

Decision No. 225

Paul Zwaga,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on June 30, 1999, by Paul Zwaga 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 Robert A. Gorman (President of the Tribunal) as President, Thio Su Mien (a Vice President of the Tribunal), Bola A. Ajibola and Jan Paulsson, Judges. The usual exchange of pleadings took place. The case was listed on December 27, 1999.

2. This application raises issues related to the Bank's decision not to confirm the Applicant's probationary appointment. It is the Applicant's position that the non-confirmation decision was unjustified and not taken in accordance with due process.

Relevant facts

3. On September 2, 1997, the Applicant, a Dutch national, joined the Bank as Head (level 23) of the Marketing Unit (EXTMT) of the External Affairs Department (EXT), Office of the Publisher (EXTOP) on a four-year fixed-term contract. The Applicant had been internationally recruited for that position by the Publisher of EXTOP (hereinafter the "Publisher") as part of the Bank's efforts to make its publishing operations more commercial. In the Applicant's letter of appointment, it was specified: "In accordance with World Bank policy, your appointment will be probationary for the first year and will normally be subject to confirmation on the first anniversary of your reporting for duty."

4. In mid-October 1997, EXT's Staff Association Delegate informed the Director of EXT that a number of female staff in EXT had complained about the inappropriate conduct of a senior male staff member, but the Delegate did not identify the male staff member at that time. The Director of EXT addressed the complaints by reinforcing the Bank's policy on sexual harassment during an October 23, 1997 meeting with EXT's Division Chiefs – which meeting the Applicant attended as Acting Division Chief of EXTOP – and by following up with discussions with managers. According to the Applicant, he had no indication from the October 23rd meeting that complaints had been directed at him.

5. In November 1997, the Director of EXT was informed by the Publisher that complaints had specifically been made about the Applicant's behavior. The Publisher was thereafter instructed by the Director of EXT to deliver personally to the Applicant a copy of the Bank's booklet on sexual harassment in the workplace. The Applicant acknowledges having received the booklet; however, it is his position that – contrary to the Publisher's version of events – the Publisher simply handed the booklet to him without comment about the complaints and without instructions to modify his behavior.

6. On December 10, 1997, a long-term consultant in EXTMT submitted his resignation effective February 2, 1998. The consultant indicated in exit interview notes that 80% of the reason for his resignation was that the Applicant was "[i]mpossible to work with."

7. In late 1997 and early 1998, the Director of EXT received further complaints about the Applicant's behavior

and management style. By a memorandum to the Publisher dated January 12, 1998, the Human Resources Officer for EXT listed the behavior that was causing the “most widespread concern and upset” among the Applicant’s colleagues. This behavior, she indicated, consisted of: insensitivity (crude jokes and offensive sexual remarks); arrogance (open and public criticism of the lack of professional competence of the staff working in EXTOP, resulting in a “serious impact on the morale” of staff); rudeness and condescension.

8. The memorandum of January 12, 1998 was thereafter shown to the Applicant during a meeting that was held on January 14, 1998 between him, the Publisher and the Human Resources Officer for EXT. According to the Applicant, it was on this occasion that he was first told that complaints had been directed against him regarding inappropriate remarks and jokes.

9. On January 26, 1998, the Director of EXT met individually with four members of the Applicant’s marketing staff who detailed their complaints regarding the Applicant’s behavior. The Director of EXT met with the Applicant the following day to discuss his behavior. The Director of EXT and the Publisher indicated that they thereafter received no further complaints from staff that the Applicant was making racially or sexually oriented remarks.

10. The Applicant’s Overall Performance Evaluation (OPE) for the period of September 2 to December 31, 1997 was signed by the Publisher in April 1998. In this OPE, the Applicant’s performance received mixed reviews and his people management and teamwork skills were rated as “weak.”

11. The above OPE was attached to a memorandum from the Publisher to the Applicant dated April 14, 1998, as part of the mid-term review for the Applicant. In this memorandum, the Publisher noted a number of tasks that the Applicant had handled well, but also criticized the Applicant’s competence in the areas of planning, analyzing and reporting. The Publisher emphasized that it was “essential” for the Applicant “to develop quickly [his] unit into a functioning team with well motivated members,” and “to improve further [his] working relationship with the great majority of colleagues in EXTOP and key people outside of it.”

12. According to testimony before the Appeals Committee, the Applicant had, during this period, both positive and negative interactions with some of his clients and other managers in EXT. Additionally, aside from testimony regarding the Applicant, two managers in EXT gave testimony about their own negative experiences as new managers in EXT. One of the managers testified that she had experienced difficulties with her staff when she arrived at EXT in that they were unhappy, unproductive and resistant to change. She indicated that she did not receive the support of EXT senior management and that staff presented complaints against her to senior managers, Human Resources and the Staff Association. It became her belief, she testified, that staff were attempting to create a “wall of complaint” against her. This manager noted, however, that she had been receiving improved support from senior management since then.

13. Effective May 2, 1998, a second staff member in EXTMT resigned. According to the Publisher, this staff member resigned due to the Applicant’s poor management style. The Applicant asserts, however, that this staff member left the Bank for a better position.

14. On May 28 (or 29) and on June 3, 1998, the Publisher met with the Applicant. It is the Applicant’s position that the Publisher, during the meeting of June 3, 1998, gave him a commitment of one additional year of probation. The Publisher has asserted, however, that he instead told the Applicant that confirmation was not possible but that he would be willing to offer the Applicant an extension of the probationary period by a few months in order to give him another chance to succeed.

15. From June 5 to 21, 1998 the Publisher was out of the office to attend an executive training program. The Publisher asserts that before he left, he sought volunteers among the unit managers for a proposed move from offices to open space. The Applicant, he says, volunteered his unit without discussing the matter with his (the Applicant’s) staff and received, as a result, strong resistance and complaints. As explained by the Director of EXT, the office move incident was the “straw that broke the camel’s back” regarding the Applicant’s future in EXT.

16. On June 30, 1998, the Publisher wrote to the Acting Director of EXT and the Human Resources Officer for EXT – who together with the Publisher comprised the management review group – to request approval to terminate the Applicant’s employment. In making the request, the Publisher explained that the Applicant’s tenure in the Bank was characterized by a history of behavior and performance problems.

17. Later that same day (i.e., on June 30, 1998), the management review group convened to review the Applicant’s performance and the Publisher’s recommendation that the Applicant’s employment be terminated. After some discussion, the Publisher’s recommendation was endorsed.

18. By a letter dated June 30, 1998, the Publisher informed the Applicant that he had recommended that the Applicant’s employment be terminated. He stated that the Applicant’s performance and behavior during the past month had been a “bitter disappointment,” and he enumerated a number of examples.

19. The Vice President of EXT thereafter informed the Applicant by a letter dated that same day (i.e., June 30, 1998) that his appointment had not been confirmed and that his employment would terminate on September 30, 1998.

20. Also on June 30, 1998, a third staff member in EXTMT announced her intention to resign due, according to the Publisher, to the Applicant’s “management style and interpersonal behavior.” The Publisher asserts that, in addition to the resignations of the three staff members, two other EXTMT staff members had asked to be transferred “to get away” from the Applicant. The Applicant challenges the Publisher’s assertions.

21. On September 24, 1998, the Applicant filed a Statement of Appeal with the Appeals Committee against the “non-confirmation and the termination of [his] fixed term contract.” (The Applicant by-passed, pursuant to Staff Rule 9.01, paragraph 2.02, the administrative review stage.)

22. In its report, the Committee found that the non-confirmation decision was proper and that there was insufficient evidence that the Publisher had promised the Applicant a one-year extension of his probation. However, it further found that: (i) while the Applicant’s international recruitment was part of an overall strategy to professionalize EXTMT, EXT senior management took no steps to reinforce that message with the Applicant’s staff; (ii) there was no indication that EXT senior management attempted to mentor or coach the Applicant in order to help him assimilate to the Bank’s culture; and (iii) the Applicant’s managers did not approach him promptly and provide him with a fair opportunity to address the staff complaints that were made against him.

23. In the light of its findings, the Committee made the following recommendations: (i) the Applicant should be awarded compensation in the amount of six months’ net salary; (ii) the Applicant should be compensated for the shipment to his home country of his personal and household effects (if this had not already been done); and (iii) the Applicant should be paid attorney’s fees.

24. The Bank accepted these recommendations, but the Applicant requested an additional three-months’ net salary for a full release and settlement of his claims. The Bank rejected the Applicant’s request and the Applicant filed an application with the Tribunal on June 30, 1999. In his application, he contests the Respondent’s decision not to confirm his appointment and its alleged decision to retract its offer of a one-year extension of his probationary period.

Review of the non-confirmation decision

25. The Tribunal will first address the Respondent’s decision not to confirm the Applicant’s appointment. Pursuant to Staff Rule 4.02, paragraph 1.02, “[t]he intent of the probationary period is to assess the suitability of the Bank Group and the staff member to each other.” An assessment of this suitability is a matter of managerial discretion. (See, e.g., Salle, Decision No. 10 [1982], para. 27.) Furthermore, it is for the Bank to establish the standards which the probationer should satisfy. In Buranavanichkit, Decision No. 7 [1982], paragraph 26, the

Tribunal held that these standards

may refer not only to the technical competence of the probationer but also to his or her character, personality and conduct generally in so far as they bear on ability to work harmoniously and to good effect with supervisors and other staff members.

26. The Tribunal's decision in Buranavanichkit is reflected in Staff Rule 4.02 "Probation," paragraph 3.02, as it was in effect at the time of the Applicant's non-confirmation of appointment. Paragraph 3.02 provided:

The manager shall determine the staff member's suitability or non-suitability for confirmation based on an assessment of the staff member's achievement of the work program, technical qualifications and professional behaviors.

27. In the light of the above jurisprudence and Staff Rules, unless there is an abuse of discretion, it is clear that the Tribunal may not review the Respondent's determination whether the Applicant was suitable for Bank employment.

28. In the present case, the Respondent decided not to confirm the Applicant on account of: (a) his behavior and management style; and (b) his performance.

29. The record is abundantly clear that the Respondent was reasonably justified in its criticisms of the Applicant's behavior and management skills. Complaints about inappropriate behavior began almost at the outset of the Applicant's employment and continued through January 1998 when the Applicant was told that his behavior was inappropriate and would have to change. While the Applicant's behavior appears to have improved subsequent to January 1998, his management skills appear to have been problematic throughout his tenure at the Bank. The Applicant's poor behavior and problematic management are evidenced by, among other things, a memorandum of the Human Resources Officer for EXT that outlined staff complaints; notes of staff and the Director of EXT regarding staff complaints; at least one resignation that was directly attributed to the Applicant; the Applicant's mid-term evaluation; and the correspondence pertaining to the decision to terminate the Applicant's employment.

30. The Applicant himself has acknowledged having a harsh management style. For instance, in his interim review, the Applicant stated that, in the future, he would demonstrate a more positive attitude, which "becomes more credible if one has been very critical initially." Later, in his statement before the Appeals Committee, the Applicant explained his behavior at the beginning of his employment in the following way:

If, in the private sector, a manager finds that his hockey team consists of football players, he is not expected to treat them with silk gloves, but to do anything necessary to make sure his team consists of hockey players. Criticism is meant to be a push for people to do better. I do believe my criticism was overkill....

31. The Tribunal notes that most of the Applicant's interpersonal problems existed mainly before he was given adequate feedback by his managers and it recognizes that interactions with his staff seemed to improve later. However, the initial problems did adversely affect the implementation of the new marketing program for the Bank's publications activities, the main reason for which the Applicant had been recruited.

32. Regarding the Applicant's professional performance, it is not possible for the Tribunal to ascertain whether certain achievements in the Applicant's work program, such as the negotiations with Oxford University Press, the negotiations with the Stationary Office, the closing of the World Bank bookstore in Paris, certain sales increases and cost savings, were the outcome of the Applicant's contributions or of other factors as the Respondent alleges. In any event, there were instances where, according to the Publisher, the Applicant's performance did not produce the expected results. In this respect, the Tribunal will not substitute its own judgment for that of the Respondent on the staff member's suitability for employment. In reviewing the Respondent's decision not to confirm the Applicant's appointment, the Tribunal further notes that the concept of unsatisfactory performance as applied in the case of probation is broader than that of a confirmed staff member. As the Tribunal held in McNeill, Decision No. 157 [1997], paragraph 34: "Regarding probation, the problem is not so much whether the probationer has performed satisfactorily as whether he has proven his

suitability to the specific requirements of the Bank regarding the work which he would have to perform if he were to be confirmed.”

33. In so far as the evaluations of the Applicant and the decision made by the Respondent were based upon the unsuitability of the Applicant for Bank employment, and, in the absence of bias, arbitrariness or improper motivation on the part of the Applicant’s managers, the Tribunal concludes that there has been no abuse of discretion by the Respondent.

Fair treatment

34. The next question for the Tribunal to address is whether the Respondent treated the Applicant fairly and in accordance with due process in the decision not to confirm him.

35. The Tribunal held in McNeill, Decision No. 157 [1997], paragraph 44, that probation creates rights and obligations for both parties and because the institution has a widely discretionary power to determine whether the probationer should, or should not, be confirmed, this power should be balanced by its duty to meet what the Tribunal has called “the appropriate standards of justice.” In Salle, Decision No. 10 [1982], paragraph 50, the Tribunal emphasized “the importance of the requirements sometimes subsumed under the phrase ‘due process of law’.” It added:

The very discretion granted to the Respondent in reaching its decision at the end of probation makes it all the more imperative that the procedural guarantees ensuring the staff member of fair treatment be respected.

36. The probationer has the right to be given a fair opportunity to prove his suitability to the specific requirements of the Bank regarding the work which he would have to perform if he were to be confirmed. The role of the Tribunal is to review whether this right has been respected and whether the requirements of due process have been met.

37. In connection with probation, the Tribunal has singled out “[t]wo basic guarantees” as “essential to the observance of due process”:

First, the staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached. Second, the staff member must be given adequate opportunities to defend himself.

(Samuel-Thambiah, Decision No. 133 [1993], para. 32.)

38. In addition, the Tribunal has held that one of the basic rights of an employee on probation is the right to receive adequate guidance and training (Rossini, Decision No. 31 [1987], para. 25) and that it is its duty to make sure that the Bank’s obligation to provide a staff member on probation with adequate supervision and guidance has been complied with in a reasonable manner. (Salle, Decision No. 10 [1982], para. 32.)

39. From its review of the record in this case, the Tribunal finds that Bank management did not afford the Applicant fair treatment in that it did not provide him with adequate supervision and guidance, and there was a violation of due process which has caused the Applicant harm.

40. The record shows that the Applicant had been recruited as an experienced manager in his field from the private sector in an effort by the Bank to make its publishing operations more commercial. The Applicant was hired to head a Division which was undergoing great changes in its goals, policies and procedures in implementing these goals. The question disputed by the parties is how much the Bank reinforced among EXT staff the need for change in the publishing function and how much support it provided the Applicant in this respect.

41. It may be true, as the Respondent argues, that the commercialization of the publishing function was “a broad, overarching goal, that was infused in almost all the activities in EXTOP, and was common knowledge

among EXTOP staff.” It is also true that these new policies were communicated through an EXTOP brochure and an EXTOP slide show which were disseminated from June 1997 onward throughout the Bank and in particular to EXT staff. The Publisher has explained that “[t]hese new policies needed to be communicated and explained in the Bank because some were kind of ‘revolutionary’ ... and, therefore, were likely to face resistance.” While the Applicant was an experienced manager in his field in the commercial sector and was recruited to put this experience and knowledge to good use in the Bank, he was required to work in an environment where, as Bank management knew before recruiting him, it was likely he would face significant resistance to the changes he was hired to implement. Indeed, the testimony before the Appeals Committee of one of the two new managers who were recruited by EXT after the hiring of the Applicant revealed that she, too, faced significant resistance from her staff. In fact, this manager testified that it was only after she enlisted the support of EXT senior management and Human Resources that she was able to regain control of her unit.

42. The Tribunal further notes that the Applicant was an external recruit unfamiliar with the Bank’s policies and procedures and it was to be expected that he would need a reasonable amount of coaching and supervision, at least at the outset of his assignment, to address the problems that were likely to arise during the transitional period.

43. The Applicant indicated that he discovered on his own that since the end of November 1997, his behavior sometimes had upset his colleagues and that he spent considerable time and effort in December “to set things straight.” Furthermore, in his comment in his interim review, the Applicant stated: “Entry into the WB environment is exciting but not easy. Information is hard to get and often unreliable. Standards of measurement that apply in private industry seem to be unknown; hence [it] is almost impossible to see what is expected.” He continued his expression of confusion: “I am not sure whether I am expected to adapt to the Bank’s culture, or to push for changes, as I sometimes get mixed messages Condition for success is that there is absolute clarity about the desired goal at all levels.” He added: “In order to achieve results in the short term, a lot of work has to be done to create the conditions where results can be achieved. Not all of these conditions can be created without the assistance of others.”

44. In reviewing this record, the Tribunal concludes that the Bank did not provide adequate guidance and supervision to the Applicant in the way he was to manage his staff in the implementation of these changes. In particular, the Bank failed to deal promptly with inappropriate behavior about which a number of staff had complained as early as October 1997. The record indicates that the Applicant was not formally informed of these serious allegations until mid-January 1998, some four months into his probationary period. The record further indicates that after he was properly notified, the Applicant changed his behavior and the complaints stopped.

45. Taking into account that the entire probationary period was to last one year, the Tribunal finds that the notice of staff complaints and the guidance given to the Applicant were late in coming and ultimately proved inadequate because they deprived him of the opportunity to provide an explanation to his supervisors and to engage in a constructive dialogue with them, as well as to improve his relationship with his staff, his managerial skills and ultimately his performance. The Bank thus deprived the Applicant of a fair chance to prove his suitability for Bank employment.

46. This finding of the Tribunal is particularly important since the Applicant’s inability to demonstrate “the managerial and interpersonal skills required to build and engage a team effort among [his] staff and colleagues” was one of the principal reasons given by the Respondent for the non-confirmation of his appointment. The Appeals Committee recommended that the Respondent pay the Applicant compensation for the Bank’s failure to provide him a fair opportunity to succeed in the task he was recruited to perform, a recommendation that was accepted by the Bank. The Tribunal finds that this compensation was appropriate and that no additional compensation need be awarded by the Tribunal in this respect.

Other procedural irregularities

47. The Tribunal finds that there were other instances in the treatment of the Applicant by the Respondent

which constitute a breach of due process. An interim review was prepared for the Applicant under Staff Rule 4.02, paragraph 2.02(b). This paragraph provides:

During the probationary period, the designated supervisor shall:

...

(b) at the end of the first six months of the probationary period, or earlier, share with the staff member a written assessment of the staff member's suitability and progress based on achievement of the work program, technical qualifications and professional behaviors.

48. Although the preparation of the interim review was completed more than one month after its due date under the Staff Rule, the Tribunal finds that this delay was remedied by the fact that the review was comprehensive and that the Applicant took the opportunity to comment on the review.

49. At the end of May, or in the beginning of June, 1998, however (i.e., only one and a half months after the completion of his interim review), the Applicant was informed by the Publisher during a meeting that confirmation was not possible but that the Publisher would be willing to offer the Applicant an extension of the probationary period in order to give the Applicant another chance to succeed.

50. The Tribunal views the period between the time the Applicant was informed at his interim review that his performance needed improvement and the time that he was informed that confirmation would be impossible (i.e., one and a half months) as insufficient time for the Applicant to demonstrate improvement in his performance.

51. The most serious irregularity occurred, however, on June 30, 1998 (only a few weeks after the meeting between the Applicant and the Publisher at the end of May or in early June) when the Publisher wrote to the Acting Director, EXT, and the Human Resources Officer for EXT requesting approval to terminate the Applicant's employment. On that same date, the management review group convened to review the Applicant's performance and endorsed the Publisher's recommendation. The Applicant was also informed by the Publisher on that date that he had recommended that the Applicant's employment be terminated and the Publisher outlined "a few" of the reasons for the termination. Also on June 30, 1998, the Vice President of EXT informed the Applicant that his appointment had not been confirmed and that his employment would terminate on September 30, 1998.

52. Staff Rule 4.02, paragraph 2.02(c), states that the designated supervisor shall "at the end of the probationary period complete a performance review in accordance with provisions of Rule 5.03, 'Performance Management'." Further, Staff Rule 4.02, paragraph 3.03, provides:

At any point during or at the end of the probationary period, a decision to end a staff member's employment by non-confirmation of appointment shall be made by the staff member's vice president taking into account the recommendation of the staff member's manager and a senior manager, and with the concurrence of the Manager, Human Resources Team.

53. The Staff Rules provide less than a clear answer to the question whether a notice of non-confirmation given before the end of the probationary period must be accompanied by a formal performance review as described in Staff Rule 5.03, including the mutual completion of a written performance evaluation. Staff Rule 4.02, paragraph 2.02, requires such a formal evaluation after six months of probationary service and again "at the end of the probationary period." The latter phrase could reasonably be interpreted to mean at the end of the normal probationary year, whether or not the staff member is confirmed in his post; or it could reasonably be interpreted to mean the date, even before the end of the contemplated probationary period, when a definitive determination is made and communicated that a probationary staff member's services are no longer needed, which would have been June 30, 1998 in the present case. The Respondent appears to concede that the more rigorous latter interpretation is correct, for it argues that the Publisher's letter of June 30 to the Applicant should be treated as the equivalent of a performance evaluation in compliance with Staff Rules.

54. If indeed Staff Rule 4.02, paragraph 2.02, is to be understood to require a performance evaluation at the

time a probationary staff member is given an early notice of non-confirmation (i.e., one that is given prior to the end of the anticipated probationary period), then the Tribunal must conclude that the Bank failed to provide that in this case. Although the Publisher's and the Vice President's letters of June 30, 1998 were quite detailed in specifying the Applicant's performance failures, he was afforded no opportunity to respond or explain, as in the case of a performance evaluation. Moreover, even if that Staff Rule does not require that such an "early" non-confirmation be accompanied by an explanation by the Bank as well as by an opportunity for the staff member to respond or explain, the Tribunal concludes that principles of due process so require, as much in the case of "early" non-confirmation as in the case of non-confirmation that is communicated at the end of the normal probationary period.

55. In the overall context, the Tribunal is also troubled by the hasty manner in which the non-confirmation of the Applicant's employment took effect. In only one day (i.e., June 30, 1998) the Publisher requested approval of his recommendation not to confirm the Applicant's appointment, the management review group endorsed this recommendation, the Publisher informed the Applicant of the recommendation, and the Vice President of EXT notified the Applicant that his appointment would not be confirmed. At no point was the Applicant offered the opportunity to address the reasons for which his manager recommended the non-confirmation of his appointment. The Applicant was finally afforded this opportunity in his Statement of Appeal before the Appeals Committee. The Respondent's explanation for the timing of events surrounding the decision not to confirm the Applicant's employment (i.e., to avoid the Applicant's negative impact on his unit and his working relationship with EXTOP's clients and the need for personnel actions to coincide with the close of the fiscal year) does not justify this obvious infringement of the Applicant's right to due process.

56. The Tribunal finds that the Applicant had a right to a final evaluation of his performance prior to the management review and before any action regarding the non-confirmation of his appointment was taken and that the above procedural irregularities deprived the Applicant of the opportunity to defend his record, for which he should be compensated.

Extension of probationary period

57. The Applicant also alleges that, during the meeting held with the Publisher at the beginning of June 1998, he was offered an extension of his probationary period for one year and that, on the basis of this offer, he committed himself to another year's lease on his home. The Tribunal notes that there is no evidence in the record of the type of commitment that the Applicant alleges the Publisher offered him. In fact, the evidence in the record is conflicting and the Tribunal observes that the only indisputable evidence is that there was a discussion that day between the Applicant and the Publisher during which the Publisher expressed his willingness to offer the Applicant an extension of his probationary period.

58. It should be noted that even if the Applicant had accepted an offer of extension of his probationary period for one year, he still had no right to tenure or assurance of his employment being confirmed. As the Tribunal ruled in McNeill, Decision No. 157 [1997], paragraph 30, pending confirmation, the situation of a probationer is essentially provisional and his future with the Bank depends on his suitability for permanent employment. In Salle, Decision No. 10 [1982], paragraph 28, the Tribunal also held that the fact that the probationary period is extended does not give any decisive indication as to the likelihood of ultimate confirmation. The Tribunal further held in Salle that it is clearly not the case that continuation of the initial probationary period is tantamount to a commendation and to an assurance of ultimate confirmation. (*Id.*) In this respect, Staff Rule 4.02, paragraph 3.03, provides that a decision not to confirm a staff member's employment can be made "[a]t any point" during the probationary period.

Damages

59. As the Tribunal has ruled in the past, "[d]amages are designed to provide the Applicant with adequate reparation of injury actually suffered." (McNeill, Decision No. 157 [1997], para. 62.) In this case, the Tribunal finds that the Applicant has suffered injury because: (a) he was not treated fairly by the Bank in that the Bank did not provide him with adequate notice and guidance to succeed in the task for which he was recruited to

perform, especially at the beginning of his probationary period; and (b) of other procedural irregularities. Regarding the first ground, the Tribunal finds that the Applicant has been adequately compensated by the Respondent in conformity with the recommendation of the Appeals Committee and finds no reason to award additional compensation. However, in the light of other procedural irregularities, the Tribunal concludes that the Applicant is entitled to additional compensation in the amount of four months' net salary and costs in the amount of \$5,000.

Decision

For the above reasons, the Tribunal unanimously decides to award the Applicant:

(i) compensation in the amount of four months' net salary; and

(ii) costs in the amount of \$5,000.

All other pleas are dismissed.

Robert A. Gorman

President

Nassib G. Ziadé

Executive Secretary

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