

## **JUDGMENT CASE NO. 5 \***

### **JACQUES COOK ET AL. vs. IDB**

The Inter-American Development Bank Administrative Tribunal,

Composed of Dr. Gonzalo J. Facio, President, Dr. Elita Graterol, Vice-President, the Honorable Charles D. Breitel, Dr. Luis Coronel de Palma, Sir William Douglas, Dr. Agustín Gordillo and Dr. Mozart Victor Russomano, considered the case, following the relevant procedures required or allowed by Articles 20, 21, 22, and 23 of the Rules of the Tribunal.

The complainants were represented by their attorney, Mr. Martin R. Baach. The Bank was represented by Jerome I. Levinson, General Counsel, and Mr. David H. Coore, Esq., of counsel. In addition to the written submissions by the parties, there was oral argument on October 9, 1985.

#### **I. WHEREAS:**

1) Mr. Jacques Cook and the other staff members of the Bank whose powers of attorney are to be found as from page 460 (65 powers of attorney) and beginning on page 534 (12 powers of attorney including that of Mr. Cook) and who organize themselves into the IDB Employees' Taxation Action Committee (ETAC), have sued the Inter-American Development Bank and request the Tribunal to order the following redress:

- "(1) Review all Bank actions and decisions on the Educational Allowance and Home Leave Allowance issues taken after November 8, 1982;
- (2) Determine whether inequities exist in the Bank's Education and Home Leave Allowances;
- (3) To the extent the Tribunal find inequities in the Education and Home Leave Allowances, direct the Bank to specifically perform all terms of the

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\*Executive Secretariat translation, the Spanish text alone being authoritative.

December 15, 1981 Aide Memoire, specifically paragraphs 5 and 6, in order to remedy said inequities by, among other things:

- (a) Meeting and discussing with ETAC, within 21 days of the issuance of the Tribunal's decision, the Tribunal's finding that inequities exist and the views of the Bank and ETAC on how to remedy them;
  - (b) Making every reasonable effort to reach a consensus view with ETAC on how to redress the inequities found by the Tribunal, said consensus view (or determination that none is possible) to be reached within 90 days of the issuance of the Tribunal's decision;
  - (c) Preparing, with ETAC a written report of the foregoing meetings and discussions, including recommendations, to be jointly submitted, along with the Report and commentaries thereon, to Top Management, within 90 days of the issuance of the Tribunal's decision, and
  - (d) By no later than 60 days after receipt of the aforementioned written Report, issue a final written decision approved by Top Management, with a full explanation of the reasons therefore, which describes how the Bank will redress all inequities found by the Tribunal in the Bank's Educational and Home Leave Allowances, provided further that all changes made to redress said inequities will be made retroactive pursuant to the terms of the December 15, 1981 Aide Memoire;
- (4) In view of the Bank's delay in complying with the terms of the Aide Memoire, direct the Bank to delay implementation of its new tax reimbursement system by freezing the phase-in at the 1980 level for the years 1981 and 1982; and phase-in 1983 at the Aide Memoire's 1981 level; 1984 at the 1982 level; 1985 at the 1983 level; 1986 at the 1984 level; and 1987 at the 1985 level; and
- (5) Award complainants their costs in this proceeding, including reasonable attorney's fees."
- 2) In support of their action, the plaintiffs have cited the facts and the law summarized below:

a) From the earliest years of existence of the Inter-American Development Bank, efforts were made for member countries to exempt from tax such income as their nationals obtained from the Bank, in order that staff members having different nationalities might enjoy equal pay for equal work within salaries scales that were competitive with those of other international organizations. Some member countries, however, did not adopt this policy, which caused inequalities that led the Board of Governors in 1960 to approve Resolution AG-3/60 which ordered the reimbursement of such national taxes as Bank's staff members had to pay on their salaries.

To determine the amount of reimbursement, from the outset the Bank used the principle of "Standard Deduction System" (SDS), which meant that the Bank presumed that the employee pays the tax on the basis of a standard deduction pertaining to his salary level. But in May 1979, the IDB President decided to change the tax reimbursement system and to use, as from January 1, 1980, the "Average Deduction System" (ADS) which is less costly to the Bank than the former system.

As a result of this change, one hundred and thirty-one employees of the IDB, affected by this measure which meant they would henceforth receive less money, filed complaints before the Committee of Labor Relations which was then in existence, later replaced by the Conciliation Committee, to which these complaints were forwarded. The grounds advanced by the complaining staff were basically three: A violation by the IDB of Section 381 of the Personnel Policies Manual in having failed to consult with the Staff Association about the change; a disregard of the vested or acquired right of the staff regarding the reimbursement system known as "SDS", which is more favorable to the employees; and the upsetting of the approximate balance in existing compensation between employees who pay taxes and those who do not, with the ensuing breach of the principle of equal pay for equal work, since the previous reimbursement system contributed to that balance;

b) The complaints were settled by means of a compromise agreement set forth in an Aide Memoire which, once signed by the parties, was submitted to the Conciliation Committee for consideration. The Committee approved it and included it in its Proceeding Minutes in March 1982.

The basic tenets of that agreement were as follows: i) it was agreed to apply the new reimbursement procedure gradually, beginning with 16 and 2/3% in 1980 and increasing to 100% in 1985; ii) beginning in 1980, the annual deductible average for medical expenses in relation to tax reimbursement was set at US\$150 and it was agreed to revise this procedure for the future with the representatives of the plaintiffs; iii) the retroactive portion of the general salary adjustment granted in 1981 and pertaining to 1980 would be adjusted,

as regards tax reimbursement, by taking into account the gradual introduction percentage of the tax reimbursement procedure applicable to 1980; iv) some procedures which Management had already put into effect and specified in Clause 4), would be kept in effect, including the safeguard of total reimbursement of income tax; v) Management stated that it had already taken steps to extend -- beginning January 1, 1982-- the current income tax reimbursement system to those taxes which must be paid on amounts received in lieu of commutation under the Retirement Plan for IDB staff; vi) Management would approve, as from January 1, 1982, an extension of the procedure in effect for the shipment of personal goods, to the persons and in the manner prescribed by Clause 8). Clauses 5) and 6) of the Aide Memoire laid down obligations the breach of which is asserted in this proceeding and which, consequently, it is useful to transcribe verbatim:

- "(5) The Administration shall conduct a comprehensive study on the entire matter of the personnel study entitled "Education Allowance." One of the major objectives of the study will be to identify any inequitable elements which may exist in the application of current policy and suggest alternatives for their remedy. The terms of reference for the study shall be prepared by the Administration, taking into account the views and opinions of the representatives of the claimants, not later than January 31, 1982. The study shall be conducted by the Administration with the assistance of a consultant. All progress reports and draft reports shall be submitted to the representatives of the claimants for their observations. The final report, together with comments by the representatives of the claimants, if any, shall be completed for presentation to Top Management by May 31, 1982. Any modification to the current education allowance procedure that affect the claimants shall become effective at the beginning of the school year, August 1982.
- (6) The Administration shall conduct a comprehensive study of eligibility related to claimant's travel to their place of origin, including eligibility based upon the country of origin of the claimant's spouse. The terms of reference of the study shall be prepared by the Administration, taking into account the views and opinions of the Representatives of the claimants, not later than January 31, 1982. The study shall be conducted by the Administration with the assistance of a consultant. All progress reports and draft reports shall be submitted to the representatives of the claimants for

their observations. The final report, together with comments by the representatives of the claimants, if any, shall be completed for presentation to Top Management by May 31, 1982. Any modifications affecting claimants, eligibility will begin "no later than July 1, 1980."

c) The Bank did not fulfil its obligations under Clauses 5 and 6 as transcribed above. In the first place, the Bank improperly kept the Report by the consultants Towers, Perrin, Forster & Crosby (TPF&C) from ETAC's knowledge for almost three months; it unduly delayed the preparation of its comments on the Report, thereby preventing the delivery by May 31, 1982, of the opinions of the parties to Top Management; it improperly abstained from delivering those comments to Top Management; and it refrained altogether from considering the main issue for the settlement of which Paragraphs 5 and 6 were drafted, namely, whether certain Bank employees are discriminated against in the application of educational allowance and home leave. In addition, the Bank did not draw up the terms of reference for the Consultant but shifted its responsibility onto ETAC, which lengthened the preparation of those terms of reference.

The Report by the Consultants confirmed that the educational allowance created inequities between employees who pay taxes and those who do not and recommended changes to correct those inequalities; but the recommendations by the Bank ignored this conclusion and the opinions of the Consultants and decided that, since other international organizations grant educational allowances to their "expatriate" staff members, the IDB should do likewise.

The comments by ETAC to the TPF&C Report show that educational allowances and home leave set up unfair compensation packages to the substantial detriment of Bank employees who pay taxes. These comments were designed to be reported to the President of the Bank. Nevertheless, for reasons which have never been explained, they were never conveyed to him;

d) The plaintiffs waited for nearly nine months for news about the delivery to the President of the Bank of the report and its comments, until on August 11, 1982, they sent a note asking for a reply. Eight months went by without any answer. In the meantime, a new Administrative Manager, Mr. Jose D. Epstein, was appointed and ETAC took the opportunity to remind him of the pending commitment by the Bank. Mr. Epstein replied by offering to study the matter as soon as possible but another six weeks elapsed without any knowledge of the Bank's response.

In these circumstances, ETAC agreed to return to the Conciliation Committee and requested it, in view of these events and non-compliance by the Bank, "to proceed to consider the case in the

manner it was originally presented". In its reply, the Bank described the delays that had taken place as harmless, but made no reference whatever to a delay of 17 months during which it had refused to deliver the documents to Top Management or to propose up other solutions. Most surprising in that answer, however, was the disclosure that "the statement by ETAC, the report by the Consultants and the working document by Management have ... received full and thorough consideration by the Bank at all proper levels, including Top Management". On the substance of the matter, the Bank contended that educational allowances and home leave have been calculated in such a manner as to satisfy the needs of the U.S. and non-U.S. staff of the Bank and, consequently, to facilitate compliance with the basic ideas on personnel policies embodied in the agreement establishing the IDB. It bears noting --it adds-- "that staff members who are U.S. citizens and work outside the United States are full recipients of the Bank's expatriation allowances; consequently, these policies cannot be regarded as unfair or discriminatory."

In their reply, the plaintiffs mentioned the opinion voiced by the Conciliation Committee itself in favor of a revision of these policies, as stated in the Procedural Minutes of March 1982:

" It is desirable for the complainants to attain, to the extent practicable, benefits that are similar to those enjoyed by citizens of other countries than the United States, on the understanding that the access by United States staff members to the benefits established for staff members who are not United States nationals should be provided prudently, taking into account the desires expressed by the Management of the Bank of amending the scope of some of them, for new staff members."

For its part, in its final rejoinder file with the Conciliation Committee, the Bank stated that Clauses 5 and 6 of the Agreement it was bound only to conduct studies on educational allowances and home leave policies and to deliver those studies to Top Management with the comments of ETAC, all of which it did. At no time did it undertake to change those policies. It was left to the discretion of Management to make a decision on the matter and, following a thorough study of all of the information, it was decided not to change those policies, which is fully consistent with the terms of the Agreement.

Since each party held to its view points, on November 6, 1984, the Conciliation Committee decided to put an end to its role in the matter.

3) The Bank filed its answer to the suit and requested the Tribunal to find that the Bank had duly complied with all its obligations under the Agreement signed with ETAC on December 15, 1982 and consequently, to deny the redress requested by the plaintiffs. It requested, moreover, that should the Tribunal find that the Bank did break the aforesaid Agreement, it hold that the plaintiffs are not entitled to the redress requested in accordance with Article IX of the Statute.

In support of its petitions, it relied on the facts and the law summarized below:

a) The defendant grants that it was not possible to comply with the dates agreed for various actions, but it was not because of lack of promptness in fulfilling its obligations. On the contrary, if it was unable to meet the various deadlines set, it was precisely because the Bank launched an exhaustive and earnest study of the educational allowance and home leave policies so as to determine which employees of the Bank should be entitled to them;

b) Although the Agreement sets certain dates for doing certain things, the strict observance of such dates was not stipulated as an essential feature of the Agreement. There is a general principle of law that states that the term for complying within a condition in a contract is not of the essence of the contract unless there is a specific stipulation to that effect. In addition, the Agreement itself protected the plaintiffs against all ill effects from any delays, inasmuch as it set fixed dates for any change in policies to take effect. Since the Bank decided not to introduce such changes, no injury was caused to the plaintiffs as a result of the delays. And even if changes had been made, no injury could have resulted for the plaintiffs as a consequence of such delays, since the additional benefits could have been granted retroactively, as from the agreed dates;

c) The obligations set forth in Clauses 5 and 6 of the Aide Memoire in respect to the Bank were: to conduct a broad study of the personnel policies in existence with regard to educational allowance and home leave; to take into account the view points of the plaintiffs in preparing the terms of reference for the study; to carry out the study with the aide of a consultant; to deliver to the complainants, for their comments the progress reports, the draft report and the final report on the study; and to submit the final report, together with the comments from the plaintiffs, to the IDB Top Management.

The Agreement did not bind the Bank, expressly or implicitly, to adopt or to put into effect all or any of the recommendations of the final report, but rather to reach a decision in good faith, on the basis of the pertinent considerations and by reasonably exercising the proper discretion of management in an international organization such as the IDB;

d) To comply properly with the Agreement, Management accepted the terms of reference which, parallel to those of the Bank, had been prepared by ETAC; it retained the firm of consultants of Towers, Perrin, Forster & Crosby to help it carry out the study; it set up a working group to study the report by the consultants; on August 16, 1982, it sent to ETAC both the report by the consultants and the comments made by the Bank as a result of the work of the aforesaid group; on November 8, 1982, it received from the plaintiffs their own comments on the report by TPF&C; and early in December 1982, or thereabouts, the Administrative Manager delivered to the President and discussed with him the study by the consultants, the document prepared by Management and the comments from the plaintiffs. The delivery to the President was made personally, without sending any documents, for which reason no copy was sent to the plaintiffs. In early December, the President told the Administrative Manager that the Bank could not agree to extend the education allowances and home leave to U.S. nationals working in Washington, D.C., as requested by the plaintiffs. Finally, in February 1983, the Administrative Manager, the Legal Advisor and the HUR Deputy Manager met with representatives of ETAC and told them that, after thorough consideration of the whole question, the Bank was not prepared to extend those benefits to the plaintiffs. The Management representatives further told those of ETAC that the Bank was willing to continue considering three options: a) travel benefits for U.S. staff members working at headquarters and married to nationals of another member country; b) an increase in the amount of reimbursement of Social Security payments to all U.S. Citizens working at Headquarters; and c) with regard to the same staff, partial subsidies of interest on loans taken out for the education of their children. It was agreed to study these possibilities and new meetings were held to that end, but the parties finally reached no agreement;

e) There is in the Bank no discrimination whatever against U.S. nationals working at Headquarters in Washington, D.C. on account of their not being entitled to educational allowance and home leave travel, because these benefits are designed to mitigate the adjustment costs of staff members who live outside their country of origin while working for the Bank. A U.S. national employed by the Bank and assigned to work in an office located in another member country, does enjoy these benefits. Entitlement to these rights is not related to nationality but to the expatriate status. Consequently, it applies equally to all staff members working for the Bank as expatriates.

The concept of expatriate serves as the basis for entitlement to these benefits, regardless of the employees nationality in all multilateral international organizations recognized in the United States; and



f) Finally, to the extent that the remedies requested require the Tribunal to determine "whether there are inequities in the educational allowance and home leave", this would be alien to the jurisdiction of the Tribunal under Section 1, Article IX of the Statute. Likewise, it is not within the purview of the Tribunal to order the Bank to put off applying the tax reimbursement system as requested by the plaintiffs.

According to that provision, if the Tribunal finds an application is well founded, it shall order the rescission of the decision contested or specific performance of the obligation invoked, and at the same time, the Tribunal should fix the amount of compensation to be paid to the applicant for the injuries sustained if the President of the Bank, within 30 days of the notification of the judgement, decides in the interest of the Bank not to comply with the terms of the judgement; provided that such compensation should not exceed the equivalent of two years of the applicants basic net salary.

Consequently, even if the Tribunal should find that the Bank did not abide by the Agreement of November 15, 1981, the Tribunal would have to confine itself to ordering the defendant to fulfill its obligations under the Agreement and setting a time table for that purpose, besides evaluating the amount of compensation to be paid by the Bank to the members of ETAC if the President should decide, as explained, not to comply with the terms of the judgement. And since the plaintiffs had no right to educational allowance and home leave benefits at the time the Agreement was signed, and since the Tribunal has no power to order the Bank to change those policies, such injury is nonexistent.

4) The parties did not avail themselves of their right to file observations on the complaint and the answer.

5) The two parties submitted much documentary evidence consisting of the policies, rules and regulations applicable to the topics at issues, the memoranda and other correspondence exchanged between the parties and between various Bank officials with regards to the talks held, the arguments advanced by ETAC and by Management before the Conciliation Committee, the procedural minutes of that Committee, the Report by the firm of TPF&C and the comments thereon made by both the plaintiffs and the defendant. In most cases, documents have been filed twice, once as attachments to the complaint and thereupon as attachments to the answer. The authenticity of none of them has been questioned. The Tribunal declared the evidence of witnesses offered by the parties to be admissible and asked its Executive Secretary to take the depositions of the witnesses for the plaintiffs, Messrs. Jacques Cook, Manuel J. Ríos, Alfred Thieme, Jr., William Taylor, Kenneth H. Cole, José B. Villegas, Manuel Russek, Jose Epstein, Luis A. Sánchez Masi, Marvin Weissman, Peter Zassenhaus, Jorge Camarena and Rafael Glower Valdivieso. Of these, Messrs.

Taylor, Camarena and Glower Valdivieso were also called as witnesses for the Bank. They were questioned as witnesses for each party.

6) The evidence shows that the facts are as follows:

a) To comply with IDB Board of Governors resolution AG-3/60 of March 1960, which ordered the reimbursement of such national taxes as Bank staff members had to pay on their salaries, the Bank put into effect the reimbursement system known as "standard deductions system" (SDS). This system assumes that the staff member pays his taxes up by making the standard deduction applicable to his salary level. Since the employee, for various reasons, often takes deductions higher than the standard, he receives as tax reimbursement an amount higher than the tax he actually paid. This system consequently provides, for the employee who receives the tax reimbursement, an amount of money additional to his salary. In May 1979, the President of the Bank decided to replace this reimbursement system by another called "average deduction system" (ADS) which, as its name indicates, refunds the average of what the taxpayer pays as tax, with a safeguard to the effect that if the staff member should as a result receive less reimbursement than the tax actually paid, the Bank reimburses also that difference, so that in no case is the employee reimbursed for less than the total amount of the tax paid. This system is applied at other international organizations located in Washington, D.C. and comparable to the Inter-American Development Bank and means the elimination of that additional gain resulting from the SDS;

b) 131 employees of the Bank felt adversely affected by the change in the tax reimbursement system and filed complaints with the Labor Relations Committee then in existence, which complaints were transferred to the Conciliation Committee when the latter was established to replace the former. In the meantime, the plaintiffs organized themselves into the "IDB Employee Taxation Action" (ETAC) which has been de facto recognized by the Management of the Bank. The complaints, later collected into a single one, were settled by the Agreement referred to in paragraph 2 of Clause 2.b) above;

c) the procedural minutes of the Conciliation Committee, which approved the aforesaid Aide Memoire and put an end to the dispute, stated in paragraph 10.03, c) "It is desirable for the complainants to attain, to the extent practicable, benefits that are similar to those enjoyed by citizens of other countries than the United States, on the understanding that the access by United States staff members to the benefits established for staff members who are not United States nationals should be provided prudently, taking into account the desires expressed by the Management of the Bank of amending the scope of some of them, for new staff members".

d) The Bank commissioned the firm of Towers, Perrin, Forster and Crosby (TPF&C) to make the study and report on the points referred to in Clauses 5 and 6 of the Agreement. In line with the terms of reference prepared by ETAC with the concurrence of Bank Management, the consultants made their study and delivered the report to the Bank on May 27, 1982 (the deadline set in the terms of reference was May 10). The report was delivered at a meeting held in the office of the Bank President, to which the representatives of the complainants were not invited;

e) By letter of June 3, 1985, Management expressed to the complainants its regret that "the magnitude and complexity of the study" made it impossible to meet the deadlines set, since the delivering of all the documents to the President of the Bank should have taken place prior to May 31, and offered to have the drafts of the study ready by July 15, 1985 "to discuss them with ETAC before submitting the final text to Top Management for consideration" adding that the report by the Consultants would be delivered with them. In his reply of June 8, Mr. Cole, the president of ETAC, expressed the distress of the complainants over the failure to observe the agreed time periods and pointed out that this circumstance would adversely affect the implementation of changes in the benefits at issue. The note also voiced his concern over the nonobservance of the terms of reference which guaranteed to ETAC that the report by the consultants would be delivered both to the Bank and to ETAC, which had also failed to occur;

f) On August 16, 1982, the Administrative Manager of the Bank sent to the president of ETAC a copy of the study made by Management of the report by the consultants and the text of the latter; he repeated his regret of the delays and stated that both reports and that of the complainants, if any, would be submitted to "Top Management as soon as possible". By memorandum of November 8, 1982, ETAC, for its part, sent its report and the supporting material to the Administrative Manager, Mr. Glower Valdivieso, with a letter addressed to the President of the Bank. It requested him, moreover, to deliver them to the President of the Bank and to advise ETAC of the date on which the three studies had been sent to the President, furnishing ETAC with a copy of the cover letter. The Administrative Manager replied by memorandum of November 29, 1982 explaining that the new delay was due to the need to translate the documents into Spanish. He added, "At all events, I wish to inform you that we will submit those documents to Top Management for consideration as soon as circumstances allow, about which you will be informed in due course and moreover provided with a copy of the letter of transmittal, as you requested in your memorandum";

g) Next year, on August 11, 1983, Mr. Cole the chairman of ETAC, sent a note to Mr. Glower, the Manager, with copies for the President and Vice-president of the Bank, in which among other things

he stated the following: "Although we have patiently kept our part of the Agreement during the intervening nine months, there have been only informal discussions with the Administration. We have received no confirmation of any action you propose to initiate nor that you have submitted our proposals to the consideration of Top Management. So as not to let these important issues go further unresolved, we would appreciate your advising before the end of the current month as to the date on which the documents in reference will be submitted, and the schedule the Administration will follow in taking appropriate measures." This letter was answered neither in writing nor verbally;

h) The report by the consultants TPF&C includes considerations that lead them to make some alternative recommendations regarding the two policies in questions, namely, the educational allowance and home leave. On educational allowance it stated, among other things, that "The widely held feeling is that the original purpose of the Allowance has been compromised because the Bank dropped the language and geographic requirements." "Most don't know why the language and geographic requirements were dropped from the policy." "Most complainants feel that the current educational practices of the G(iv) employees do practically nothing to prepare their dependents to reenter their home countries since the tendency is to have dependents enrolled in programs conducted in English at all levels including university." "This Allowance has lost its meaning as such and is widely regarded as merely an economic subsidy and an integrated part of the benefit package." "The universal feeling among the U.S. employees is that they are being discriminated against by the Bank Administration since they are being denied a subsidy which is extended to one group of employees." "This subsidy should be extended to all Bank employees in keeping with the policy of equal pay to equal work." Resident employees "Like the U.S. citizens, feel that they are being discriminated against and that the Allowance is really a subsidy which should be available to all employees." Pursuing to the foregoing, the report suggests two "basic" and five "moderately recommendable" alternatives. The first two are "Return to original Educational Allowance Policy on a gradual basis" and "Support creation of a Latin American School in Washington, D.C." The five described as "moderately recommendable" are "Remove the Education Allowance completely for all new employees," and "Adopt a more restrictive Educational Allowance covering primary and secondary schooling in the U.S., and university if in home country or where native language is used," "Adopt a more restrictive Educational Allowance by limiting the length of time which an allowance is granted," "Expand coverage of Educational Allowance to all headquarters staff as currently defined," and "Expand coverage of Educational Allowance to all headquarters and field staff as currently defined."

Regarding home leave, the report by the consultants states in sum, that "Unlike the Educational Allowance, Home Leave appears not to have evolved away from its original intended purpose. In the current Personnel Policy Manual, the objective is clearly stated and few employees question its validity." Nevertheless, changes are recommended "where necessary to eliminate any reasonable inequities which may exist in its definition or application". Three are the ways suggested to accomplish these purposes: 1) "Keep Home Leave Allowance as currently defined," "Keep Home Leave Allowance as currently defined but consider expanding eligibility to local staff in certain cases which would be: a) If a U.S. citizen is hired from abroad by the Bank provided that the country is a member of the IDB and can prove a close cultural or family link to that country. Long-term residence of 5 or more years should also be a primary requirement; b) If the U.S. citizen is from an ethnic subculture within the U.S. and was living and working within that subculture at the point of hire by the Bank; c) If a U.S. citizen, while employed by the Bank, in a Field office married a local national in that country, Home Leave should be extended to that employee to return to that location; d) If a local national working in a Field Office was recruited from another country which is a member of the Bank and can prove close ties to that country. As with the U.S. eligibility requirement, long-term residence should be a requirement; e) If a member country has definite subcultures from which a local national was recruited. For example, certain Brazilian frontier territories or the Amazon region, and f) If a local national, while employed by the Bank at Headquarters or another Field Office married a citizen of that country, Home Leave should be extended to the employee and family to return to that country."

## II. CONSIDERING THAT:

1. In first place, it is noted that the nature of the questions raised, the drafting of the complaints, and the relief sought by complainants, are in their wording and in their spirit, akin to the type of negotiations to be brought before the Conciliation Committee, or, in part, similar to collective bargaining but not to proceedings before this Tribunal.

The above mentioned situation has its explanation in the fact that a previous proceedings between the parties was informally solved by recourse to negotiation and withdrawal of the complaint and the signing in 1981 of the agreement characterized "Aide Memoire."

However, it is noted that the competence of this Tribunal is jurisdictionally limited as is its proceedings and the admissible extent of its rulings.

2. The focus of the complaint is that staff members who are United States nationals suffer various inequities because of an alleged financial imbalance in the allocation of tax reimbursements, home leave and educational allowances. Nonetheless, no effort has been made to establish that the individual complainants have sustained particularized financial harm.

In view of the final disposition of this case, moreover, it is not necessary to decide whether a proceeding will lie before the Administrative Tribunal for generalized or class relief. Additionally, neither side has addressed any comment or objection to the scope of the complaint. Under the circumstances, the Tribunal does not and need not decide whether such a collective procedure is appropriate.

3. With respect to the tax reimbursement, it is sought of this Tribunal that it prescribe rules of a general nature, establishing a new timetable, furthermore of a retroactive nature; all that, without the complainants having identified their own particular cases, nor having therefore provided sufficient grounds for their claims.

The relief sought does not either seem to be of the normal jurisdiction of the Tribunal, in the generic way in which it is being asked, and even putting aside that it has not been sufficiently proved which if any might be the causal relationship between the inequities --suggested but not concretely argued, as has been said-- in the educational and home leave allowances, and the tax reimbursement system.

In the end complainants seek either that the Tribunal act as a legislator, or arbitrator, neither of which falls within the competence of this Tribunal.

4. Both parties concur that the Top Management rejected the claim, which proves the failure of the conciliatory proceedings. According to the Bank's rules of procedure, complainants should either have made concrete complaints before this Tribunal, or continue new conciliatory negotiations.

They chose instead to allege the Bank's failure to observe the procedural rules agreed upon in the "Aide Memoire" for submission of the matter to the Bank's "Top Management." That implies, as it is obvious, the will to continue such conciliatory proceedings, or to renew them, by reason of their having been faultily executed as regards the wording or the spirit of the agreement.

That said, notwithstanding that such aim is desirable, and of course that nothing hinders both parties, if they so wish, to continue or renew such conciliatory proceedings, all the more so given the fact that some of the procedures agreed upon in the Aide Memoire do not clearly appear to have been fulfilled, such as previous information and timetable.

It would be in keeping with the spirit demonstrated by the parties, in the course of these proceedings.

ACCORDINGLY,

The complaint is dismissed.

Washington, D.C., October 11, 1985.

Agustín Gordillo  
Judge

Gonzalo J. Facio  
President

Eugenio Velasco  
Executive Secretary