

Decision No. 217

William L. Visser,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on April 26, 1999, by William L. Visser against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Francisco Orrego Vicuña (a Vice President of the Tribunal) as President, A. Kamal Abul-Magd and Elizabeth Evatt, Judges. The usual exchange of pleadings took place and the Applicant requested the Tribunal to direct the production by the Respondent of certain documents and other material; he also asked for an oral hearing and for depositions under oath. These requests were denied. The case was listed on October 21, 1999.

2. The Applicant claims non-observance of his contract of employment in several respects, including arbitrary termination of his terms of reference, non-renewal of his contract contrary to assurances, denial of fair evaluation of his performance, and other unfair, discriminatory and unethical treatment in violation of the Principles of Staff Employment.

3. By way of relief, the Applicant seeks the repayment of expenses incurred by him, and compensation. He also asks for an apology and the deletion of any negative comments made about him by the Respondent.

4. The Respondent denies any breach of contract or of the Principles of Staff Employment.

Relevant facts

5. The Applicant is a Dutch national. He was invited to join the Bank's Economic Development Institute (EDI) early in 1997 as a short-term consultant. He had previously worked at the World Resources Institute as a Deputy Director, a Project Director, and later as Director of International Relations; his position had been dissolved.

6. EDI decided to retain the Applicant using trust funds, which, among other things, are provided by States to employ persons seconded to the Bank from foreign governments. It was envisaged that the Applicant would hold a six-month consultancy.

7. The Applicant claims that during the discussions about his possible employment, assurances were given to him by the Director of EDI, the Program Manager and the Regional Co-ordinator for EDI that, dependent on his satisfactory performance, his six-month contract would be converted to a long-term multi-year contract beginning in fiscal year 1998. This is denied by the Respondent.

8. A Task Manager in EDIHR (the Human Resources and Poverty Division of EDI) provided terms of reference for the Applicant's six-month consultancy on January 22, 1997. The Applicant would be responsible for four tasks within the Poverty Team, under the Task Manager's supervision, one of which was the organization and co-ordination of an electronic symposium on the legal environment for NGOs in Latin America (hereinafter the "electronic symposium").

9. The Applicant began working in EDIHR in early March 1997; however, he did not receive his contract until

mid-March. The contract was for a consultancy of about 82 days in the period from March 3 to June 30, 1997, at a rate of \$450 net per day. The Regional Co-ordinator explained that they could not find funding for the entire period of six months. The Applicant was concerned that he might be denied certain benefits which attach to contracts of six months or more. However, after being informed that funds had been found for a further 63 days, he signed the contract on April 14, 1997. The contract was later extended to a total of 145 days.

10. In April 1997, the Applicant went on mission to Jamaica with a staff member of EDI. Just before going to Jamaica, the Applicant asked his Task Manager to clarify his role. After the mission, the EDI staff member prepared a report on behalf of both participants. The Applicant complains that she did not consult him about this and that he had written a report before he knew that she had already done so.

11. The Task Manager was dissatisfied with the Applicant's performance. Thus, in May 1997 the Applicant was informed by the Task Manager that he was not to work further on any items in his terms of reference other than the first item, the electronic symposium. He was also informed that he could not expect to be associated with the Latin America group or the Division beyond the period of his short-term contract and that as he hoped to extend his World Bank association, he should accept offers from other sections.

12. In late May 1997, the Division Chief of EDIHR assigned the Applicant to work under her direct supervision. She said in evidence that this was because his assignment in the Poverty Team was not working. She asked him to write a strategy note on NGO capacity building. No written terms of reference for this assignment were provided.

13. The Applicant submitted an outline of the strategy note on June 6, 1997. The Division Chief wrote critical comments on the draft. The Applicant expressed embarrassment at the misunderstanding, and at the gap in their perceptions of the project. His revised outline submitted on July 18th also met with an unfavorable response from the Division Chief.

14. The Applicant ceased working for EDIHR at the end of July. The Division Chief claims that the Applicant's assignment ended because she was dissatisfied with his work and there was no real demand for the strategy note. The Applicant disagrees with her assessment.

15. After the Applicant left EDIHR, the Program Manager asked him to spend his remaining time, from August to October 1997, in the Office of the Director of EDI (EDIDR). He would work for the Program Manager and the Regional Co-ordinator and would be given time to look for other opportunities in EDI. If he found an interested party, his contract could be extended. He did actively seek other opportunities within EDI but nothing came of these efforts.

16. The Applicant's principal assignment in the EDIDR front office consisted of writing a concept paper on EDI partnerships (hereinafter "Partnership paper"). There were some positive exchanges between him and the Program Manager and the Regional Co-ordinator about the project in early August. He complains, however, that he had not received any written terms of reference for the Partnership paper at that time.

17. By August 8, 1997, the Applicant was aware that a Spanish consultant would soon be joining EDI to work on partnerships. The Program Manager later testified that the Applicant's Partnership paper was to serve as a reference for the new consultant.

18. The Applicant had difficulty in gaining access to the data he needed to complete the paper. The person designated as his resource person for this purpose did not respond to his requests. He asked for the data from an EDI assistant who was employed by a consultancy firm to work in EDI. She charged him \$440 for acquiring the data he requested.

19. The Applicant's last pay day was October 24, 1997. It appears that his Partnership paper was submitted to the EDI Program Manager and the Regional Co-ordinator on or about October 31st. He met with them on November 4th. He says that there was positive discussion about the paper, and that he had been asked to

provide another “cut” of the data he had used. He indicated that he was willing to do this. However, he did not think he should be asked to do further work without some assurance about his future position. He had been led to believe that his future in EDI depended on the paper and that a decision would be made on its completion. He asked if he could be paid for the revision, use the office and finalize the project with a further contract.

20. There was no response to the Applicant's request.

21. On November 19, 1997, the Applicant asked the Director of EDI for a “Manager's Review” of his contract with EDI. Among other things, the Applicant complained about the failure to convert his short-term contract to a long-term multi-year contract, contrary to assurances given him, and that he had not been given a defined work program commensurate with his capabilities or a fair and proper evaluation.

22. The Director replied to the Applicant by letter of January 16, 1998, to say that as with all short-term consultancies there had been no presumption of a longer term commitment, that there was no mistreatment as the standards applied to the Applicant were the same as for assessment of all EDI consultants, and that there was no basis for extending his short-term assignment.

23. On January 9, 1998, the EDI Program Manager asked the Applicant for a final copy of the Partnership paper. The Program Manager mentioned that extensive comments had been given on the paper and that specific changes had been recommended. It had been suggested that the Applicant discuss the paper with the Spanish consultant – but this had not happened.

24. The Applicant responded on January 12th, stating that the paper had been final and setting out many of his grievances. He asserted that it was unreasonable to expect more work without pay or access to an office. He had sent the paper to the Spanish consultant, but had no response. He asked for a meeting to discuss a solution.

25. On January 20, 1998, the Applicant made a request for administrative review regarding his “tenure” at EDI and the non-renewal of his contract. The Applicant was informed on March 26, 1998 of management's conclusion that there was no merit to his claims.

26. The Applicant appealed to the Appeals Committee on May 28, 1998. He complained of the denial of continuation of his contract despite assurances which had been given to him; the denial of a fair evaluation of performance; unethical conduct having a negative effect on his career prospects and resulting in economic loss; and breach of contract and violation of Principles of Staff Employment and Staff Rules. On January 14, 1999, the Appeals Committee recommended that the Applicant's requests for relief be denied. The Bank's decision to accept the Committee's recommendation was communicated to the Applicant on January 21, 1999.

27. On April 26, 1999, the Applicant applied to the Tribunal against the decisions and actions of the Bank (EDI).

Non-renewal or extension of the contract

28. The first issue for the Tribunal to consider is the challenge by the Applicant of the decision not to renew or extend his contract beyond October 1997. He submits that this decision was made on January 16, 1998 when the Director of EDI denied his request for a “Manager's Review.”

29. The Respondent submits that, as a holder of a short-term consultant appointment, the Applicant had no right to any contractual appointment after the expiry of the contractual term. The Applicant's contract states that his appointment will terminate at the end of the contractual period unless extended, and that the Bank has “no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed to in writing at the time of the expiration of the appointment.” The Respondent relies on Staff Rule 7.01, paragraph 3.01, and Principle 7 of the Principles of Staff Employment (expiration of employment in accordance with terms of appointment) and on the decisions in the cases of Mr. X (Decision No.

16 [1984]) and Atwood (Decision No. 128 [1993]).

30. The Tribunal observes that even where the terms of a contract provide expressly for its expiry at the end of a fixed period, there may be something in the surrounding circumstances which creates a right to the renewal of a consultant appointment. (Carter, Decision No. 175 [1997], para. 13.) Such circumstances could include a promise made by the Bank. The Applicant's claim is that the alleged assurances given to him during the recruitment period amounted to a promise by the Bank of continued employment, given satisfactory performance on his part, and gave rise to a legitimate expectation on his part that his short-term contract would be converted to a long-term multi-year contract beginning in fiscal year 1998. He claims that EDI violated Principle 4.1 of the Principles of Staff Employment.

31. In support of this claim, the Applicant says that he had other employment prospects, but he did not pursue them when he was assured of a firm contract by EDI. He relies also on the long-term nature of some of his terms of reference, including the electronic symposium, as indicative of a long-term commitment by the Bank and on the fact that he put his understanding of his expectations to the Bank in writing, and that the Bank never queried or denied it.

32. The Respondent denies that there was any promise of a further contract. The Director and the other officers referred to by the Applicant denied giving any assurances to him in their testimony to the Appeals Committee.

33. The Appeals Committee concluded that nothing that was said during the recruitment process rose to the level of a promise or assurance of continued employment beyond the six-month contract. The Committee observed that the managers may have implied that there could be future opportunities for the Applicant at EDI if he performed well and if the need for his services continued. But that did not constitute an enforceable promise, or bind the Bank to any course of action after the expiry of his contract. Such general statements, the Committee said, are a normal part of the interview process, and there was no evidence that anything more than that took place.

34. The Applicant accepts that he was not automatically entitled to renewal of his short-term contract, and that he had to show satisfactory performance.

35. It is clear that the Applicant wanted to secure a long-term contract with the Bank and that he did everything he could to bring about this result. But he was aware that there were uncertainties to be resolved about how to make use of his expertise, what work he was to do and about the source of funds to pay him. These uncertainties negate any inference of a promise or assurance giving rise to any entitlement on his part. As distinct from the Bigman case (Decision No. 209 [1999]), there is nothing in the facts of this case to support a finding that a promise was made to the Applicant about a future contract or that any more was offered to him than the possibility of a further contract. The Bank retained a discretion whether or not to grant the Applicant a further contract. (Barnes, Decision No. 176 [1997], paras. 9 and 10.)

36. The Applicant also complains that he was not told in good time that his contract would not be renewed. His expectation was that a decision would be made about a further contract at the end of the short-term contract. He asked about his situation many times. But he never received an answer. However, he must have known by August 1997 at the latest that there was little prospect that his contract would be extended or renewed, and that it was up to him to find someone in EDI or elsewhere willing to offer him a contract. He was given time to look for other opportunities. The Bank is not required to give reasons for the non-renewal of a contract which is stated to be temporary and has a termination date set forth in it. (McKinney, Decision No. 187 [1998], para. 10; Degiacomi, Decision No. 213 [1999], para. 26.) The Applicant has not established any violation of the principles of fair treatment in this respect.

Abuse of discretion: denial of proper work program and fair evaluation

37. The Applicant claims that the decision not to renew his contract was arbitrary and an abuse of discretion,

on the basis that the Bank denied him a genuine opportunity to succeed in his work. He claims in particular that EDI breached his terms and conditions of employment by failing to provide him with a clear work program, by failing to provide support, access and feedback and by denying him a fair evaluation of his performance. The various claims and allegations made by the Applicant are essentially claims that the Bank failed to treat him with fairness and impartiality and in accordance with a proper process.

Work program, terms of reference

38. The Applicant contends that throughout his time in EDI he was unsure of his role and responsibilities. His instructions were unclear, and he did not have access to the people who could provide him with information and support in his projects. His perception was that the lack of interest in and support for his work had prevented him from performing to the best of his ability and had thus prevented any possibility of a long-term contract.

39. The Respondent contests these claims and points out that four different managers had found his work unsatisfactory.

40. The Applicant complains that the withdrawal by his Task Manager in May 1997 of most of the terms of reference provided to him in January was arbitrary and in breach of contract. It was contrary to Staff Rules and Principles 2.1(d) (security of employment) and 5.1(c) (procedures for review) of the Principles of Staff Employment. He had been left with responsibility for only half of the electronic symposium project, for which he simply did not have the technical know-how.

41. The Respondent submits that the Applicant's work for his Task Manager was not satisfactory and that this justified the decision to withdraw his terms of reference and ultimately not to renew his contract. High technical knowledge was not needed to plan the symposium and there was, in any event, a technical support team.

42. The Tribunal observes that the Applicant had known since January that he was expected to work on the electronic symposium. He had not previously suggested that this project was not within his competence. The Applicant's argument that the withdrawal of his terms of reference was done to set him up for failure is not substantiated. The Bank had reserved the right to change the terms of his assignment. The Task Manager had taken the view that the Applicant's work was not satisfactory to him and sought to reorganize his work. As the Tribunal discusses later, this assessment was not an abuse of discretion. However, fair practice suggests that he should have been given a written statement concerning the change in his terms of reference.

43. The Applicant complains that he was given no proper instructions as to his role in the Jamaica assignment in April 1997 and that there was no statement of objectives or designation of a team leader. He also complains that the staff member who went with him to Jamaica had acted without his agreement in preparing the back-to-office report. However, the Tribunal observes that before going to Jamaica he had acknowledged that the terms of reference of the mission were clear. It appears from the material that the Applicant did not have the leading role. The Tribunal finds no abuse of discretion by the Respondent in relation to the Jamaica mission.

44. The Applicant claims that when he was reassigned to work under the supervision of the Division Chief, he was given no clear instructions in regard to the NGO assignment and no steps were taken to ensure that he would have access to staff whose assistance he might need. He consistently raised these and other complaints with the Ombudsman and others. He alleges that the Division Chief showed confusion, negligence, outright prejudice and ill-will in her dealings with him. She had ignored him when he first joined EDIHR and had referred to him on one occasion as a "visiting fellow funded ... by the Dutch government."

45. In support of his complaints concerning the Division Chief, the Applicant submits an e-mail and a statement from a Dutch national who had worked in EDIHR under the management of the Division Chief. In these, the Dutch national is critical of the Division Chief's performance as a manager and comments that the Applicant, a senior professional, was treated as a junior, without clear terms of reference.

46. The Respondent submits that the Division Chief had given the Applicant clear guidance as to what was

required but he had failed to meet required standards.

47. The fact that the Applicant had no written terms of reference or instructions for his assignment from the Division Chief was an omission which the Tribunal considers may have contributed to misunderstandings in the first instance; he was entitled to have a clear work program. The Applicant is, however, a man of seniority and experience. He had discussions with the Chief, and received detailed written comments from her on the draft. Even so, his work did not meet her expectations. The Tribunal cannot conclude that the lack of written terms of reference was a factor in the Applicant's failure to produce a satisfactory result, though fair treatment required that he have proper instructions.

48. In relation to this assignment, the Applicant alleges that the Division Chief told him originally that the NGO assignment had been requested by the President of the Bank, but later changed her story. The Division Chief's evidence to the Appeals Committee was that she had anticipated a request by the President for such a paper. However, she found the Applicant's performance unsatisfactory, and when she learned that there was no demand for the paper she dropped the project. The Tribunal does not consider that there is any inherent contradiction in the evidence of the Division Chief as reported by the Appeals Committee. In any event, the source of the project is of less significance than whether the Applicant was given a fair opportunity to succeed.

49. In regard to his work on the Partnership paper, the Applicant complains that he had no clear terms of reference, no work plan and no appropriate supervision. He had asked for terms of reference on August 8, 1997. He set out the agreed focus for the paper on September 22nd, but indicated that it might be difficult to complete the work in the remaining month as the focus had changed. He says that he had no access to the people whose assistance he needed, and that information he needed was not provided to him. He even had to pay personally to get data he required.

50. The Applicant claims that he was treated with indifference and as dispensable. He illustrates this by referring to an incident towards the end of his contract when he became aware that his future prospects with the Bank might depend on the view that the Spanish consultant took of his paper. The Applicant made approaches to the consultant to ask if he could join the partnership team. He says there was an apparently positive reaction, but no firm decision or response was ever made by the Spaniard or by anyone else about his situation.

51. The Respondent submits that the Applicant had been given proper instructions for the Partnership paper, that he helped to draw up terms of reference and that the Regional Co-ordinator met with him every two weeks.

52. It appears, however, that the Applicant was given no written terms of reference for the Partnership paper, and had to rely on his contacts with the Program Manager and the Regional Co-ordinator.

53. The Appeals Committee concluded that it was "probably" true that the Applicant's supervisors did not devote a great deal of attention to preparing or overseeing his assignments nor were they all familiar with the nature of his position in EDI. But, the Committee found, they were not so negligent as to violate the basic principles of fairness in the staff manual. The Applicant's treatment, in the Committee's view, was typical of that a senior level consultant should expect.

54. The Tribunal considers that the Applicant should have been given a clear understanding of his role and appropriate guidance. (Barnes, Decision No. 176 [1997], paras. 18, 20 and 29; Principles 2.1(d) and 5.1 of the Principles of Staff Employment.) But it does not appear that at any point the Applicant was well integrated into the work of EDI. When the Bank began to form an adverse view of his performance, they paid even less attention to his supervision. On the other hand, he had been brought in at a senior level, he had considerable experience and was in regular contact with his supervisors, at least in the early stages. It was not unreasonable to expect him to be self-starting.

55. The Tribunal concludes that the Applicant was denied fair treatment in that he had no written statement

concerning his terms of reference on either the NGO project or the Partnership paper. But the absence of such terms does not appear to have had any significant effect in regard to the decision not to renew or extend his contract. The more important issue is whether the Bank's evaluation of his work was unfair and whether the lack of clear terms of reference or poor supervision contributed to this. This is the next issue for the Tribunal to consider.

Assessment of the Applicant's work

56. The Applicant claims that EDI denied him a fair evaluation of his performance. He claims that he should have had a formal assessment in accordance with Staff Rule 5.03, paragraph 2.03, and that the actual assessments which were made were unfair and biased. The Respondent submits that the rule in question does not apply to the Applicant as a short-term consultant. In any event, the Respondent submits that the Applicant was evaluated fairly, and that the evidence is overwhelming that his performance was not satisfactory.

57. The Tribunal agrees that Staff Rule 5.03, paragraph 2.03, does not apply to the Applicant, as he did not have a contract for a specific duration of a minimum of six months. In general, the assessment of performance is a matter within the responsibility of a staff member's managers. (Suntharalingam, Decision No. 6 [1981], para. 27.) The Applicant was, however, entitled to fair treatment and to an assessment which was not an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure. (Saberi, Decision No. 5 [1981], para. 24.)

58. The Applicant's Task Manager had expressed dissatisfaction with his work before withdrawing part of his terms of reference. He later provided an adverse assessment of the Applicant's work to the Division Chief. In this, he stated that the Applicant's work had not been adequate for someone with his experience and position. Assignments took too long and the quality was inadequate. The Applicant reacted defensively to feedback and could not accept criticism. There were complaints about him as a team player and the Task Manager had to become heavily involved. He gave evidence to the Appeals Committee that he had had concerns from the beginning in regard to the Applicant's work.

59. The Applicant submits that his Task Manager did not have the capacity to supervise or to evaluate his work, that he was threatened by the Applicant's experience, resented that the Applicant had been imposed on him and had accepted him only because he was "free of cost." The Applicant points out that the assessment which the Task Manager sent to the Division Chief was written on the same day that she decided to end his relationship with EDIHR. The Applicant submits that the opinion is "ex post facto" and that it is bogus.

60. The Tribunal finds no substance in the Applicant's claims that the assessment made by the Task Manager involved an abuse of discretion or that it was made for any reason other than those related to the proper management of the organization.

61. In regard to the NGO assignment, the Division Chief did not prepare a written assessment of the Applicant's work, other than her written notes on his outline. However, there were discussions in which she told him her opinion. The Applicant argues that he had complied with all her comments on his draft outline, and that her criticisms of his revised outline were quite unjustified and were the result of prejudice on her part. The Respondent submits that the Applicant had failed to take account of the Chief's detailed comments and that his outline did not meet the required standards.

62. The Tribunal does not find the allegations of prejudice or abuse of discretion to be substantiated. The Division Chief had commented favorably on the Applicant's other work more than once, including comments made after he had sent her the draft outline. The Applicant's submissions on these points are not persuasive.

63. There is no written assessment in respect of the Applicant's last assignment, the Partnership paper. According to the Applicant, the Program Manager and the Regional Co-ordinator made positive oral comments on his paper. He was asked to carry out some revisions in regard to the data and to speak to the new Spanish consultant. The paper was never completed, because the Applicant took the view that he should do no more work unless he had further payment or an extended contract.

64. The Respondent's submission that the final paper was unsatisfactory to the two supervisors is not in full accord with the evidence. The Program Manager and the Regional Co-ordinator testified to the Appeals Committee that they were disappointed that the Applicant did not complete the paper. The Appeals Committee concluded that the Regional Co-ordinator had found his work satisfactory and was impressed by the effort that had been put into the paper. She would use it when the data was revised. She had commented that it was a pity that he had not consulted them about the cut of statistics before completing the paper. In view of the lack of written instructions, and the limited time available to the Applicant, the Tribunal considers that the need for these changes may not necessarily have been due to any fault on his part.

65. The fact that his supervisors asked the Applicant for the final version of his paper in January 1998 confirms the claims of the Applicant that his work on the Partnership paper was considered satisfactory by his immediate supervisors. The Applicant expected that a positive result in regard to the paper would lead to a decision to renew or extend his contract. However, nothing happened. The Bank failed to respond to his requests for discussions or to give consideration to a long-term contract in EDI or elsewhere.

66. As already stated, the Tribunal is of the view that the Applicant had no automatic entitlement to a further contract. The possibility of such a contract remained within the discretion of the Bank. However, while the Applicant was not entitled to a renewal or extension of his contract, or to a written evaluation, he was entitled to fair consideration and to an acknowledgment of his work on the Partnership paper which had been considered satisfactory. The Bank appeared to have wanted this project to be completed but failed to consider any means of enabling the Applicant to finish it. To this extent they denied him fair treatment.

Claims of bad faith and improper motivation

67. The Applicant has made a number of allegations of abuse of discretion, unethical conduct, bad faith and improper motivation. One such claim is that the Director of EDI employed him without any precise reason, and that no one in EDI knew who he was or what he was supposed to do. He argues that the Bank employed him at a high level on the basis of his references, but failed to make proper use of his talents.

68. Some of the Applicant's claims are confusing and contradictory. On the one hand, he says that the Bank had not really wanted his services but took him on because he came virtually cost-free as he was paid for out of a trust fund. On the other hand, he says that the real reason the Bank decided to employ him was because he was a Dutch national, and his presence might help them in securing further funding from the Dutch government for EDI. According to the Applicant, this explains the fact that while he was welcomed at first, the Bank later decided that as he was of no further use for raising funds he could be dispensed with.

69. The Respondent denies that there was any bad faith or any possible motivation to act in bad faith by the four people for whom the Applicant worked.

70. The Tribunal observes that EDI agreed to bring in the Applicant before they had identified a task for which his services were specifically wanted. Such an arrangement is likely to have pitfalls for both parties, and so it proved. On the other hand, the Applicant appeared to be eager to accept a short-term contract which might lead to a further longer term commitment on the part of the Bank. The Tribunal can find no unfairness or bad faith in this regard.

71. In regard to the Applicant's claim concerning the trust funds, there is no dispute that the second part of his contract was paid for from a Dutch trust fund. The Respondent asserts, however, that they drew on a Swedish trust fund for the first part of his contract. This issue is, however, of little relevance.

72. More significant is the allegation that the Applicant had been brought in by the Bank to improve their chances of gaining further funding from the Dutch government and that he was asked to help with this fund raising. He has produced evidence that he had dealings with the Dutch representative in Washington which related to the funding provided to EDI. He contends further that there was a breakdown in relationships between

EDI and the Dutch in May/June 1997, leading to a freeze on Dutch funds. He alleges that when it appeared that he would not be able to assist the Bank in securing Dutch funds, he became expendable. The Bank wanted to find spurious reasons not to honor their undertaking to provide him with a long-term contract, he says.

73. The Respondent denies that the Applicant was employed or asked to help raise Dutch funds or that any failure to secure funding affected its decisions in regard to the Applicant. Consultants were never used for this purpose, and the relations of EDI with the Dutch government were excellent. The Applicant was hired for his professional expertise. If he did take action in regard to funding, it was at his own initiative.

74. The Appeals Committee found that the Applicant's Dutch nationality played no role in EDI's decision-making process and that he was hired for his professional expertise.

75. The Tribunal finds that it is far from clear that the Applicant was asked, rather than offered, to approach the Dutch government. There is no record of any instructions to him in that regard. Further, it does not seem that his dealings with the Dutch were anything but peripheral. There are some unexplained aspects of the matter. But there is no evidence to support the Applicant's view that he had been brought in for the specific purpose of securing further Dutch funds or that the failure of this objective made him expendable in the eyes of EDI. The Tribunal is unable to draw any inference that the attitude of the Bank towards the Applicant was determined by his usefulness in securing funding from the Dutch.

The Applicant's search for other work in EDI

76. The Applicant complains that the Respondent treated him unfairly by making no effort to find him another position in EDI. He relies on Principle 4.1 of the Principles of Staff Employment. He does not contend that EDI was obliged to help him secure employment in the Bank, but he alleges that his supervisors undermined him unfairly in his attempts to follow up employment leads because he had been marked as undesirable. He gives several examples of his failure to get positions which had appeared promising and attributes these failures to negative action by the Respondent.

77. A particular grievance of the Applicant is that he was denied consideration for a related vacant position as a Partnership specialist in EDI while he was working in the front office of EDIDR. A Spanish professional was recruited (with Spanish trust funds) to fill the position. The Applicant says that the Regional Co-ordinator suggested that he apply for the position, but he could not obtain any information. He alleges that the Spaniard was favored because he had better prospects of helping to raise funds, having come direct from his home country.

78. The Tribunal can find no evidence to support a conclusion that the Respondent acted to block the Applicant in his attempts to seek employment in EDI or elsewhere in the Bank or acted otherwise in bad faith in that respect.

Other claims by the Applicant

Reduced fee

79. The Applicant complains that his daily fee under the contract was deliberately and wrongfully reduced by the Respondent from \$500 net per day to only \$450 net per day. The facts do not support this claim. The Applicant had told EDI that a \$450 daily rate would be acceptable to him, but he suggested that the Regional Co-ordinator ask for \$500 as a negotiating position; if that sum was approved it could be reduced to \$450. In the event a fee of \$500 was approved. The contract of March 13, 1997 provided, however, for a fee of \$450 per day. In view of the Applicant's indication that he was willing to accept a fee of \$450, and in view of the fact that he signed the contract, the Tribunal is unable to conclude that there was any improper motivation or unfairness on the part of the Respondent.

Splitting the contract in two periods

80. The Applicant claims that he had been offered a six-month consultancy, pending a longer term agreement. However, the contract sent to him on March 13, 1997 provided for only 82 paid days, from March 3rd to June 30th. By that time he had already started work. He signed the contract on April 14th, after being assured that it would be extended by 63 days to a total of 145 days. The Applicant says that he believed that the extension to 145 days would make him a "long term consultant" entitled to certain benefits, such as health insurance, a pension plan, and sick and annual leave. However, the contract did not qualify as a contract for six months and he was denied those benefits. He complains that he relied on the assurances given him and that as a result he suffered financial loss.

81. The Respondent's explanation is that initially, sufficient trust funds could not be found for a six-month contract. Funding for 82 days was made available. When they later secured further funds, the contract was extended by 63 days. As the Applicant accepted the short-term contract, he cannot now claim any loss.

82. The Appeals Committee considered it unfortunate that the Applicant did not learn until after he had begun work in EDI in March 1997 that his six-month consultancy would be split into two short-term contracts. Having started, he was no longer well situated to consider other alternatives. The Committee found, however, that the change did not result in any financial damage for which compensation would be appropriate, as he most likely would have accepted the assignment, since the total period conformed with his expectations. He therefore suffered no measurable damage.

83. It is clear that the Applicant expected and wanted the benefits that normally flow from a continuous contract for six months. There is no evidence that he was told that his expectations were false before he signed the contract. The Tribunal considers that the Bank denied fair treatment to the Applicant by failing to ensure to the Applicant the benefits that would have flowed from a continuous contract of six months or to advise him in good time of his true position in regard to the benefits associated with such a contract. Further, as noted earlier, the fact that he did not receive a six-month contract denied him the right to a formal written evaluation under the Staff Rules.

Out-of-pocket expenses

84. The Applicant claims \$440 as out-of-pocket expenses which he incurred in order to obtain information from the EDI database. He alleges that he had to pay this sum to an employee of a consultancy firm working in EDI, when the person designated to support him did not reply to his requests for data.

85. The Respondent does not dispute that the Applicant made the payment or its purpose. They say that he never told them of the payment at the time, that it was improper and that he should have requested his manager for administrative support. The firm in question was dismissed when the incident was later disclosed.

86. The Appeals Committee found the incident baffling and troubling. It was a stark indication of how isolated the Applicant must have felt. The Appeals Committee concluded that as an experienced professional, the Applicant must bear some of the responsibility; he should have assessed the situation as one which he should report to management before he paid the funds. The Bank did not have a chance to address the problem at the time and the Committee was not inclined to recommend a refund.

87. The Tribunal considers that the isolation of the Applicant, which this incident reveals, must be attributed in part to management deficiencies and indifference. It appears, that at this time, the Bank gave little attention to any of the Applicant's concerns and failed to reply to many of his requests. In the view of the Tribunal, the Bank has denied fair treatment to the Applicant by creating conditions that were not supportive of his work and by failing to reimburse him for the payment which he incurred as a consequence.

Unfair treatment and disrespect

88. The Applicant complains that while he was working in the EDIDR front office, he was treated with disrespect, and unprofessionally. He returned from vacation to find his possessions in a box in the hall, and his e-mail account closed. On another occasion, he found his office occupied by computer analysts, his computer disconnected and his files in disarray. He had been kept off the staff e-mail distribution list until near the end of

his tenure, thus ensuring his near total isolation. The Tribunal understands that these matters were troubling to the Applicant at the time, and no doubt the more so as they emphasized his temporary status in the organization and his isolation. The Tribunal considers that these actions ought to have been avoided, but they do not require any separate finding of unfair treatment.

Bias in appeals process

89. The Applicant claims that there was partiality and prejudice in the appeals panel final judgement, and no due process. However, the Tribunal is not a court of appeal from the Appeals Committee and does not review the manner in which the Appeals Committee has dealt with a case. (de Raet, Decision No. 85 [1989], para. 54.)

90. The Applicant's claim that the letter forwarding the appeals report is offensive has no merit.

Claim for compensation

91. The Applicant has claimed compensation, damages and expenses in the following sums:

- i) compensation of \$117,000 representing his annual net salary at the time of the decision contested;
- ii) value of lost benefits, calculated as 10% of total payments – \$6,500;
- iii) 145 days x \$50 fee differential – \$7,250;
- iv) out-of-pocket expenses – \$440; and
- v) legal honoraria – \$2,625.

Conclusion

92. The Tribunal concludes that the Applicant has not established that there was a promise or assurance by the Bank to renew or extend his short-term contract on its expiry.

93. The Tribunal concludes, however, that there were several irregularities in the treatment of the Applicant, resulting in unfair treatment, contrary to the Principles of Staff Employment, by:

- i) not providing the Applicant with a written statement concerning the change in his terms of reference in May 1997 and concerning his later assignments;
- ii) failing to acknowledge the satisfactory work done by him on the Partnership paper or to consider any means of enabling the Applicant to complete the paper;
- iii) failing to ensure to the Applicant the benefits that would have flowed from a continuous contract of six months, including a formal evaluation under the Staff Rules, or to advise him of his true position in regard to those benefits; and
- iv) failing to create conditions that were supportive of his work and to reimburse him for the payment of \$440 which he made in order to obtain data for his Partnership paper.

94. The Respondent should pay compensation for the injury suffered by the Applicant.

Decision

For the above reasons, the Tribunal unanimously decides that:

- (i) the Respondent shall pay the Applicant compensation in the amount of \$20,000 net of taxes;
- (ii) the Respondent shall pay the Applicant costs and expenses in the amount of \$1,500; and
- (iii) all other pleas are dismissed.

Francisco Orrego Vicuña

President

Nassib G. Ziadé

Executive Secretary

At Washington, D.C., January 28, 2000