

Decision No. 297

Pedro N. Taborga,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on November 19, 2002, by Pedro N. Taborga 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, and composed of Bola A. Ajibola (a Vice President of the Tribunal) as President, Elizabeth Evatt (a Vice President of the Tribunal) and Robert A. Gorman, Judges. The usual exchange of pleadings took place. The case was listed on April 3, 2003.

2. This case deals with the Applicant's claims that the decision to declare his employment redundant was wrongful and pretextual, that the Respondent failed to follow due process in implementing the redundancy decision, and that the Respondent followed deceptive practices in converting the Applicant's Mutually Agreed Separation (MAS) into a forced one.

The relevant facts

3. In February 1971, the Applicant began employment with the Bank as a Transport Economist in the Transportation Projects Department. The Applicant spent fourteen years with the Transportation Department, after which he worked for eight years with the Africa Projects Department. In 1993, the Applicant moved to the Europe and Central Asia Department (ECA) and in July 1997 joined the Europe and Central Asia Infrastructure Department (ECSIN) as a Senior Transport Economist at level 24, which is the equivalent of level G.

4. In his Overall Performance Evaluation (OPE) for 1997, his then supervisor, the Lead Specialist, ECSIN, praised his technical skills and stimulating contributions to projects but noted, among other things, that the Applicant needed to pay particular attention to communications with Country Team members, Directors and clients, and to "be careful not to give [the] impression of disregarding comments, cutting corners, etc."

5. In 1998, Ms. X, Transport Sector Manager, ECSIN, became the Applicant's manager and immediate supervisor. In the Applicant's OPE covering the period from January 1, 1998 to March 31, 1999, the Applicant was given "Fully Successful" ratings for four of his projects and one "Outstanding/Best Practice" rating for one project. In the OPE, Ms. X recognized the Applicant's effort in initiating the Transport and Trade Facilitation in Southern Europe (TTFSE) project and his innovative way of preparing the "ICR" of the "Georgia TRRP project." Nevertheless, Ms. X pointed out in the OPE that in July 1998 the Applicant had to be replaced as Project Team Leader (PTL) for the Georgia Transport Projects. In the Behavioral Assessment Section of the OPE, the Applicant received "Fully Successful," "Superior" and "Outstanding" ratings for all competencies except for "Teamwork," where he received a "Partially Successful" rating. In her overall comments, Ms. X praised the Applicant's analytical skills, capacity to handle a very heavy workload, quick mind and strong self-confidence. She stated, however, that the Applicant, among other things, seemed to find it difficult to listen to, accept or be convinced by the viewpoints of colleagues and clients, and that he liked to get preferential treatment regarding relaxation of Bank rules.

6. In the same OPE, the Applicant registered his disagreement with Ms. X's comments and presented his understanding of an earlier discussion with Ms. X regarding the areas on which he needed to improve. The Reviewing Manager, i.e. the Director of ECSIN, found Ms. X's assessment balanced, and further stated that

her comments did not “imply a general questioning of Mr. Taborga’s technical skills, his creativity or his dedication to work, which are acknowledged, but point to the behavioral aspects of his performance and to how he interacts with his supervisor.”

7. Around 1998, a need for budget reductions was identified in ECA. The budget cuts were needed because ECSIN was funding a budget deficit, and because infrastructure was regarded as a “sunset sector” that would become less and less important over time. Another reason for the budget cuts was that out of the 28 countries in ECA, 10 were European Union (EU) accession countries and, therefore, would gradually rely less on the World Bank for assistance. As a result, the work program of staff was to be reduced. The Director, ECSIN, who was responsible for the transportation, urban and water sectors, and the Sector Leaders reviewed the staffing of each sector. Management identified the possibility of reductions in the number of Transport Economists who worked in the ECA Region. In 1999, ECSIN had one Transport Economist at level H and five Transport Economists at level G. It was found that the reduced work program could be easily delivered with one Lead Transport Economist at level H and three Transport Economists at level G. It was apparent that at some point during the year 2000, ECSIN would have to eliminate two Transport Economist positions. The Director, ECSIN, then sought volunteers for separation. Of the two volunteers that came forward, one Transport Economist left under an MAS. The other volunteer was seen by Ms. X to be a star performer who was critical to the work program and therefore it was determined that a severance package could not be considered in his case.

8. Given the separation of the first Transport Economist under an MAS, and in order to eliminate another position, the Director, ECSIN, also anticipated a redundancy under Staff Rule 7.01 (“Ending Employment”), paras. 8.02(d) (“Reduction in Staff”) and 8.03. In order to determine which Transport Economist’s employment would be declared redundant, the Director, ECSIN, and Ms. X reviewed the remaining four Transport Economists at level G, while taking into consideration the other requirements of Staff Rule 7.01, para. 8.03(a) and (b), i.e. relative performance and fungibility.

9. The Director, ECSIN, and Ms. X compared the relative performance of the Transport Economists over the previous few years. For 1997, 1998 and the first few months of 1999, the Director, ECSIN, and Ms. X used written OPEs for their assessments. For the rest of 1999, they relied on their own observations of the Transport Economists’ work, since performance evaluations had not been completed for that period. All four Transport Economists were considered high performers. Therefore, the comparisons were made by looking for relative differences which, in their opinion, were marginal. Ultimately, of the four Transport Economists under review, the Director, ECSIN, and Ms. X decided that the Applicant should receive the lowest rating under the performance criterion.

10. When considering the fungibility of the four Transport Economists, i.e. their ability to work across the Bank, the Director, ECSIN, and Ms. X took into account: (a) the demand for their services within the institution; and (b) their ability to work in different sectors. They concluded that of the four Transport Economists, the Applicant was the least able to work across the Bank.

11. Further, Ms. X remarked in this respect that she had consulted with the Transport Sector Board to see if there might be openings elsewhere for a Transport Economist, even in the form of rotation to other units. Moreover, in coordination with the Director, ECSIN, she had contacted the Director of the Operations Evaluation Department and others, including Region Representatives at the Sector Board. Nobody, however, could confirm an opening because the Bank was contracting everywhere and every manager wanted to preserve places for his or her own staff.

12. In September 1999, the Director, ECSIN, met with the Applicant, informed him about the declining work load in ECA, and suggested that he look for another job. The Applicant tried to find a job elsewhere but was unsuccessful because the Bank was contracting its staff needs at the time. Thereafter, the Respondent approached the Applicant with the offer of an MAS in February 2000.

13. In March 2000, a long negotiation process to reach an MAS began with the Applicant, but ultimately it was unsuccessful. According to the statement of the Human Resources (HR) Officer for ECSIN, the Applicant was

asking for 100% of a redundancy package, i.e. 22 ½ months of salary, while normally staff leaving under an MAS receive only 80% of a redundancy package, according to HR Compact Separation Guidelines. Other issues of disagreement between the parties were: (a) the amount of paid training to be afforded; (b) the amount of days per year that the Applicant would be allowed to work for the Bank as a Short-Term Consultant; and (c) the classification of the Applicant into one of the categories under which Consultants were being graded (A, B or C).

14. In an e-mail dated June 9, 2000, the Chairman of the Transport Sector Board informed the HR Officer that on April 19, 2000, the Transport Sector Board had reviewed the request from ECSIN to declare the Applicant redundant. He stated that “[i]nasmuch as (i) no other region indicated a need for [the Applicant’s] skills at this time and (ii) the separation is in conformance with our agreed Staffing Strategy, the Transport Sector Board voted ‘no objection’ to the redundancy.”

15. On June 27, 2000, the Director, ECSIN, decided that the conclusion of an MAS with the Applicant was impossible, and thus informed him that the internal steps for a declaration of redundancy would be finalized. A day earlier, on June 26, 2000, the Manager, Human Resources Service Center (HRSSC), had approved a Request for Approval of Severance Payment to the Applicant.

16. On June 28, 2000, the Acting Vice President, ECA, gave the Applicant a Notice of Redundancy. This notice stated that the Applicant’s employment would become redundant with effect from June 30, 2000, and that the decision had been taken in accordance with Staff Rule 7.01, paras. 8.02(d) and 8.03. The Applicant was further notified that if his job efforts proved unsuccessful by December 31, 2000, he would be given 60 days’ notice of termination.

17. In the Applicant’s OPE covering the period from April 1, 1999 to March 31, 2000, Ms. X gave the Applicant “Fully Successful” ratings with regard to three of his projects, one “Superior” rating and one “Partially Successful” rating. Regarding his “Partially Successful” rating, Ms. X stated in her overall comments for the OPE that the Applicant had to be removed as PTL of the TTFSE Regional Project due to complaints received from the EU, which was a key stakeholder in customs reforms in the Balkans through CAFAO, the Customs and Fiscal Assistance Office established by the EU, and also from the client (Bosnia and Herzegovina). The Applicant took issue with that particular rating in his OPE. Regarding his Behavioral Assessment for the OPE, the Applicant received two “Partially Successful” ratings regarding his “Teamwork” and “Learning and Knowledge Sharing” competencies. With particular regard to his teamwork skills, Ms. X commented that: “[a]s a team-player, [the Applicant] on the one hand coaches and mentors his team members without sparing any efforts. On the other hand my impression based on the feedback I received and also on my observation, is that work under his teams have a rather authoritarian atmosphere, where the rules of [the] game are strictly under [his] control.” Ms. X also pointed out that the Applicant had been facing a decreasing workload.

18. The Applicant took issue with these comments in the OPE and alleged “discrepancies” between Ms. X’s comments and the facts. The Applicant also requested a Managerial Review with regard to the OPE. In his overall comments in the OPE signed on July 18, 2000, the Reviewing Manager, the Director, ECSIN, in confirming Ms. X’s comments, stated that he saw no reason to modify the OPE’s overall assessment of the Applicant’s performance, which assessment he found balanced and fair.

19. On August 8, 2000, the Applicant requested an administrative review of the redundancy decision. After being informed by the Vice President, ECA, that the process of administrative review had been discontinued, he decided to use the Bank’s mediation services.

20. By memorandum dated December 15, 2000, the Manager, HRSSC, gave the Applicant a 60-day notice of termination commencing December 31, 2000 and ending February 28, 2001. On January 19, 2001, the Applicant filed an appeal with the Appeals Committee challenging, among other decisions, the Respondent’s decision to declare his employment redundant and the omission from his 1999-2000 OPE of the views of other reviewers.

21. On March 1, 2001, after his departure from the Bank, the Applicant began receiving an unreduced pension under the Staff Retirement Plan.

22. The Appeals Committee held a hearing in the Applicant's case on May 29, 2002. In its Report dated July 15, 2002, the Appeals Committee recommended that the Applicant's requests for relief be denied. By letter dated July 22, 2002, the Vice President, Human Resources, informed the Applicant that she had accepted the Committee's recommendation.

23. The Applicant filed an application with the Tribunal on November 19, 2002. In his application, the Applicant requests compensation in the amount of three years' net salary as well as legal costs.

Considerations

24. The Applicant in this case contests the "wrongful and pretextual decision" to declare his employment redundant pursuant to Staff Rule 7.01, paras. 8.02(d) and 8.03. The Applicant claims that he was targeted for redundancy by his immediate supervisor, the Transport Sector Manager, ECSIN, Ms. X, who allowed her personal differences with, and discriminatory attitude toward, the Applicant to taint her decision on how to reduce the "mismanaged budget" of her Department. The Respondent states that the Applicant's redundancy was implemented in order to accommodate mandated budget cuts and to increase efficient administration, and that all procedural requirements imposed by the Principles of Staff Employment, Staff Rule 7.01, paras. 8.02(d) and 8.03, and the Tribunal's jurisprudence were "scrupulously" followed.

25. As the Tribunal has found in the past, a decision to declare a staff member redundant is discretionary and the Bank's powers in this respect are subject only to limited review by the Tribunal. The exercise of such discretion will be overruled by the Tribunal only if it constitutes an abuse of discretion, being arbitrary, discriminatory or improperly motivated, or otherwise in violation of the Staff Rules, the Principles of Staff Employment or due process. (See *Mahmoudi* (No. 2), Decision No. 227 [2000], para. 24.) The Tribunal has also noted in this respect that it is not often easy for staff members to substantiate allegations of arbitrariness or lack of fairness amounting to an abuse of discretion, and that it is incumbent on the Tribunal to require the strictest observance of fair and transparent procedures in implementing the Staff Rules dealing with redundancy. (*Yoon* (No. 2), Decision No. 248 [2001], para. 28; *Harou*, Decision No. 273 [2002], para. 27.)

26. The Applicant appears to be challenging as pretextual the budget reductions that took place and resulted in the redundancy of his employment. The Applicant claims that no transparent business plan existed for his manager to decide that only three Transport Economists in ECSIN were needed, and that the only bases alleged are a regional budget overrun in fiscal year 2000 ("FY00") and a need to reduce the budget in FY01. The Applicant adds that the Respondent does not even support with any evidence its claim that budget reductions took place from 1998 to 2001. On the other hand, the Applicant clarifies in his pleadings that he does not dispute the "obvious budget mismanagement" that took place at the Bank, but highlights that the Respondent treated him unfairly and in violation of Staff Rules and procedures when it declared him redundant under Staff Rule 7.01, para. 8.02(d).

27. In any event, and judging from the record, the Tribunal finds that the Respondent has satisfactorily explained that budget reductions existed in the Transport Sector, that the resulting staffing reductions were necessary at the time of the Applicant's redundancy, and that the Applicant was not the only staff member affected. According to the record, as well as the Director's, ECSIN, and Ms. X's testimony before the Appeals Committee, the Department was facing a budget deficit. In addition, many within the Bank regarded infrastructure as a "sunset sector," and ten ECA countries were preparing to access the EU, thus relying less on the World Bank for assistance. Because of these reasons, the reduction in the work program of Transport Economists became inevitable. In addition to the above, it is also on record that before staff reductions were implemented, a series of budget cuts in other areas were implemented, including cuts in overhead and other costs. It has also been shown that these budget and staffing cuts spanned a number of years, and that while many staff left with voluntary separations or redundancies, the reduced work program in ECSIN required the elimination of two positions at level G in FY00.

28. The Tribunal finds that the decision to reduce the number of Transport Economists at level G in FY00 was an effort to lower costs and to manage the Department in an efficient manner. It is within the discretionary power of management to decide on such a budget strategy, and the Tribunal will not substitute its judgment for that of the Respondent absent abuse of discretion. (See *Lee*, Decision No. 241 [2001], para. 31.)

29. Additionally, the Tribunal finds that the Respondent correctly decided that the redundancies should be dealt with under Staff Rule 7.01, para. 8.02(d), which requires that “[e]mployment may become redundant when the Bank Group determines in the interests of efficient administration that: ... (d) [s]pecific types or levels of positions must be reduced in number.” In this case, it was reasonable to deal with redundancies under this provision since the positions envisioned to be reduced were of the same level (i.e. level G).

30. In this respect, the Tribunal notes that the Applicant did not assist his arguments that the redundancy declaration was not in the interests of efficient administration and that the Bank mismanaged its budget, when he admitted to being unsuccessful in finding vacancies after being told in September 1999 to look elsewhere for a job. He explained in his testimony before the Appeals Committee that the Bank had been “contracting,” not “expanding,” at the time of his search. Moreover, the fact that many staff members in ECSIN were separated through MAS or redundancies further casts doubt upon the Applicant’s claims that he was individually targeted or treated unfairly in having his employment declared redundant.

31. Finally, the Tribunal notes that, while the Applicant claims that infrastructure projects are again becoming a priority for improving the investment climate in developing countries, that the number of Transport projects has recently increased in the Bank so that more Transport Economists will presumably be hired, and that, for this reason, advertisements have been placed by the Bank in order to hire Transport Economists, he does not provide any evidence for these claims and, as the Respondent points out, such job advertisements have not been placed by ECSIN.

32. The next question for the Tribunal to examine is the Applicant’s allegation that the Respondent failed to comply with the requirements of Staff Rule 7.01, para. 8.03, which provides that “[w]here positions are reduced in number under paragraph 8.02(d) ..., the selection of staff members whose employment is redundant shall be made on the basis of managerial judgment about the skills needed by the Bank Group to carry out its work effectively, taking into account the following factors:

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

33. The Applicant first claims that the comparison of his performance with that of the other three Transport Economists at level G was unfair. He alleges that the Respondent has produced no evidence to support its claim that the Applicant was a “lower performer” than the other three Transport Economists, and he asserts that his performance was excellent during his 30 years with the Bank. He adds that he had a higher educational level and longer experience than any of the other Transport Economists.

34. The Respondent for its part states that when the Applicant’s managers evaluated the performance of the four Transport Economists, they focused on actual performance as required by Staff Rule 7.01, para. 8.03(a), and not on seniority or educational credentials. The Respondent points out that, although the Applicant had a sound educational background and technical strengths, he had behavioral problems that undermined his overall performance and effectiveness as a project team leader.

35. Furthermore, Ms. X testified before the Appeals Committee that when comparing the performance of the four level G Transport Economists, she found that two of them exhibited, on balance, a performance superior to that of the Applicant. She admitted that the most junior Transport Economist in the Unit, i.e. Ms. D, had weaker

technical skills than the Applicant because she was more junior, but that from the feedback Ms. X received about her it appeared that she had significant potential to develop. The redundancy rationale for the Applicant's position presented in the Proposed Staff Severance Form likewise stated that the Applicant's performance did not improve relative to the feedback provided over time, while Ms. D's performance had improved.

36. The Tribunal notes that the evaluation of the relative performance of staff members is a matter of managerial discretion which it will not review absent clear evidence of abuse of discretion. (See, e.g., *Jassal*, Decision No. 100 [1991], para. 37.) The Tribunal cannot find that such evidence exists here. On the contrary, the Tribunal finds clear evidence in the record to support the Respondent's allegations regarding certain behavioral problems in the Applicant's performance and his failure to improve in response to feedback given to him.

37. A review of the Applicant's CV makes clear that the Applicant had a very impressive educational background and work experience. A further review of his OPEs for 1997 and 1998-99, which the Respondent took into account when it compared the Applicant's performance with that of the other Transport Economists, also shows that the Applicant had very strong technical skills, and, as a result, received ratings that were mostly "Fully Successful," some "Superior," and even in one case "Outstanding." The Applicant, however, received only an "Improving" rating for 1997 and a "Partially Successful" rating for 1998-99 for his interpersonal skills and teamwork. In their comments in his OPEs, both the Applicant's former immediate supervisor and Ms. X noted the need for the Applicant to pay more attention to communications with Country Team members, Country Directors for the various countries, and clients, and also to listen and accept others' viewpoints and to show more respect for them. Further, according to the testimony of the Country Director for Georgia, the Applicant's inability to consult with colleagues and to coordinate with others, as well as his tendency to pursue his own course, meant that he required more supervision than other Team Leaders. This was a factor which contributed to his removal as PTL from the Georgia Transport Projects. In addition, the Respondent's allegations regarding the Applicant's problems in coordinating with others have been documented in several communications between the relevant staff members (i.e. the Applicant, his managers, the Country Director for Georgia and even the staff of the Legal Department).

38. Another record showing the continuation of the Applicant's behavioral problems is his 1999-2000 OPE. Although this OPE was not taken into account by the Applicant's managers when they compared his performance with that of the other Transport Economists, its review is helpful to the extent that it records problems in the Applicant's performance which were being discussed by his colleagues and managers in 1999 when the rationale for the Applicant's redundancy was formed. This OPE shows that because of the Applicant's failure when he was a PTL for the TTFSE Project to coordinate with team members, client countries, and important stakeholders, such as the EU, complaints were raised by them against him, and consequently he had to be removed as PTL from this project as well. The Applicant's behavioral problems in this respect are also in evidence, as documented in the statement of the Deputy Resident Representative of Bosnia, and also by a series of contemporaneous e-mails – written around the spring of 1999 – regarding the Applicant's performance on this project.

39. Further review of the Applicant's OPEs and the e-mails mentioned above substantiates Ms. X's claim that the Applicant's performance did not improve relative to the feedback provided to him over time and despite the long discussions she had with him. In addition, evidence of the Applicant's problems also appears in the Proposed Staff Severance Form which explains the rationale for the Applicant's redundancy.

40. It being established that the behavioral aspects of the Applicant's performance did not improve over the years, the Tribunal finds that it was within the discretion of management to anticipate greater development potential in Ms. D, a more junior economist, especially since para. 8.03 of Staff Rule 7.01 provides that "the selection of staff members whose employment is redundant shall be made on the basis of managerial judgment about the skills needed by the Bank Group to carry out work effectively." It was reasonable, therefore, for the Respondent to conclude on the basis of the Applicant's well documented problems in the behavioral aspects of his performance that he would not be able to carry out his work in the future as effectively as could the other Transport Economists.

41. The Applicant has alleged that due process was violated because he was not given appropriate support by management in resolving problems regarding his work. He also contends that he was never given the opportunity to defend himself and refute the “baseless” claims made against him in the Proposed Staff Severance document which presented the rationale for his redundancy. The Tribunal finds that the Applicant’s claims in this regard are unsubstantiated. Clearly, the Applicant had knowledge of the problems relating to the behavioral aspects of his performance, as these were documented in some of his OPEs, particularly those for 1997 and 1998-99 which were taken into account by his managers in comparing his performance to that of the other Transport Economists. More importantly, it is evident that in all of his OPEs, the Applicant availed himself of the opportunity to respond in detail to all of the comments and ratings of his supervisors, including those related to issues of teamwork and interpersonal skills. Furthermore, it is on record that the Applicant and Ms. X had many discussions regarding such problems as well as his removal as PTL from the Georgia and TTFSE projects. The Tribunal finds therefore that the Applicant’s due process rights were respected and that the Applicant had ample opportunity to rebut and correct any alleged deficiencies in this respect.

42. The Applicant further argues that if he was a poor performer, Ms. X should have taken the correct managerial decision to separate him on grounds of “unsatisfactory performance.” This contention of the Applicant lacks merit. It is clear that the Applicant’s performance was never evaluated as unsatisfactory; it was considered as merely marginally less satisfactory than those of the other Transport Economists. Moreover, as made clear by the Director, ECSIN, the Applicant was a strong performer who “but for” the redundancy requirements would have remained in the employ of the Bank. As the Tribunal has found in the past, the redundancy provisions must not be used to deal with unsatisfactory performance, but this does not mean that the performance or skills of a staff member may not be taken into account when deciding who should be rendered redundant in the context of a redundancy procedure under Staff Rule 7.01, paras. 8.02(d) and 8.03. (See *Jassal*, Decision No. 100 [1991], para. 31; *Hoezoo*, Decision No. 181 [1997], para. 6; and *Harou*, Decision No. 273 [2002], para. 37.)

43. The second factor which the Respondent had to consider before making the redundancy decision under Staff Rule 7.01, para. 8.03(b), was the issue of the Applicant’s fungibility, i.e. whether the Applicant’s abilities and experience could be used elsewhere in the Bank Group. The Respondent explains that the determination of the four Transport Economists’ respective abilities to work across the Bank was based on two criteria: (a) how much cross-support the person gave to the other Regions; and (b) how much the person worked on other sectors. The Respondent has produced evidence showing that two of the more senior Transport Economists who had worked mainly in the Transport Sector provided the most cross-support to units outside ECSIN, while the Applicant and Ms. D offered the least cross-support to other units. In fact, Ms. D provided less cross-support than the Applicant. Ms. X, however, testified before the Appeals Committee that Ms. D was new to the Bank and unable to take cross-support assignments because she was due to take maternity leave. In addition, Ms. X testified that Ms. D worked extensively outside the Transport Sector in Water Sector projects, and in this respect she was considered the more fungible of the two. The Applicant for his part worked exclusively in the Transport Sector during the period under review. The testimony of Ms. X, and the rationale for rating the Applicant as the least fungible as presented in the Proposed Staff Severance Form, appear reasonable and the Tribunal cannot find anything in the record to question the Respondent’s assessment in this respect. Based on the evidence before it, the Tribunal cannot conclude that the Applicant’s claim on this issue is justified.

44. With regard to his ability to work across the Bank, the Applicant also questions the Respondent’s assertion that the Transport Sector Board was approached before the redundancy decision was made in order to find another position for him. In addition, he questions its claim that the Director, ECSIN, and Ms. X made good faith efforts – which, however, proved fruitless – to find him alternative assignments before declaring his employment redundant.

45. The Tribunal notes that despite the Applicant’s doubts as to the Respondent’s alleged efforts to find him alternative employment, the Applicant himself admitted in his testimony before the Appeals Committee that he, too, was unable to find alternative employment when he was encouraged in September 1999 to look for another job. The Tribunal further notes that consultation with the “applicable Sector Board” is required by Staff

Rule 7.01, para. 8.03, before a redundancy decision is made and in most cases it is done in order to see if another position can be found in other Regions in the Sector before an employment is declared redundant. Although the Tribunal cannot ascertain when exactly the Sector Board was first approached, there is evidence in the record that the Applicant's case was reviewed at a meeting in April 2000. Even though the minutes of this meeting do not provide details as to the discussion of the Applicant's case, they do state that the Board voted no objection to the redundancy request after "careful consideration." This conclusion is further reinforced by the June 9, 2000 e-mail of the Chairman of the Board to the HR Officer confirming that the Sector Board's decision not to object to the redundancy was based on the fact that no other Region had indicated a need for the Applicant's skills at the time, and that the separation was in compliance with an agreed Staffing Strategy. Finally, contrary to the Applicant's claim that the Sector Board was required to examine the performance of the Transport Economists or the existence of volunteers, the Tribunal finds that the Sector Board has no such authority under the Staff Rule.

46. The final requirement under para. 8.03(c) that the Bank must consider before deciding on a redundancy under Staff Rule 7.01, para. 8.02(d) is whether there are volunteers for termination who are willing to accept severance payments pursuant to Staff Rule 7.01, paras. 8.08 or 8.09. The Applicant claims that despite the fact that one of the four Transport Economists had volunteered for redundancy, the Respondent refused to consider him because it had "targeted" the Applicant for termination. The Respondent has explained that the reason that the volunteer was not accepted was because he was a top performer who had taken over a problem project in a country with huge issues in the transportation sector. Ms. X expressed the view that his departure would have been detrimental and destructive to the program and to the Bank's relationship with the client, so she decided not to accept his offer as a volunteer for redundancy. The Tribunal accepts that a volunteer for redundancy is not automatically entitled to have his or her offer accepted, nor does the Bank have an obligation to accept such an offer. The decision to accept the offer of a staff member who volunteers for redundancy is subject to managerial discretion in accordance with Staff Rule 7.01, paras. 8.02 and 8.03.

47. One of the principal claims that the Applicant has made in his application is that his redundancy was improperly motivated because he was targeted for termination by his immediate supervisor, Ms. X, who was new to the Department and was intimidated by him. Although the Tribunal appreciates the difficulty for an applicant in producing substantiating evidence of improper motivation, it cannot find anything on record to support the Applicant's claim that he was improperly targeted for redundancy by Ms. X. On the contrary, the record shows that Ms. X gave the Applicant positive ratings throughout his OPEs and acknowledged his technical skills. Although she did point out problems in his teamwork, such problems had also been acknowledged by the Applicant's former manager in his 1997 OPE, by the Country Director for Georgia, and by the Deputy Resident Representative for Bosnia regarding projects where the Applicant had worked as a PTL, and as reflected in several communications of the Legal Department and of representatives of the Bank in the EU. The Tribunal thus finds that the Applicant's claims against Ms. X in this regard are unfounded. This conclusion is reinforced by the fact that the redundancy decision was not made by Ms. X alone. As is evident by the Proposed Staff Severance Form and the Applicant's notice of redundancy, the primary official who handled the Applicant's redundancy was the Director, ECSIN. The final redundancy decision was made by the Acting Vice President, ECA.

48. The Applicant has also made an unsubstantiated claim of age and gender discrimination against him by Ms. X. He seems to indicate that Ms. X favored Ms. D over him because she was younger like herself and a woman. That argument, however, conflicts with the actions of Ms. X, who at the same time considered another male Transport Economist, the oldest in the Department, as a star performer and did not accept his offer to volunteer for redundancy. The Tribunal finds, therefore, that the Applicant has not substantiated his claim in this regard. Furthermore, with regard to age discrimination, the Tribunal noted in *Lee*, Decision No. 241 [2001], para. 39:

Moreover, [an argument of age discrimination] in and of itself is not evidence of abuse of discretion on the part of the Bank. It only emphasizes the need for the Respondent to apply a higher standard of care with respect to a decision terminating the employment of a staff member who has been in the service of the Respondent for a long period of time, and who, on account of his or her age, is less likely to find

employment elsewhere.

49. The Applicant has made additional claims regarding the notice of the redundancy of his employment. First, the Applicant claims that he never received any notice with regard to the grounds for the redundancy decision. However, the Tribunal notes that it is clearly stated in his notice of redundancy dated June 28, 2000 that his employment with the Bank had been declared redundant in accordance with Staff Rule 7.01, paras. 8.02(d) and 8.03, and therefore his claim on this point is flawed.

50. The Applicant indicates that he was not given adequate notice that his position would be declared redundant and that *post hoc* rationalizations were prepared hastily to justify the redundancy after negotiations for the conclusion of an MAS failed. The Tribunal found in *Dussert*, Decision No. 203 [1998], para. 12, citing *Garcia-Mujica*, Decision No. 192 [1998], para. 19, that “although there is no obligation under the Staff Rules to give warning prior to the notification of redundancy, a basic guarantee of due process requires that the staff member affected be adequately informed with all possible anticipation of any problems concerning his career prospects.”

51. The Tribunal finds in this case that the Respondent met the standard set by the Tribunal in its jurisprudence and timely informed the Applicant of pending problems concerning his career prospects. As the record indicates, the Director, ECSIN, made it clear in 1998 and 1999, through meetings with staff, that budget reductions would result in reductions of positions. The Director, ECSIN, then specifically informed the Applicant in the fall of 1999 of his unfavorable job prospects in ECSIN and encouraged him to look for another job. Subsequently, the Director, ECSIN, approached the Applicant in February 2000 and offered him the option of an MAS. Furthermore, the HR Officer avers that the option of the redundancy vis-à-vis an MAS, and the benefits derived under either option, were discussed with the Applicant in the negotiations for separation. Therefore, the Applicant should have been reasonably aware of the possibility that if the MAS negotiations failed, his position would be eliminated by an application of the redundancy rules.

52. The Applicant alleges that deceptive practices were followed in converting a voluntary separation into a forced one in his case. In this respect, the Applicant claims that the Respondent continued MAS negotiations with the Applicant after it had obtained agreement for his redundancy from the Sector Board on April 19, 2000. While not being informed of that agreement, he received his notice of redundancy on June 28, 2000 in accordance with a predetermined time frame, i.e. the end of FY00.

53. The Tribunal does not find any merit in the Applicant’s claims in this respect. First, although it was admitted by the Respondent that there had been a deadline for either issuing a redundancy notice or for concluding an MAS by June 2000, it has been adequately explained by the Respondent that there was no improper motivation behind this. The reason given is that a severance package, drawn from funds under the Strategic Compact, would be reduced by twenty per cent if a request for it was not processed by June 2000; therefore the Applicant would receive lower financial benefits. The Respondent’s actions in this respect did not prejudice the Applicant.

54. Further, the record shows that the MAS negotiations were made by the Respondent in good faith and that the redundancy was not used as a negotiating tool by the Respondent, as the Applicant claims. The MAS was offered to the Applicant in order for him to take advantage of benefits provided under the agreement, such as his receiving a slightly lower severance payment than the one received under redundancy in return for the right to consult at the Bank upon his separation, an option that would not be available to him under redundancy. Moreover, it is evident that the Respondent made numerous efforts to accommodate the Applicant’s requests, but apparently was restricted by Bank policies with regard to the conclusion of an MAS. This, however, does not constitute evidence of managerial abuse of discretion. Furthermore, the Tribunal does not consider it improper for the Respondent to have obtained clearance from the Sector Board for the Applicant’s redundancy while the MAS negotiations were taking place, as it was clear in advance that the Applicant would be separated and that there was an effort to arrive at either of the two options (redundancy or MAS) before the time of reduction in severance payments. Furthermore, as the HR Officer explained, the option of an MAS is always available, even after the declaration of redundancy, until the date of separation. The Tribunal therefore does

not find it inappropriate or prejudicial to the Applicant that the two procedures coincided.

55. In view of the foregoing conclusions, the Tribunal finds that the decision to declare the Applicant's position redundant under paras. 8.02(d) and 8.03 of Staff Rule 7.01 was not an abuse of discretion, and that the procedure implementing the redundancy was properly followed.

Decision

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

/S/ Bola A. Ajibola

Bola A. Ajibola

President

/S/ Nassib G. Ziadé

Nassib G. Ziadé

Executive Secretary

At London, England, May 20, 2003