

Decision No. 40

The World Bank Staff Association,
Applicant

v.

International Bank for Reconstruction and Development,
International Finance Corporation,
International Development Association,
Respondents

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and A. K. Abul-Magd, Vice Presidents, and R. A. Gorman, E. Lauterpacht, C. D. Onyeama and Tun Suffian, Judges, has been seized of an application, received June 30, 1987, by The World Bank Staff Association against the International Bank for Reconstruction and Development (the Bank), the International Finance Corporation (IFC), and the International Development Association (IDA). The Tribunal decided that oral proceedings requested were unnecessary and should not be ordered. After the usual exchange of pleadings the case was listed on October 1, 1987.

2. Several procedural decisions were taken in this case:

(i) Since the Applicant's application was submitted with fourteen other applications relating to similar subject matter, the Applicant submitted in explanation of his application a consolidated memorandum covering all fifteen cases. The Respondents objected to the consolidation of the cases. The President ordered that the cases not be consolidated and that legal memoranda be submitted by each Applicant in each case separately but that "in order to economize on documentation, when identical legal arguments are made and corresponding annexes are filed in more than one case, cross-references in an individual application to arguments made and annexes filed in another application which has been submitted on the same date, are acceptable."

(ii) In view of the Applicant's request for expedited hearing of its case and the Respondent's willingness "to discuss mechanisms for expediting" the case the President shortened the time limits for the submission of pleadings and modified the application of the relevant Rules with a view to having the case decided at the next session of the Tribunal.

(iii) In response to the Applicant's request for provisional measures the Tribunal, considering that the situation was not urgent in this case, decided not to take any action in regard to that request.

The relevant facts:

3. The Applicant is the Staff Association which was created during the early years of the Bank's existence "to promote and safeguard the rights, interests and welfare of the members of the Staff," as was stated in Article II of its Constitution. It pursues its objectives by:

- (a) Maintaining a channel of communication between the staff and management;
- (b) Providing staff members with information about developments affecting their interests, and ensuring as far as possible that the management inform the staff about such matters;
- (c) Making arrangements whereby problems and difficulties of staff members can be identified and, if possible, solved;
- (d) Serving as the negotiating agent for the staff with management on all matters of common interest;
- (e) Providing representatives in any joint executive, advisory or consultative arrangements with

management that might be set up to deal with matters of concern to the Staff; and

(f) Making studies of critical areas in management-staff relations, actual or potential, with a view to pointing to solutions.

It is a membership organization, open to all members of the staff of the Bank and IFC. Currently it is composed of about 6,000 members from both organizations. The individual members of the Staff Association elect delegates to the Delegate Assembly, which is the main deliberative and decision-making organ of the Staff Association. Currently there are 59 staff Delegates. The staff Delegates select an Executive Committee, which in turn selects its Chairman. All the staff Delegates and Executive Committee members continue their normal activities in their respective organizations throughout their service to the Staff Association. The person selected to be the Chairman is relieved by the Bank of his or her duties at the Bank during the one-year term, but continues to be employed and compensated by the Bank.

4. The Bank has accorded to the Staff Association a formal role in the formulation of Bank policies. In the Principles of Staff Employment, the Bank states as follows in Principle 10.1:

The efficient and harmonious conduct of the Organizations' business requires that the President be cognizant of staff views in matters concerning the staff and that these views be given due consideration. In recognition of the right of the staff to associate, the President shall establish appropriate mechanisms to consult with representative members of the staff selected by the staff about the establishment of and changes in personnel policies, conditions of employment, general questions of staff welfare, and the establishment, amendment or revocation of Principles and of Staff Rules.

This Principle has been implemented in greater detail in Staff Rule 10.01, which provides that the Bank shall, in carrying out its responsibilities under Principle 10.1, first consult with representatives of the staff, and also that it is the Staff Association which is to designate those representatives.

5. In a letter dated October 8, 1986, to the staff the President of the World Bank stated that "the Bank's current structure was established more than a decade ago, when this was a smaller institution and the issues confronting the developing world were very different. A new look at our organization is therefore not only timely but essential." Further, he referred to the following three objectives of a proposed reorganization:

- (i) enabling the Bank to respond effectively to the needs of member countries and to the changing focus of the Bank's mission;
- (ii) placing greater emphasis on strategic planning, a clearer definition of priorities, and improved budget planning and control; and
- (iii) emphasis on administrative efficiency.

The President concluded that the best approach to reorganization was to undertake an internally-directed review, with the assistance of professional management consultants. An international consulting firm was retained and the reorganization effort began with a study conducted by the consulting firm which included more than 100 interviews with Executive Directors and with Bank staff.

6. After the consultants had submitted their findings the President in a letter to the staff, dated December 1, 1986, concluded that it was clear that organizational changes were necessary to ensure effective and efficient response to the needs of member countries and to the challenges of a changing global economy. He also announced his decision to establish a senior management organization with four Senior Vice Presidents in the areas of Operations, Finance, Policy Planning and Research, and Institutional Services.

7. Phase I of the reorganization effort having thus been concluded, Phase II was undertaken to define the mission and organization of the four complexes and to address the conclusions of the Phase I study. A Steering Committee consisting of Bank staff and outside experts, and three Task Forces, were established in

order to achieve the objectives of Phase II.

8. In his letter to the President, dated December 5, 1986, the Chairman of the Staff Association suggested that the Staff Association should be more closely involved in Phase II than it was during Phase I. The Chairman concluded that “our desire to become more closely involved is aimed at supporting the directions you have set out for the Bank and at helping to assure the staff at large of the importance of specific reorganization measures and the need to work together to implement them efficiently and with minimum disruption.”

9. On January 5, 1987, the Steering Committee and the three Task Forces began to work and the President was briefed regularly on the progress of the work accomplished.

10. On January 21, 1987, the Chairman of the Staff Association in a letter addressed to the President expressed the concerns of the staff about the direction the reorganization was taking. He stated that:

They (the staff) are disturbed when they read the articles in the press purportedly quoting “official” sources in the Bank for various figures of possible staff cuts following the reorganization The idea that the reorganization might be already targeted on achieving massive staff cut received further reinforcement last week. The heads of 24 Bank and IFC departments received a memo from the Chairman of one of the Task Forces asking them to indicate within a few working days how their service standards would be affected by cuts of 10, 20 or 30 percent. Many recipients of this request were surprised that such a question, even if hypothetical, should be raised so early in the reorganization process because it seemed inconsistent with the objectives you had described in your memoranda to the staff.

He concluded:

We remain committed to supporting the objectives of the Bank reorganization exercise ... However, we do believe it to be essential and urgent to clarify the position on the two matters of burning concern to the staff —the rumors of massive reductions, and the criteria and provisions that would be employed for handling any redundancies – that we wanted to bring to your attention.

11. In a letter dated February 4, 1987, the Chairman of the Staff Association announced to all staff the formation of the Staff Association’s special task force on the reorganization (known as SABRE) to provide input into the reorganization process. In the minutes of a meeting of Operational Vice Presidents held on the same day it was recorded that the President noted in relation to staffing implications of the reorganization, that “the purpose of the reorganization study is to strengthen the Bank’s effectiveness and responsiveness to member countries” and that “contrary to news media reports there is no explicit or implicit staffing goal (emphasis in original) underlying the reorganization and that if reductions were warranted they would be ‘marginal’.”

12. On February 4, the Chairman of the Steering Committee met with the Delegate Assembly of the Staff Association to describe the objectives of the reorganization and the work of the Steering Committee. It was reported to the staff by the Staff Association that he had said that it might take several years for full implementation of the reorganization plan so that any necessary staff reductions could be achieved through attrition rather than forced separation and that he did not believe that the Bank could “fire” a staff member except for “cause” and that if involuntary separation were required the Bank would offer a “fair” separation package. Later the Chairman of the Steering Committee contradicted the statement relating to termination of service and separation packages.

13. By mid-March, 1987, the Task Forces had conducted over 750 interviews with staff and managers at all levels. Some 400 memoranda and letters also reached the reorganization teams, written by staff members who had responded to the President’s invitation to express their views in order to have the reorganization benefit from as wide a spectrum of ideas as possible.

14. In a letter to the staff, dated March 16, 1987, the President noted that he would make final decisions relating to the implementation of the reorganization by early May, after receiving the Steering Committee’s

recommendations and after consulting with the Executive Directors, the managers and the Staff Association. On March 17, 1987, the President confirmed to the Chairman of the Staff Association that the Staff Association would be kept fully informed and would have an opportunity for input before he made any final decisions.

15. In a letter to the staff, dated April 3, 1987, the Chairman of the Staff Association noted that “[s]o far, we know almost nothing about how the reorganization is to be implemented and what the possible redundancy implications might be and this is the area which is worrying most people.” Furthermore, he reiterated the Staff Association’s support for the reorganization’s declared objectives and noted his concern that managerial and staff selections might be made without adequate criteria, and without specific rules and safeguards to protect staff against arbitrary or unfair management decisions.

16. On April 6, 1987, the President announced that he, as well as the Executive Directors, Senior Management and the Staff Association, had received the Steering Committee’s recommendations in the form of a report entitled “Reorganizing the Bank, An Opportunity for Renewal”, and that Phase III of the process, which included consultation/deliberation and decision-making, had begun.

17. The Steering Committee Report indicated the principles that the organizational design of the reorganized Bank should reflect. It envisioned a changing role for the Bank and consequently changing needs in the organizational structure. It recommended that:

- (1) the role of the President in providing overall strategic and policy guidance to the Bank, and in integrating the major institutional functions, should be strengthened;
- (2) the functions of research, policy formation, strategic planning and institutional budgeting should be grouped together under the Senior Vice President for Policy, Planning and Research;
- (3) the Operations Complex should be reorganized into Country Departments combining Programs and Projects functions, with regional Technical Departments and the six regions consolidated into four; and
- (4) to the extent possible, support functions should be decentralized to user departments and subjected to market tests of efficiency.

18. In a newsletter dated April 10, 1987, the Chairman of the Staff Association expressed the Staff Association’s concern over an estimated 500 probable redundancies which would result should the Steering Committee recommendations be accepted, as well as over the fact that compensation packages for redundant staff and the staff selection process itself had not received the appropriate attention they deserved.

19. During the following week the Staff Association presented its comments in a paper dated April 24, 1987, to the Committee of the Executive Directors on Compensation. The paper dealt with the issues of implementation and in particular the need (i) to protect the interests and institutional commitment of the staff, (ii) to remove uncertainty as quickly as possible and (iii) to provide transparent criteria for selection and due process to all staff concerned.

20. In a memorandum to the Executive Directors, dated May 4, 1987, the President announced the recommendations of the Steering Committee that he said he had adopted after holding extensive consultations with the Executive Directors, senior managers, staff members and representatives of the Staff Association. He concluded that he intended to take whatever time was required to implement the reorganization in an orderly and effective way and reiterated that the purpose of the reorganization was not to “downsize” the institution or to achieve administrative budget reductions per se.

21. The same day a paper entitled “Reorganization of the Bank: Staff Selection Redeployment and Redundancy” was submitted by the President to the Executive Directors. The paper was discussed with the Committee on Staff Compensation Issues of the Executive Directors and also with the Staff Association and several changes were incorporated in the final document. This paper provided criteria determining the design of

the selection process to the extent possible to meet the following objectives, namely to:

- (a) Retain staff whose skills will be needed in the reorganized Bank and place them in positions where those skills can be used effectively.
- (b) Place a large majority of managers and staff in their positions as quickly as possible to minimize anxiety and disruption internally and provide for continuity of service to our (the Bank's) clients.
- (c) Follow a practical timetable which makes ample provision for skills and training needs assessment, matching individual qualifications and skills against selection criteria, and exchange of information on available positions and staff not yet placed, orderly work transition, and taking of decisions by both managers and staff.
- (d) Ensure that selection and assignment decisions are made, and seen to be made, in a fair, transparent manner by matching staff skills, knowledge and experience with explicit requirements of the job which are known to staff before selection.
- (e) Preserve staff integrity, dignity and morale both in the selection process and in the treatment of staff leaving the Bank.
- (f) Provide for the training or re-training of staff for available positions when this is cost-effective.
- (g) Maintain a mix of managers and staff which respects the Institution's objectives for geographic and gender distribution.
- (h) Be consistent with the diverse cultural and individual variations and needs of staff and the desired future culture of the Bank.
- (i) Provide for voluntarism and staff preferences for jobs to the extent compatible with other objectives, particularly timeliness.

Attachment I to this paper stated the general principles developed to guide the selection of staff. It was stated that, although the guiding principles for selection currently in force in the Bank would be maintained throughout the process, some particular elements could be new or may need special attention. The principle guiding parameters were stated to be the following:

- (a) The functional description and work program of the unit.
- (b) The determination of the numbers and types of staff required for each unit.
- (c) The key job accountability and staff selection criteria for each unit which the Personnel Teams and managers will together develop.
- (d) Staff profiles (as evident in the staff profile register and PPRs) in terms of available (or trainable) skills, experience and comparative effectiveness.
- (e) Selection will be made first according to required skills. If more staff have requisite skills than there are positions available, the selection will be made in light of comparative effectiveness and performance.
- (f) Incumbency will be an underlying factor, since in many cases the market for selections of staff will be limited to staff in existing or constituting units. Incumbency alone, however, is not to be given any precedence over needed skills as a selection criterion.

The paper also provided further details on the selection process for managers and for staff, the financial compensation packages for staff members whose employment was terminated in the course of the reorganization, the grievance procedures available to the staff as well as comprehensive communications plans to ensure that all concerned staff got the same information in a timely manner.

22. However, because the ground rules for staff selection provided in this paper were quite complex, the Bank and the Staff Association agreed that a working group should be established to produce a comprehensive overview of the selection process, together with detailed timetables of actions to be taken by managers, personnel officers and staff members. During the period May 13-22, 1987, the working group completed several documents describing the implementation of the selection process and distributed them to all managers at the Division Chief level and above, to members of the Personnel Management Department (PMD) and to the teams of Staff Advisers. One of the distributed documents, a memorandum dated May 22, 1987, from the Vice President (VP), Personnel, addressed to VPs and Directors concerning the Division Chief selection process, instructed the recipients to work together with their respective Senior Personnel Officers "to review, define and/or develop the key accountabilities and selection criteria provided by the Task Forces which are in the attached Data Book." It was also noted that selection would be made first according to required skills, and if there were more qualified staff than positions, on the basis of cooperative effectiveness and performance; incumbency would be an underlying factor but would not be given precedence over needed skills as a selection criterion.

23. In a newsletter, dated May 18, 1987, the Staff Association noted that "the way things are going, the entire selection process will be over before the actual implementation procedures have seen the light of day." Furthermore, it was said that in the present circumstances, instead of the proposals contained in the May 4 Paper sent to the Executive Directors, a revised implementation plan was needed along the following lines:

- (a) use natural attrition and the present above-average level of vacancies;
- (b) limit the numbers of redundancies in connection with the reorganization to structural redundancies only;
- (c) all further redundancies to be on basis of volunteers for Package "A", with Bank right to refusal on basis of objective skills/performance criteria;
- (d) deal with any other identified skills cases through a crash training program to be implemented immediately;
- (e) announce, and effectively implement starting FY89, more rigorous systems of performance setting and evaluation, with use of existing rules where clearly documented cases occur;
- (f) provide for future maintenance of an appropriate "skills mix" through effective manpower planning, staff training and flexible use of non-career employment; and
- (g) shorten the immediate implementation period to finish by July 31 (people can take vacations in August without fear of being fired).

24. On May 19, the Chairman of the Staff Association presented an address to the Executive Directors on the reorganization implementation proposals. He noted that since the Steering Committee had submitted its report to the President the staff had not received one single piece of information from the Bank's management about how the reorganization was to be implemented and that there was still confusion about why there had to be redundancies, how many there would be and how they would be chosen. Also the question was raised of how the redundant staff (of any category-structural, skill-mix or plain down-sizing) was to be selected.

25. On May 21, 1987, the President of the Bank informed the staff that the Executive Directors had authorized the amount of \$101.3 million to cover the direct cost of the reorganization, on the assumption that redundancies would not exceed 390 staff members. The President addressed the issues of the Staff Assignment Process, Voluntary Separation and Compensation Packages for staff leaving the Bank.

26. On staff assignment the President stated that staff whose positions were restructured or whose units were reduced in size would go through Round 1; the criteria for staff selection would be the skills and characteristics

needed for each position; incumbency would be an important factor but would not be given precedence over needed skills; Round 1 would cover the great majority of staff and was expected to be completed by July 15. Round 2 was to be a Bank-wide reassignment process during which every effort would be made to reassign those staff members who had or could acquire through training the skills needed for the remaining available positions; all staff in Round 2 would receive a vacancy roster of all available positions and managers would receive lists of candidates; Round 2 was expected to be completed by the end of September.

27. On voluntary separation the President stated that eligible staff wishing to leave the Bank would have an opportunity to apply for voluntary separation between June 15 and July 24; acceptance of such requests would be subject to the Bank's staffing needs and budget considerations.

28. In regard to compensation packages for staff leaving the Bank the President on May 21 stated that the Executive Directors had approved two reorganization-related compensation packages, one for staff who elected "Voluntary Separation" (Package A) and the other for staff who had not found appropriate positions in the Bank after all selection possibilities had been explored (Package B). Both packages had three basic elements: cash payments, pension entitlement and special benefits and services.

29. The President also announced three publications to be made available to the staff shortly, viz, (i) a new Staff Rule on "Implementation of the Reorganization," (ii) "Guide to Institutional Changes – 1987 Bank Reorganization" and (iii) "Implementing the World Bank Reorganization – A Guide to Staffing Policies."

30. On Friday, May 15, 1987, the Assistant General Counsel, Administration, had forwarded a draft of Staff Rule 5.09 on "Implementation of the Reorganization" to the Chairman of the Staff Association stating that the draft rule raised no issues that had not previously been discussed with the Staff Association and that she would appreciate receiving the comments of the Chairman of the Staff Association by 3 p.m. on Monday, May 18, 1987, so that the Rule could be issued after the meeting of the Executive Directors.

31. On May 18, 1987, the Chairman of the Staff Association in his memorandum to the Assistant General Counsel, Administration, noted that the Staff Association was reluctant to enter into any formal discussion of the proposed Rule until the Executive Directors had considered the implementation package on May 19 so that the Staff Association could assess the procedural implications of the Board's decision first and then proceed to begin formal consultation on the Rule implementing the changes. He stated that the Staff Association would be in a position to proceed to consult with management on the proposed Rule very soon after the Board meeting.

32. On May 20, 1987, the representatives of the Staff Association met with the Assistant General Counsel and the Director of Compensation for a working level meeting to discuss the draft of Rule 5.09. At this meeting the Staff Association gave its comments on the draft Rule and took note of modifications already made by the Legal Department (LEG) to the May 15 draft; some Staff Association points were accepted, others were discussed. The Staff Association was then advised that the Rule would be sent to the printer around noon the next day. The Staff Association was of the view that consultations on the draft Rule had not been completed.

33. On May 21, 1987, the Chairman of the Staff Association received from LEG at 10:30 a.m. a second draft of Rule 5.09 in which it was stated that the draft would be sent to the printer at 1:00 p.m. The Chairman called the Senior Vice President, Administration, at 1:00 p.m. to inform him that the Staff Association had strong objections to the Rule as currently written and that a memorandum summarizing these objections was being hand-delivered to his office. The memorandum stated:

We discussed our substantial concerns over this Rule in a three-hour meeting yesterday with LEG and COM. While we see some changes in today's draft reflecting some of our suggestions (e.g. on staff preference in the selection process) our most important areas of concern remain unchanged in this draft.

Without going into details again, our major concerns relate to the following:

(a) narrow and unclear definition of Bank units affected by the reorganization (1.03);

(b) absence of section setting out time-table, decision options and criteria for voluntary redundancy selection process;

(c) absence of principle that this Rule provides treatment no less favorable to staff than the set of relevant existing Rules; we note that the latter are “deemed modified and displaced” without time limit (1.04);

(d) we believe that the Release clause (12-01) is unacceptably broad and should cover only those claims arising from a decision that a staff member is redundant under this Rule;

(e) we cannot accept that only staff at level 27 or above should be eligible to serve as Administrative Hearing Officer (11.02.b).

The above does not exhaust our comments on the draft Rule. As made clear yesterday, without a reasonable time to discuss these, we would point out that consultations with the Staff Association on this draft Rule as required under Staff Rule 10.01 have not been concluded.

We therefore urge that this Rule not be considered as final. We are ready to discuss at your convenience.

34. On May 22, 1987, Staff Rule 5.09 was issued and circulated to the staff. Its provisions relate to staff selection, reassignment, and redeployment, and to the compensation benefits and institutional support that are available to staff who are not placed in positions in the reorganized Bank. It contained, among other things, a provision requiring a staff member who chose to take one of the separation packages referred to in the Rule to release “all claims the staff member might otherwise have against the Bank arising out of any circumstances occurring or any decisions taken before or on the date of acceptance” and to relinquish his right to internal remedies and to appeal to the Tribunal or otherwise.

35. On June 1, 1987, a document entitled “A Guide to Staffing Policies” was distributed by management to the Staff. The purpose of this document was to explain in simpler terms the staff selection process and the related separation packages contained in the May 4 Board Paper. This publication had been reviewed by the working group which was created (on May 13) by the VP, Personnel, in agreement with the Staff Association, in order to consolidate the efforts being undertaken in various parts of the Personnel Management Department on the detailed design of the implementation process. A member of the Executive Committee of the Staff Association joined the group after he had resigned from his Staff Association post in order to avoid a conflict of interest, but it was agreed that he would maintain contact with the Staff Association to keep them informed.

36. On Friday, May 29, 1987, at a meeting which the Executive Committee of the Staff Association had requested with the Senior VP, Administration, it had appeared that the Staff Association had not received a draft of this document. The VP, Personnel, offered the Chairman of the Staff Association to delay printing the document, if he could get Staff Association comments to him over the week-end so that the document could be printed and distributed on June 1, 1987. Since the Chairman replied that it was impossible to work on such short notice, the VP, Personnel, decided not to delay the issuance of this publication and to make changes through clarifying notices.

37. In a memorandum, dated June 4, 1987, to the Senior VP, Administration, the Chairman of the Staff Association stated:

I regret very much that this document, which vitally affects staff interests and their conditions of employment, was issued before the Staff Association had an opportunity to review it and make comments. This in itself is a breach of the Rule on Consultation. But it also, we believe, resulted in a paper coming out to staff that is unclear, less than accurate and less than reassuring about a staff selection process which the President assured us and the Board will be “fair and transparent”.

The Chairman also noted that “much of the document is clear and well presented; but there are too many error commissions.” He continued specifically commenting on major inaccuracies and unclear points.

38. On June 8, 1987, the first circular of a series entitled "Questions and Answers on implementing the World Bank Reorganization" was issued by the VP, Personnel, in order to clarify the document "A Guide to Staffing Policies." These circulars dealt with a selection of questions frequently asked by concerned staff and with answers prepared by the VP, Personnel, in consultation with the Staff Association.

39. According to the calendar of actions, VPs and Directors were to be selected and appointed effective June 1, 1987; the Division Chiefs were to be selected by June 4 and appointed effective July 1, 1987; offers by Division Chiefs to staff in Policy Planning and Research, Finance, and Administration were to begin by June 15, 1987 and to staff in Operations were to begin formally on June 22, 1987. The development of the selection process to be used in the reorganization was "a partial zero-based cascade approach" for the units to be reorganized. Under this approach, some units within the Bank were unaffected and others were scheduled for future review. For all other units staff were selected into positions beginning at the top management level and cascading down to all other levels. It was expected that 85 to 90% of the staff would have been placed in Round 1, i.e. staff selection and offers were to be completed by July 15, 1987. Staff was to have two weeks to accept offers. Round 2 was to close on September 30, 1987. Consequently, the organizational structure and its management were to be in place by July 1, 1987 and 85-90% of the staffing of the new structure was to be achieved by end-July.

40. One of the Executive Directors had addressed to the President of the World Bank a memorandum, dated June 12, 1987, concerning the implementation of the reorganization in which he made certain criticisms. He listed the aspects of the reorganization which his authorities considered the most contentious as follows:

- (1) At the outset, let me stress their strong belief that a reorganization such as the present one is neither an appropriate opportunity for granting promotions, nor a proper occasion for the settling of scores.
- (2) Some of the appointments which have been made in connection with the reorganization appear inexplicable, or not susceptible to any acceptable explanation.
- (3) Some of the promotions seem questionable.
- (4) It is hard to understand what has prompted you to request or acquiesce in the departure of a number of good people, or to encourage their decision to leave.
- (5) Cases exist which give credence to the notion that considerations which are only marginally or not at all relevant to the Bank's stated goals and mission are being allowed to govern the overall implementation of the reorganization.
- (6) Transparency, which was supposed to be one of the key features of the reorganization, has not been pursued, but avoided.
- (7) Last but not least, dedication, competence, and valuable and meritorious performance, which the staff has always been told are the determinant criteria for promotion, seem to have been grossly disregarded.

41. Apparently the implementation plan up to the end of Round 1 has been executed in a timely manner.

42. Because the Staff Association and its members concluded that they were adversely affected by the Bank's actions during the current reorganization, the Delegate Assembly of the Staff Association on June 22, 1987, adopted a Resolution authorizing the Staff Association and the members of the Executive Committee to file applications in their own right and on behalf of all staff members affected by the reorganization.

The Applicant's main contentions:

43. The Staff Association has standing in its own right to bring this action, because its purpose has been thwarted, its effectiveness has been undermined by the Respondents, and the Respondents' purposeful failure to engage in meaningful consultations with the Staff Association has caused the latter palpable and direct injury to its operations. This right of judicial standing is inherent in the recognition of the Staff Association as the

official representative group of the staff as codified in Staff Rule 10.01.

44. The same reasons which justify the right to judicial standing of the Staff Association in its own right also justify the right of the Staff Association to seek judicial relief as a representative of its members, particularly, in this case, because the action challenges conduct that violates fundamental rights shared by the staff at large, the relief sought being primarily declaratory and injunctive in nature.

45. The Staff Association has a right to intervene in applications filed with the Tribunal because it is clearly an interested entity whose operation would be affected by the decision of the Tribunal in the applications filed by Godwin Agodo, Klaus Berg, David Delmonte, Anne Harrison, Ian M. Knapp, Alexander David Knox, Robert Myers, Roberta Preston, Christopher J. Redfern, Iona Sebastian, Randi Selehdar, Paul Vandenheede, John Vincent-Smith and Charles Ziegler.

46. Nothing in the Statute or in the Rules of the Tribunal prohibits an application by the Staff Association. Just as Rule 20 of the Rules gives the right to intervene to certain organizations representative of Bank management, the Tribunal should extend the same right to participate in cases to the Staff Association as the recognized representative of the Staff.

47. This case, because of the fundamental issues that it raises, and because the internal means of redress in their former or revised form are either unworkable or not currently functioning, justifies a finding that on account of exceptional circumstances the requirement of the Statute that internal remedies must be exhausted should be waived.

48. This Application has been filed within 90 days of the event most relevant to it which is the issuance by the Bank on May 22, 1987, of Staff Rule 5.09.

49. The right of the Bank to develop and implement a program for the more efficient organization of the Bank staff is not contested. However, in the particular circumstances of this case, the Bank failed to consult in an effective and meaningful way with the staff, as required by Staff Principle 10 of the Principles of Staff Employment and Staff Rule 10.01, on implementation provisions that vitally affect the staff's contracts of employment and purport to amend a number of the Staff Rules, particularly in enacting the new Staff Rule 5.09. In addition, the practice which has developed of having the Bank's Rules Steering Committee consider Staff Rules was not followed in the case of Staff Rule 5.09.

50. The principle of consultation, like the principle of negotiation, requires above all a good faith attempt to elicit, understand and, if possible, accommodate the views of the consulted party, after serious consideration. The facts do not show that in the adoption of Staff Rule 5.09 the Bank engaged in meaningful good faith consultations with the Staff Association. Further, if a timetable for adoption of the final Rule existed it was not made known to the Staff Association.

51. Staff Rule 5.09 contains provisions which are an abuse of discretion of the Bank's power to amend the staff's terms and conditions of employment. The exercise of discretionary authority to organize, appoint and dismiss staff must be consistent with the "purposes and objectives" for which the Bank was created and must conform to certain generally accepted principles of law limiting discretionary power, including the principles of non-retroactivity, non-discrimination and proportionality between means and ends.

52. The methods selected by the Bank are not proportionate to the objectives of the reorganization. The Bank-wide across-the-board suspension of virtually 6,000 Bank staff, the terminations, the uncertainty and the impairment of Bank activities are way out of proportion to the objective to be achieved.

53. The Bank's methods for selection and redeployment of personnel have no objective criteria and are likely to result in unsound and unfair choices, in violation of the President's duty to secure "the highest standards of efficiency and technical competence" referred to in the Bank's Articles of Agreement.

54. The process is tainted with the possibility for favoritism, prejudice and discrimination among staff members, in breach of the Bank's obligations as stated in Staff Principle 2.1(d) and (e).

55. The Bank's implementation of the reorganization plan retroactively impairs the rights of staff members. While Staff Principle 7 establishes that Bank staff have the right to consideration of their length of service upon separation at the Bank's initiative, paragraph 7.06 of Staff Rule 5.09 offers the higher payments to those redundant staff members who agree to release all claims against the Bank and waive their right of review and appeal.

56. The Bank's implementation of the reorganization plan unduly discriminates among staff members. Paragraph 9.02 of Staff Rule 5.09 denies the option of voluntary separation to holders of positions with grade 26 and above and thus unjustifiably discriminates against one group of staff.

57. All non-U.S. citizens or resident staff members are subject to taxation on their receipt of the separation package, whereas U.S. citizens and residents will receive a tax allowance in respect of any severance payments they may receive. Such discrimination is impermissible.

58. Paragraph 12.01 of Staff Rule 5.09 seen in the context of the other provisions of the same Rule is an impermissible unilateral amendment of an essential element of the staff's conditions of employment, namely, the right of judicial review. Staff Principle 2, adopted in 1983 after the de Merode decision, provides that the Bank shall respect the essential rights of staff members that have been and may be identified by the Tribunal, and Staff Principle 9 provides that staff members may make use of their rights to judicial review "without fear of reprisal." By virtue of paragraph 12.01 of Staff Rule 5.09, the Bank is now attempting to take away this right in circumstances of utmost importance, namely the termination of several hundred staff members under controversial and potentially discriminatory conditions.

59. None of the requirements laid down by the Tribunal for the validity of release clauses is satisfied by paragraph 12.01 of Staff Rule 5.09, because it does not provide for voluntary release. Staff members made redundant by the reorganization do not have the option to remain in the employment of the Bank. The consequences for each one of the 390 staff members concerned are much more negative than generally would be the case in any individual redundancy decision within the normal course of the Bank's operations or in the case of individual terminations. Even those staff members who "choose" the "Voluntary Separation Package A" are hardly free from duress since the introduction of a quantitative limitation on voluntary separations coupled with the power of the VP, Personnel, to deny an application for voluntary separation in specific cases suggests that the decision to leave "voluntarily" lies not as much with the staff member as with the Bank. Such a release in any case does not meet the requirements established by the Tribunal, because it is not the result of a negotiated settlement based on the staff member's individual circumstances. The same is true for those staff members who "accept" Enhanced Separation Package B. In fact there is no "acceptance" whatsoever, because the staff member has no viable options. Therefore, because the release is imposed as a condition to receiving the benefits of the separation packages, without negotiation or consideration of individual circumstances, the release is invalid.

60. Even if the right to judicial review were not recognized as an essential element of employment, it is, at a minimum, one of those elements of employment which the Bank can change only by observing certain limits and conditions established by the Tribunal. Paragraph 12.01 of Staff Rule 5.09 is out of proportion to the objectives aimed at. Paragraph 12.01 results in discrimination and abuse of discretionary power because it contemplates a release, whether implied or explicit, of all claims and a waiver of all forms of internal review and appeal, such as pending individual claims unrelated to the reorganization which the Bank cannot have expected to buy off in exchange for a severance package available to the staff at large.

61. The Applicant is not seeking an advisory opinion but relief from actual harm. In any event the Tribunal may determine that procedural requirements had not been observed and remand the case for correction of the required procedures.

62. Because of the importance and complexity of the issues raised the Applicant is entitled to legal fees and costs.

63. Oral proceedings should be held so that the arguments and the facts may be clarified.

64. The Applicant seeks the following relief:

(i) An order granting the following interim measures to be effective as of May 19, 1987, and until the Tribunal renders a final decision:

(a) suspension of the Bank's efforts to obtain releases or waivers or in any other manner implement paragraph 12.01 of Staff Rule 5.09; and

(b) holding in abeyance the enforcement or use by the Bank in any way of releases or waivers given or signed by Bank staff pursuant to acceptance of any Separation Package offered by the Bank in the course of implementing its 1987 reorganization which is targeted to be completed, so far as termination of employment contracts is concerned, by September 30, 1987.

(ii) Consideration of this application on its merits on an expedited basis by convening a special plenary session, as provided for in Rule 5(2) of the Tribunal, or forming a panel to consider this case, as provided for in Article V of the Statute and Rule 6 of the Tribunal.

(iii) A declaration that the Bank, during the reorganization and particularly with regard to the preparation of Staff Rule 5.09, has not observed its obligation to engage in effective and meaningful consultations with the staff through their representative, the World Bank Staff Association, concerning matters affecting staff employment conditions.

(iv) An order that the Bank suspend to the extent necessary the application of Staff Rule 5.09 until modified in a manner that will ensure selection of qualified staff, and by implication termination of staff, on the basis of objective criteria, including detailed position and skills descriptions made known to staff, in a process designed to be free from prejudice, favoritism and discrimination.

(v) An order that the Bank revise the scope and availability of the Separation Packages as required to remove elements of discrimination and retroactive prejudice against staff members, including, but not limited to, provision for eligibility of staff at grade levels 26 and above for the Standard Separation Package, availability of the Enhanced Separation Package's increased payments for length of service to all staff who have accrued the necessary service, and extension of tax reimbursement to all staff who are subject to tax on receipt of payments under the Separation Packages.

(vi) An order that the Bank engage in meaningful and effective consultation with the Staff Association for the purpose of preparing appropriate amendments to Staff Rule 5.09 to correct the deficiencies noted in subparagraphs (iv) and (v) above.

(vii) An order that paragraph 12.01 of Staff Rule 5.09 be rescinded.

(viii) An order that the Bank cease and desist from any attempts to implement paragraph 12.01 of Staff Rule 5.09, or to obtain releases and waivers from individual staff members who are voluntarily or involuntarily leaving the service of the Bank as a result of the reorganization.

(ix) An order that the Bank make available to the staff the 1987 reorganization Separation Packages without requiring or implying a release of claims against the Bank or waiver of the right to review administrative decisions, including access to this Tribunal.

(x) An order that the Bank reimburse the Applicant for all fees, costs and disbursements incurred by the Applicant in connection with this application, including reasonable attorneys' fees.

The Respondents' main contentions:

65. The Staff Association does not have standing as applicant or intervenor nor can it act as such on behalf of staff members before the Tribunal. It has no "contract of employment or terms of appointment" with the Respondents and it is not a "current or former member of the staff." The jurisprudence of other tribunals and

courts does not support the enlargement of the Statute that the Applicant urges on the Tribunal.

66. Rule 20 of the Tribunal's Rules of Procedure makes no provision for intervention by the Staff Association.

67. A breach of an obligation to consult with the Staff Association may be appealed to the Tribunal by the aggrieved staff member who, under the terms of the Statute, has the right to assert it.

68. Even if the Staff Association had standing, the declaratory relief requested by it is not provided for by the Statute of the Tribunal, nor is the suspension of the application of Staff Rule 5.09 until certain modifications are made, or the revision of the Separation Packages to remove elements of discrimination and retroactive prejudice, or the rescission of paragraph 12.01 of Rule 5.09. There is no provision entitling a staff member or the Staff Association to contest generally a rule or regulation of the Bank. The Tribunal may pass judgment on the legality of a rule or regulation only in the context of an allegation of non-observance of terms of employment of an individual staff member. Article XII of the Statute which provides for relief if the Tribunal finds an application well-founded supports the concept that a decision must be limited to relief for individual staff members. International administrative tribunals, except for the Court of Justice of the European Communities, do not give relief of a general declaratory nature. The Staff Association is in effect asking for an advisory opinion for itself and on behalf of staff members which the Tribunal is not empowered to render.

69. The reorganization reflects a proper exercise of discretion, good faith, a proper consideration of the relevant facts, careful study of the proposed changes, and the adoption of safeguards to avoid unnecessary or excessive harm to the staff. It was undertaken far from hastily. The formulation and implementation of the reorganization are consistent with the Bank's Articles of Agreement, the Principles of Staff Employment and the principles enunciated by the Tribunal in paragraph 31 of the de Merode decision.

70. The development and implementation of the selection process was the result of a lengthy review in which careful consideration was given to the various alternatives available. Great care was taken to ensure that selection would be made in a reasonable, non-discriminatory and fair manner calculated to avoid unnecessary or excessive harm to staff, the goal being to ensure for the Bank a staff possessing the highest standards of efficiency and technical competence.

71. The Principles of Staff Employment empower the Bank to terminate the employment of a staff member when his or her position is no longer needed or when the position has changed so as to require a different skills mix, and Staff Rule 7.01 determines the compensation due when such termination occurs. Both special compensation packages take as a starting point the severance payments provided under Staff Rule 7.01 to staff who become redundant due to abolition of position or change in job requirements. The packages were carefully studied, with the active involvement of the Staff Association, and were designed to ensure equity between groups of staff as well as responsiveness to the individual needs of the recipients.

72. While the Bank is under an obligation to consult, i.e. to listen with an open mind, to consider insofar as it deems appropriate and to accommodate the views of representative members of the staff, it retains for itself the power to decide. There is no obligation to negotiate. The Bank consultation with staff and representatives of the Staff Association not only fully complied with Principle 10 and Staff Rule 10.01, but also because of their frequency and the involvement of the Staff Association representatives in all aspects of the implementation process, went far beyond the requirements of the relevant provisions of the Principles of Staff Employment and of the Staff Rules. The principle of consultation was not infringed because Bank management decided to adapt the process followed for the adoption of Staff Rule 5.09 to the circumstances and to decide that it was reasonable to provide a period of less than a week for consultation.

73. Paragraph 12.01 of Staff Rule 5.09 does not constitute a unilateral change in an essential, or non-essential, condition of employment. A settlement and release does not amount to a deprivation or denial of administrative or judicial remedies. The release of claims is an integral element of both separation packages and it is agreed to by departing staff members in exchange for generous benefits and payments. Concerned staff may decline to accept either of the two separation packages and may choose to leave the Bank under the redundancy

provisions of Staff Rule 7.01 which do not involve any release of claims. The Tribunal has in three decisions rendered by it upheld the general validity of release of staff members' claims.

74. The decision to pay a tax allowance only to the recipients of severance payments who previously had received a tax allowance in respect of their salary does not discriminate in an unjustifiable manner among staff members of different nationalities or residence. Since no staff members have yet requested a tax allowance on severance payments which has been denied by the Bank such a complaint is not ripe for consideration by the Tribunal and is irrelevant to the Staff Association itself.

75. Oral proceedings should not be held because they will be dilatory and are unnecessary.

76. The Applicant's request for an award of costs should be denied, because even if a party wins, he is not entitled to costs, save in exceptional circumstances.

Considerations:

77. The Staff Association challenges the manner of promulgation, the content and the implementation of Staff Rule 5.09. That rule, announced on May 22, 1987, is the cornerstone of the Respondent's major plan for reorganization of the staff. It deals with selection, reassignment and redeployment of staff, and with the compensation, benefits and institutional support available to staff members who are not placed in positions in the reorganized Bank. The Staff Association claims that the procedures used by the Respondent in formulating the rule were defective, particularly on account of the Bank's failure to consult fully with the Staff Association as representative of the staff. The Applicant also claims that certain specific provisions of the rule are improper, in particular paragraph 12.01 which provides that a staff member's acceptance of either of two compensation packages created by Rule 5.09

shall constitute a final settlement and release of all claims the staff member might otherwise have against the Bank arising out of any circumstances occurring or any decisions taken before or on the date of acceptance and shall relinquish his right to seek administrative review and to appeal to the Appeals Committee, a hearing officer designated under par. 11.02, the Job Grading Appeals Board and the World Bank Administrative Tribunal or otherwise.

The Staff Association also contends that the implementation of the reorganization plan has been improperly subjective, unfair and unclear.

78. The principal issue for the Tribunal to determine is whether it has power under its governing instrument to "hear and pass judgment upon" the application filed by the Staff Association. The Respondent contends that the Staff Association is altogether without standing to file any application to initiate a proceeding before the Tribunal and, therefore, lacks standing to assert any challenge to the validity of Staff Rule 5.09.

79. Article II, para. 1 of the Statute of the Tribunal provides:

The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member.

Article II, para. 3 defines "member of the staff" to mean

any current or former member of the staff of the Bank Group, any person who is entitled to claim upon a right of a member of the Staff as a personal representative or by reason of the staff member's death, and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

No other provision of the Statute gives standing to anyone else to file an application for relief before the Tribunal.

80. The Staff Association contends, variously, that it is empowered to file an application on its own behalf (at least by virtue of the Respondent's alleged failure adequately to consult with regard to the formulation of Rule 5.09), or on behalf of aggrieved staff members (in the generality or in particular), or as an intervenor, or as *amicus curiae*.

81. Under the Statute the only person who may properly file an application is a member of the staff as defined in Article II, para. 3. That definition refers only to an individual currently or formerly employed, or a personal representative of such an individual, or a person claiming a pension payment. The Staff Association is not within any of these categories. The Applicant in this case appears not to claim that it may properly be deemed a "personal representative" of a staff member, and that phrase rather clearly from its context invites limitation to representatives--such as conservators, guardians, and the like--who are acting of necessity on behalf of an incompetent or deceased individual.

82. The Statute is clear in defining not only the kind of person entitled to file an application but also the kind of claim that must be asserted in that application. The applicant must allege "non-observance of the contract of employment or terms of appointment of such staff member." By expressing the nature of the claim in these terms, the Statute reinforces further a construction that would require that the applicant be an individual presently or formerly employed by the Respondent or be within the other narrow categories of individual applicants contemplated in paragraph 3. Obviously, the Staff Association fails to satisfy this requirement as well, for it cannot properly allege the non-observance of an employment contract or terms of appointment of its own.

83. It therefore follows that the Staff Association has no standing to file an application with the Tribunal on its own behalf as an institution. Even if the Statute were not clear on its face, this conclusion is reinforced by examination of certain documents prepared in November 1979 in connection with the intended establishment of an administrative tribunal for the Bank. Drafts of proposed statutes were prepared by Bank management and by the Staff Association. The latter's proposed draft would have accorded access to the Tribunal not only to affected staff members but also to the Staff Association: "Upon petition by the President of the World Bank or by the World Bank Group Staff Association, the Tribunal may, at its discretion, render an advisory opinion on the validity of administrative action which the World Bank Group or any of its constituent organizations proposes to take." This proposal by the Staff Association was not incorporated in the Statute of the Tribunal as ultimately adopted.

84. The Staff Association has expressed concern that if it is denied standing to seek redress from the Tribunal for the violation of alleged duties owed by the Respondent to the Applicant as an institution--for example, by the Bank's failure fully to consult with it as required by various Bank policies and statements--then there will be no vehicle whereby such impropriety can be challenged and redressed. That is in fact not the case. A defect in the procedure utilized by the Bank in formulating and implementing its policies may be challenged in the context of an application by an individual staff member who claims that he or she has been the subject of an improper adverse decision by the Bank. This issue is not disputed by the Respondent which in its answer to the application of the Staff Association states:

It is an individual staff member who claims to be aggrieved by the breach of an obligation, whose grievance is ripe for adjudication, and who has exhausted internal administrative remedies, who may appeal to this Tribunal and who may raise the adequacy of Respondent's consultations with the Staff.

If such a staff member doubts their adequacy, it is part of his case that the Rule or other obligation under which his grievance arose was defectively adopted for that reason, and that such lack of consultation materially affected the aspect of the Rule or obligation which he is contesting. It is the aggrieved staff member for whose benefit the obligation was undertaken, and who, under the terms of the Statute has the right to assert it.

85. The Staff Association also asserts standing to file an application on behalf of all or particular staff members

who have been adversely affected by the Respondent's non-observance of those persons' contracts of employment or terms of appointment. There is no greater support in the Statute of the Tribunal for the Staff Association filing an application on behalf of staff members than there is for its filing an application on its own behalf. Article II, para. 1, expressly contemplates the filing of an application "by which a member of the staff" alleges non-observance of the contract or terms of appointment "of such staff member." There is no provision for an application by one staff member--let alone a person, such as the Staff Association, who falls altogether outside of the definition of "staff member"--that alleges failure by the Respondent to observe another staff member's contract or terms of appointment. The aggrieved staff member must initiate the Tribunal proceeding himself or herself. The only exception to this rule concerns an application by an applicant acting "as a personal representative or by reason of the staff member's death." The reasons for such a limitation upon standing are obvious. Volunteers should not be accorded access to the Tribunal if the truly aggrieved individual is not sufficiently moved to seek such access himself, lest the Tribunal be diverted and overburdened with minor and speculative allegations which may be improperly understood and framed by the volunteer, or which in fact may be disclaimed by the actually aggrieved party.

86. The Staff Association appears to claim that because four members of the staff have been directly affected by the Bank reorganization through redundancy, job downgrading or reallocation, it is proper for the Staff Association to file this application, in part, on their behalf. The premise does not at all lead to the proffered conclusion. Those four staff members, if they can allege a non-observance of their own contracts of employment or terms of appointment, are free to file applications in their own names. They have in fact done so, and the Tribunal will decide their particular claims in due course. As already noted, if the Respondent has, in making a decision adversely affecting these individual staff members, violated any consultation procedures involving the Staff Association, that can be pointed out and dealt with in the context of the proceedings brought by the staff members.

87. The Staff Association also claims standing to file an application, in the alternative, as an intervening party. This contention must also be rejected. Article VII, para. 2(d), of the Statute of the Tribunal, empowering and directing the Tribunal to establish its Rules, provides: "The rules shall include provisions concerning ... intervention by persons to whom the Tribunal is open under paragraph 3 of Article II, whose rights may be affected by the judgment." Rule 19(1) of the Rules of the Tribunal provides that intervention is available only to persons who are entitled to file an initial application with the Tribunal pursuant to Article II of the Statute. As was concluded just above, the Staff Association is not such a person.

88. There is another Rule of the Tribunal, however, that does give to the Staff Association a role of significance in proceedings before the Tribunal. Rule 23(2) expressly contemplates that the Staff Association may serve in particular cases as amicus curiae. In pertinent part, that Rule provides: "The Tribunal may permit ... the duly authorized representatives of the Staff Association of a respondent institution ... to participate [as a friend-of-the-court]." The Tribunal therefore sustains the final contention of the Staff Association with respect to its status in the various proceedings arising from the reorganization of the Bank staff, i.e., that it "may also present its views for consideration by the Tribunal as an amicus curiae under WBAT Rule 23(2)." Even though the Staff Association may not appear as an applicant or as an intervenor before the Tribunal and, therefore, cannot submit pleas on its own, the Staff Association can indeed provide assistance to the Tribunal in rendering a full and considered decision of the issues raised in the various cases arising from the Bank reorganization. In those cases properly brought before the Tribunal by staff members alleging non-observance of their contracts of employment or terms of appointment, the Staff Association could, for example, usefully file briefs in support of the staff member's contentions regarding such matters as the Respondent's alleged failure to consult properly with the Staff Association or the allegedly arbitrary and unreasonable methods chosen by the Respondent to implement the reorganization plan.

89. The Tribunal, therefore, treats the pleas and supporting memoranda of the Staff Association in this case, which have been cross-referenced in the other cases filed and listed at the same time, as requests for permission to participate as friend of the court and as amicus curiae briefs. Thus treated, the Tribunal grants the request of the Staff Association and receives the briefs and other documents it has filed, and will take them into consideration in the other cases simultaneously filed arising from the reorganization of the Bank.

Decision:

For these reasons, the Tribunal unanimously decides that:

- (i) the application is dismissed; and
- (ii) the Staff Association's request to participate as friend-of-the-court is granted, and the briefs and other documents already filed by it shall be treated as having been submitted amicus curiae and shall be taken into consideration as such.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C.F. Amerasinghe

/S/ C.F. Amerasinghe
Executive Secretary

At London, England, October 27, 1987