

JUDGMENT CASE NO. 13 *

ALFREDO DEL RÍO 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, the Honorable Kenneth F. Smith, considered the case, following the relevant procedures required or allowed by Articles 20, 21, 22 and 23 of the Rules of the Tribunal.

Complainant was represented by his attorney, Mr. Ovidio Martínez. The Bank was represented by Mrs. Gay Davis Miller, attorney of the Legal Department. In addition to the written submissions by parties, oral arguments were heard on April 1, 1987.

WHEREAS:

1) Alfredo del Río Aliaga, a staff member of the Inter-American Development Bank, Special Services Assistant in the Administrative Services Division, Grade X, step 8, having met all requirements of form and substance established by the Statute of the Administrative Tribunal, has filed a complaint asking that the Tribunal order: the reversal of the decision of August 15, 1985 adopted by Mr. Luis Sánchez Masi, HUR Deputy Manager, ordering the immediate termination of the Complainant's services on the grounds that he falsified the information in his employment application of May 21, 1970 by stating that no relations of his, by blood or marriage, were employed by the Inter-American Development Bank or any other international organization; that the Complainant must be reinstated in the position he held on August 15, 1985 with acknowledgment of all rights and benefits accruing from that date until the day when he is actually restored to his post; that should the President of the Bank wish to exercise the authority conferred on him by Article IX, paragraph (1) of the Statute of the Administrative Tribunal, the amount of damages which the Bank must pay the Complainant should be fixed at the equivalent of three years' basic net salary of the position the Complainant held, because of the extraordinary nature of the case; and that the Bank must pay him additional compensation in the amount of US\$100,000 for the moral and financial injury he has suffered and will continue to suffer because he was accused of falsifying information in his employment application;

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

2) In support of his petitions, the Complainant argued:

a) On May 21, 1970 he filed with the IDB an employment application which he completed without any advice from Bank officials and correctly to the best of his understanding and knowledge and in good faith. Question 15 of that application asked the following: "Are any members of your family or relatives (either by blood or marriage) employed by the Inter-American Development Bank or any other international organization? If the answer is yes, please specify." The complainant answered NO, interpreting that the former are relatives of the same blood, in other words, grandparents, parents, children or brothers and sisters, and that relative by marriage is the person to whom one is married;

b) He never concealed his family tie to Mr. Jaime Ballivián, a staff member of the IDB married to his sister Rosario del Río de Ballivián, neither within the Bank nor in Bank circles. Instead, in various documents which he submitted over the years to the Personnel Division and other departments, he mentioned his family tie to Mr. Ballivián and the fact that he was the brother of Mrs. Rosario del Río de Ballivián. Furthermore, Bank Management had the opportunity to learn of his relationship when he filed his summary of personal data in 1975 and listed Mr. Jaime Ballivián as his brother-in-law;

c) In June 1982, Mr. Alvaro Chaves, Chief of the Benefits, Records and Reports Section, received the official information on the family tie between the Complainant and Mrs. del Río de Ballivián, reported it to his supervisor, Mr. Jose B. Villegas, Chief of the Compensation and Benefits Division (Salaries and Allowances) and the latter decided to take no action because, in his experience, there were no rules barring the hiring of relatives of Bank employees when the Complainant was hired in 1970;

d) Many persons who worked in the past or are now working for the Bank, were or are relatives of IDB staff members. Management has not denied this fact but has tried to justify it by saying that they were exceptions authorized by the President of the Bank;

e) The Conciliation Committee unanimously decided to recommend that Bank Management reverse its dismissal of the Complainant and reinstate him in his position;

f) The decision of August 15, 1985 by HUR Deputy Administrative Manager, which he challenges, was in violation of Personnel Policy No. 325 because the complainant has always performed satisfactorily and with total dedication to the needs of the Bank, which earned him written congratulations from the Administrative Manager on August 30, 1985, on the 15th Anniversary of his services to the Bank, and he

never transgressed against any IDB rules or regulations or against his employment contract;

g) The Bank has charged him with falsifying information in his employment application, but misrepresentation in a statement exists only where it is done knowingly, in other words, when a statement other than what the deponent knows to be the truth is made in order to conceal the truth. There never is or can be any falsification when a statement is made by error or out of ignorance. In this case, the Complainant's statement was correct according to his understanding and knowledge and Management has not shown, or even attempted to show, that the statement was false;

h) Prior to 1973, the provisions regarding the hiring of employees with relatives in the Bank were not clear; nor is there any accurate record of their official wording or the date on which they took effect. They were scattered provisions, insufficiently known to the officials in charge of Personnel Management and in respect of which many exceptions were granted;

i) It is evident that Bank Management learned of the existence of a family tie between the Complainant and the staff member Mr. Jaime Ballivián on several occasions --October 1972, June 1975, August 1978 and June 1982-- and on none of these did it take any administrative action on the matter, thus tacitly but unquestionably acknowledging that the written statement made by the Complainant in his employment application of May 1970 had breached no rule of the IDB in force at that time. According to the universally applied Principle of One's Own Actions, if by a tacit administrative behavior the IDB repeatedly acknowledged that the Complainant had infringed no official rule by his statements in the 1970 employment application, it cannot legally take, 14 years later, an administrative measure which is completely at variance with its own prior actions;

j) Mr. Sánchez Masi's decision of August 15, 1985 was adopted beyond the proper limits of his authority or powers and is therefore lacking in any validity. Under Bank procedure, and specifically under Personnel Policy No. 236, paragraph (E)(2), the final administrative decision must be taken by the Manager of the Administrative Department. On August 15, 1985 Mr. Sánchez Masi was Deputy Manager of the Human Resources Subdepartment and consequently, his decision to terminate the Complainant's services at once should have been reviewed by the IDB Administrative Manager. Soon thereafter, however, Mr. Sánchez Masi was appointed Administrative Manager and in this capacity proceeded, on October 31, 1985, to confirm the decision he had himself adopted on August 15 as HUR Deputy Manager. An administrator who took a decision which is under appeal to his superiors, obviously does not have the authority to pass on the appeal against his own decision, because this would be contrary to the essence of review. Mr. Sánchez Masi should have disqualified himself, and by failing to do so and

taking on the review himself, he overstepped his powers and went beyond the limits of his authority; and

k) Lastly, reasons of fairness and justice and the general principles of law on labor contracts lead to the conclusion that the administrative action by which the Complainant's contract was terminated had been extinguished by the lapse of time. If a statute of extinctive prescription applies to the rights of the staff --and there are many examples in the Personnel Policy's Manual of the Inter-American Development Bank-- it is unquestionably equitable and fair that it should also apply to situations in which Bank Management is free to take action and for various reasons does not. In this case, the dismissal was decided on August 15, 1985 based on events that took place on May 21, 1970, in other words, 15 years earlier.

3) The Bank answered the complaint requesting its dismissal, confirmation of the termination of Mr. del Río's services and rejection of any compensation whatever. It argued as follows:

a) On April 2, 1970 Mr. del Río completed the employment application form of the Inter-American Development Bank containing questions worded in Spanish, the applicant's mother tongue, and replied NO to question 15 on whether he had any relatives by blood or marriage who were employees of the IDB or another international organization. At that time, Mr. Jaime Ballivián, Mr. del Río's brother-in-law was and had been an employee of the IDB since October 1962;

b) Complainant signed the form in the space following the certification that all statements made therein were complete and true to the best of his knowledge and belief. In addition, the application warned the applicant that any willful misstatement would be grounds for termination of employment;

c) On several occasions, Mr. del Río filled out another form known as the Personal Data Summary specifying various persons to be contacted in case of emergency, and it was only in 1972 that Mrs. Rosario Ballivián was named on the form as the person to be contacted, but Mr. del Río did not state his relationship to her. In 1975, when this form was updated, the person he asked to be contacted in case of emergency was Mr. Jaime Ballivián, his brother-in-law, but he indicated neither his telephone number nor the fact that he was a staff member of the Bank. When he completed this form at other times, the Complainant again specified his sister Mrs. Rosario del Río de Ballivián as the person to be contacted in case of emergency, but did not say that she was married to an employee of the Bank;

d) In 1982, an employee of the Benefits, Records and Reports Section noticed the family tie after reviewing a visa application, which circumstance he reported to Mr. Jose Villegas, then Chief of the

Compensation and Benefits Division. Mr. Villegas took no action because he believed that Mr. del Río had joined the Bank before the policy on family ties took effect;

e) Since 1967, the Bank has had a Personnel Policy (I-C-2 from 1967 to 1973 and Policy 312 thereafter) which rules out the hiring of close relatives of employees, including brothers and sisters of a relative's spouse. There has been and there is, however, a small number of staff members hired prior to the effective date of the rules, under exceptions to the policy which were specifically authorized by the President of the Bank as head of the staff. Nevertheless, the policy has been applied consistently and whenever individuals hired in violation of this policy have been discovered, they have been asked to resign;

f) Owing to an anonymous telephone call which reported a similar violation by another staff member, an investigation was conducted to ascertain whether other such situations existed and Mr. del Río's misrepresentation was then discovered. On January 23, 1985 he was asked to explain the falsehood and he replied that he had not understood the question, but said nothing about asking anybody what it meant. In view of Mr. del Río's long and satisfactory services in the Bank, he was offered the option of resigning and receiving all benefits accruing from voluntary resignation. It was explained to him that the other alternative was immediate dismissal, from which he would have the right to appeal under established Bank procedures. At a meeting held on February 11, 1985 he announced his decision to resign voluntarily and he submitted a memorandum with his resignation effective August 31, 1985, on the understanding that the Bank would transfer him to another international organization. The Bank reply accepted his resignation but stated that it had no power to "transfer him" to another organization. In April 1985, based on the resignation agreement, the Bank granted Mr. del Río and his family the benefit of home leave;

g) Following an exchange of correspondence between Mr. del Río and Mr. Nimo, Chief of the Benefits, Records and Reports Section of the Human Resources Subdepartment, on the subject of Mr. del Río's personal file and the tendering of his resignation, on August 12, 1985 the Complainant wrote to Mr. Nimo to say that he believed his removal from the Bank to be unlawful and intended to challenge it under Personnel Policy No. 326. On August 15, HUR Deputy Manager wrote Mr. del Río to advise him of his immediate dismissal from the Bank because he had falsified a reply in his employment application;

h) In no document whatever did Mr. del Río ever indicate that he was the brother-in-law of another staff member of the Bank. The Bank is entitled to rely on the answers given in the employment application and has no obligation to launch a search for a possible disqualifying relationship. The official in charge of collecting the

Personal Data Summaries of all IDB employees --1,014 staff members when Mr. del Río was hired, 1,183 in 1975-- is not responsible for overseeing recruitment guidelines;

i) Mr. Villegas was not an employee of the Bank when Mr. del Río was hired and was therefore not in a position to know the conditions prevailing when Mr. del Río was hired. Mr. Villegas did not investigate, nor was he empowered to authorize an exception to the policy. He did not report the matter to his superiors. It was only when the records were examined for the specific purpose of uncovering family ties that the unlawful hiring of Mr. del Río came to light and direct action was taken. Under these circumstances, the behavior of the Bank prior to that inquiry is not in any way an acceptance of the family tie between Mr. del Río and another staff member and does not absolve him of his failure to disclose that family tie in the employment application; and

J) Mr. del Río filed his claim in bad faith because, following several meetings, he decided to accept the IDB proposal to resign voluntarily and receive the benefits inherent in this type of departure from the Bank, which he actually did, only to challenge his own resignation later on.

4) In his observations on the answer to the complaint, the Complainant elaborated on his previous arguments, disputing the statements and arguments put forward by the IDB. He insisted particularly, it may be noted, that the answer to the complaint does not meet the formal requirements laid down by the Rules of the Tribunal as it neither follows the sequence of issues raised in the complaint nor gives a clear answer to every allegation of fact and of law made in it; that the basis for the decision challenged is the alleged misrepresentation committed by the Complainant in his employment application and that, as specifically stated in the preliminary recommendations of the Conciliation Committee, Management has failed to show beyond any doubt that the Complainant denied the existence of a family tie with the deliberate intent of deceiving the Bank into hiring him; that while it is true that the IDB, according to the attorney for the Bank, had 1,183 employees in 1975 of whom 124 had last names in common, it must be remembered that from the inception of the IDB to this date there has been only one employee named Ballivián, Mr. Jaime Ballivián, brother-in-law of the complainant, so that all employees who reviewed the form signed by the Complainant in May of that year and in which he specified the name of his brother-in-law Jaime Ballivián as the person to be contacted in case of emergency, necessarily knew that he was referring to the IDB staff member so named, because he is a high official well known to the staff; that sound evidence of the fact that Management periodically reviewed the information in the Personal Data Summary forms is the fact that in June 1982 an employee of the Benefits, Records and Reports Section substantiated the family tie by reading the form submitted by the

Complainant that same month, in which he had entered the name of his sister Rosario Ballivián with the same information and family background set forth in similar forms filed in preceding years; that he rejects the statement, which implies a very serious charge for the personal reputation of Mr. del Río, that he is bringing the claim in bad faith; and that the meetings which Personnel officials asked the Complainant to attend in January 1985 were held to threaten him and force him to submit his resignation.

5) In its reply to the Complainant's observations, the IDB insisted, for its part, on the arguments advanced in the answer. Among other things, it stated that the answer is fully in compliance with every legal and regulatory requirement; that the Conciliation Committee had no authority to issue legal opinions, that its purpose is simply to seek an understanding between the Bank and the staff member and, consequently, the Bank accepts neither the validity of the outcome, nor the conclusions or recommendations of the Conciliation Committee; that, irrespective of intent, the answer given by Mr. del Río to the question on family ties was false, and the truth, had it been known, would have precluded his hiring by the Bank; that the Bank believes, based on the evidence collected, that Mr. del Río knew or had full reason to know, that Bank policies barred it from hiring him and that consequently his misrepresentation was not innocent; and that Mr. del Río's claim was brought in bad faith because he pretended to accept the offer made by the Bank and he enjoyed the benefits granted because of that agreement, only to challenge his own resignation thereafter.

6) Both parties submitted an abundance of documentary evidence, basically in the form of policies, rules, resolutions and internal correspondence relating to the status of the Complainant, without any challenges to the authenticity of any document; the Tribunal accepted the witnesses proposed by the Bank and asked that depositions be taken by the Executive Secretary, who heard testimony from the witnesses Ernesto Nimo, Wilma Reider, Juan Manuel Corredor, Antonieta Gutiérrez, Weston Williams, Ezio Vermiglio and Miriam de Narcho.

7) The evidence collected discloses the following facts:

A) Mr. Alfredo del Río was hired by the Inter-American Development Bank on October 9, 1970 on a temporary basis. This contract was extended several times and he received a permanent appointment on January 5, 1972, which appointment was confirmed on January 1, 1973. On August 15, 1985 Mr. del Río was an assistant, Grade X, step 8 in the Special Services Section of the Administrative Services Division;

B) To join the Bank, Mr. del Río completed an employment application which he delivered to the Office of Personnel on May 21, 1970. That application asked, under No. 15, the following: "Are any members of your family or relatives (either by blood or marriage) employed by the Inter-American Development Bank or any other public

international organization? If the answer is yes, please specify." The form was worded in Spanish, the native language of the Complainant, who is a Bolivian national, and he answered "NO" even though Mr. Jaime Ballivián, the husband of Mr. Alfredo del Río's sister Rosario del Río de Ballivián, had been working for the Bank for several years. In his complaint, Mr. del Río justifies this reply by saying that in his understanding, blood relative is a family member of the same blood, in other words, grandparents, parents, children, brothers and sisters, and that relative "by marriage" is the person to whom one is married, adding that, in Bolivia, the person married to a brother or sister is called "brother-in-law" or "sister-in-law" but never "relative by marriage";

C) The Complainant was always an efficient and deserving staff member, as specifically acknowledged by the IDB in the congratulations he received from Management on August 30, 1985 upon his 15th year of service in the Bank;

D) Policy I-D-2 barring the hiring of persons with relatives in the Bank, including children, parents, brothers and sisters of an employee or his or her spouse, was in force in the Bank in 1970. This policy was worded in English and there was no translation into Spanish. Its wording differed from that of question 15 on the employment application, though the substance of the rule was the same. The policy was part of a Personnel Policies Manual which was not signed by any official of the Bank and a copy of which was delivered only to the supervisory staff, with instructions to publicize its content in their sections, divisions or departments;

E) On October 31, 1972, when completing the Personal Data Summary, which contains complete information on the personal circumstances of the staff member and is updated periodically, the Complainant wrote the name "Rosario Ballivián" as the person to be contacted in case of emergency, without however, mentioning the family tie between them. In May 1975, in a new version of this Personal Data Summary, Mr. del Río mentioned Mr. Jaime Ballivián as the person to be contacted in case of emergency, specifying that he was his brother-in-law. On August 14, 1978 the Complainant once again changed the Personal Data Summary and named "Mrs. Rosario del Río de B." as the person to be contacted, and identified her as his sister; he did the same in 1982;

F) In 1982, after reviewing a visa request, an employee of the Benefits, Records and Reports Section noticed the family tie between Mr. del Río and Mr. Ballivián and reported it to Mr. Alvaro Chaves, then Chief of that section, who in turn reported it to Mr. Jose Villegas, then Chief of the Compensation and Benefits Division. Mr. Villegas decided to take no action against the Complainant in the belief that when Mr. del Río was hired by the Bank, there was no policy in effect barring the hiring of relatives;

G) On December 11, 1984 the IDB employee Mr. Jose Santaballa received an anonymous telephone call reporting that a Bank employee named Salvatierra was related to another called Gonzalez, both employed in the Secretariat Department of the Bank, which was found to be true. The incident ended with Salvatierra submitting his resignation. This led to Mr. Juan Manuel Corredor, Chief of the Compensation and Benefits Division, ordering Mr. Ernesto Nimo, Chief of the Benefits, Records and Reports Division, to investigate whether either cases existed. It was then, when the staff of the section was asked about it, that someone remembered the family tie established in 1982 between the employees del Río and Ballivián, and Mr. Nimo wrote an aide memoire for Mr. Corredor, dated January 3, 1985, stating the fact and adding that Mr. del Río, in his Personal Data forms, had several times mentioned his sister Rosario Ballivián and his brother-in-law Jaime Ballivián;

H) Several meetings between IDB officials and Mr. del Río took place in January 1985 to consider the situation. At the first meeting, Mr. del Río was advised to seek legal counsel because the problem was serious. After three more meetings, Mr. del Río agreed to resign and sent the Administrative Manager the memorandum on file, dated February 19, 1985, in which he states, among other things, that "my file shows that I warned the Bank about my family tie in the Personal Data form, on the occasions it was asked of me" and concludes by saying "faced with the pressure and inflexibility of the Bank I have no other choice but to resign, effective August 31, 1985, on the understanding that Management will help me to obtain a transfer to another international organization in the area, while granting me the benefits accruing from termination of service". On March 15, 1985 the Administrative Manager accepted his resignation effective August 31, 1985 but pointed out that the Bank could not undertake to procure a transfer to other organizations and that his entitlement to benefits would be recognized only upon, and as a condition of, his voluntary resignation. In April 1985 Mr. del Río and his family availed themselves of his home leave benefit. In June 1985 there was an exchange of notes regarding the Complainant's personal file and his desire to secure some copies. On August 12, 1985, after receiving a note advising him that a separation clearance form had been sent to various offices of the Bank, Mr. del Río sent Mr. Ernesto Nimo a memorandum in which he comments on the sending of that form and on his own situation within the Bank, and ends by saying that his resignation was conditional and the condition had not been accepted by the Bank, which meant that it had not been legally accepted and was therefore wholly ineffective;

I) The parties agree that there is a number of IDB staff members who were hired without applying the policy barring the hiring of applicants with family ties to Bank employees, because the President of the Bank ordered that they be granted an exception. The

parties disagree however, as to the origin of this authority and its legal effectiveness.

WHEREAS:

1. The dismissal which Complainant impugns as invalid is based on an alleged falsehood committed by Mr. del Río when he completed his employment application in May 1970. This falsehood is said to have been committed when Complainant answered NO to question No. 15 of the application form, which asked the applicant to indicate whether any relatives of his (by blood or marriage) were employed by the IDB or another international organization.

2. The misrepresentation occurred, according to the official who issued the dismissal order, because Mr. del Río did have a relative by marriage who worked in the IDB: Mr. Jaime Ballivián, his brother-in-law, who had been a Bank staff member since 1962. Complainant argues that the wording of question No. 15 was ambiguous, allowing for various interpretations. According to his knowledge and understanding, he contends, relative by marriage was the spouse, which he did not have at the time, and when he later married his wife never worked for the IDB. Mr. del Río maintains that he never interpreted "relative by marriage" to mean his brother-in-law relationship to Mr. Ballivián.

3. These terms, "relative by marriage", are not common usage among Spanish speakers. The technical term for family ties resulting from marriage is "relationship by affinity". The Tribunal will consequently allow that the wording of question No. 15 could lead a person such as Mr. del Río, a youth who in 1970 had barely started high school in his native Bolivia, into error. Accordingly, that he replied in the negative to question No. 15 on the application form is not by itself unquestionable proof of misrepresentation. He may have replied NO in the belief that he was telling the truth.

4. Nor does the subsequent behavior of Complainant clear up the question of whether he acted in error, in good faith, or tried maliciously to conceal his family tie to Mr. Ballivián in an effort to avoid rejection of his employment application by the IDB, since the prohibition to hire relatives by blood or marriage of IDB employees was already in existence. Although Mr. del Río mentioned his family tie to Mr. Ballivián in other forms, he never openly stated that Mr. Ballivián worked for the IDB or volunteered any information from which the Bank might conclude that the Ballivián mentioned as the person to contact in case of emergency, was the very same Ballivián who held a high position in the IDB.

5. On the evidence collected, the Bank has not shown that Mr. del Río maliciously provided false information, but neither has Complainant proven beyond doubt that his negative reply was the result of a mistaken construction placed on the ambiguous terms of question No. 15, rather than a plot to circumvent the prohibition of hiring relatives by blood or marriage of IDB employees.

6. Nevertheless, since the principle of "IN DUBIO PRO OPERARIO" applies in labor relations as a consequence of the PRINCIPLE OF PROTECTION which inspires labor law as a whole, the Tribunal in this case grants the benefit of the doubt to the employee Mr. del Río and consequently accepts his statement that in replying NO to question No. 15 on the employment application, he did not intend to conceal a family tie which would have barred him from joining the IDB but replied instead according to his mistaken interpretation of the terms "relative by marriage", and he who acts in error does not commit a falsehood.

7. Besides, the PRINCIPLE OF NEGATIVE PRESCRIPTION is universally recognized in all branches of the law. When applied to the procedure for exercising a right, negative prescription leads to a LAPSING OF THE ACTION to bring suit or exercise any right. The party not claiming or exercising a right within reasonable time, bars itself by its own negligence from exercising or demanding that right. The action to claim it lapses over time. Even criminal action to punish the most heinous crimes may not be brought after the period prescribed by statutes of limitations, which is generally the equivalent of the maximum sentencing term for the particular crime. The right of action will lapse after a period which varies according to the subject matter. As stated, the period may be very long in the case of criminal actions. For the collection of debts, negative prescription in commercial law is shorter than in civil law. Labor law sets very short deadlines to bring action over dismissal.

8. Although no specific rules have been established in the IDB for the lapsing of action over dismissal, it is undeniable that the term for bringing this action cannot remain open without limitation. If the IDB does not exercise its right to dismiss within reasonable time, that right must lapse.

9. The lapsing of the right to bring action over dismissal always raises the question of the moment from which the term begins to run. The answer of labor law and administrative law to this question is that the term begins to run from the moment the employer learns, or should have learned, of the cause for dismissal.

10. It has been shown that on June 1982 at any rate, the IDB learned of the family tie by marriage which existed since 1970 between Complainant Mr. del Río and his brother-in-law Mr. Ballivián. That the Division Chief who was told of the existence of this cause for

dismissal did not take the necessary steps for the proper authorities to exercise the dismissal action, does not in any way support the argument that because of a mistake by that official, the Bank had no proper knowledge of the cause for dismissal and was not able, in consequence, to exercise its right to dismiss. From the moment the IDB learned, or should have learned, of the cause for dismissal (June 1982) to the moment when it dismissed Mr. del Río (August 1985) more than three years went by, time more than enough for the dismissal action, which the IDB could have brought against Mr. del Río, to lapse. Even if the action to terminate Complainant's services had begun in late 1985, the Tribunal believes that a term of two and a half years is more than enough time for the operation of negative prescription of the right to dismiss an employee.

11. In view of the foregoing, the dismissal of Mr. del Río ordered by the Human Resources Subdepartment on August 15, 1985 is held by the Tribunal to be invalid, not only because it was not shown beyond doubt that Complainant committed a falsehood in replying NO to question No. 15 of his employment application, but also because, even if such falsehood is considered proven, the dismissal action had already lapsed by the operation of negative prescription when the Bank exercised it.

12. As 18 months have passed since the improper dismissal of Complainant, the Tribunal considers justified that the amount of compensation IDB should pay Mr. del Río if it chooses not to reinstate Complainant, must exceed the regular amount of compensation established in Article IX of the Statute, but without reaching the ceiling for extraordinary compensation established in the same Article. Consequently, the majority of the Tribunal deems that such amount must be fixed in 30 months.

THEREFORE, the Tribunal decides:

1. To reverse the decision impugned, by which the Deputy Manager of the Human Resources Subdepartment, Mr. Luis Sánchez Masi, ordered the dismissal of Complainant Mr. del Río on August 15, 1985.

2. To reinstate Complainant Mr. Alfredo del Río in the position he occupied on the date of his dismissal, with acknowledgment of the rights to which he would have been entitled had he not been improperly dismissed.

3. To set at 30 months of salary the amount of compensation to which Mr. del Río would be entitled if the IDB should decide that the reinstatement now ordered by the Tribunal is not in the interest of the Bank.

Judge Smith voted to set at 24 months of salary the amount of compensation referred to in paragraph 3 above.

Washington, D.C., April 2, 1987.

Gonzalo J. Facio
President
Judge

Eugenio Velasco
Executive Secretary