000 pension income plus \$1,000 of spouse income, filing married jointly, with 2 exemptions, DC residence and the standard deduction[,] which provides a tax liability [of] \$35,215 (DC & Federal). I then calculated your tax liability on all of your income with the same assumptions ... and I come up with a tax of \$387,661 (DC & Federal) of which the Bank provided \$363,494[,] a difference of \$24,167. A difference of much less attributable to your pension then [sic] if your only income had been your pension.

In other words, the Applicant paid lower taxes on his 1996 pension payments, not higher, as a result of the actual tax allowances paid to him in connection with the extraordinary lump-sum net severance package along with other net Bank income in early 1996. The Tribunal further notes that elsewhere, in its rejoinder, the Respondent, using actual figures from the Applicant’s 1996 federal and D.C. tax returns, was able to show that the 1996 tax allowances made it possible for the Applicant to pay no more out-of-pocket than some \$22,520 in income taxes in connection with his \$110,000 gross pension payment and other outside taxable income of about \$7,000. Moreover, had the Applicant’s only 1996 income been his pension income of \$110,000 plus his other outside taxable income of \$7,000, his total federal and D.C. tax liability would have been \$28,750, or more than what the Applicant actually paid out-of-pocket. This seemingly curious result is explainable as follows, in the words of the Respondent in a letter of April 17, 1998 filed in response to a direction from the Tribunal:

In Applicant’s case, that notional grossed up annualized salary of \$168,000 was greater than his \$110,000 in gross pension income. This caused the Bank to calculate the tax allowance on Applicant’s severance package applying marginal rates that were higher than the rates that would actually apply. Applicant’s tax allowance for his compensation before his retirement [i.e., his early January salary payments] therefore served to decrease Applicant’s expenditure for income taxes on his gross pension.

18. The Applicant contends that, in assessing the validity of his claim, the Tribunal must decide the matter only on the basis of principle and interpretation, and not by looking into the Applicant’s actual financial situation, i.e., the taxes he actually paid on his 1996 pension payments. This is altogether unconvincing. It is the Applicant’s very claim that the unusually large severance package he received in January 1996 resulted in a particular diminution of his gross pension payments, placing him in an inequitable position when compared with his non-U.S. staff colleagues and thus warranting a departure from the terms of Staff Rule 6.04 as interpreted and applied by the Bank. But surely it is proper to test the Applicant’s own claims of special hardship, and of unfair

comparative treatment within the staff, against the realities of his situation. One aspect of those realities is the fact that the Applicant filed no claim (in 1997) for a “safety-net allowance” for 1996. Under Staff Rule 6.04, paragraphs 4.01-4.04, a staff member who pays actual income taxes in an amount higher than the tax allowance computed by the Bank and paid to him – for example, by having fewer actual deductions than the average deductions assumed in computing the tax allowance – is entitled to be paid that difference by the Bank. Under paragraph 4.03, this “safety net” payment will take account of the staff member’s actual deductions, actual filing status, actual income, actual number of exemptions claimed, and other relevant data. The Tribunal regards it as of some considerable significance, given the Applicant’s claim of an actual after-tax situation worse than that projected in the 1996 tax-allowance computation, that the Applicant filed no claim for a safety-net allowance for 1996.

19. For all of these reasons, the Applicant’s principal claim concerning the allegedly enhanced tax liability relating to his severance and pension payments is denied. He has also raised three other claims deriving from the computation of his tax allowances for 1996: (i) the Bank’s annualization of the Applicant’s 1996 income should have been based not simply upon his part-year salary but should have taken account of additional elements of income (such as dependency allowance, safety-net allowances, etc.) that were reflected in his W-2 income-reporting forms from the Bank for the previous three years; (ii) the Bank miscalculated, and overstated, the Applicant’s average federal deductions (which include District of Columbia tax payments), because it assumed that he would pay his full 1996 D.C. estimated tax liability in 1996 (thus reducing the federal tax allowance), whereas he was required by law to pay only a considerably smaller portion of that amount; and (iii) his tax allowance did not include reimbursement for the increase in the Applicant’s medicare/social security tax that was caused by the unusual lump-sum severance package. The Respondent asserts that these claims were not presented by the Applicant until the hearing before the Appeals Committee, that they were never pressed in a timely manner through administrative review, and that it is thus beyond the jurisdiction of the Tribunal to address these claims on their merits.

20. Jurisdiction is indeed limited by Article II(2)(i) of the Statute of the Tribunal by a requirement, among other things, that the Applicant have exhausted all internal remedies, which includes the timely resort to administrative review. But whatever the merits of the Respondent’s contentions in this regard, the Tribunal, in the particular circumstances of this case, has sympathy with the Applicant’s contention that it would be unfair to bar him from seeking review here of the Appeals Committee’s negative dispositions concerning the merits of the three contentions initiated there concerning the Respondent’s calculation of his 1996 tax allowance. The Bank was less than forthcoming in providing to the Applicant information that was all but essential for him to evaluate the accuracy of the Bank’s tax-allowance calculations. For example, the Bank never clearly explained to the Applicant how it calculated the annualized gross figure that was then used as the basis for determining his pro-rated tax allowance for the two weeks worked by him in January 1996, until it did so in April 1998 after an explicit direction from the Tribunal. In addition, the 1996 D.C. tax payments that were taken into account by the Bank in computing deductions for the federal tax allowance were largely put into issue by the Applicant promptly on April 10, 1996, in his memorandum to the Chief of the Tax Section. For these reasons, as well as for the reason that the Respondent has devoted substantial attention in its pleadings to these contentions on the merits, the Tribunal will address them here.

21. The Applicant claims that, instead of using only the salary payments made to him in early January as the basis for annualizing his 1996 Bank income – which resulted in a notional annualized gross figure of \$168,000 – the Bank should have used the gross figure of \$209,000. This was the amount reported by the Bank to the U.S. Internal Revenue Service (on the W-2 form) in each of the years 1993 through 1995 as the Applicant’s total taxable Bank compensation. The discrepancy was caused by the fact that the W-2 income included not only the net salary and the tax allowance for each of those three years but also the Applicant’s dependency allowance, imputed income from employer-paid life insurance, reimbursed medicare/social security taxes and some safety-net payments.

22. Staff Rule 6.04, paragraph 3.05, however, expressly states that the tax allowance for the part-year staff member is to be calculated “as if the staff member received Bank Group net salary during the entire year at the same rate,” and that “[t]he tax on Bank Group net salary so calculated” will be prorated depending on the

period actually worked. There is no question that in its terms this staff rule uses only net salary as the base for calculating the tax allowance, and not the salary along with other possibly recurrent but variable elements of compensation. Given the legitimate interest that the Bank has in ready calculability, and thus the proper role of approximation in determining tax allowances, the Tribunal cannot find that the salary-based calculation prescribed by paragraph 3.05 is arbitrary or otherwise an abuse of the Bank's discretion.

23. In any event, although there is a \$40,000 increase in the gross figure proffered by the Applicant, the use of the annualized gross salary figure of \$168,000 does not result in a \$40,000 "loss" to the Applicant – despite the fact that he appears to be claiming such in his request for relief. Any resulting "lost" tax-allowance moneys would be sharply reduced through the process of prorating, confined to the two-week period worked by the Applicant in early January 1996. Nor were the marginal tax rates for gross incomes of \$168,000 and \$209,000 at all different under the U.S. tax structure, so that any additional tax allowance generated at the latter figure would have been negligible – particularly considering that the greater average deductions taken into account at the latter higher gross figure would have resulted in some offsetting reduction of the tax allowance. Similarly, because under the terms of Staff Rule 6.04, paragraph 3.05, the dependency allowance, imputed life insurance, and other benefits paid net of taxes are indeed taken into account in computing the tax allowance – as "top-tranche income" subject to a marginal tax rate above that pertaining to the annualized gross salary – it is not at all clear that the revised formula proffered by the Applicant would work to his advantage. There is, in short, no basis for concluding that the Bank acted improperly in using the Applicant's part-year salary as the basis for annualization, and for the resulting calculation of tax allowances, under the Staff Rules.

24. Nor can the Tribunal sustain the Applicant's next major contention. The Bank did not act improperly in treating all of the Applicant's District of Columbia tax-allowance payments as having been paid by the Applicant to the District for 1996 taxes, and thus as fully deductible for purposes of 1996 federal income taxes, so as to reduce his federal tax allowance. The Applicant points to Staff Rule 6.04, paragraph 2.06, which provides in material part that "the Bank Group will calculate tax allowances and social security tax reimbursements on the basis that the lowest tax payable under the governing law on Bank Group compensation is attributable to it under this Rule." He also points out that, despite the four-fold increase in his 1996 income taxable by the District of Columbia, the D.C. tax law requires only that 110 percent of the previous year's taxes need be paid through quarterly "estimated" payments in 1996. For the Applicant, this D.C. requirement had two appealing elements. First, as he promptly noted on April 10, 1996, two days after receiving his very substantial D.C. tax-allowance payment from the Bank, he was free to use only a small part of it to pay his estimated 1996 D.C. taxes and thus to invest the balance in the securities markets – with the D.C. tax-payment balance due from him only on April 15, 1997, one year later. Second, by keeping his estimated 1996 D.C. tax payments to the minimum required by law, this would reduce the deductions *actually* claimed on the Applicant's federal tax return, resulting in a higher *actual* federal tax liability than assumed by the Bank in calculating the Applicant's federal tax allowance (based upon the payment of his D.C. tax in full) and thus the Applicant's entitlement to a 1996 safety-net tax allowance payable in 1997.

25. There are two decisive responses to the Applicant's challenge to the Bank's practice of assuming that D.C. taxes are deductible by staff members against their federal income taxes in the year in which the Bank pays them the allowance for D.C. (or state) taxes. One response is rooted in Staff Rule 6.04, paragraph 2.06, quoted above, which provides that the tax allowance is to be computed on the basis of the lowest tax payable under governing law. Rather than support the Applicant's position that he should be treated as having paid the lowest lawful estimated D.C. taxes (i.e., 110 percent of his 1995 D.C. taxes), this staff rule clearly was intended to mean the contrary: that the staff member should reduce his far greater federal income tax liability by paying his District (or state) taxes in full so as to claim them in full as a deduction on his federal income tax return and thus generate "the lowest tax payable under the governing law." It is, moreover, altogether reasonable for the Bank, in calculating the tax allowance, to assume that staff members will use the state tax-allowance amounts actually paid in hand to the staff members, one week before their state filing deadline, to pay in turn their state taxes and thus to reduce their overall tax liabilities – as opposed to using as little of those funds as possible for the payment of state taxes, investing the balance in the stock market or elsewhere, and requiring the Bank to pay a safety-net allowance as well to supplement the earlier tax allowance.

26. The second reason to reject the Applicant's contention that the Bank should have treated him as paying the minimum of 1996 estimated taxes to the District of Columbia, rather than paying those estimated taxes in full, is that the Applicant did indeed pay 1996 D.C. taxes in an amount even *greater* than the amount of his in-hand D.C. tax allowance from the Bank. Although the Applicant challenges the soundness and fairness of the Bank's assumption that he would pay his 1996 D.C. taxes in full, he in fact did just that. Yet the Applicant did not disclose this fact until, at the direction of the Tribunal, he submitted his 1996 federal and D.C. tax returns, which made this fact evident. For the Applicant to insist that the Bank enhance his federal tax allowance, by making a counter-factual assumption concerning lower-than-actual D.C. tax payments as deductions, and then to assert an entitlement to an additional allowance in the form of a safety-net payment, is asking for a double windfall – indeed, a triple windfall, considering the added opportunity to earn money with his tax-allowance funds in the securities markets – that is altogether beyond reason. This could hardly be said to accomplish the sort of equitable treatment between U.S. and non-U.S. staff members that is at the heart of the Applicant's claims.

27. The Applicant also claims that he should have received \$30,000 to cover fully his medicare/social security tax liability for 1996, rather than just the \$15,000 that was provided to him by the Bank. In this respect, while he expressly states that he is not contesting the Bank's policy to reimburse a staff member for only one-half of his medicare/social security tax liability, he also argues that receipt of the lump-sum separation package increased this tax liability and that such increase "should be offset in the package-related tax reimbursement." In support of this rather contradictory argument, the Applicant asserts that he would not have incurred this "tax impact" had he been a tax-exempt G-IV staff member.

28. The Tribunal rejects the Applicant's claim. The Bank properly reimbursed the Applicant for one-half of his medicare/social security tax liability in accordance with Staff Rule 6.04, paragraph 7.01, which provides that the amount of reimbursement will be the difference between the amount of medicare/social security taxes paid by the staff member "and, if less, the amount of such taxes the staff member would have paid on Bank Group compensation had it been paid by a taxable employer...." Staff Rule 6.04 does not differentiate in this respect between salaries and severance payments. Further, the fact that some staff members do not pay medicare/social security taxes and that those who do are not fully compensated does not constitute inequitable treatment. The Applicant as a U.S. citizen is required by U.S. law to pay medicare/social security taxes. The Bank has established a policy of reimbursing U.S. staff members for one-half of this tax liability (through payments, not tax allowances). The purpose of the policy is to put U.S. staff members like the Applicant on equal footing with U.S. employees of taxable employers, who pay one-half of the U.S. employees' medicare/social security tax liability. The Applicant clearly benefited from this policy throughout his career because the Bank – by way of its annual reimbursements to the Applicant – in effect contributed to the payment of premiums towards the eventual receipt by the Applicant of social security and medicare benefits, benefits that are not received by staff who do not pay medicare/social security taxes.

29. The Tribunal has considered a variety of subsidiary contentions made by the Applicant in support of his principal claims, and finds these as well to be unconvincing. The Tribunal appreciates the pleading submitted amicus curiae by the Staff Association. To the extent, however, that the Staff Association asserts that the Bank failed to afford sufficient counsel to the Applicant with respect to the implications of his decision to terminate his employment in January 1996 with accelerated lump-sum leave and severance payments, this contention is unsupported by the record. On the contrary, the Applicant met frequently with Tax Section personnel on several occasions in late 1995 and early 1996, and he expressly acknowledged in April 1996 their "patient advice and provision of information over the past few months," noting that "[i]t has helped substantially in my financial planning." This observation is fully consistent with that of the Chief of the Section who, in a contemporaneous internal memorandum to section colleagues, stated that "I have dealt with Mr. Richardson an inordinate number of times recently during his retirement planning." It appears to the Tribunal from these and other circumstances that the Bank cannot reasonably be faulted for failing to provide all reasonable assistance to the Applicant as he considered and implemented the various financial decisions that accompanied his departure from the Bank, and that the Applicant acted upon more than adequate information when he concluded that there was substantial benefit in terminating his employment early in the year and in accelerating his leave and severance payments.

Decision

For the above reasons, the Tribunal unanimously decides to dismiss the application.

Robert A. Gorman

President

Nassib G. Ziadé

Executive Secretary

At London, England, May 14, 1999