

Decision No. 10

Jean-Claude Salle,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, A. K. Abul-Magd and P. Weil, Vice Presidents, R. Gorman, N. Kumarayya, E. Lauterpacht and C. D. Onyeama, Members, has been seized of a complaint, received on April 9, 1982, by Jean-Claude Salle against the International Bank for Reconstruction and Development. The Applicant's original application filed on March 30, 1982, was rejected by the Executive Secretary as being defective. The Applicant was given 10 days to submit his amended Application. After two extensions of time granted at its request, the Respondent filed its Answer and the Applicant, after requesting and receiving an extension of time, submitted Observations thereon. The Respondent filed an Additional Written Statement on the Applicant's Observations. The case was listed on September 27, 1982. A request by the Applicant to file a further written statement was received on September 28, 1982, but was rejected by the Tribunal.

The relevant facts:

2. In March 1979 the Applicant was interviewed by six agriculturists in management positions. Their evaluations of the Applicant's suitability as agriculturist with the Bank ranged from negative to highly positive. At the time of his interview, it was stated by the Acting Coordinator of the Respondent's English Language Program that if hired, the Applicant would require 250 to 300 hours of training in oral English language communication and grammar over the first six to nine months and an additional 50 to 60 hours of training in English language writing.

3. The Applicant's letter of appointment of June 28, 1979, specified that his appointment as an agriculturist grade L(T) was to be probationary and subject to confirmation "on or before the first anniversary of your reporting for duty at the World Bank". On December 17, 1979, the Applicant entered the service of the World Bank and was assigned to the Central Agriculture Division in the Eastern Africa Projects Department.

4. The Applicant's first-in-line supervisor, his Division Chief, in an Interim Performance Evaluation dated June 19, 1980 and addressed to the Applicant's Personnel Officer, evaluated his performance positively. In particular, she noted the Applicant's clarity of thinking, his professionalism and his low-key approach to problems as "welcome assets" to her Division. At the same time, however, she stated that the Applicant should continue the study of English, without which, she stated, he would no doubt be an effective and fully competent technician but unable to cope with the Respondent's procedures and with work at Headquarters.

5. The Anniversary Evaluation Review (AER) covering the period December 1979 - November 1980 was completed on June 3, 1981. In this AER the Applicant acknowledged that his English still needed improvement and expressed the wish to be given the opportunity to take an intensive English course. His Division Chief, although she acknowledged that the Applicant had demonstrated his abilities as an agriculturist, nevertheless noted that the Applicant did not have the opportunity fully to contribute to the work of his Division because of his deficient English and his preference for an independent work style. She concluded that additional time was required for a fair assessment of the Applicant's suitability for permanent employment, thus extending his probationary period, and she promised personally to help the Applicant in his efforts to master the English language and become an effective and productive project officer.

6. By letter dated June 5, 1981, his Division Chief let the Applicant know that he could devote himself full-time to English training for the whole month of September.

7. On October 1, 1981, this Division Chief addressed a memorandum to the Assistant Director who was the Applicant's next-in-line supervisor, on the subject of the Applicant's performance evaluation and confirmation of appointment. She stated that "although Mr. Salle is currently participating in an intensive course in English," she felt that she was presently able to assess fairly the Applicant's suitability for permanent employment. Consequently, she recommended that the Applicant's appointment should not be confirmed, because he had failed to demonstrate his ability to function effectively as a project officer and because it was unlikely that he would develop the necessary operational skills "in a reasonable time frame". Furthermore, she explained that the Applicant had had broad exposure to the difficult aspects of his position, but that he had failed to discharge satisfactorily the operational aspects of his work. In particular, she stated that he had failed to demonstrate analytical skills, to function as a member of an interdisciplinary team, to complete a satisfactory volume of work, to meet deadlines, and to work harmoniously with his colleagues; that generally speaking his negative attitude and independence had seriously impaired his contribution to the Division's work; and that he had also been negligent in collecting information, argumentative, critical and indifferent to the Respondent's operational procedures. She concluded that the Applicant was an exceptionally difficult person to communicate with, especially about his performance. On this issue she pointed out that he had refused to work further with a mission leader because the latter allegedly accused the former of being a racist.

8. In a memorandum dated October 17, 1981 and addressed to the Assistant Director of the Department, the Division Chief amplified this assessment and corroborated it by providing memoranda of two colleagues of the Applicant, including the mission leader with whom the Applicant had quarrelled.

9. At a meeting of October 5, 1981, and in a memorandum of October 21, 1981, the Applicant took up the matter with his Assistant Director, and appealed the recommendation not to confirm him. He raised objections to the assessments in the above-mentioned memoranda written by his supervisors and colleagues, and he also raised the possibility of seeking another assignment in the Bank. In a memorandum dated November 25, 1981, the Assistant Director informed the Applicant that confirmation decisions properly rest on more than minimal technical competence, that the Applicant's Division Chief had attempted without success to counsel the Applicant about his performance, and that he, the Assistant Director, was convinced on the basis of a broad sampling of Division staff that the Applicant's contribution had been less than satisfactory. He thereupon confirmed the Division Chief's assessment and recommendation.

10. Earlier, on October 22, 1981, the Applicant also put the issue of his confirmation before his Personnel Officer with whom the Applicant had been meeting since June 1981 concerning his performance problems. As it was apparent that the Applicant could not stay in his current situation, the Personnel Officer outlined alternate steps which were open to the Applicant: (i) the Applicant would remain in place until the year's end, during which time the Personnel Management Department (PMD) would attempt to find him a new assignment as an extension of probation; (ii) if such an assignment were located and the Applicant performed satisfactorily during the trial period he would be confirmed; (iii) if he failed to perform satisfactorily in any new assignment, his services would be terminated; and (iv) if no new assignment could be made, his employment would terminate on December 31, 1981. Pursuant to this arrangement, PMD made a number of attempts to have the Applicant reassigned to one of several Agriculture Divisions or else undertake a second assignment, but without success.

11. By memorandum of December 21, 1981 to the Vice President, Personnel and Administration (PA), the Applicant complained both about the fact of and procedure connected with the impending termination of his employment. The Vice President, PA, responded to him by memorandum of December 24, 1981 stating that the record showed that the Applicant had received fair treatment. By memorandum of January 13, 1982 the Vice President also explained the situation to the French Executive Director who had raised an inquiry on the Applicant's behalf.

12. The terms and conditions of the Applicant's separation from Bank service, including three months' special

leave, were set out in a memorandum to him from the Acting Director of Personnel, dated December 30, 1981. This memorandum was delivered by hand to the Applicant, who returned it unsigned in early January. The Respondent continued to process the termination of the Applicant's employment.

The Applicant's main contentions:

13. The language of Personnel Manual Statement (PMS) No. 4.02 concerning guidance and coaching created a mandatory duty and the burden of proof lay on the Respondent to show adequate discharge of that duty in the event of a dispute as to compliance.

14. The Applicant was prejudiced by the fact that his AER was for reasons not explained provided to him only in April 1981 for input and subsequently completed by his superiors only in June 1981, rather than in December 1980. The Applicant thereby lost six months' time to improve his performance. He received no feedback on performance after January 1981 until October 1981.

15. While all concerned acknowledged the Applicant's English language deficiencies, he received, contrary to the requirements of PMS No. 4.02 and the recommendations at the time of his hiring, an insufficient amount of English language instruction, of a total of about 205 hours over 20 months, as compared with the recommendation of about 300 to 360 hours over 6 to 12 months. Such instruction came too late to make a difference in his performance.

16. Prejudice against him developed sometime between the time of his AER, which reflected no serious problems, and October 1981 and this could be the only explanation for his Division Chief's shift of mind towards him from relatively positive and supportive to negative. He was largely unaware of criticism--or the consequences thereof -- until October 1981, and specifically denied that his Division Chief provided counselling or training between June and October 1981.

17. Although he was advised in October 1981 that his appointment would be terminated on December 30, 1981 if no alternative assignment could be found, he was nevertheless left in a "state of uncertainty" concerning his status. Furthermore, notice of termination should have come from the Director of Personnel rather than from his Personnel Officer.

18. He was denied "the right to access documents that are in the Bank's exclusive possession". He requested the Tribunal to order the Respondent to make available to his counsel all "non-privileged documents that are contained in his personnel files, confidential and otherwise".

The Respondent's main contentions:

19. The Applicant's opinions as to the nature of the duty incumbent upon it to guide and coach, and as to the burden of proof, have to be rejected as being inaccurate and inapplicable, particularly because like a number of other Personnel Manual Statements, PMS No. 4.02 essentially sets out general principles and norms.

20. The primary reason for the delay in the completion of the Applicant's AER was that, although requested to prepare and submit his portion of the AER, the Applicant did not deliver this to his Division Chief until late April 1981. The Applicant received informal feedback on his performance up to that date and in the following months. Moreover, he was granted time beyond the usual six months' extension of probation with a specified agenda for further training and exposure to work.

21. It was recognized at the time of recruitment that the Applicant needed to improve his English language skills. The Language Program records note that beginning in January 1980 the Applicant, except for periods when he was on mission, underwent a month of intensive training followed by some eight or so months of less-intensive training; that he took a group writing course in January 1981; and that he also had another month of intensive training in September 1981 for a total of about 205 hours of English training. Even allowing for the time limitations necessarily resulting from the full-time job he was hired to do and his full-time assignments, the

Applicant failed to take full advantage of the early and continuing opportunity presented to him to remedy his language deficiencies. The Applicant, even when at headquarters, was careless about attendance and assignments.

22. The Applicant failed to consider or chose to ignore his interim evaluation and AER in their totality and to absorb the informal feedback he was receiving. The Applicant's managers considered his performance in the field generally to be satisfactory. Their continuing complaints were related to the other areas noted: analytical abilities, teamwork, temperament, and understanding of Bank procedure. The fact that his Division Chief felt unable to recommend confirmation on the Applicant's AER should have been a clear indication to the Applicant that his future with the Respondent was by no means secure. In sum, there was nothing in the record to substantiate the Applicant's claim that the Respondent's decision not to confirm his employment was taken on any ground other than an objective assessment of the Applicant's suitability for permanent Bank employment.

23. The Respondent's normal period of notice for termination of employment is thirty days. The Applicant was given slightly over twice that amount of time. While some unavoidable uncertainty was created by the very nature of the arrangement with him to look for an alternative assignment, the Applicant was not left in a state of uncertainty from October through December 1981. The original notice of termination and reminder notice of December 23, 1981 were appropriately communicated to the Applicant by his Personnel Manager who had the authority to communicate decisions regarding termination of employment.

24. The Respondent refers to Personnel Manual Circular No. 3/81 of April 3, 1981 in regard to the Applicant's right to access his personnel file or files. The Respondent has also made the Applicant's file available to counsel for the Applicant. Because of this action all and any issues raised by the Applicant relating to access to files are moot.

Considerations:

25. The Applicant entered the Respondent's service on December 17, 1979 under the normal conditions. His letter of appointment provided that in accordance with the Respondent's policy this appointment "will be probationary for the first year and will be subject to confirmation on or before the first anniversary of [his] reporting for duty at the World Bank". The Applicant contests the Respondent's decision to terminate his appointment on December 31, 1981 rather than confirm it or extend his probation. He is claiming three years' net pay in lieu of reinstatement and an unspecified amount of compensation for moral damages and injury to reputation as well as legal costs.

26. According to PMS No. 4.02, which states the Respondent's policy on probation,

"The primary purpose for the period of probation is to give both the Bank and staff member an opportunity to evaluate their work relationship and to agree whether the continued employment of the staff member with the Bank is appropriate".

27. It is of the essence of probation that the organization be vested with the power both to define its own needs, requirements and interests, and to decide whether, judging by the staff member's performance during the probationary period, he does or does not qualify for permanent Bank employment. These determinations necessarily lie within the responsibility and discretion of the Respondent, as the Tribunal has found in the Buranavanichkit Case (Decision No. 7).

28. It is also of the essence of probation that the evaluation of the probationer's suitability for Bank employment may be subject to changes during his period of probation. Favourable appraisals at one stage of this period do not dictate confirmation of employment, any more than unfavourable ones necessarily lead to termination of employment. Neither does the fact that the probationary period is extended give any decisive indication as to the likelihood of ultimate confirmation. Although continuation beyond the normal probationary period demonstrates that the staff member's performance is not so substandard as to justify immediate termination, it ought properly to alert him to the fact that up to that date his performance has not warranted the immediate

grant of a permanent appointment and that a satisfactory level of performance must be achieved before confirmation becomes appropriate. It is therefore clearly not the case that continuation of the initial probationary period is tantamount to a commendation and to an assurance of ultimate confirmation.

29. On the other hand, the Tribunal is also unable to accept the proposition that as a matter of principle the provisions of PMS No. 4.02 do not create a mandatory duty. Although contingent upon confirmation, the relationship between the Bank and the probationer is nonetheless a legal one. The probationer is a staff member "entitled to all appropriate staff benefits" (PMS No. 4.02), and he has a right – a legal right – to the observance of his conditions of employment. Some of these conditions are contained in PMS No. 4.02. While not all provisions of PMS No. 4.02 are conditions of employment, some of them certainly are, as the Tribunal has stated in the Buranavanichkit Case (para. 4). Conditions of employment may also derive from various other sources, including general principles of law, as the Tribunal has determined in the de Merode Case (Decision No. 1). The observance of the probationer's conditions of employment is all the more imperative since the period of probation is a difficult one for the staff member in terms both of adjustment to the Bank's needs and policies and because of the inherent insecurity of his situation.

30. While it is the duty of the Tribunal to draw the appropriate conclusions from any non-observance of the conditions of employment of a staff member under probation, the Tribunal will not substitute its own judgment for that of the Respondent on the staff member's suitability for permanent employment. As the Tribunal has declared in the Buranavanichkit Case (paras. 26 and 30), the merits of the Bank's decision will not be reviewed by this Tribunal except for the purpose of satisfying itself that there has been no abuse of discretion and that the appropriate standards of justice have been met.

31. With these general considerations in mind, the Tribunal now turns to the Applicant's contentions that the Respondent (i) failed to provide adequate supervision; (ii) neglected to provide proper language training; (iii) failed to provide timely appraisals of the Applicant's performance; (iv) failed to give reasonable notice prior to termination; and (v) based its decision to terminate the Applicant's employment on personal prejudice. An additional contention is based on the allegedly illegal denial, during the first stage of the procedure before the Tribunal, of what the Applicant regards as his right to have access to his personnel file. The Respondent has, referring to the "circumstances of the case," in fact afforded to the Applicant's counsel access to the Applicant's file and to other requested documents. The Applicant, who was granted an extension of time to file his Observations on Respondent's Answer in order that he might comment upon these documents, contends that earlier access to them would have affected the manner in which he initially presented his case. The Tribunal concludes, however, that the substance of the Applicant's claim has not been materially affected, and that the Respondent's disclosure thus renders moot the Applicant's request for access. Therefore, there is no need to address, either in the specific situation here or as a more general matter, the question of the Respondent's duty to disclose the personnel records of Applicants before the Tribunal.

32. The Applicant contends in the first place that the Respondent did not observe his conditions of employment with respect to supervision and guidance as set forth in PMS No. 4.02. The relevant provisions (paras. 1 and 11) read as follows:

"...During probation, the staff member will benefit from the special supervision and guidance offered by supervisors in the light of a careful assessment of the staff member's relative strengths and weaknesses..."

"Immediate supervisors are responsible for helping a new staff member to adapt to the environment of the Bank and to undertake successfully work assignments that will enable both the staff member and the Bank to judge during the probationary period whether the employment and placement have been appropriate. Within this context, supervisors must (a) introduce the new staff member to the programs and procedures of their work units; (b) design individual assignments that will provide the new staff member with opportunities to show initiative, learn on the job, and demonstrate alternative solutions. The tasks should test the staff member's ability to perform the work of the Bank effectively; (c) provide the new staff member with ongoing coaching, information, guidance and performance feedback..."

While the methods and extent of implementation of the Respondent's obligation under these provisions are obviously left to its discretion, it is nevertheless the Tribunal's duty to make sure that this obligation has been complied with in a reasonable manner and that the decision not to confirm the Applicant's employment has not been based on a performance which has manifestly not benefitted from adequate supervision and guidance.

33. The Tribunal notes that as early as June 19, 1980 the Applicant's Division Chief wrote to the Applicant's Personnel Officer that she had discussed with the Applicant "the importance of concentrating increasing efforts" on the improvement of English and that she had drawn his attention to "the risk he was facing of finding Bank procedures and work in Washington particularly frustrating". In the AER of October 9, 1980 the Division Chief gave the Applicant the advice that "until he is fully conversant with Bank procedures he should ensure that he works closely with me and the experienced project officers in the division" and that "he should concentrate on developing the style and techniques needed to be an effective project officer, including work with other specialists in the division, mission leaders, and staff of other divisions". She stated further that she "will closely work with him and with his mission leaders to define with him the operational skills and information which are essential for him to operate actively as an agriculturist in the Bank". In her memorandum of October 1, 1981 recommending that the Applicant's appointment be terminated, the Division Chief wrote that she had had "several discussions with Mr. Salle about his work program and responsibilities, and role in the Division." In another memorandum, dated October 17, 1981 she speaks of the efforts of one of the Applicant's mission leaders "to provide full and continuing feedback to Mr. Salle" and of his "extraordinary efforts to work effectively with Mr. Salle and to assist him in learning about the requirements of his job". Reports from this mission leader as well as from other Bank officials show that during his probation the Applicant was exposed to the types of tasks which would have been required of him as a permanent employee and that he had been given the opportunity to benefit from their guidance and comments.

34. The Applicant maintains that the Respondent carries the burden of proof to establish that proper action has been taken. The Respondent relies, so he argues, on self-serving statements of supervisors, without any corroboration or record whatsoever as to the particulars of the guidance given.

35. The Tribunal does not regard the problem as one of burden of proof. It is incumbent upon both the Applicant and the Respondent to provide the Tribunal with all the available evidence in order to allow it to pass judgment upon the Applicant's allegations of non-observance of his conditions of employment; and it is for the Tribunal to determine, in the light of the evidence made available to it, whether the Applicant's conditions of employment have, or have not, been observed.

36. The Tribunal notes that supervision and guidance do not necessarily take the form of recorded conversations or otherwise specific acts or activities; they may consist as well in day to day work and contacts with supervisors and colleagues and in the exposure to the kind of tasks which the staff member would have to accomplish if his appointment were to be confirmed. The language of PMS No. 4.02 leaves no doubt on this point. In the present case the record demonstrates that the Applicant was exposed during his period of probation to the kind of tasks he would have had to accomplish if he had been regarded eventually as suitable for permanent Bank work. His own responses to his Division Chief's memorandum recommending the termination of his appointment and to the memorandum of one of his mission leaders show that he had been given a number of opportunities to work with supervisors, to be advised of their opinions and suggestions and to discuss their viewpoints with them. While there is no documented evidence of the accurateness of each and every fact mentioned in the supervisors' reports, there is no documented evidence either of the Applicant's contention that these reports should not be trusted; the Tribunal can obviously not found its decision on the Applicant's simple and total denial.

37. As has been said above, the Tribunal cannot pass judgment on the specific methods or extent of the guidance and supervision required under PMS No. 4.02 and it will, therefore, not regard the staff member's conditions of employment as violated unless the guidance and supervision offered have been kept below a reasonable standard and have been manifestly insufficient. In the present instance the Tribunal is satisfied that this is not the case.

38. The Applicant contends also that the Respondent has failed to comply with its duty to provide language training in accordance with PMS 4.02. The relevant provision (para. 5) reads as follows:

“5. In exceptional cases the Bank recruits professionally well qualified staff members who lack even a minimal command of English.

(a) Those staff members whose need for special training in English has been identified before entry-on-duty will be allowed a period of up to 18 months for combined probation and basic language training as long as the language training and job performance of the staff member proceed satisfactorily.

(b) Those staff members whose need for such special English training has not been identified before entry-on-duty but is identified within the probation period will have up to six months added to the probation period. In both cases, the following will apply:

(i) The English training during those 18 months may involve up to six months intensive (full time) training and any suitable combination of semi-intensive (half time) and other scheduled classes. The schedule and the level of proficiency to be reached will be determined jointly by the immediate supervisor and the Personnel Department (English Language Program) in consultation with the staff member.

(ii) At the initiative of the immediate supervisor, the staff member may be considered for confirmation before the end of the 18 month period.

(iii) The additional period of up to six months will not appear as an extension of probation in the file of the staff member.”

The Applicant maintains that he was not allowed to take an intensive course in English until September 1981. The violation of his conditions of employment under PMS No. 4.02 is all the more significant, so the Applicant argues, because the language deficiency was at the root of the decision not to confirm his appointment.

39. The Tribunal observes that the Applicant cannot be regarded as having “lack(ed) even a minimal command of English.” In the curriculum vitae filed with the Respondent the Applicant described his command of English as good. His ability to express himself fairly well in spoken English was noted by two of the Respondent’s officials who interviewed him before his appointment. Nevertheless, some language problem had already been identified at that early stage; in particular, doubts had been voiced by the interviewers about his ability in written English. In March 1979, three months before his appointment, the Applicant had been tested by the English Language Program personnel who noted that “he communicated well despite limitations of vocabulary and syntax” and “scored at the intermediate level of proficiency”, and recommended that, if hired, he would require some training in English. The Respondent’s case thus falls under sub-paragraph (a) of the above-quoted provision.

40. In light of the above provision the Respondent’s obligation was, therefore, to allow the Applicant “a period of up to 18 months for combined probation and basic language training as long as the language training and job performance... proceed satisfactorily”. The Applicant acknowledges that his language training underwent some difficulties because during much of his service with the Bank he was assigned to French-speaking African countries, that he was given the option of full time language training or continuing language training with mission jobs and that he chose the latter. Whichever may be the case, the Respondent had no obligation under PMS No. 4.02 to suspend job performance in order to allow language training, but only to combine both as long as they could proceed satisfactorily. In its Answer the Respondent states that, according to the Language Program records, the Applicant underwent a month of intensive training in January 1980; that during the eight or so following months he underwent less intensive training except for periods when he was away on mission; and that he took a group writing course in January 1981 and another month of intensive training in September 1981. These records have not been put before the Tribunal, but the Applicant contests neither their existence nor the accurateness of the facts as recounted by the Respondent. The Tribunal further observes that as early as June 1980 (i.e. six months after his appointment and eighteen months before its termination) the Applicant’s Division Chief noted that while in Washington the Applicant “has devoted considerable time to English-language study, since his knowledge of English was very limited prior to joining the Bank”; she added that “we have

discussed the importance of concentrating increasing effort on improvement of both written and spoken English over the next six months and, despite his growing operational responsibilities, we will make a concerted effort to ensure that he has sufficient time for this important activity". One year later, in the AER for the period December 1979 to December 1980, the Division Chief wrote that, "although he (the Applicant) has worked with the English Language Program over the past year, he still lacks facility in both written and spoken English".

41. The Tribunal also notes that, in his response of October 21, 1981 to his Division Chief's memorandum recommending the termination of his employment, the Applicant, while contesting several points put forward by this memorandum, including his alleged inability to write reports, did not address the issue of language training. In a memorandum dated October 22, 1981 the Applicant's Personnel Officer reported that during a discussion with the Applicant he spoke to him about the difficulties the Applicant faced in communicating in English, "although he has been exposed to extensive English-language training", and that the Applicant confessed that "there is some truth in that".

42. The Applicant cites the memorandum written by the acting coordinator of the English Language Program following his pre-employment test in March 1979; it stated that, if hired, the Applicant would require 250 to 300 hours of training in oral communication and grammar over the first six to nine months and an additional 50 to 60 hours of training in writing following that. In the face of this, the Applicant says, the Respondent "boasts" that it provided 205 hours over twenty months. The Tribunal observes that the Applicant in no way disputes this figure, thus admitting that, despite all his assertions to the contrary, he received substantial – although, in his view, insufficient – English language training. That the amount of training received did not come up to the level recommended by the English Language Program personnel before the Applicant's appointment has obviously no bearing on the problem of the observance of his conditions of employment. No more than on the issues of supervision and guidance in general is the Tribunal able to assess the precise quantity or quality of language training required under PMS No. 4.02. The Tribunal is satisfied that the English language training provided to the Applicant did not fall short of the standard of reasonableness and was not manifestly insufficient.

43. The Tribunal thus reaches the conclusion that the Respondent has not violated its obligation to provide the Applicant with language training under the provisions of PMS No. 4.02.

44. The Tribunal adds that, even assuming that the Respondent did not fulfill its duty in this regard, this would in any event not have the effect of invalidating the decision not to confirm the Applicant's employment. This decision was founded primarily not on the Applicant's language deficiency but rather on general aspects of his performance. The Division Chief's memorandum of October 1, 1981 recommending the termination of the Applicant's appointment clearly states that "difficulties in English expression explain part but not all of these problems" and dwells more on the Applicant's general performance than on his language problem. The same holds true for the memorandum sent by the Division Chief to the Assistant Director of the Eastern Africa Projects Department on October 17 in order to report to him on the Applicant's performance. Moreover, the very insistence of the Applicant on the decision having been based on prejudice against him contradicts his allegation that "language proficiency lay at the heart of the matter".

45. The third contention of the Applicant relates to the alleged non-observance by the Respondent of its obligation to carry out periodic appraisals.

According to PMS No. 4.02 (para. 6),

"During the staff member's period of probation, supervisors are expected to evaluate the staff member's performance every six months..."

The Applicant recognizes that an Interim Performance Evaluation covering his first six months with the Bank was received on June 19, 1980. The first Anniversary Evaluation Review, covering the period from December 1979 to December 1980, should therefore have been completed by the end of 1980 but was in fact not completed until June 1981, "for reasons not explained in the dossier" (so the Applicant argues). The Applicant further contends that he received no feedback on his performance from January 1981 until October 1981.

46. The Respondent's duty to evaluate periodically the probationer's work is no doubt an important one, because it gives the staff member an opportunity to assess from time to time his deficiencies and to improve his performance before a final decision is made on his confirmation. The six months' delay in completing the Applicant's first AER is, therefore, regrettable. The Tribunal does not, however, regard it in the present case as invalidating the final decision not to confirm the Applicant's appointment. It appears that the Applicant himself did not complete Part I of the AER until April 27, 1981. The Division Chief completed her evaluation on May 12; the Assistant Director and the Director of the Eastern Africa Projects Department did so respectively on June 2 and June 3. Under these circumstances the Department cannot be blamed for any unreasonable delay in completing the Applicant's first AER. The Respondent maintains that the AER was delivered to the Applicant with oral instructions as to completion in early December 1980, i.e. several weeks prior to the expiration of the Applicant's first year of employment, and that throughout the following months the Applicant was given oral reminders concerning the return of his portion of the AER. The Applicant alleges that he did not receive the AER until April 1981, and that he could therefore not complete it until then. On the evidence available to the Tribunal, it cannot resolve this difference as to the cause of the original delay. However, in the circumstances, the identification of the cause does not matter since the Applicant has not suffered any injury as a result of the delay. The AER recommended that an additional period of six months be granted to the Applicant in order to make a better assessment of his suitability as a permanent staff member. The Applicant's period of probation, which should normally have run its course by the end of 1980, was thus extended until the end of 1981. Far from losing time because of the belated AER, the Applicant had more opportunity to improve his performance and to demonstrate his abilities.

47. As to the Applicant's contention that he received no feedback on his performance from January to October 1981 and that the Respondent's assertions to the contrary are inaccurate, the Tribunal considers that the question thus raised is closely related to the problem of supervision and guidance. It will, therefore, not address it again as a separate item.

48. The Tribunal considers, in conclusion, that the Applicant's conditions of employment with regard to timely appraisals have not been violated.

49. The Applicant further maintains that the decision not to confirm his appointment was vitiated by insufficient notice prior to termination. While admitting that he had been advised since October 1981 that unless another assignment could be found his appointment would be terminated at the end of the year, he alleges that he was not informed with any degree of certainty, and not by an official authorized to make a final decision, until December 1981, and that, instead, he was unreasonably left in a state of uncertainty concerning his status.

50. The Tribunal deems it necessary to emphasize the importance of the requirements sometimes subsumed under the phrase "due process of law". The very discretion granted to the Respondent in reaching its decision at the end of probation makes it all the more imperative that the procedural guarantees ensuring the staff member of fair treatment be respected. Although the Respondent does not yet appear to have promulgated any formal statement of the procedure to be followed when terminating the employment of a staff member, whether permanent or on probation (see the Saberi Case, Decision No. 5, paras. 24 and 29 ff., and the Suntharalingam Case, Decision No. 6, paras. 27 and 31 ff.), the Tribunal must enquire whether the decision to terminate his appointment at the end of his probationary period was reached in accordance with the appropriate standards of justice (the Buranavanichkit Case, paras. 28 and 30).

51. The Applicant alleges that the Respondent violated his right to reasonable notice before termination of his employment. According to the Respondent, its normal notice period for termination of employment is thirty days. It does not appear that this policy was disregarded in the present case. The record shows that as early as October 1, 1981 the Applicant was informed of his Division Chief's recommendation that his employment be terminated at the end of the year. On October 5 the Eastern Africa Projects Department Assistant Director met with the Applicant and discussed with him the Division Chief's memorandum. On October 22 it was the Applicant's Personnel Officer who discussed with him the Division Chief's recommendation; he informed him in as many words that "he cannot stay in the Division" and that, unless another assignment could be found for

him in another division, he would have to leave the Bank at the end of December. The record also shows that the Applicant had on several occasions let his supervisors know that he disagreed with this decision. Already in October he raised the possibility of an appeal. On October 21, he responded at length to his Division Chief's memorandum recommending the termination of his employment, and the arguments set out in this document are nearly identical to those contained in his application before the Tribunal. Between October and December the Applicant contested with various Bank officials the impending termination of his appointment. He also submitted his case to the Staff Association, to the Ombudsman, and to the French Executive Director. On December 14 he requested reconsideration of the decision from the Acting Director of Personnel, and on December 21 from the Vice President, PA.

52. It thus appears beyond any doubt that, apart from the warnings contained in the AER in June 1981, which should have alerted the Applicant to the Respondent's hesitation in confirming his appointment, the Applicant had notice of the Respondent's decision at least three months in advance, and that he had plenty of opportunities to defend himself at various levels of the administrative hierarchy. The fact that the Acting Director of Personnel wrote to him only on December 30 has no relevance to the problem of prior notice. This memorandum was in effect no more than a confirmation of a decision made previously and brought in due course to the Applicant's knowledge, as clearly stated in the letter itself. According to PMS No. 4.02 (para. 14), "the Director of Personnel is the final authority for all cases of appeal under the provisions of this policy statement". The December 30 memorandum of the Acting Director of Personnel, written after the letters of December 23 from the Personnel Officer of the Applicant and of December 24 from the Vice President, PA, constitutes precisely the final decision following the appeals made by the Applicant before various authorities against a decision of which he was aware since October.

53. The Tribunal concludes that no conditions of employment relating to fair and reasonable procedures have been violated.

54. The Applicant finally contends that the Respondent's decision to terminate his employment was based on prejudice. The evidence of such bias is to be found, so the Applicant says, in a drastic and otherwise inexplicable change of mind on the part of his Division Chief towards him between June and October 1981. The sequence of events is here explained in the words of the Applicant. In June the Division Chief issued an AER which "on the whole... was positive" and contained "no indication of serious problems that would jeopardize Applicant's employment in the Bank". Four months later, on October 1, the same Division Chief wrote "a devastating memorandum" on the Applicant's performance and recommended that his employment be terminated at the end of the year. The Applicant maintains that "only prejudice would explain the rather sudden turn of events". The explanation of this prejudice lies in a "personality conflict" between himself and one of his mission leaders, who happened to be "a close friend" of the Division Chief. True, other officials reported also on the Applicant's bad performance, but it was at the request of the Division Chief who asked them to rush to her aid; these reports were no more than corroborating memoranda, written after the decision had been reached by the Division Chief, and could not have been a basis for her decision. The Applicant has therefore been a victim "of vindictive individuals who set out to oust (him) from his post in the Division and eventually from his job in the Bank".

55. The Tribunal does not find in the record any evidence of the so-called turn of events between June and October 1981. Contrary to the Applicant's allegations, the AER of June 1981 did in effect express precise and at times severe reservations about the Applicant's performance: "he needs ... to focus on increasing his understanding of Bank work, including basic policies and procedures, and ways of contributing effectively to inter-disciplinary teams..."; "Mr. Salle has tended to work rather independently... he should concentrate on developing the style and techniques needed to be an effective project officer, including work with other specialists in the division, mission leaders, and staff of other divisions"; "he has not fully demonstrated his ability to utilize his considerable skills and knowledge effectively on operational matters"; "he has tended to prefer an independent working style which has perhaps delayed the acquisition of a clear understanding of Bank operational procedures, requirements and working methods". At the same time the Division Chief was aware of the Applicant's abilities and of his "good competence in his field". She felt, therefore, that it would have been premature to make a final decision at that stage and that his probation had to be extended because additional

time was “required to make a fair assessment of his suitability as a permanent staff member”. The Tribunal is thus unable to accept the Applicant’s basic contention that the memorandum of October 1, recommending the termination of his appointment, constituted a drastic and otherwise unexpected change of mind or that the AER of June 1981 did not contain any of the harsh criticisms voiced in the October 1 memorandum.

56. Four months later, on October 1, 1981, the Division Chief confirmed that “on technical matters, Mr. Salle has made a useful contribution, and has demonstrated a good knowledge of the principal technical areas ... required for his work”. She added that “however, on general operational aspects of his work, (his) performance has not on balance been satisfactory”. She noted, in this respect, that “the basic problems relate to his ability to analyze situations and express his conclusions clearly and easily, his general approach to analytical work, some unsatisfactory experiences in functioning as a member of inter-disciplinary teams...” She mentioned that the Applicant “has tended to prefer to work independently, without clear reference to the broader objectives and direction of the mission as a whole” and that “he appears not to have appreciated that his job requires continuing interaction with colleagues of other disciplines”. She noted also that the Applicant “tends to argue so much on many issues”, that “he is not an outgoing or friendly personality”, that “his bluntness and critical style often do not increase his efficiency”, and that “it has proved exceptionally difficult to communicate with (him) on his performance, since he does not appreciate or accept criticism, and since his approach is to argue in defence of his work and to criticize others”. Since June, she observed, the Applicant had participated in the appraisal of a project and was currently involved in intensive training in English. She thought that “we have now sufficient experience to make a fair assessment of Mr. Salle’s suitability as a permanent staff member,” and expressed the view that the Applicant’s “overall performance has not been at the level we should require of a project officer”. She recommended consequently that “if no appropriate assignment is identified in the very near future his appointment should be terminated”.

57. In the Tribunal’s view, there is nothing in this assessment of October 1 which would point to the kind of turnabout in the Division Chief’s mind which the Applicant is trying to suggest. Most, if not all, of the criticisms voiced in the October memorandum were already expressed in the June AER, although in a less assertive tone; but it is precisely one of the purposes of an additional period of probation to allow the staff member’s superiors to strengthen a somewhat hesitant appraisal or even to modify their earlier opinion of the probationer. To consider any shift in the Administration’s evaluation of the staff member as a sign of prejudice would amount to a denial of the very object and purpose of the extension of the probationary period, and even of the probation itself. The Division Chief could as well have recommended the termination of the Applicant’s employment in June, or even in January 1981, on the basis of the Applicant’s overall performance and personality. She felt, however, that it was her duty to postpone any decision and to extend for a number of months the Applicant’s probation. It would be absurd to consider that this extension gave rise to a right in the Applicant to have his appointment confirmed or could serve as a basis for suspecting that any final decision of termination was vitiated by bias or prejudice. To reason along such lines would result in the Respondent’s never granting an extension of probation and its deciding in all cases of doubt not to confirm the staff member’s appointment and not to give him a further chance.

58. The Applicant argues that the AER was not specific in its criticisms and that he was not in a position to improve during the extended period of probation. The Tribunal considers that criticisms of the kind voiced against the Applicant, which concern his general behavior rather than specific issues, do not lend themselves to quite precise indications. The criticisms expressed in the AER of June were in effect specific enough to give the Applicant an opportunity to improve. The final decision after an extended period of probation does, moreover, rest not only on the performance during this necessarily limited period but on the overall performance during the whole probationary period.

59. The Applicant maintains further that the criticisms expressed by his Division Chief had never been discussed by him and his Division Chief. He denies flatly the assertions of the Division Chief in this respect, and regards them as no more than “self-serving statements” which “hardly reach the level of serious evidence”; it rests with the Respondent, so he says, to prove that such discussions took place, which could easily have been done had the Respondent documented its actions. The Respondent maintains, for its part, that according to the desk calendar of the Applicant’s Division Chief, the Applicant met with his Division Chief at least five

times between May and September 1981. The Tribunal has stated earlier its views about the so-called problem of burden of proof. It may be noted also that the relations between staff members and superiors would become over-bureaucratic if each and every conversation or discussion were to be documented. In any event, the question whether informal discussions in fact took place or not is irrelevant, since the Administration may base its appraisal on all available elements and not necessarily on discussions with the staff member. What is relevant is whether the staff member has been given the opportunity to defend himself against the criticisms of his superiors and has been granted fair treatment. The Tribunal has already said that the requirements of due process of law have been fully satisfied in the present case.

60. The Tribunal does not attach special importance to the memoranda written by other Bank officials and produced as evidence by the Respondent. The reports written after October 1, 1981 cannot have served as a basis for the Division Chief's recommendations. One of them is, however, significant insofar as it corroborates the reference made by the Applicant to a "personality conflict" between him and one of his mission leaders. This does not suffice to characterize the decision impugned as being the result of a plot of the Applicant's superiors or of bias or prejudice against him. In this respect, the Tribunal cannot but repeat what it stated in the Buranavanichkit Case (para. 26):

"Probation has as its purpose the determination whether the employee concerned satisfies the conditions required for confirmation. These conditions may refer not only to the technical competence of the probationer but also to his or her character, personality and conduct generally in so far as they bear on ability to work harmoniously and to good effect with superiors and other staff members. The merits of the Bank's decision in this regard will not be reviewed by this Tribunal except for the purposes of satisfying itself that there has been no abuse of discretion."

In the present case the Respondent's decision appears to have been founded on the conviction that the Applicant, in view of his personality and his general performance, did not qualify as a permanent staff member. Nothing suggests that in reaching this conclusion the Respondent abused its discretion.

61. The Tribunal concludes that the Respondent's decision to terminate the Applicant's appointment on December 31, 1981, rather than confirm it or extend his probation, did not amount to the non-observance of the Applicant's contract of employment or terms of appointment.

Decision:

For these reasons, the Tribunal unanimously decides that the Application be rejected.

E. Jimenez de Arechaga

/S/ Eduardo Jiménez de Aréchaga

President

C. F. Amerasinghe

/S/ C.F. Amerasinghe
Executive Secretary

At Washington, D. C., October 8, 1982