

Decision No. 164

Ralph Romain (No. 2),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on April 9, 1996, by Ralph Romain against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of R.A. Gorman (a Vice President of the Tribunal) as President, P. Weil and Thio Su Mien, Judges. The usual exchange of pleadings took place. The case was listed on May 16, 1997.

2. The present application before the Tribunal concerns the Applicant's April 1, 1992 to March 31, 1993 Performance Review (PPR) which spanned five months in the Operations Evaluation Department (OED), Division 1 (OEDD1), and seven months in the Population and Human Resources Department (PHR), Education and Employment Division (PHREE), ("the 1993 PPR"). The Supervisor's Performance Review in the 1993 PPR was made by the Division Chief, PHREE, and the Supplemental Review by the Division Chief, OEDD1. In order to fully appreciate the Applicant's claim, it is necessary to understand the events leading to the making of the 1993 PPR.

3. The Applicant, who began his service with the Bank on July 2, 1973, returned from an external service assignment with UNESCO in January 1989. He reentered the Bank as a Principal Education Specialist, level 25, in PHR. In the Applicant's 1989-90 PPR, the Division Chief, PHREE, expressed his dissatisfaction with the Applicant's work for that period and gave him an unsatisfactory performance rating. The Applicant requested administrative review of his performance rating and, as a result, his rating was upgraded to satisfactory and his salary review increase was revised upward.

4. For the period of July 1, 1990 to March 31, 1991, the Applicant worked on a temporary assignment in OEDD1 as a Principal Evaluation Officer, level 25. The Division Chief, OEDD1, assessed in the Applicant's 1990-91 PPR that his performance had been fully satisfactory. The Applicant's assignment in OEDD1 was thereafter extended for one more year. In his PPR for the period of April 1, 1991 through March 31, 1992, the Applicant's Division Chief stated that the output of the Applicant's two years' work in OED was problematic and that he failed to show the leadership expected of a senior officer. The Applicant requested an administrative review of this PPR and, later, filed an appeal with the Appeals Committee. The Appeals Committee recommended that the Applicant's request to have the comment concerning leadership deleted from his PPR be granted and that his Division Chief be advised of the need to provide some frequent and structured feedback on performance, particularly where some aspects of performance were judged below expectations. The Vice President, Personnel and Administration, accepted this recommendation. The Applicant returned to PHREE on July 1, 1992 but was officially on loan to OEDD1 up to August 31, 1992.

5. In the Staff Member's Summary Assessment section of the 1993 PPR (Section I), the Applicant outlined his work in both OED and PHREE. In OED, his tasks had involved, among other things, audits and work on an Africa Human Resources Study (AHRS). He stated that he had performed the needed audit tasks and that, after having tried to improve drafts of the AHRS written by the Task Manager (who was in charge of the AHRS), it had been agreed in May 1992 by the Task Manager and the Applicant that it would be better if the Applicant were to write a chapter on education. A draft of this chapter had been forwarded to the Division Chief, OEDD1, in September 1992, after which a draft report had been issued for comment with the Task

Manager's version of the Applicant's draft chapter. The Applicant expressed his opinion in the 1993 PPR that the draft report was issued prematurely. He stated that the report was being revised after the submission of comments, that he was rewriting his chapter, and that the new draft chapter was to be completed by the end of March 1993.

6. In connection with his work in PHREE, the Applicant had prepared an "Approach Paper" relating to his work on the Education Management contribution to the intended sector policy paper for fiscal year 1995 and had convened a meeting of PHREE staff to discuss it. As to the operational support aspect of PHREE, the Applicant stated in the 1993 PPR that he had completed a mission to Uzbekistan to contribute an education chapter to an economic report and that he had prepared the sector contribution to the proposed technical assistance program for Uzbekistan.

7. The supervisor responsible for the 1993 PPR was the Policy Advisor, Education and Social Policy Department, who had been the Division Chief, PHREE, who had already evaluated the Applicant negatively in the 1989-90 PPR ("the Division Chief, PHREE"). He assessed the Applicant's performance for the 1993 PPR as falling short of that expected of staff of his level and experience in terms of sectoral leadership, policy work or operational support. He stated, inter alia, that the general view of the meeting which had reviewed the "Approach Paper" was that it lacked an adequate conceptual framework and needed substantial revisions. It was noted that the Applicant had produced a revised version, but that the second draft had been held in abeyance pending the preparation of the first business plan under the new organizational structure. The Applicant's supervisor further noted that he had expected the Applicant to be involved in several operational support tasks, but that the Applicant's operational support had been limited to eight staff weeks in one country (Uzbekistan). The Applicant had in his performance plan proposed 19 weeks of operational support including the Caribbean and Zambia.

8. In an attached Supplemental Review of the Applicant's performance, the Division Chief, OEDD1, who as a result of an Appeals Committee recommendation had deleted his comments concerning the lack of leadership of the Applicant in the 1991-92 PPR, was of the view that the 1992 AHR draft prepared by the Applicant was inadequate by the Bank's standards. He noted that this was acknowledged by the Applicant when he said its release was premature. He further noted that the Applicant had been working on a revised draft of his chapter for this study.

9. The Applicant objected to his supervisors' review of his performance and set forth in writing his comments on their assessments.

10. In their review of the 1993 PPR comments of the Applicant and his supervisors, the Management Review Group (MRG) agreed with the Division Chief's, PHREE, assessment that the Applicant's performance had not met the expectations for staff of his level and experience. For that reason, the MRG determined that the Applicant's recent salary merit award should reflect an unsatisfactory performance rating. It was also decided that the Applicant's performance would be monitored and evaluated in accordance with Staff Rule 5.03, paragraph 2.02.

11. The Applicant sought administrative review of the decision. The decision was confirmed. Thereafter, the Applicant appealed to the Appeals Committee which, by a majority decision, rejected the appeal. The Respondent's decision to accept the recommendation of the Appeals Committee is the subject of this application.

12. The Applicant requests the rescission of the 1993 PPR and the merit award based on it. He also seeks compensation for the improper merit increase, for moral damage and for costs.

13. The Tribunal has on many occasions recognized the discretionary nature of the evaluation of staff performance by the management of the Respondent. The Tribunal will only review such an evaluation to determine whether there has been an abuse of discretion in that the decision is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure. The issue before the

Tribunal in the present case is whether the assessments in the Applicant's 1993 PPR constituted an abuse of discretion.

14. The Applicant's main contention is that the evaluations of his performance, both by the Division Chief, PHREE, and by the Division Chief, OEDD1, were incomplete, biased and tainted by both inaccuracies and misleading statements.

15. In respect of the OEDD1 evaluation covering the first five months of the period under review, the Applicant maintains that it was incomplete because the Division Chief, OEDD1, who reviewed the Applicant's September 1992 draft chapter which formed part of the AHRS draft report, did not see the March 1993 revisions to that chapter which the Applicant had sent to the Task Manager under whose direction he worked, rather than to the Division Chief, OEDD1.

16. The Tribunal notes that the record does not indicate that the Applicant and the Division Chief, OEDD1, ever discussed the Applicant's progress with regard to the AHRS after or indeed before the Applicant returned to full-time work with PHREE. Nor does the record indicate whether and, to what extent, the Task Manager provided the Division Chief with his comments on the Applicant's contribution to the AHRS during the Applicant's assignment in OED or after his return to PHREE.

17. According to the Applicant's comments on his supervisors' assessment as stated in the 1993 PPR, the Applicant understood from the Task Manager that the Division Chief, OEDD1, had not been given the revised draft submitted by the Applicant to the Task Manager in March 1993 during the period of review. The Division Chief, OEDD1, had not yet read the revised draft when preparing his April 22, 1993 supplementary evaluation and his assessment of the Applicant was thus based only on the earlier draft handed to OEDD1 in September 1992. Furthermore, he had mistakenly concluded from the Applicant's statement in Section I of the PPR that the OED draft report on AHRS was prematurely released as an acknowledgment by the Applicant that his draft chapter was inadequate. It is beyond doubt, however, that the Applicant was referring to the AHRS draft report as a whole which included his draft chapter which had been altered by the Task Manager. The Task Manager had agreed with the Applicant to the draft chapter being further edited by the Applicant but unfortunately the draft report was released in the fall of 1992 by the Division Chief, OEDD1, during the absence of the Task Manager.

18. The Bank raised the argument that the Division Chief, OEDD1, was not obligated in the review of the Applicant to cover the period after the Applicant's full-time assignment to OEDD1, namely, after August 31, 1992.

19. The Tribunal is of the view that it is the obligation of the Respondent, when assessing the performance of staff members for a given period of review, to take into account all relevant and significant facts that existed for that period of review. The revised draft chapter delivered by the Applicant to OED, whether to his Task Manager or to the Division Chief, OEDD1, in March 1993 is a relevant fact, particularly in view of the weight given by the Division Chief, OEDD1, to the September 1992 draft. The Respondent should have taken the March 1993 draft into account for a full and proper assessment of the Applicant's performance for the period under review.

20. The Tribunal finds the contention of the Respondent that the Division Chief, OEDD1, is not obligated to assess the performance of the Applicant beyond the period of his assignment to OED untenable under the circumstances of this case. The obligation of the Respondent is to assess its staff members' performance for a review period based on all relevant facts irrespective of whether the relevant facts pertained to a period of assignment in one unit of the Bank or another. It notes that the Division Chief, OEDD1, had largely based his assessment of the Applicant's performance on the draft chapter submitted after the termination of the Applicant's assignment in OED. This constitutes an acknowledgment of the principle that, in all PPRs for a review period, the Respondent must take into account all relevant facts. In this case, the failure of the Respondent to take into account a relevant fact which goes to the root of the assessment of the Applicant constitutes an abuse of discretion.

21. In view of this conclusion, the Tribunal finds it unnecessary to deal with the other contentions of the Applicant.

22. For the above reasons, the Tribunal decides that both the 1993 PPR and the salary merit award based thereon must be quashed. This conclusion would normally lead to the requirement that the Respondent prepare a new Performance Review for 1992-1993. However, as it is impossible for the Tribunal to predict what would be the content of such a review, particularly having regard to the fact that the Applicant has now retired from the Bank's services, the Tribunal orders that the Respondent compensate the Applicant without there being need for any further action by the Respondent.

DECISION

The Tribunal unanimously decides:

- (i) to quash the Applicant's 1992-1993 Performance Review and the accompanying salary merit award;
- (ii) to award damages to the Applicant in the sum of \$5,000; and
- (iii) that the Respondent shall pay costs in the sum of \$3,000.

Robert A. Gorman

/S/ Robert A. Gorman
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At London, England, June 10, 1997