

Decision No. 2

Rudolf Skandera,
Applicant

v.

The World Bank,
Respondent

THE WORLD BANK ADMINISTRATIVE TRIBUNAL,

Composed of E. Jimenez de Arechaga, President, T.O. Elias, P. Weil, Vice Presidents, A.K. Abul-Magd, R. Gorman, N. Kumarayya and E. Lauterpacht, Members;

Has considered the application of Rudolf Skandera dated September 29, 1980, the answer of the World Bank dated November 17, 1980, and the observations of the applicant dated April 2, 1981;

Has decided that oral proceedings as requested by Applicant pursuant to Rule 14(l) are unnecessary and shall not be held; and

Has for the same reason rejected the Applicant's request under Rule 14(3) that the Tribunal put written interrogatories to certain witnesses.

The relevant facts of the case are as follows:

1. By a letter dated November 9, 1979, Applicant Rudolf Skandera – then a tenured Professor at Temple University, in Pennsylvania – was offered an appointment to the World Bank (Secondment) Staff “to serve as Monitoring Adviser of the World Bank-executed, UNDP-financed Technical Assistance Project in Maseru, Lesotho.” His appointment was for two years, “subject to termination by the World Bank for any cause or if circumstances necessitate a substantial shortening of the assignment.” Varying periods of notification were stipulated in the event of termination upon Government request by reason of unsatisfactory performance or of disagreement between the staff member and the Government (two months' notice), or termination by reason of misconduct (effective immediately), or termination for other cause (four months' notice). The letter of offer provided that in the event of termination, “the World Bank may remove you from active work status, but will retain you in pay status until your appointment terminates.” Financial arrangements were set forth in detail, including provision for a base salary of U.S. \$28,000 per annum.
2. In a letter dated November 28, 1979, Mr. Nimrod Raphaeli, Chief of the Planning Advisory Division, International Relations Department, World Bank confirmed Mr. Skandera's assignment as Monitoring Adviser to the Central Planning and Development Office of the Government of Lesotho (CPDO) pursuant to a project document between the Kingdom of Lesotho, the World Bank and the UNDP. Mr. Skandera was to “be responsible to the Bank for the performance of [his] duties.”
3. Mr. Skandera accepted the appointment on November 30, 1979, and arrived in Maseru, Lesotho, on December 28, 1979.
4. Shortly after his arrival, Mr. Skandera complained about the housing provided by the project. He requested, and was granted, funds for the purchase of curtains and heaters. In mid-January 1980, he declined to move into the designated house, emphasizing that it lacked heating (“while night temperatures will decline to freezing”) and that inter alia it was dusty and drafty, and littered by construction debris. Although on January

24, the UNDP Resident Representative, Mr. David McAdams, confirmed to Mr. Raphaeli that the house was suitable for immediate occupancy, Mr. Skandera on January 28 once again refused to move in, claiming that the deficiencies of the house “present a health hazard.” He therefore chose, as contemplated in his letter of appointment, to remain in his hotel at the Bank's expense. Although Mr. McAdams on February 7 once again stated by cable that Mr. Skandera's house was ready for occupancy, that Mr. Skandera's insistence on the installation of heaters and additional windows was unreasonable, and that another project employee was already occupying a similar house, Mr. Raphaeli had on February 6 agreed to pay for Mr. Skandera's hotel accommodation until February 20.

5. During his first six weeks of service in Lesotho, in January and early February, Mr. Skandera generally walked between his hotel and his office. He claims that the long walk, the dusty conditions, the unexpected rainstorms, and the improper and persistent refusal of his superiors to make available to him an automobile at the disposal of project employees, all contributed to the development of serious and chronic injury to his lungs (bronchitis) and his knee (arthritis). Contemporaneously, Mr. Skandera formally complained of the drafty working conditions in his office and their adverse effect upon his health.

6. On January 16, Mr. Sam Montsi, the Managing Director of the Lesotho National Development Corporation (LNDC), with whom it was expected that Mr. Skandera would work beginning on January 23, stated to Mr. Skandera that a management advisory team provided by the assistance program of the Irish Republic was already assisting the LNDC.

7. Mr. Raphaeli visited Lesotho from February 4-13, 1980, when he met Mr. Skandera for the first time, and discussed his housing complaints and also his work on the Bank's project.

8. Shortly before Mr. Raphaeli's arrival, Mr. Skandera – at the invitation of Mrs. Moji, Deputy Permanent Secretary of Lesotho's Central Planning and Development Office (CPDO) – prepared a short document entitled “The Mixed Sector of Lesotho: a Preliminary Statement of the Problem.” On February 4, this document was made ready for distribution to other government agencies by Mr. M.P. Sejanamane, Permanent Secretary of the CPDO. Mr. Sejanamane's covering memorandum adverted to the attached “initial views of Dr. Rudolf Skandera concerning the broad management problem in our parastatal economic sector,” invited the addressees to discuss their management problems with Mr. Skandera, and observed that Mr. Skandera “suggests a pragmatic approach.” The Skandera draft had not been approved by any of his Bank superiors, and after the Bank interceded with Mr. Sejanamane the document was never distributed.

9. On February 11, 1980, Mr. W. H. Waldorf, Chief, Technical Adviser of the Project, who was Mr. Skandera's general supervisor in Maseru, wrote to Mr. Raphaeli recommending the termination of Mr. Skandera's appointment for the following reasons:

- (i) the recent use by LNDC (the most important Lesotho parastatal) of Irish management experts, and thus the redundancy of Mr. Skandera's services;
- (ii) Mr. Skandera's poor performance, particularly his paper of February 4 (“so elementary and general that it discredited the professionalism and expertise of the World Bank Team”), and his lack of cooperation; and
- (iii) Mr. Skandera's personal behavior (including calisthenics in his office), which had become a common matter of gossip and ridicule.

Mr. Waldorf stated to Mr. Raphaeli that the recommendation for termination was endorsed by Mr. Sejanamane. On February 12, Mr. Raphaeli wrote to Mr. McAdams stating that Mr. Skandera's manners were “eccentric” and the subject of “derision and ridicule.”

10. On February 19, Mr. Skandera sent Mr. Raphaeli a memorandum detailing the reasons for his inability to perform a substantial amount of work since the beginning of his assignment. He adverted to the fact that certain Lesotho officials in CPDO and LNDC were apparently unaware of his availability or had no need for his services.

11. On February 20, Mr. Raphaeli wrote to Miss Dorothy Murphy of the Compensation Department, recommending that Mr. Skandera be informed of the termination of his appointment by personal telex routed via Mr. McAdams "to avoid unnecessary embarrassment to Skandera". Mr. Raphaeli cited Mr. Skandera's redundancy (since other advisors had assumed Mr. Skandera's principal responsibilities with CPDO and LNDC), as "was agreed with the Government"; his limited knowledge of public corporations; his eccentric manners (particularly his complaints about housing and office facilities); his limited work-product in a six-week period; and his memoranda on trivial matters.

12. The next day, February 21, 1980, Mr. McAdams was directed by the Personnel Management Department, Recruitment Division, to forward to Mr. Skandera a notice of termination which stated that the termination was at the request of the Lesotho Government; referred to paragraph 2(c) of Mr. Skandera's letter of appointment providing for four months' notice; and urged Mr. Skandera to make arrangements to leave Maseru at his earliest convenience. The Bank has admitted in these proceedings that in fact the Lesotho Government had not instigated Mr. Skandera's termination, although it had endorsed it. Mr. Skandera left Lesotho on March 1.

13. Mr. Skandera wrote on March 20 to the Secretary General of the United Nations and to the President of the World Bank complaining of the termination of his appointment. In response to the second letter, Mr. Alden L. Doud, Senior Counsel Administration, wrote to Mr. Skandera on June 20, 1980 stating that the causes for termination were: (1) redundancy; and (2) "behavior towards your colleagues" and unacceptable conduct which impaired the effectiveness of the World Bank, the UNDP and Mr. Skandera himself. Mr. Doud also challenged Mr. Skandera's claim that the Government of Lesotho was pleased with and anxious to extend his services.

14. After his return to the United States, Mr. Skandera secured medical attention for his lungs and his knee, and he filed claims for reimbursement of medical expenses under the workmen's compensation program for Bank employees.

Applicant's main contentions are that:

15. His contract of employment was violated because his appointment was terminated without cause, with malice and bad faith, and with gross negligence. Applicant's work in Lesotho was progressing well and was well received by Government officials (as evidenced by Mr. Sejanamane's memorandum of February 4, 1980 accompanying Mr. Skandera's memorandum and recommending it and him to parastatals and agencies). The assignment of the Irish experts to the LNDC had been done before Applicant had been assigned to Lesotho and it was known to Mr. Sejanamane who nonetheless continued to acknowledge the need for Mr. Skandera's services; the endorsement by Mr. Sejanamane of Applicant's termination must therefore have been extracted either by improper promises or improper threats, and was adverse to Lesotho's best interests. In any event, Applicant's appointment contemplated his service to a number of different parastatals and government agencies and not merely to the LNDC. Applicant's complaints concerning his housing and working conditions were reasonable and were indeed consistent with medical advice, and he in any event was entitled by his letter of appointment to exercise the option to remain, at the Bank's expense, in hotel accommodations. Applicant's termination was, in conclusion, a prejudiced response to his national origin and his economic views.

16. Applicant was denied due process by virtue of the procedure whereby his termination was effected. Although his notice of termination stated that it was at the request of the Lesotho Government, the World Bank now admits that this assertion was not the truth. That the Bank did not so concede for nine months (until it filed its answer in these proceedings) has severely prejudiced Applicant in responding to his termination. Mr. Doud's letter of June 20, 1980, was also untruthful (to the extent it cited Mr. Skandera's redundancy) or unfairly vague (to the extent it cited his "behaviour towards your colleagues"). The Bank knew the redundancy claim to be false, and it therefore fabricated the charge that the Lesotho Government sought his termination. These unfair procedures are part of a "carefully premeditated plot," born of hatred and prejudice, intended to "terrorize" Applicant.

17. Applicant's unjust termination has caused him mental anguish, has resulted in his being personally

humiliated, and will surely interfere with future job opportunities in the academic world, consulting and international organizations.

18. The Bank also violated Applicant's contract of employment by failing, contrary to the rules in force, to make available to him automobile transportation when he asserted medical justification; and by otherwise creating conditions of employment which severely impaired his health and caused chronic injuries to his lung and knee. This has "impaired my quality of life for the rest of my life," and cannot be recompensed by workmen's compensation.

19. Applicant is entitled to recover salary and other benefits due at the time he left Lesotho, and which he was either improperly denied or which were erroneously not paid to him because of miscalculation.

20. Applicant requests the following relief: (a) rescission of the termination of his appointment; (b) compensation in the amount of \$100,000 for damage to his professional reputation and the resulting loss in future earnings; (c) compensation in the amount of \$22,000 for loss of earnings under his Bank contract; (d) \$100,000 for injury to his lungs and knee; and (e) \$10,763 for earned and unpaid salary and allowances.

The contentions of the Respondent are that:

21. The termination of Mr. Skandera's services was clearly authorized by his letter of appointment, which contemplated the possibility of termination "for any cause or if circumstances necessitate a substantial shortening of the assignment." It is true that the termination of his appointment was not at the request of the Government of Lesotho, but it was for other valid reasons and was endorsed by Mr. Sejanamane, Permanent Secretary of CPDO. The principal reason for the termination was that his services were no longer needed because of the assignment of the Irish management experts to the LNDC, Lesotho's largest parastatal. Moreover, Mr. Skandera's work was minimal in quantity and poor in quality. His personal eccentricities were also a source of friction and ridicule. That there may have been some Lesotho Government officials who were unaware of his termination or who even were satisfied with his work is not relevant; the power to evaluate and terminate lay with Mr. Raphaeli as a representative of the Bank, and it was he who terminated Mr. Skandera's appointment.

22. There was no denial of due process in the manner in which the termination of Mr. Skandera's appointment was effected. It is true that the termination notice erroneously cited the Lesotho Government as the party initiating the action, but this error was harmless; the Government did endorse the termination, and the citation of this erroneous reason resulted in no injury to Applicant. Promptly upon receiving Mr. Skandera's request for a further explanation, the Bank through Mr. Doud informed him on June 20, 1980 of the principal reasons for termination – his redundancy, and his eccentric behaviour. In any case, Mr. Skandera was awarded four months' termination pay, precisely as required by his letter of appointment.

23. Mr. Skandera's claim for injuries resulting to his lungs and knee is without any basis. There was no obligation on the part of the Bank to make transportation available to Bank Staff; Mr. Skandera was not intended to be the beneficiary of any rules regarding the use of project automobiles; and he was never denied transportation in a medical emergency. Nor is there proof that the alleged bronchitis and arthritic knee are related to Mr. Skandera's employment in Lesotho. But even if they are thus related, Applicant's exclusive remedy for medical expenses and loss of earnings lies in a claim for workmen's compensation, by which Bank employees are insured against work-related injuries regardless of the Bank's fault. He has made some such claims, and is thus aware of this workmen's compensation plan and is limited by it.

24. All of Mr. Skandera's claims regarding overdue salary and other benefits have already been processed by the Bank. He has either been paid, or has misunderstood his rights, or has not completed the appropriate and necessary forms for the purpose of securing reimbursement.

Considerations:

25. The principal issue before the Tribunal is whether Mr. Skandera's services were terminated "for any cause," as provided in the letter offering him an appointment. The Bank has conceded that the reasons for its action were other than the one stated in the termination notice, namely, the request of the Government of Lesotho. The true reasons were those set forth in four written documents (referred to in paragraphs 9, 11, and 13 above), of which only the last was actually communicated to Mr. Skandera. Taking into consideration the arguments of the Applicant and the Respondent as set forth above, the Tribunal finds that reasonable grounds existed on which the Bank could validly reach a decision to terminate the appointment of Mr. Skandera. Although Mr. Skandera asserts that his services were needed and that the quality of his work was adequate and was indeed favorably regarded by some Lesotho officials, it is clear (and his letter of appointment explicitly so provides) that the authority to decide such matters lay with his supervisors at the Bank.

26. Mr. Skandera claims that the Bank's decision to terminate his appointment was based upon such motives as hatred, malice, prejudice and bad faith. For the reasons already given, however, the Tribunal is of the view that the termination was not improperly motivated.

27. The Tribunal notes that the sufficient and valid reasons for the termination of Mr. Skandera's appointment were not formally communicated to him until Mr. Doud wrote to him on June 20, 1980, some four months after the termination. The reference in his termination notice to the request of the Government of Lesotho was perhaps a well-intentioned effort to avoid having to confront Mr. Skandera with hurtful criticism. But it was also misleading, and potentially more prejudicial to Mr. Skandera than had there been no reason given at all for the termination of his appointment.

28. It is neither necessary nor possible to develop in detail at this time all of the requirements of what might be called "procedural due process" in termination cases. The Tribunal can say, however, that notice of termination should communicate to the affected staff member the true reasons for the Bank's decision. It is in the interest of the Bank that the employment of qualified employees not be terminated on the basis of inadequate facts or ill-founded justifications, and one way to assure this is to furnish the staff member at the time of termination with a specific and true assessment which will provide a fair opportunity to the individual to dispute, and possibly to seek rectification of the decision of the Bank. The prompt communication of reasons for termination will also facilitate the preparation and presentation of appeals and other remedies provided in the Bank's dispute-resolution procedure.

29. By failing on February 21 to inform Mr. Skandera accurately of the reasons for the termination of his appointment, the Bank impaired his ability to protect his interests. Although prompt and candid disclosure of reasons might well not have affected the Tribunal's decision regarding the propriety of the termination, Mr. Skandera was delayed by four months in dealing in an informed manner with the Bank's action. It is difficult to place a value upon such an intangible injury. Since in the circumstances, rescission of the decision contested or specific performance of the obligation invoked is not a remedy appropriate to the injury done, the Tribunal will order the payment to Applicant of compensation equitably assessed at three months' net base salary.

30. Mr. Skandera also contends that the Bank's assertion that his appointment was terminated at the request of the Government of Lesotho was humiliating to him and will interfere with future employment opportunities. The Tribunal cannot accept this claim, considering that the vague reference in his termination notice to the request of the Lesotho Government would surely be far less harmful to the reputation of Mr. Skandera than would have been the full disclosure of the true reasons for the termination of his appointment.

31. Mr. Skandera claims that he was improperly denied access to the official automobile used in connection with his project and that this denial forced him to walk to and from work in circumstances which led to severe and chronic injury to his lungs and his left knee. The Tribunal rejects his claim for compensation on this score. The regulations upon which Mr. Skandera relies for his alleged entitlement to the use of the official automobile do not create rights in Bank employees to be transported between home and work, save in urgent medical emergencies which did not exist in this case.

32. Moreover, the available and exclusive remedy for physical injury suffered by virtue of his service with the

Bank is a claim for workmen's compensation. There is some question whether all of Mr. Skandera's alleged ailments are attributable to his Bank service, but if they are, it is the Bank's insurer which is to pay for medical expenses and loss of earnings, without the need for the staff member to prove any fault on the part of the Bank. Mr. Skandera has in fact made such insurance claims and been reimbursed. Although he has indeed admitted that "I am not so disabled to qualify for workmen's compensation," he claims that "the quality of my life has been permanently impaired." This claim is vague in nature and is unsupported even by prima facie evidence of a relationship between the Bank's alleged failure and the alleged impairment of the Applicant's quality of life. Accordingly, this claim must also be rejected.

33. With regard to Mr. Skandera's final claim that he is entitled to overdue salary and other benefits accrued up to the date of his departure from Lesotho, the Bank contends that Mr. Skandera has been paid, or has misunderstood his rights, or has not filled out the appropriate informational or claim forms. The Tribunal has considered the pertinent correspondence, as well as the fact that Mr. Skandera in his observations on Respondent's Answer did not challenge the Bank's assertions. The Bank appears to have in fact paid some of these claims submitted by Mr. Skandera, and the Tribunal cannot assume that the Bank will fail to complete that process once Applicant has complied with the relevant requirements.

DECISION:

For these reasons, the Tribunal unanimously decides: (1) that the Respondent shall pay Applicant a sum equal to three months' net base salary; and (2) that the application is otherwise rejected.

E. Jimenez de Arechaga

/S/ Eduardo Jimenez de Arechaga
President

B.M. de Vuyst

/S/ Bruno M. de Vuyst
Executive Secretary

At Washington, D.C., June 5, 1981