

JUDGMENT CASE NO. 11 *

BENJAMÍN CASTRO 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. Agustín Gordillo, Dr. Mozart Victor Russomano, and the Honorable Kenneth G. Smith, considered the case, following the relevant procedures required or allowed by Articles 20, 21, 22, and 23 of the Rules of the Tribunal.

The complainant was represented by his attorney, Mr. Juan F. Bauta. The Bank was represented by Mrs. Gay Davis Miller, attorney of the Legal Department. In addition to the written submissions by the parties, oral arguments were heard on March 31, 1987.

WHEREAS:

Benjamín Castro, a Salvadoran citizen, staff member of the IDB Legal Department since July 1, 1961, has filed a complaint with this Administrative Tribunal impugning his performance evaluation for the period "May 1983 - May 1984" which rated him at "Generally below the norm" and served as grounds for denying him the merit increase granted as from August 1, 1984. He asked the Tribunal to set aside the performance evaluation and, in so doing, order the Bank to pay him the merit increase which, based on the evaluation, was denied him as from July 29, 1985:

In support of his claims, he raised the arguments summarized below:

In his performance evaluation for the period May 1983 - May 1984 he was rated "Generally below the norm," as a result of which the Bank decided not to pay him the merit increase granted as from August 1, 1984 by the President of the Bank. Subsequently, pursuant to the decision handed down by this Tribunal in Case No. 7, he was paid the adjustment only for the period ranging from August 1, 1984 to July 29, 1985. Accordingly, the increases he has received since August 1, 1985 have been calculated by the Bank on the basis of his former lower

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

salary, in other words, without considering the merit increase paid under that decision for the period August 1, 1984 - July 31, 1985; that the evaluation is irregular and invalid because the Bank incurred delays, omissions and breach of its own rules for conducting these evaluations, inasmuch as his was completed in the Legal Department 13 months after the date set by the Executive Vice-president and was never discussed with him, the staff member being evaluated; that his evaluation was the result of an overstepping of authority reflecting the a priori setting of quotas and averages to be artificially met in rating employees, so that predetermined percentages of staff members rated "Constantly above the norm," "Generally at or above the norm" and "Generally below the norm" would be arrived at in each department of the Bank, as proven by the survey taken by the IDB Staff Association on the employee rating procedure for that year.

The Bank answered the complaint and asked that it be dismissed on the following grounds: that the statements of fact and the reasoning advanced by Mr. Castro in his complaint are the same as those he put forward in Case No. 7 decided by the Tribunal, the only novelty being his reference to the document prepared by the Staff Association on the evaluation process, which document was already available at the time of the previous complaint; that the procedural irregularities to which Mr. Castro objects did not affect the final outcome of the evaluation, and that the evaluation was not the outcome of a system of quotas or any overstepping of authority by Mr. Castro's supervisors, but an objective assessment of the complainant's professional performance during that period.

After a thorough review of the case, and before deciding, the Tribunal notes:

That in evaluating the performance of the complainant Benjamín Castro, the Bank failed to comply with Personnel Policy No. 324 and the communications issued by the Executive Vice-president on June 14 and August 8, 1984, as well as those of July 6 and August 7, 1984 from the General Counsel.

Personnel Policy No. 324 states that "Discussion of the evaluation with the employee concerned is essential . . . " that "its outcome must be discussed by the immediate supervisor and the employee in a formal meeting . . . " and that "the employee must sign the evaluation form as evidence that its contents reflect the discussion with his immediate supervisor . . . " In this case, however, discussion of the complainant's evaluation took place not on the date on which it is shown to have been done by his immediate supervisor, Mr. Freeborn Jewett, but on a date subsequent even to its confirmation by Mr. Jewett's own supervisor.

This breach of procedure on the essential component of prior discussion with the employee concerned, affects the validity of the evaluation, for which reason this Tribunal finds it null and void, without consideration of the merits of the evaluation itself. Accordingly, the Tribunal will not deal with the other issues raised by Complainant.

As the performance evaluation of Complainant has been found null and void, it will be recorded as never having taken place and consequently, the Bank must pay, with the proper adjustment, the merit increase of 2% as from July 29, 1985, which increase was announced by the President of the IDB on August 2, 1984 and in reference to which the last evaluation for Complainant will therefore be the one that was taken into account to give him the merit increase granted in 1983.

Washington, D.C. April 3, 1987.

Elita Graterol Calles
Judge

Gonzalo J. Facio
President

Eugenio Velasco
Executive Secretary