

Decision No. 85

Pierre de Raet,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

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 November 8, 1988, by Pierre de Raet, against the International Bank for Reconstruction and Development. The Tribunal rejected the Applicant's request for production of documents and inquiry. The usual exchange of pleadings took place. The case was listed on August 11, 1989.

**The relevant facts:**

2. The Applicant, a Belgian national, joined the Bank in 1974 at the age of 40, on a regular appointment, level L (equivalent to current grade 23), as a Loan Officer for Senegal in the West Africa Region, where he worked for ten years under the supervision of three different division chiefs but the same director.

3. In the Applicant's Annual Performance Reviews (APRs) for the period 1974-81 his supervisors consistently noted, on the one hand, certain strong points, such as excellent administrative skills, unflagging dedication to work, determination to achieve results and capacity to produce a large volume of work in a timely manner, and, on the other hand, the fact that he lacked imagination and strategic thinking and that he felt uncomfortable with the policy aspects of his work.

4. In 1982 the Applicant was recommended by his Region for promotion to level M. However, the Personnel Department objected to his promotion because the required criteria had not been met. Later after the Ombudsman intervened, the Applicant and his supervisors came to an understanding as to how to proceed in the coming year in order to demonstrate that the Applicant had met the criteria for promotion to level M. Finally, on the basis of his APR for 1982-3, which described his work as improved and good and recommended his promotion, in June 1984 the Applicant was promoted to level M effective August 1, 1983.

5. On January 1, 1985, as part of a general rotation of loan officers, the Applicant was transferred to the Indian Ocean Division of the Eastern and Southern Africa (ESA) Region as Senior Loan Officer and team leader for Mauritius, Comoros and Seychelles. On January 10, 1985 his former Division Chief sent a letter to the Applicant stating how exceptional his contribution was to both the Bank's operations and Senegal's (Applicant's assigned country) development during the past ten years. On May 1, 1985 the Applicant received a 3.8 percent salary increase for a fully satisfactory performance. His reward category was 3, and on his Personnel Action form a handwritten note read: "Solid 3".

6. In July 1985 the Applicant and his Division Chief agreed upon an Individual Performance Plan (IPP) for FY86. In the Performance Area under Project Formulation it was stated that the Applicant's key objective should be to translate strategies developed by the Government/Country team into lending operations; under Staff Development and Training it was stated that the Applicant's key objective should be to strengthen skills in upstream work and macroeconomic approach, which would be achieved by on the job development and taking specific courses.

7. In the Applicant's APR for the period January 1985 to June 1985 his Division Chief stated that the Applicant

had made a good start in ESA but that he should focus on strengthening his upstream skills and taking a macroeconomic approach to his work. On January 31, 1986 the Applicant's Director completed his part of the Applicant's APR confirming the Division Chief's comments and adding that the Applicant should pay attention to the timeliness of his work product.

8. In the meantime, in late 1985, the Personnel Management Department (PMD) had been requested by the Bank's senior management to assist in carrying out a Bank-wide skills mix review to determine whether the Bank had the proper mix of technical and professional skills to cope with the changing lending program, which had become more policy-oriented with emphasis on sectoral adjustment and macroeconomics. As of February 20, 1986 a timetable for the Skills-Mix Exercise was set as follows:

- (a) by April 1986 each Vice-Presidency was to produce (i) an estimate of staff at levels 21-25 whose skills could not be fully utilized in their current units and staff who were less than fully satisfactory performers; and (ii) an assessment of the actions that might be taken to deal with affected staff; and
- (b) in April and May 1986 the Vice Presidencies should identify the individual staff members and develop action programs dealing with their individual circumstances.

9. By May 1986 the Vice Presidencies had compiled the data and had communicated it to the Managing Committee which upon review decided that:

- (i) individual skills-mix cases would be dealt with in the normal Performance Planning and Review (PPR) process;
- (ii) to minimize disruption and because funds were limited, the effort in 1986 would begin in the Europe, Middle East, North Africa (EMENA) and ESA Regions because these regions had the most current and complete PPR data; and
- (iii) because of changing requirements for loan officer, special emphasis would be placed on this career stream in all regions.

10. On June 18, 1986 the Applicant submitted his portion of the APR for the period July 1985-June 1986 to his Division Chief who, on September 10, 1986 returned to the Applicant his first draft concerning the latter's performance during the period. In this draft his Division Chief stated, inter alia, that for the first time the more demanding performance standards for a Senior Loan Officer were being applied and that the Applicant performed extremely well in the area of responsibilities of the traditional Loan Officer, but that he found it difficult to engage in the upstream activity so critical to the future Loan Officer role. His Division Chief concluded that on balance his performance must be considered less than fully satisfactory. Because of the Applicant's disagreement a second draft of the APR was produced in September 1986 which, however, was similar to the first draft.

11. On September 30, 1986 PMD issued the Skills-Mix Exercise Timetable which set certain deadlines for the Programs department of the EMENA and ESA Regions. After identifying those who were inadequate and consideration by and discussion with Personnel Officers by December 31, 1986 Directors and Division Chiefs were to agree upon proposals for individuals with mismatched skills.

12. On October 8, 1986 the Applicant submitted his comments on his Division Chief's draft evaluations in his 1985/86 APR stating, inter alia; "why should more demanding standards than in the past be applied? Does it mean that my performance in West Africa was not correctly evaluated or does it mean something else? ... The reference to the future loan officer role seems to indicate that the judgment is with reference to the future rather than to the period under review."

13. Meanwhile and before October 10, 1986 the Applicant's Division Chief met with Personnel Officers and discussed the Skills-Mix needs of his division. On October 20, 1986 a Circular from the Director of Personnel informed all staff of the objectives and implementation of the Skills-Mix Exercise. It was stated in the Circular that the Skills-Mix was to focus on the Bank's body of professionals and the appropriate mix of skills needed to

do the Bank's work, whereas the Reorganization was to focus on the structure of the institution; the Exercise was needed because the loans of the Bank had become increasingly policy oriented, with more emphasis on sectoral adjustment and macroeconomics; the Bank was committed to developing its staff to fill these new needs with internal and external training, retraining and special leave budgets once the staff had been identified through the PPR process; and finally the Exercise was to begin this year in the EMENA and ESA regions, and special emphasis would be placed on training and development in the entire career stream of loan officers.

14. In early October, apparently as a result of the Skills Mix Exercise as well as the Skills Mix timetable for the Applicant's region the Applicant's Personnel Officer had already prepared an assessment of the Applicant and filled in form 11/86 entitled: Request for Approval of Severance Payment. On October 22, 1986 the Applicant received from his Division Chief a third draft of the 1985/86 APR which was similar to the earlier drafts. By memorandum dated December 15, 1986 to the Acting Director, PMD, sent through the Vice President, the Applicant's Division Chief requested concurrence in declaring the Applicant redundant. In particular he stated:

[W]e have discussed Mr. de Raet's capabilities, limitations and work history at the divisional, departmental and regional levels and have concluded that over a period of time, his position has changed to such an extent that Mr. de Raet is no longer qualified to perform it.

Three days later the Applicant received from his Division Chief a fourth draft of his 1985/86 APR in which it was stated that the Applicant had performed extremely well in the areas of responsibilities for the traditional loan officer, but because of time constraints as well as the routine work in the Division it proved difficult for the Applicant to become more engaged in upstream activities, and that while considerable efforts and progress were made in FY86, the Applicant would need in the future to concentrate more of his time and energy on upstream activities. The Division Chief concluded that:

[I]n the context of a year of solid achievements, the Applicant did not fully meet the demanding, yet still emerging standards being projected for future programs officers.

15. On the same day the President of the Bank in his memorandum to the Members of the President's Senior Staff stated, inter alia, that because of the pending reorganization managers shall approve at this time only those personnel actions necessary for the functioning of the Bank.

16. On December 24, 1986, the Acting Director of Personnel approved the decision to declare the Applicant redundant and on January 7, 1987 the Applicant was informed by his Director that his position, as it currently existed, had become redundant under Staff Rule 7.01, Section 8.02 (c), under Sections 8.05 and 8.06 of the same rule the Personnel Department would be actively working with him to identify a suitable alternative position, and, should these efforts prove unsuccessful within six months, i.e. by June 30, 1987, it would be necessary to arrange for his separation from the Bank. The same day eight other staff members in the ESA Region were also declared redundant.

17. On January 23, 1987 the Applicant was informed by his Director that the terms of the redundancy notice had been suspended because senior management had decided to further review the terms of the redundancy decision.

18. On April 15, 1987 the Applicant received from his Division Chief the fifth and final draft of his 1985/86 APR which was very similar to the fourth draft. Under Section IV entitled Staff Member's Comments, the Applicant stated: "[I] must dissent from significant aspects of this characterization of my performance", noted that on several occasions he took the initiative of launching so-called "upstream activities" and gave a number of examples. Furthermore, he stated that in several drafts of this FY86 APR it was explicitly stated or implied that the standard against which his performance had been judged was some unspecified future standard for loan officers, viz, "the demanding, yet still emerging standards being projected for future programs officers." He concluded that at no time during the period under review did he receive any indication that his performance was not fully satisfactory and that on at least two occasions his Director congratulated another staff member and himself for their handling of the discussions with the Minister of Finance of Mauritius in particularly difficult

circumstances. In response to the Applicant's dissenting comments, his Director stated under Section V entitled Management Review that the review process had been handled fairly and that the Applicant had previously been given adequate indications that his performance had not been fully satisfactory.

19. By June 1987 the Reorganization, the main facts relating to which are described in paragraphs 3 to 42 of Decision No. 40, was underway and in order to ensure that Bank staff in affected units received full placement consideration, a number of personnel actions were suspended, among them reassignments other than those resulting from the reorganization or within or among unaffected units.

20. In June 1987 after the Applicant had been informed that his salary increase was 2.5%, i.e. reward category 2, less than fully satisfactory, he contacted the Ombudsman and told his Division Chief of his intention to appeal the decisions concerning the characterization of his performance in the 1985/86 APR and his merit increase of May 1987. His Division Chief indicated to the Applicant that submitting an appeal in the present circumstances would have the effect of creating serious complications in that he, the Director, and the Applicant would, as a result of the Bank reorganization, be in very different positions, and would also inevitably influence the preparation of the Applicant's APR for 1986/87 but concluded that the Applicant had the right to appeal.

21. On July 15, 1987 the Applicant's Personnel Officer confirmed to him that he had not been selected for a position during Round 1 of the staff selection process during the reorganization, and that he would be listed on the Redeployment Roster for Bank-wide consideration for vacant positions in Round 2.

22. Meanwhile the Applicant submitted to his Division Chief Section I of his APR for 1986/87. The latter noted several of the Applicant's strengths and achievements in traditional loan officer functions as well as his weaknesses, such as delays in processing of final products. He concluded that the Applicant's skills and experience "should" not be redundant to the Bank. In response the Applicant stated that his supervisor's evaluation closely paralleled that for 1985/86 which was the subject of an appeal, and, therefore, the objectivity of the 1986/87 evaluation, especially in view of the effect of the reorganization, might well be questioned.

23. On July 22, 1987 following the Ombudsman's intervention drawing management's attention to the adversity imposed on the careers of the nine redundant staff member of ESA, the Applicant was informed by his Personnel Officer that special arrangements had been made to make him immediately eligible for the Enhanced Separation Package (Package B). Notwithstanding this the Applicant, on August 7, 1987 made six applications for announced vacancies in Round 2 but received only two non-selection replies.

24. On August 21, 1987 the Applicant elected to accept Package B and on the same day he requested an Administrative Review of the decisions concerning his performance for 1985/86 and his salary review effective May 1, 1987. In response, on November 10, 1987, his Vice-President stated that both decisions were correct.

25. On December 30, 1987 the Applicant requested an Administrative Review of the Redundancy Notice dated January 7, 1987 as well as his non-selection during the Reorganization, and on January 15, 1988 he filed an Appeal with the Appeals Committee relating to the failure to evaluate his 1985/86 performance in accordance with Staff Rule 5.03 and the failure to grant him a normal merit increase. Furthermore, on February 26, 1988 the Applicant amended his Appeal to include an appeal against the decision to issue him the Redundancy Notice which led to his non-selection during the reorganization.

26. The Appeals Committee in its report dated August 5, 1988 concluded that:

Our recommendation, therefore, based on the written evidence, as well as on the extensive and often wide-ranging testimony at the Hearing, is that the Appellant's requests for relief be denied.

27. On August 9, 1988 the Senior Vice President, External Affairs and Administration, informed the Applicant that he had accepted the Committee's recommendations.

### **The Applicant's main contentions:**

28. The Regional Vice President, who had formed an unfavorable opinion of the Applicant ten years earlier, had carried over that bias when, as Vice President of the ESA Region and during the Skills-Mix Exercise, he became the arbiter of the Applicant's status in that exercise which resulted in: (i) the receipt by the Applicant of the Redundancy notice, (ii) the characterization of his performance in 1985/86 and 1986/87 as unsatisfactory and (iii) his non-selection during the Reorganization. The Vice President's bias constituted détournement de pouvoir.

29. There was national discrimination against the Applicant, because of the nine professional staff declared redundant in the ESA Region four of them who were of the same nationality are still employed by the Bank as a result of intervention by their Governments.

30. The Applicant's 1985/86 and 1986/87 Annual Performance Reviews departed so egregiously from legal standards that they constituted use of discretionary authority for a purpose other than the objective for which it was granted. His supervisors had decided that the Applicant's APR must conform with the redundancy decision regardless of the Applicant's actual performance and in order to satisfy the bias of the Regional Vice President. Consequently there was an abuse of power.

31. The Applicant was denied due process because the Respondent committed several procedural irregularities with regard to the Redundancy decision, the Applicant's APRs, his non-selection during the Reorganization, and the proceedings before the Appeals Committee.

32. The timetable of the Skills-Mix Exercise shows undeniably that the identification of individual staff members who did not have the proper mix of technical and professional skills to cope with the changing lending program took place in the spring of 1986, well before the Applicant's evaluation process for 1985/86 had begun.

33. By evaluating retrospectively the Applicant's performance against the future standards for "upstream activities" the Respondent changed the standards by which the Applicant's performance ought to be judged.

34. As appears from his Director's statement at the hearing of the Appeals Committee, the Applicant was never told during the period July 85-June 86, that his performance was less-than-satisfactory.

35. The Redundancy notice undeniably prejudiced the Applicant's prospects of selection during the Reorganization, because the Respondent suspended only the terms of that notice.

36. The Appeals Committee hearing fell far below the standard of fair procedure to which the Applicant was entitled, because it did not consider the issues of bias and national discrimination, did not make a verbatim record, and did not require testimony on affirmation. Furthermore, its Chairman conferred ex parte with a recalcitrant and hostile principal witness, did not permit cross-examination of that same witness and signed the Committee's Report for another member of the Panel.

37. It was illegal and improper for the Respondent to suggest that the Applicant's promotion from L to M in 1984 was not earned. The Respondent is bound by that decision and is estopped from alleging that the Applicant's promotion was undeserved.

38. The decision to declare the Applicant redundant was an arbitrary act and its implementation was irregular since the Respondent failed to produce evidence (i) that the Applicant's position had been redesigned and that the functions performed by the Applicant were redundant; (ii) that the Applicant's alleged redundancy was determined on the basis of managerial judgment about the skills needed by the Bank; (iii) that the Respondent sought reassignment for the Applicant; and (iv) that the Respondent had explored the possibilities of retraining.

39. The evaluation of the Applicant's performance for 1985/86 was based on irrelevant considerations, because the Redundancy notice he received on January 7, 1987 was issued well before the Executive Directors had approved Management's recommendations concerning the Reorganization and the new mission of the Bank as



well as its appropriate new staffing needs.

40. The Applicant's Division Chief contrary to the Respondent's assertion, failed to modify the Applicant's IPP objectives after having qualified them "unreasonably ambitious" during the January 1986 interim review.

41. Because of all the above Respondent's wrongdoings the Applicant has suffered extensive damages and tangible and intangible injuries. His career has been curtailed and he must compete in the European market with a tarnished record after twenty dedicated years of international civil service.

42. The Applicant sought the following relief:

(i) Rescission of the following administrative decisions:

(a) Determination in the 1985/86 and 1986/87 evaluations that the Applicant's performance was less than fully satisfactory.

(b) Denial of normal merit increase effective May 1, 1987;

(c) Redundancy notice of January 7, 1987; and

(d) Non-selection during the 1987 Bank Reorganization;

(ii) Correction of his Personnel Record to show satisfactory performance for 1985/86 and 1986/87;

(iii) Compensation for three causes of action: détournement de pouvoir, procedural irregularities (détournement de procédure) and substantive irregularities (breach of contract). Because this is an exceptional case the Applicant sought compensation in excess of "three years net pay" for the curtailment of his career as an international civil servant in the amount of US\$267,000; and

(iv) An award of costs and counsel fees.

### **The Respondent's main contentions:**

43. The Applicant's performance evaluations for 1985/86 and 1986/87 were conducted fairly and his salary adjustments for both periods were appropriate in the light of his performance evaluations.

44. Although no formal notice of unsatisfactory performance was given to the Applicant he received feedback from his managers during the periods under review.

45. From the outset of his Bank service the Applicant's managers found him lacking in ability to develop and implement overall country strategy and to engage in macroeconomic analysis. These work requirements had assumed much greater weight in late 1985 during the implementation of the Skills-Mix Exercise.

46. The decision to declare the Applicant redundant as a result of the Skills-Mix exercise in ESA and the implementation of that decision were carefully considered and carried out and were not arbitrary. Moreover, the redundancy notice did not negatively affect the Applicant's chances of selection during the reorganization. Two other staff members in the ESA Region, who had also received redundancy notices, were selected, not because of some bias in favor of nationality, but because they located positions outside the Operations Complex where their talents matched the requirements of the positions for which they had been selected.

47. It was proper for the selecting managers to take into account the Applicant's performance evaluation for 1985/86. As a result the Applicant was not selected during the reorganization because he was weak in the areas of developing and implementing country strategy and macroeconomic analysis.

48. The Applicant had not been discriminated against, nor had there been any abuse of power in the Respondent's treatment of him. The Applicant's performance evaluations and the 1986 and 1987 merit increases went up the line from his immediate supervisor to his Department Director, not down the line from the

Applicant's Vice President. The latter was not the initiator of the redundancy notice nor of the Reorganization selection decisions. In all these matters the Applicant's Vice President relied properly on the recommendations of departmental management.

49. The proceedings before the Appeals Committee were carried out properly and in accord with the Committee's Rules of Procedure. It was not improper on the part of the Chairman of the Appeals Committee to contact the Applicant's Division Chief, who was a witness, to remind him of his obligation and request his presence at the hearing of the Committee. Moreover, it was entirely proper for the Committee to decide that it did not need to hear all the witnesses the Applicant had wished to call.

50. The Tribunal should deny all of the Applicant's requests for relief, since the Applicant had not been treated capriciously, arbitrarily or unfairly.

51. Even if the Tribunal were to decide that the Applicant were entitled to compensation for injury, he has failed to show in accordance with the Tribunal's jurisprudence that the compensation he sought exceeded the differential between what he had received under Package B and what he would have received under the redundancy provisions of Staff Rule 7.01, Section 8.

52. The Tribunal in accordance with its jurisprudence should deny the Applicant an award of attorney's fees, because there were no exceptional circumstances in this case.

### **Considerations:**

53. There are at the outset three points that need to be recalled.

54. (1) The first is that the relationship of the Appeals Committee to the Tribunal is not that of an inferior to a superior court. 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 before it. The proceedings before the Tribunal are entirely separate and independent despite the fact that recourse to the Appeals Committee is a condition precedent to the commencement of proceedings before the Tribunal. The function of the Appeals Committee is to assist the management of the Bank to determine for itself whether there has been a failure on the part of the Bank. The function of the Appeals Committee ends with its recommendation, which the Bank may or may not accept. It is a complete misunderstanding of the situation to aver, as does the Applicant, after complaining of certain aspects of the Appeals Committee's procedure, that "consequently, the Report of the Committee does not provide a basis upon which the Tribunal can deal with the questions raised in this application." The report of the Committee is never regarded as "the basis" upon which this Tribunal deals with cases and is in no way binding upon it. The Tribunal is the only body within the Bank that deals with complaints judicially and it does so only on the basis of the evidence before it.

55. The Applicant has complained of certain inherent limitations in the operation of the Committee as well as procedural and substantive flaws in its conduct in this case. The Tribunal has found itself able to review these complaints without entering further into the question of the powers of the Appeals Committee or its relation to the Tribunal. It has concluded that the complaints cannot be sustained.

56. (2) The second point which the Tribunal has made repeatedly before is that in matters involving the exercise of discretion by the Bank, the Tribunal is not charged with the task of re-examining the substance of the Bank's decision with a view to substituting the Tribunal's decision for the Bank's. The duty of the Tribunal is to assess the Bank's decision – as to both its content and the manner in which it has been made – to determine whether it constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

57. (3) The third point is that, despite the assertion of the Applicant to the contrary, it is not the obligation of the Bank to demonstrate that there has been no discrimination or abuse of power – not, that is, until an Applicant has made out a prima facie case or has pointed to facts that suggest that the Bank is in some relevant way at

fault. Then, of course, the burden shifts to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner. (See also Bertrand, Decision No. 81 [1989]).

58. It will be convenient to examine the Applicant's complaints in the chronological order in which he has presented the date of occurrence of each decision giving rise to the application.

### **I. The redundancy notice (January 7, 1987)**

59. The first item of which the Applicant complains is the redundancy notice dated January 7, 1987. The short answer to this complaint is that within three weeks of the notice of redundancy being given to the Applicant, he was advised that the terms of his redundancy notice were suspended pending review and the notice was not reinstated prior to his separation from the Bank on September 30, 1987.

60. The Applicant appears to consider that a significant distinction is to be drawn between the suspension of "the terms of the redundancy notice" and the suspension of the notice itself. The Tribunal is unable to identify any relevant distinction. If the terms of a notice are suspended without any qualification or limitation, there is nothing in the notice that remains unsuspended. The notice therefore becomes legally inoperative.

61. However, having reviewed the question in its entirety, the Tribunal cannot disregard the fact that the redundancy notice was issued and that a series of events took place that led to its issuance. The manner of their happening is such as to occasion concern.

62. The redundancy notice stated that it was given under Staff Rule 7.01, Section 8.02(c). The relevant provision of this section read:

Employment may become redundant when the Bank or IFC determine in the interests of efficient administration that ...

(c) a position has been redesigned to the extent that the incumbent is no longer qualified to perform the duties.

The Tribunal observes that there is room for uncertainty as to the correct manner in which to interpret this provision. It is not clear whether subsection (c) requires an express "redesign" of the position or whether an informal redesign is possible by means of a gradual change in the requirements of the position. The probability, in an organization such as the Bank, where every position has its job description, is that the correct understanding of sub-section (c) is that formal "redesign" is called for and that a written product of that redesign, in the shape of a new job description, is required. Otherwise, there is a risk that staff members may be deprived of the benefits of the predictability of their activities and the standards implicit in an expressly formulated job description. There is also a risk that, in the absence of such explicit redefinition of job content, Bank management may too readily fall into the error of terminating on redundancy grounds the services of a staff member whose superiors are in reality moved by the poor quality of his performance rather than by his lack of the skills newly incorporated in a "redesigned" position; there is, indeed, some evidence that precisely this error may have occurred in the initial decision to terminate the Applicant on the basis of redundancy. If this view is correct, the requirements of subsection (c) were not met and the procedure followed in relation to the Applicant must be found not to have been correct.

63. There is another aspect of the redundancy procedure that occasions concern, namely, that it appears that it can take place without the staff member whose position is being redesigned, and whose qualifications for the new position are being examined, being informed of what is happening. This happened in the present case. During much of the period when the Applicant was discussing with his manager his APR for 1985-86, in the apparent belief that this was the only process going on at that time that might affect his position in the Bank, the redundancy process was concurrently taking place, unknown to the Applicant. In it the Applicant's post was being redesigned and determinations were being made by the Bank that the Applicant was not qualified to perform the duties of his position.



64. It is impossible in this connection to disregard the fact that an assessment was made of the Applicant sometime in 1986 by his Personnel Officer. This document has been put in by the Bank as material to the declaration of the Applicant's redundancy. Most unusually for a Bank document of this kind, it is in manuscript, is undated and the Applicant was not made aware of its existence or given an opportunity to comment on it. It has no heading and begins with a "Department Recommendation", namely, "Separation or Abolition of Office Terms." If this is to be regarded as the link connecting the Applicant to the operation of the redundancy rules (and there appears to be no other), it is self-evidently defective. It contains no suggestion that the Applicant's position has been "redesigned". Indeed, the basic irrelevance of this assessment to the skills mix exercise is openly acknowledged in the note at the top of its second page where the adverse comments on the Applicant are expressed in terms of his performance and not at all in terms of his possession of the requisite skills.

65. A further unsatisfactory feature of the simultaneous pursuit of two separate but parallel procedures affecting the Applicant is demonstrated by two other documents signed by the Applicant's Division Chief within three days of each other. On December 12, 1986, the Division Chief put his signature to the fourth version of the Applicant's 1985-86 APR. It concluded thus:

1. In the context of a year of solid achievements, Mr. de Raet did not fully meet the demanding, yet still emerging standards being projected for future programs officers.
2. Actions: In FY 1987, Mr. de Raet and I expect to work closely together in the critical upstream areas of his work, and, within the limits of the time available, I expect to provide him increased feedback and development support. I am also asking the Senior Divisional Economist and the Country Economist to guide and assist him in integrating his work more fully into a macro-economic framework.

Notwithstanding this, the same Division Chief on December 15, 1986 signed a Strictly Confidential Memorandum to the Acting Director, PMD, in which he requested the latter's "concurrence in our decision declaring Mr. Pierre de Raet as 'redundant staff'." The memorandum continued:

We have discussed Mr. de Raet's capabilities, limitations and work history at the divisional, departmental and regional levels and have concluded that over a period of time, his position has changed to such an extent that Mr. de Raet is no longer qualified to perform it.

This conclusion was clearly the result of an extended review process, carried out without the knowledge of the Applicant who, in the meantime, was discussing with the same manager the drafting of his APR in the evident belief that apart from that document nothing would affect the security of his tenure in the Bank. It clearly cannot be right that a Division Chief or any other officer of the Bank should be placed in such a duplicitous position, nor that the Applicant should be exposed to the detrimental consequences of it.

66. The fact that the terms of the notice of redundancy were withdrawn by the Bank shortly afterwards makes it unnecessary for the Tribunal to say more about that process in the present case. But Principle 2.1 of Staff Employment ("The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members") should be borne in mind; and clarification now of the mode of operation of the redundancy provisions may assist in avoiding difficulties in the future.

## **II. The FY 1986 Performance Review**

67. The basic complaint of the Applicant in respect of his 1985-86 APR is that his performance was classed as "less than satisfactory". As he fully understands and acknowledges, it is not for the Tribunal to substitute its own determination of the Applicant's performance for the one just quoted. At most the Tribunal can find that this conclusion was reached in an arbitrary manner, involving, for example, unfairness, failure to allow the Applicant to state his case, or other departures from established procedures, bias, prejudice, the taking into consideration of irrelevant factors or manifest unreasonableness. If the Tribunal so finds, it may declare the APR invalid and require its removal from the Applicant's record.

68. The Applicant maintains that these requirements were not met because appropriate procedures were not followed nor were appropriate standards applied. Moreover, he charges that the Vice President of his Region was biased or prejudiced against him.

69. The procedure to be followed in the preparation of APRs is set out in Staff Rule 5.03, Section 2.02. In summary, this requires a meeting between the manager and the staff member at which they are to review the staff member's performance plan. The staff member is to be shown the manager's written review and may respond to it.

70. There can be no doubt that in the present case these requirements were met to the full. The manager's assessment went through no less than four drafts, two in September, one in October and another in December 1986 and the final report was eventually completed on May 22, 1987.

71. The remaining issue is the question of the standards that were applied during this process. The Applicant's supervisor conceded that in certain specified areas, which he himself described as "the main responsibilities of the traditional Loan Officer", the Applicant performed extremely well. The fault that was found with the Applicant was that he did not become sufficiently engaged in so-called "upstream activities". These have been described in the Bank's answer as "development of overall country strategies, and project identification and preparation in the context of such strategies." The Applicant has not dissented from this definition. But he says, in effect, that he satisfied this requirement.

72. In his application the Applicant provides a detailed analysis on a country by country basis of how he dealt with the "strategic" aspects of his work in respect of which he had received adverse comments in his APR. This approach assumes, however, either that the Tribunal is entitled to review the substance of the Bank's assessment of the quality of the Applicant's work or that the Bank's assessment is so manifestly unreasonable that it cannot possibly be accepted. However, it is common ground that it is not for the Tribunal to substitute its own assessment for that of the Bank. Nor, in the light of the documents before the Tribunal, especially those reflecting the discussions that took place between the Applicant and his Division Chief and Director, can it be said that the Bank's assessment is so manifestly unreasonable that it may be invalidated. And this is so even in respect of the issue between the Applicant and the Bank regarding the details of the Applicant's "upstream" or "strategic" performance, to which he devoted detailed attention in his application. There is sufficient indication in the materials before the Tribunal to show that the Bank had adequately considered the Applicant's assessment of his own activities before the final draft of the 1986 APR was completed. This being so, the Tribunal cannot say that the conclusions expressed in the 1985-86 APR were manifestly unreasonable and therefore unacceptable. At the same time, having regard to how important it is that the Bank should not be seen to be acting in an arbitrary manner, the Tribunal observes that some direct response by the Bank to the presentation made by the Applicant in his application of the nature and extent of his "strategic" or "upstream" activities would not have been out of place.

### **III. The FY 1987 Performance Review**

73. The Applicant has also complained of his APR for 1986-1987. But both he and the Bank appear to be agreed that the validity of this APR really stands or falls with that for 1985-1986. In view of the conclusion reached by the Tribunal regarding the earlier APR there is no need to consider the later one in detail.

### **IV. The effect of the adverse Performance Review and of the determination of redundancy**

74. The question of the effect of the adverse APR for 1985-86 and of the determination of redundancy upon the Applicant's prospects in the Reorganization involves a degree of speculation into which it is inappropriate for the Tribunal to enter. Even if managers of other divisions were aware of the emerging 1985-86 APR and of the redundancy notice, it does not follow that their rejections of the Applicant's requests were determined by that knowledge. The same goes for the allegation of bias that plays so prominent a role in the Applicant's case. The allegation rests at best on coincidence. There is no direct or circumstantial evidence to support it.

75. The injury done to the Applicant by the wrongful determination of redundancy has in all the circumstances been sufficiently compensated by the increment in separation benefits that the Applicant received under Package B.

**Decision:**

For the above reasons the Tribunal unanimously decides that:

- (i) the undated manuscript memorandum referred to in paragraph 64 above and the redundancy notice given to the Applicant on January 7, 1986 shall be removed from the Applicant's personnel file; and
- (ii) the pleas in the application are dismissed.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary

At London, England, September 22, 1989