

JUDGMENT CASE NO. 12 *

JUAN RAMÓN DUVAL 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. Breitell, Dr. Luis Coronel de Palma, Sir William R. Douglas, Dr. Agustín Gordillo and Dr. Mozart Víctor 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 Complainant was represented by his attorney, Mr. José de Jesús Bergés. The Bank was represented by Jerome I. Levinson, General Counsel, and Mrs. Gay Davis Miller, attorney of the Legal Department. In addition to the written submissions by the parties, there was oral argument on September 30, 1986.

WHEREAS:

- 1) Juan Ramon Duval, a Dominican citizen and civil engineer by profession, hired by the Inter-American Development Bank under the Junior professional program, has sued the Bank. He asks the Tribunal to order the amendment and/or rescission of: 1) the decisions set forth in the memorandum of Sept. 14, 1984 by Mr. Luis Fernando Jaramillo, Project Analysis Manager, and in the memorandum of May 28, 1985 by Mr. Luis Sánchez Masi, the Administrative Manager and 2) competition 85/08 held in March-August 1985 to fill positions 5062 and 5006 in the area of energy (sectoral specialist); in the event the IDB President should decide that it is not in the interest of the institution to comply with the terms of the judgment that will be handed down in the instant case, he asks the Tribunal to establish at one hundred thousand dollars the compensation to be paid to the Complainant and five hundred thousand dollars as the amount of damages payable by the Bank for the moral and material injuries suffered as a consequence of the irregularities and violations committed against Complainant by high officials of the Inter-American Development Bank.

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

- 2) To justify his claims he contends: a) he was hired by the Bank for one year as from September 22, 1983 under the Junior professional program and was assigned to discharge his duties and responsibilities in the Unconventional Energy Section at Headquarters . During this period he received very good evaluation marks. Mr. Duval's contract was to expire on September 18, 1984 and called for the Bank to give him at least two months' notice before extending his contract for one more year. As early as September 11, 1984 Complainant met with several officials to ascertain the reasons for this irregular situation and was able to establish the following: that by memorandum of July 27, 1984 the Acting Manager for Project Analysis had recommended the extension of Complainant's contract for one more year; that his evaluation for the period of September 1983-May 1984 had been neither completed nor included in Complainant's file; that changes were made in his evaluation for the period June 1983-May 1984; that Complainant was not evaluated as a junior professional but as a specialist; that, inexplicably, his evaluation failed to account for the period August-December 1984, and both his merit increase and the recommendation regarding possible permanent employment had been omitted; b) this suspicious conjunction of many irregularities and glaring violations, which were conceded by the Administration, substantially affected his acquired rights under the Junior professional program (salary increase, evaluation as junior professional, periodic evaluations), including his prospects of securing an extension of his contract and permanent employment with the Bank, besides casting a shadow over his professional career within and without the Bank; c) by memorandum of September 14, 1984 the Project Analysis Manager, Mr. Luis Fernando Jaramillo, recommended the extension of Complainant's contract for one additional year, indicating however, that "based upon the performance evaluation of Complainant, the Department could not incorporate Mr. Duval into its permanent staff." That evaluation was partial, incomplete and considered Complainant as a "specialist" instead of a junior professional; needless to say, had the evaluation been properly executed it would have earned him a permanent position in the Bank; d) the fact that Complainant still did not know as late as October 4, 1984 whether his contract would or would not be extended, put him in a state of emotional tension which, regrettably, affected his relationship with his two young daughters. Furthermore, on October 23, 1984 Complainant was notified by Mr. Luis Sánchez Masi that his contract had been extended by an additional year and that he had been assigned, effective January 1, 1985, to the IDB Field Office in Honduras; in view of this situation, he was forced to withdraw his oldest daughter in the middle of the school year at the risk of not being able to enroll her back in Honduras; e) once in Honduras "administrative oversights" continued, such as duplicating his installation and settlement allowances and excluding him from participating in the competition to fill

positions 5062 and 5006, Energy Sectoral Specialist, even though he met the requirements, since he had a Master's Degree and six years' experience; f) by memorandum of June 25, 1985, Mr. Duval filed a formal complaint with the Human Resources Deputy Manager, seeking review of his participation in the Junior professional program, withdrawal of the memorandum of September 14, 1984 by Mr. Jaramillo, Analysis Project Manager stating that Complainant could not join the permanent staff of the Division, and an explanation of the reasons which precluded his participation in the competition for positions 5206 and 5006. HUR Deputy Manager replied belatedly, declining to have the above-mentioned memorandum withdrawn and saying nothing about the competition. Complainant ratified his complaint before the Administrative Manager, who also failed to reply within the proper time.

Subsequently, Complainant brought the matter before the Conciliation Committee, which reached the conclusion that Complainant had not proven that Bank Management acted in violation of Complainant's terms of employment. However, the Conciliation Committee conceded the existence of several "administrative oversights" which, in its view, did not affect Complainant's rights; g) those irregularities, contrary to the opinion of the Conciliation Committee, have caused serious moral and material injury to the Complainant. The absence of evaluation and incomplete evaluation of some periods of the Complainant's performance, for instance, leave a void in his professional career and in his work at the Bank; by being evaluated as a "specialist" and not as a junior professional, he was doomed to lower marks to the detriment of his curriculum and of his prospects for permanent employment with the Bank; when his contract was renewed for one more year, no recommendation was made as to permanent employment by the Bank, causing him injury; and preventing him from participating in the competition for positions 5062 y 5006 frustrated a possible permanent job at the Bank; and h) in accordance with universal legal principles there is an obligation to repair the injury unjustly caused to others and the employer is responsible for injuries caused by his subordinates or agents in the exercise of their duties.

- 3) The Inter-American Development Bank answered the complaint and asked the Tribunal to deny it upon the following grounds: a) Mr. Duval had no right to a permanent employment contract at the end of his two-year service as a Junior professional. Junior professional contracts last one year and may be extended for one additional year if approved by the Selection Committee and the respective Department Manager. This extension for a second year was proposed to Mr. Duval who expressly accepted it, but the Department of Project Analysis decided not to offer him a permanent position after the two-year contract, in accordance with regulations of the Junior professional program and Mr. Duval's contract; b) Mr. Duval was given appropriate periodic performance

evaluations, based on his status as a junior professional; c) Mr. Duval did receive a salary merit increase; d) Complainant was not forced to return a part of the installation allowance paid to him upon his transfer to Honduras. The inquiry about its payment was an ordinary verification procedure for accounting purposes which did cause neither injury nor inconvenience to Mr. Duval. Similarly, the fact that the telexes referred to him as a "consultant" rather than a junior professional, had no effect on him whatsoever. They did not change his status or altered the payment of the allowance to him; e) His two-year term at the Bank has not caused any damage to Mr. Duval. He returned to his home country as the Program intended, with a better understanding of the Bank's operation in his field, and a broadened experience in the practical application of his professional skills; f) Mr. Duval was not qualified for the specialist positions he applied for. As a matter of fact, he listed as his qualifications a specialist's Master's degree in Hydraulic Resources Planning and a degree in civil engineering, as well as his experience as a project engineer at the Dominican Electric Corporation from July 1982 to September 1983 and his work at the Bank. Furthermore, he made reference to his Bank application form, the "Personal Data" summary, and there is no indication that any of this additional experience was related to energy resources. In sum, he was short of the six-year minimum of related professional experience; and g) regarding the "administrative irregularities" upon which Mr. Duval bases his present case, many of them simply did not exist, and others had no substantive effect whatever.

- 4) There are no observation briefs to be considered.
- 5) Both parties presented abundant documentary evidence mainly policies, rules, resolutions, and correspondence related to Complainant's position. Authenticity of none of the documents was disputed. The Tribunal accepted the witnesses proposed by the parties and entrusted the Executive Secretary with the taking of depositions; however, only Bank witnesses Mr. Gustavo Calderón y Ms. Frances Laso, testified on September 10, 1986.
- 6) Evidence adduced by the parties shows that the fundamental facts of the case are as follows:

The decision adopted by Mr. Luis Fernando Jaramillo, Project Analysis Manager on September 14, 1984, amendment/rescission of which was requested by Complainant, is contained in a memorandum sent to HUR Deputy Manager, Mr. Luis Sánchez Masi which states: "based on the first-year performance of Mr. Juan Ramon Duval in the Junior professional program, this Department does not undertake to offer him any permanent position at the end of his second year in the Program"; that the Division would be willing to continue training him for a

second year or for a shorter period, provided the Bank deems it advisable; and that "his performance evaluation and professional qualifications would not enable us to include him among the permanent staff of this Department upon completion of such extension of his contract as may be decided";

the decision of May 28, 1985, adopted by the Administrative Manager, Mr. Luis Sánchez Masi, the amendment/rescission of which was requested by Complainant, is a letter sent to Complainant to remind him that "the contracts of junior professionals are temporary in nature and may not be renewed after completion of two years of service" and to let him know that at the expiration of his contract, on September 18, 1985, "there are no prospects of the Bank offering a new position";

Mr. Juan Ramón Duval was hired by the Inter-American Development Bank for one year, as from September 22, 1983, under the Junior professional program and was assigned to work in the Project Analysis Department. His contract stated, among other things, that he would discharge his professional duties and responsibilities in Washington, D.C., that at the end of a year of service "and provided your performance has been fully satisfactory to the Bank, the IDB may renew your contract for an additional year, subject to your willingness to be assigned to one of the IDB Field Offices in the borrower member countries, if Bank Management so decides"; and that in this case, at the end of the second year your relationship with the Bank shall cease and the IDB shall have no obligation towards you other than those hereby established, but you may apply to work in the Bank at any time there is a vacancy commensurate with your background and experience;

at the end of the first year the Bank did not decide about the renewal for a second year, but after the first contract expired on October 23, 1984, a second-year extension beginning September 19, 1984 was offered, subject to assignment to the Bank's Field Office in Honduras starting January 1, 1985. Mr. Duval expressly accepted the extension and its conditions;

as stated, on May 28, 1985 the Administrative Manager Mr. Luis Sánchez Masi informed Complainant that, at the end of his contract as junior professional, on September 18 of same year, "there are no prospects of the Bank offering you a new position";

during his two-year service in the Bank, Mr. Duval was given four performance evaluations: from September 18, 1983 to March 18, 1984; from September 18, 1983 to July 31, 1984; from June 1, 1983 to May 31, 1984; and from January 1, 1985 to July 31, 1985. He was given an overall rating of "Generally at or above the Norm." The second of those performance evaluations was not completed and, therefore, not included in Complainant's personal file. Evaluation was not done for the period August-December 1984. Evaluations were based upon Mr. Duval's junior professional status, but in his last evaluation he was considered a "junior specialist";

Complainant did receive a 4% merit salary increase;

there was no duplication regarding the installation allowance in Honduras and Complainant was not forced to return part of it. There was only a slight confusion because two nearly equal sums were authorized for Mr. Duval two days apart. But this error was quickly cleared up,

information provided by Mr. Duval in his application form to positions 5062 and 5006 (sectoral specialists in energy) and in his "Personal Data" summary, to which he specifically referred in the application mentioned, shows that his professional experience was not in the energy sector, as required by Notice of Vacancy 85/08 for positions 5062 and 5006. Therefore, he did not meet the requirements.

AND WHEREAS:

1. The Complainant was hired by the IDB for a fixed term (1 year) under the rules governing the Junior professional program, in other words, on a temporary basis, with the possibility of renewal of his contract for one more year.

At the end of the first contract, the Bank failed to let the Complainant know in advance whether his contract would be renewed. After the Complainant's contract had expired, however, he continued to work in the Bank on the same terms.

This anomalous situation lasted two months and when the Bank became aware of the irregularity, it tried to correct it: as compensation, the Complainant was offered (1) an extension of his contract for two (2) months (which he rejected) and, later on, renewal of the contract for twelve (12) months retroactively, in other words, from the end of the first contract. This retroactive renewal was warranted because, in the two (2) months following the end of the contract, the Complainant had continued working in the Bank and drawing his regular salary.

It follows from the foregoing that the personal inconvenience and concern experienced by the Complainant were offset by the actual extension of his first contract and consequently, are not injuries for which legal compensation can be provided.

The Complainant, moreover, specifically agreed to the extension on the terms proposed and adhered to by the IDB, including his transfer to Honduras as from January of the following year.

This free choice by the employee would alone exclude his claim for compensation, in light of the facts surrounding the extension of his first contract.

2. As regards his claim to permanent employment in the Bank, it is clear that the purpose of the Junior professional program is to train future and potential permanent employees and experts or technicians who will apply, in countries dealing with the Bank, the knowledge gained in working for the IDB.

There is, accordingly, nothing more than an aleatory possibility that the "junior professional" will secure permanent employment at the end of his employment contracts. No rule or contract clause binds the IDB to offer permanent employment to "junior professionals" upon expiration of their contracts. The Complainant was fully aware of this circumstance, which was repeated to him in writing on May 28, 1985, in other words, nearly four (4) months prior to the end of his second contract (September 18, 1985).

This notice gave the Complainant sufficient time to determine the direction of his professional activities upon expiration of his contract with the Bank, which took place on the date and pursuant to the terms freely agreed by the parties.

3. Irregularities also took place in regard to the "performance evaluations" of the Complainant, particularly their timing which did not reflect the customary frequency. But this is irrelevant to the case. However great and manifest may be the importance of evaluations to the career of a staff member and to the relations between the Bank and its employees, it has not been shown in this case that Complainant suffered injuries or losses of any kind on this score.

Besides, even if the outcome of those "evaluations" had been more favorable to the Complainant, he would have no rights other than those which were recognized to him by the IDB, including any prospects of securing permanent employment.

4. Regarding the Complainant's salary increase, the evidence shows that he received 2% as general increase and another 2% as "merit" increase. The Complainant had no other right beyond the comprehensive 4% increase.

As it turned out, the "merit increase" was paid to him effective August 1984, in other words, before the end of his first contract. Far from amounting to injury or damage, this was an obvious benefit to the Complainant.

In connection with the allegation --mentioned in the course of the oral arguments-- that the Bank, in addition to the 4% increase, should have offered the Complainant a promotion at the end of his first contract, it must be noted, first, that no petition on this issue is to be bound in the complaint and, secondly, that Complainant not only agreed specifically to the terms of the second contract but subsequently expressed, in writing, his thanks for the opportunities given him throughout his stay in the Bank.

5. Complainant suffered no injury as a result of his transfer to Honduras, which he accepted without protest; nor could he have been injured or offended by the verification of payments made by the IDB in connection with his transfer and that of his family to Honduras. The sums paid turned out to be accurate. Complainant was not asked to make any refund whatever, as his statements made clear in the course of the oral arguments.
6. Complainant's application to compete for two (2) vacancies announced on March 4, 1985, with a closing date of March 29, was rejected by Bank Management. This is the last item of the complaint to be considered.

To apply for these vacancies, the candidate was required to have eight (8) years' professional experience in the area of programming, design, financing, bidding, supervision, execution and management of investment programs or projects in the energy sector or, alternatively, a Master's degree and six (6) years of relevant experience.

The professional experience indicated when he applied for the vacancies, was well below six years in the relevant area, covering only his years with the Bank and some few months of professional activity in his country of origin.

Accordingly, when the Bank declined to register him for the competition, it was abiding by the terms of the notice of March 4, 1985.

THEREFORE:

The administrative irregularities which took place and were specifically admitted by the IDB did not cause Complainant any injury for which he can legally recover, so the complaint is dismissed.

As to Complainant's request that the Bank refund the air fare of his lawyer who traveled to attend a hearing of witnesses which had been duly postponed but notice of which did not reach him in time, it is granted and the Bank is advised to proceed accordingly.

Washington, D.C. 2 October 1986.

Mozart Victor Russomano
Judge

Gonzalo J. Facio
President

Eugenio Velasco
Executive Secretary