

JUDGMENT CASE NO. 14

MARCELO NUNES RIBEIRO 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 Víctor 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. Guillermo Félix Blanco. 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 April 2, 1987.

WHEREAS:

1) Mr. Marcelo Nunes Ribeiro, a Brazilian national, Representative of the Inter-American Development Bank in Argentina, has lodged with this Administrative Tribunal, a complaint against the Bank challenging the memorandum of July 17, 1985 by the Administrative Manager of the IDB and has petitioned the Tribunal:

"In due course, to find for Complainant on all points, ordering Bank Management to cancel those decisions by which Complainant was deprived of the Merit Increases listed in Chapter VII of this brief.

Accordingly, Complainant should be paid all amount withheld on this account, with the addition of interest at market rates as from the time when such sums were payable by the Bank.

Furthermore, we request that Bank Management be ordered to take such steps as may be necessary to recompose Complainant's salary retroactively beginning on December 1, 1981, so as to erase all injury caused by Management's illegitimate and arbitrary actions, restoring to him all income as if such measures had (not) been adopted."

The merit adjustments specified in Chapter VII of the complaint and estimated at about US\$20,000, pertain to December 1, 1981, when his evaluation for the period February-October 1981 was at Code I; to June 1, 1983 when his evaluation for 1982 was also at Code I; and to August 1, 1984 on account of the equalization adjustment as well as his evaluation at Code II.

2) In support of his petitions, Complainant raises a series of issues of fact and of law which may be summarized as follows:

a) The new IDB salary policy reported to the staff in Document HUR/15/84 of August 3, 1984 prompted Complainant to try to obtain from Management an explanation about the procedure followed in recent years in his regard, because he had not received the merit increases to which he believed himself entitled under the guidelines announced by the President of the Bank and HUR Deputy Manager. Following an exchange of letters which did not dispel his uncertainty, on May 6, 1985 he received a confidential memorandum, in response to his inquiry, stating among other things that the merit increase for which he was eligible thanks to his high evaluation ratings in 1982, was not granted to him because the Executive Vice-president of the IDB had ordered an audit of the outfitting and furnishing of the new IDB Field Office in Argentina, for which activities Complainant bore major responsibility, and had suspended as from May 7, 1982 any payment of merit increases to all staff members involved in the matter, until the outcome of the audit became known. One of the conclusions of that report (of November 1983) is that the standards of sobriety and economy of the IDB were exceeded in the outfitting of those offices, for which reason he had been sent a written reprimand and his merit increase had been turned down;

b) He was never told about the suspension of the merit increase ordered by the Vice-president on May 7, 1982, and as to the alleged "written reprimand" sent to Complainant on May 29, 1984, there is nothing in it about any penalty and it refers only to a recommendation for the future, without mentioning any financial consequences. It does not specify, moreover, whether the Administrative Manager was acting on his own behalf or that of the Executive Vice-president. If the latter official ordered the suspension of merit increases and the audit, it stood to reason that he should close the Administrative inquiry he had himself launched;

c) Despite the widespread knowledge in IDB top management circles of the episode relating to the audit report, from 1982 to 1984 Complainant's evaluation ratings remained at the highest levels and he was therefore, eligible for the merit increases;

d) The letter of May 29, 1982, later characterized as a penalty, was sent more than two years after the preventive memorandum of the Vice-president. It was first rejected by Complainant in memorandum FAR1205/84 of June 19, 1984 and later, on September 12, 1984, returned to its author with the specific request that it should not be recorded in Complainant's personal file and that any salary action to which it might have given rise should be revised or corrected. Bank Management did not reply until the outbreak of the conflict over application of the new policy approved in this connection in August 1984;

e) The audit ordered by the Vice-president originated in the information he received from the Administrative Manager with regard to the outfitting and furnishing of the IDB Field Office in Buenos Aires, which information the Vice-president interpreted to mean that "serious overruns on approved expenditures" had taken place. It was for this very purpose, to verify this fact, that he ordered the audit, as clearly stated in his memorandum of May 7, 1982 to the Administrative Manager. But the persons in charge of the audit decided that it should encompass all "activities relating to the purchase and outfitting of new offices for the IDB Field Office in Argentina and the Institute for the Integration of Latin America (INTAL)." With regard to the precise issue under investigation, the audit report states categorically that "financial transactions and protection of assets have been carried out, in their basic aspects, in line with Bank standards" and that "in general, financial transactions were duly accounted for, adequately reported and supported with sufficient documentation." In other words, the audit did not find "serious overruns on approved expenditures" simply because they never existed, since all contracts were approved by Headquarters. In addition, it deemed it appropriate to add the following paragraph: "It may be noted that the size of the project demanded considerable dedication and effort from the Representative and the Deputy Representative as well as from the Administrative Sector, who carried out the necessary work in addition to their regular duties";

f) Management made no comment whatever after receiving the audit report and neither did the Executive Vice-president confirm the temporary suspension of merit increases he had ordered. Nor did he inform, as required by elementary standards of ethics and procedure, the staff members involved;

g) Under the IDB policy in force with regard to merit increases, this increase depends solely and exclusively on whether the staff member was rated "At the Norm" or "Above the Norm" irrespective of any other consideration;

h) Management's attitude has been indolent, abusive and arbitrary. Indolent because once the preventive memorandum of the IDB Executive Vice-president had been issued, it was distorted as to its essence and was taken as a definitive penalty, thus considerably affecting Complainant's earning by depriving him of a merit increase on three occasions. Abusive, because Complainant was never advised of the order or told that the failure to grant him merit increases between 1981 and 1984 originated in that order. Arbitrary, because Management, in an effort to fill the Administrative void it created, capriciously tries to endow its actions with a substance and a coherence they lack, and because it attributes to the IDB Executive Vice-president powers little short of discretionary in matters of merit increases, which he in truth does not possess;

i) Neither the memorandum of May 29, 1984 --later characterized as a written reprimand- - nor the confidential memorandum of May 6, 1985, both from the Administrative Manager, Mr. Epstein, nor the audit report of November 1983, include a single mention of the IDB rules alleged to have been violated, which alone serves to make plain the unlawful manner in which Management has acted, by omitting to mention any legal basis in this connection;

j) The foregoing notwithstanding, a brief review of internal rules of the IDB applicable to the outfitting and furnishing of Field Offices, namely FO-604-2 and FO-604-3, shows that they contain only guidelines and are devoid, by themselves, of any strict and specific content. Annex I, page I of FO-604-3, for instance, states that the guidelines on allocation of space must be followed as faithfully as possible, bearing in mind that there might be considerable differences among various countries in building practices or in usage in this connection. Referring to furniture in particular (Annex II, page I) the same rule states that its guidelines should be followed as faithfully as possible, only to add that the need to avoid ostentation must be taken into account. Consequently, for these rules to be meaningful, they must be supplemented by budgets and the approval of tentative amounts. In the instant case, the amounts appropriated never exceeded the authorizations granted and the projects and contracting were approved by Headquarters. At all times, moreover, specialized outside consultants were on hand to advise;

k) The deep changes made in these standards in 1982 as a result of the Buenos Aires experience, sought to add new rules and specify others which were very broad and vague, serve to show the truth of the preceding argument. It is interesting to note that these amendments, which of course do not apply to this case because are subsequent in time to the events discussed, introduced for the first time the word "standard" which is used as a sort of crutch in the auditor's report, even though it did not exist at the time in the rules of the Bank; and

l) In the Bank, there is no properly regulated system of penalties, leading to the conclusion that, in the best of cases, the exercise of disciplinary powers must be limited by fairness, prudence and the general principles of law, among which the following are universally recognized: a) a penalty must be imposed at the proper time; b) it must have a just cause and be proportional to the fault; c) it must originate in a notice given to the employee by his supervisor and must allow for his answer to the charge; d) it must be advised in writing; and e) only one penalty may be imposed for the same fault. Bank Management has acted with manifest arbitrariness and indolence, ignoring these principles. The most absolute silence surrounded an alleged penalty, for a nonexistent wrong the processing of which disregarded the most elementary administrative rules and principles. The errors committed both in procedure and

substance cannot be undone and must be corrected through a judgement of this Tribunal restoring matters to their previous state.

3) The Bank answered the complaint and asked that it be dismissed in its entirety for the reasons advanced, which may be summarized as follows:

a) The authorization to purchase the furniture was issued in November 1981 without Headquarters' reviewing the proposals because of the short time remaining for the use of funds allocated for that purpose under the 1981 budget, but subject to the condition that the furniture would meet the standards established in Annex II of Field Office Policy FO-604-3. Later, after reviewing the purchases, the Administrative Services Division suggested a more thorough study and the Administrative Manager, on April 21, 1982, reported to the Executive Vice-president that the purchases were not in line with Bank rules and requested an audit. On May 7, 1982, the Vice-president took up the suggestion, ordered the audit and suspended any merit increase to the individuals involved in the purchase, until such time as the matter was cleared up. The audit established flaws, particularly as regards: (1) allocation of space beyond the real needs of the Bank; (2) the use of designs with elements unusual in the Bank which strayed from established standards; (3) selection and purchase of furniture well beyond the standards used to ensure sobriety and economy; and (4) delays in sending the relevant information to the Administrative Services Division. As a result of this report, the Administrative Manager sent a written reprimand to Mr. Ribeiro;

b) While it is true that Complainant obtained good performance ratings between 1981 and 1985, it is also true that according to the rules in force on merit increases, in the case of Mr. Ribeiro those good ratings were not enough to secure the increase automatically. The rules on "Salary Administration of International Employees in the Field Offices" classified Representatives under Grade "A" of the salary category and included, in addition, a "Salary Treatment Code" governing eligibility for individual merit increases. Code I included the highest 20% of employees rated "Constantly Above the Norm." Those below that 20% and those rated "General at or Above the Norm" made up Code II. This policy established that those individuals in Grade "A" who were in Code I or Code II and whose salaries exceeded 75% of the range for their grade, were not eligible for merit increases before at least 18 months had passed since the previous increase. And the policy added that, when the salary reached 75%, any consideration of a salary increase, especially for Representatives and Deputy Representatives had to be considered a "Special Action" requiring approval from the Vice-president of the Bank. In the events of the instant case, Mr. Ribeiro was within Grade "A" and in the percentile 81.5. Personnel Policy No. 337 on Salary Administration of the International Employees in Field Offices was issued in 1983. This policy made it possible to grant merit increases to individuals in

Grades "A" and "B" above the 75% of the salary range, only when such persons were classified under Code I. It also stated that merit recommendations leading to a salary above 75% of the range had to "include a written recommendation" and that all increases above the 75% were to be considered "Special Actions" requiring approval of the Vice-president. A clear consequence of this system of rules is that, for most staff members, merit increases were granted on a routine basis, but for the higher officials in the Field Offices the increase specifically required the additional measures of written justification and consideration and approval by the Executive Vice-president. It is obvious, therefore, that the Vice-president had the authority to grant or turn down the merit increase;

c) In the exercise of this authority, the Vice-president refrained from approving any merit increase for Mr. Ribeiro until an audit should establish the facts, for he had been alerted to the possibility of breaches of Bank policies in the purchase of furniture for the new IDB Field Office in Buenos Aires. Subsequently, following review of the auditor's report, which included specific charges against Mr. Ribeiro, it was decided not to give him those salary increases. It was agreed, at the same time, to grant him merit increases for the future, without retroactive effect, in line with the new salary increase system that was taking effect, and Mr. Ribeiro was so advised;

d) The new salary system, under which all eligible international employees would receive merit increases on August 1 of each year, was announced by the President of the Bank on August 2, 1984 and he pointed out, from the outset, that if the transition from the old system to the new was to be fair, it was essential to render the status of all employees equal on July 31, 1984. This adjustment was made necessary by the different situations that had arisen because of the time elapsed since the last merit increase and the time that had to pass between step increases according to the previous salary administration system. The idea was for the salaries of all staff members to be equivalent to those which would have been entitled to a merit increase as from August 1, 1984. The "equalization" was to take the form of a payment proportional to the time elapsed between the previous merit increase and the date on which the staff member had again become eligible for an increase in line with the interim period applicable under the policy in force until July 31, 1984; and

e) For the reasons given in (b) above, Mr. Ribeiro was not eligible for a merit increase prior to the effective date of the new salary administration policy. His eligibility arose only on the date on which the new policy took effect, and consequently he had no merit increases to be "equalized" in respect of August 1, 1984.

4) In his observations to the answer Complainant elaborated on the same arguments advanced in the complaint and stressed the following:

a) In its defense, the Bank has introduced as the central discussion topic, the performance of Complainant in the outfitting and furnishing of the office space purchased by the Bank in Buenos Aires and, from this starting point, it endeavors to justify the administrative measures by which Complainant was denied the merit increases to which he was entitled according to his evaluations and the applicable Bank policies. This compels Complainant to address the question of outfitting and furnishing so as to refute the arguments advanced by the Bank in this connection;

b) When Complainant was appointed IDB Representative in Argentina in early 1981 and took up his duties on March 3, 1981, the Bank had already purchased five floors in the Esmeralda Building located at 130 Esmeralda Street in the City of Buenos Aires (floors 16 to 20) to install there the IDB Field Office and INTAL -Institute for the Integration of Latin America. It is a first rate building housing major Argentine and foreign companies and one foreign-owned local financial company. Complainant, therefore, had nothing at all to do with the purchase of the building;

c) It may be seen from the documents submitted by the Bank that the most important decisions were taken by Headquarters, which approved, among other things, the outfitting project prepared by the consultants hired to that end, the comprehensive renovation of furniture and the process of selection for purchasing it in Argentina and, it also approved the method suggested by the Field Office to award the contracts for the furniture. Even though the failures mentioned by the Bank are vague and confusing in that they mix up different episodes in an imprecise fashion, it appears that the heart of its objections lies in the purchase of furniture for the new offices;

d) The furniture was purchased during the most acute juncture in the singular economic conditions prevailing in Argentina in 1981. An anti-inflationary economic policy based on substantial overvaluing of the Argentine currency and the ensuing undervaluing of foreign exchange, led to a distortion in the exchange rate and a major skewing of domestic prices. For instance, the Bank spent the equivalent of US\$6,840,441 to purchase the five floors in the Esmeralda building, the current value of which in US dollars is barely half that amount. These conditions were well known to the Bank, whose staff members residing in Buenos Aires received a very high post allowance on top of their basic salaries to restore the purchasing power of their earnings. There was remarkable price instability which made very difficult to obtain firm quotes valid for a reasonable length of time. Nevertheless, Headquarters put constant pressure on the Field Office to formalize the contracts before the end of 1981. This is borne out by the varied documents submitted by the IDB;

e) On November 16 and 18, 1981 Complainant reported to Headquarters on the outcome of the bidding and made a proposal on the awarding of contracts. The telex from Headquarters authorizing the contracts was issued on December 8, 1981, in other words, 20 days after the second telex had been received, during which time no additional information whatever was requested. In the course of the internal approval procedure, the Administrative Manager recommended to the Vice-president, by memorandum of November 19, 1981, that the purchase be approved because the furniture met the IDB standards; Form 80, which approved an outlay of US\$280,845, also indicates that the furniture purchased meets "current standards in accordance with the relevant budgetary items." It is only in the authorization telex dated December 8, 1981 that Management made the approval subject to the condition that the furniture should meet the standards established in Annex II of Policy FO-604-3. This requirement was untimely because Management had time enough to request more information, to order on-location supervision by some official and, lastly, to suspend the contracting. This is the same view voiced by the Auditor's report in stating that Management had three weeks to secure, even by telex, a breakdown of the furniture and the individual prices, to form an opinion about the description of the furniture and, in addition, to comply with the Field Office Manual which requires Management to render a decision on the prices;

f) The statement made in the memorandum of April 12, 1982 from the Administrative Manager to the Executive Vice-president of the Bank, is erroneous. It reports "serious overruns on approved expenditures" of approximately US\$120,000 leading the Vice-president to understand mistakenly that the Field Office had gone beyond the approved budgetary level by that amount. As stated and proven in the complaint, all contracts reflected the items and authorizations approved in due course. The reference to excessive spending originates only in the cost estimated by Headquarters for the possible purchase of similar furniture in the United States. In view of these calculations, one may ask why Management did not make these figures known to the Representative so that he might have used them as reference and why it did not decide to make the purchases in the United States, which seemed to be the appropriate course of action;

g) Regarding the delays in completing the INTAL auditorium, it is useful to remember that on February 16, 1983, Complainant asked the Administrative Services Division of the IDB to release him from any responsibilities in that connection, so that he might at length be free to concentrate on his regular work as Bank Representative in Argentina, and to place supervision in the hands of the Director of the Institute. The Bank's answer to this request was again to make Complainant responsible for supervising this construction work " . . . in view of the experience gained in management of building contracts . . . " and because it felt that, in this way" . . . the interest of the Bank

was better served by applying this experience to the construction of the auditorium, which otherwise would take longer to complete.";

h) In the area of merit increases, the Executive Vice-president of the Bank does not have powers as broad as the Bank claims. Personal Policy 331, in both its 1975 and 1983 versions, clearly provides that the President of the Bank has "the authority to approve all actions related to employees in Grades I and II" while the Vice-president deals with " . . . salary actions applicable to employees in Grades III and below." So much for the general rule. For the Field Offices, there is a special salary system in force since 1977 and revised in 1980 the provisions of which apply automatically without requiring special action by the Vice-president, except for cases not covered by these rules, where the decision is up to the Executive Vice-president. In sum, the Executive Vice-president had no legal authority to deprive Complainant of his merit increase;

i) Lastly, as regards the equalization adjustment, the account provided by the attorneys for the Bank is at variance with the clear and precise rule which grants it without restrictions to all staff members rated "Generally at or Above the Norm" or "Constantly Above the Norm." The best proof of this is the conciliation arrangement proposed by the Bank to Complainant through the IDB lawyer, Mrs. Miller, after notice that the complaint had been served, in which, among other things, payment of the increase was offered.

5) The Bank reiterated and confirmed, in answering the observations put forward by Complainant, each and every statement of fact and of law set forth in its answer to the complaint. In particular, it insisted on stressing the following:

a) The breach of Bank standards designed to avoid luxury and ostentation, committed by Complainant, went to the extreme that Mr. Ribeiro, far from pursuing in the construction and furnishing of the offices the sobriety and economy called for by the rules in effect, tried to "equal the level of the new building that was to house the offices, which he himself characterized on page 2 of his observations as a first-rate building . . . " and the defense for the Bank added: "The applicable policy does not state that the level of the building housing the offices should be squalled. On the contrary, the aim is to secure uniformity in respect of other IDB offices";

b) The Administrative Manager, Mr. Glower Valdivieso, asked Mr. Curtin to approve the expenditure, and the relevant authorization was issued, only because Mr. Ribeiro had given assurances, in his telex of November 16, 1981 addressed to Messrs. Georges and Ojeda at Headquarters, that the proposed purchases were adequate "in view of the institutional standards." In other words, by requesting approval from Management without furnishing the information that might make it possible to study the proposals in advance, Mr. Ribeiro took upon

himself exclusively the responsibility for insuring compliance with Bank standards;

c) The fact that making Mr. Ribeiro responsible for the outfitting of the INTAL auditorium was insisted on, is not inconsistent with the outcome of the audit. In the outfitting of the offices in Argentina there were problems of communication, decision-making and omissions on the part of Headquarters. Owed partly to the attention focused on the project after these issues were raised in 1982, and until such time as the audit took place, Mr. Ribeiro received more guidance, which apparently led to better results in completing the INTAL auditorium, as shown by the thanks he received for his performance in this portion of the project.

d) Its legal interpretation of the provisions governing merit increases for higher officials is correct, of which the best evidence is furnished by the practice then followed by Bank Management in this connection. In April 1982, the Executive Vice-president had received a request to approve a merit increase for Mr. Ribeiro. Had the Vice-president approved it, the increase would have taken place, but instead of approving it, he told HUR that all merit increases should be suspended pending the audit; and

e) The offer made by the Bank to Complainant in an effort to settle the matter without a public debate meant no admission, as its own wording shows, of any contradiction with the IDB position in these proceedings. For the same reason, the Bank submits that any reference to that offer is completely improper and ineffectual.

6) Both parties submitted an abundance of documentary evidence, basically in the form of policies, rules, resolutions, memoranda and internal correspondence related to the outfitting and furnishing of the IDB Field Office in Argentina, no questions having been raised as to the authenticity of any document, with some papers being submitted by both Complainant and IDB. The Tribunal accepted the witnesses proposed by the IDB and asked its Executive Secretary to take the depositions of Messrs. Ademar Toro and Francisco Ojeda, which he did. The witnesses, Messrs. Ezio Vermiglio and William L. Taylor, mentioned in the list submitted by the Bank, did not testify before the Tribunal, but the IDB filed sworn statements signed by them because they were absent from Washington on the date of the hearings. These statements were added to the dossier "on the understanding that the full Tribunal will decide on its evidential merit." By resolution of the President of the Tribunal, the Bank was ordered, as an additional measure required by the Tribunal on its own authority, to report on penalties of any kind imposed on the individuals involved in the events that gave rise to this litigation, and the report was given on February 27, 1987.

7) The evidence collected shows the following to be facts:

A) In December 1980 Complainant, a former staff member of the Inter-American Development Bank, was appointed Representative of the Bank in Argentina and traveled to Buenos Aires in February 1981 to take up his duties officially on March 2 of that year.

B) By telex of February 18, 1981, the Field Office in Buenos Aires was advised that the Board of Executive Director of the IDB had approved an expenditure of up to US\$1, 500, 000 to outfit the space purchased to install the new offices of the IDB and the Institute for the Integration of Latin America (INTAL) and instructions were issued with a view to the proposal and approval of the layout of the new offices, securing quotations on the architectural designs to build them and, once the blue prints were completed, calling for bids on the construction work and preparing as soon as possible the proposal on purchase or replacement of furniture. The Representative, it was stated, would act as Administrative Agent in all matters mentioned.

C) Throughout 1981 and the beginning of 1982 there was a lively exchange of communications between Headquarters and the Field Office, especially by telex, and numerous telephone conversations, related to the work of outfitting and furnishing the new offices in Buenos Aires; all these documents include inquiries, instructions, observations, corrections and authorizations and from them, the following are noteworthy: i) telex of April 8, 1981 by which, in view of the discrepancies between the Field Office and INTAL, Management makes it clear that greater efforts must be made to reach reasonable accords and, in the event of a tie within the Field Office-INTAL Joint Committee, the matter would be decided by the casting vote of the Administrative Agent, in other words, the Representative Mr. Ribeiro; and ii) telex of August 28, 1981 in which Management approves, with some observations, the proposed design for layout of the space; authorizes the signing of the contract with the firm of IDECO to build partitions, interior paneling and general finishing of the offices in line with the method proposed for payment of the price; and authorizes, in addition, the signing of contracts to install carpeting, curtains, fittings, electrical installations, air conditioning changes, shelving for the library and files of INTAL, entrance doors and foyers, logo types and appearance of the entrance way, storage and safe keeping of materials, and removal of debris, within the amounts proposed and subject to bidding in each case;

D) On October 16, 1981 Management reminds Mr. Ribeiro that, simultaneously with the outfitting of the new offices, it is essential to evaluate furniture requirements so as to make timely use of the funds authorized to this end in the 1981 fiscal year, which monies must be used prior to December 31 of that year, adding that the proposals must be made "subject to the standards in the Field Office Manual."

E) By telex of November 16 of that same year, Complainant refers to prior telephone conversations with officials at Headquarters and explains in detail the manner in which the bidding was carried out and other steps related to the selection of furniture, lists the names of the suppliers selected and ends by requesting authorization to sign the contract immediately because the bids received are valid for a period of only ten days which expires that very day and because the time left to complete the facilities is short and there is a risk of delaying occupancy. He concludes by offering to send the contracts and all necessary documents as soon as the former are signed and notes that there are budgetary allocations in the amount of US\$267,000 for these purposes both at the Field Office and at INTAL, which nearly cover requirements, in addition to the funds to be realized from the sale of the furniture in use. On the following day, Mr. Ribeiro reports, also by telex, that the US dollar equivalent of the amount required to pay the furniture suppliers, based on an exchange rate of 10,000 Argentine pesos per dollar, is US\$280,845;

F) On November 19, 1981 Mr. Rafael Glower, Administrative Manager of the Bank, addressed a note to the Executive Vice-president, Mr. Michael Curtin, asking him to authorize the enclosed Form 80 in the amount of US\$280,845 so as to proceed immediately with the purchase of furniture for the offices in Buenos Aires using the funds allocated under the 1981 fiscal budget which was about to expire. This Form 80 shows it was authorized by Mr. Francisco Ojeda and by the Chief of the Division on that same day, November 19, and bears other signatures with illegible dates. On December 8, 1981 Headquarters sent a telex to the Field Office authorizing the purchase of the furniture on condition that "it should comply, as to quantity and description, with the standards established in FO-604-3 Annex II". On March 10, 1982, the Field Office, through its Deputy Representative Mr. Raúl Saa, sent a memorandum to Headquarters along with the contract signed with the suppliers of the furniture.

G) On March 24, 1982, Mr. Francisco Ojeda sent a telex to Mr. Ribeiro stating that a review of the information submitted on the purchase of furniture "indicates a substantial departure in furniture description from Bank's standards set forth in FO-604-3 Annex II" and placing at US\$120,000 the estimated excess over the cost of furniture within the standards, purchased at Headquarters and shipped to Buenos Aires, all of which he was reporting to the heads of the Administrative Department. Mr. Ribeiro replies the following day by telex, expressing to Mr. Ojeda his surprise over the communication received and the procedure used to convey the opinion of Headquarters in this connection, which should have been issued at the appropriate staff level and only after consideration of the matter. As to the substance of the problem, he contends that the expenditure made is strictly consistent with the amounts authorized; that the estimate of excessive spending in the amount of US\$120,000 is untimely, as it should have been taken into account before issuing the authorization; that the

description of the furniture purchased "is adequate to the general level, quality and finish of the new premises," is consistent with sobriety and functionality, and that the facilities of the new offices will be correct though comparatively modest in light of the specifications and cost of the property purchased.

H) On March 22, 1982 the same Mr. Francisco Ojeda sent a memorandum to Mr. Juan Santa Cruz, Chief of the Administrative Services Division, providing detailed information on the background to the purchase of furniture for the new offices in Buenos Aires and concluding that the Field Office in Argentina was excessively slow in applying for the purchase of the furniture, barely 45 days before the budgetary items were to expire, even though it had been warned 16 and 10 months in advance, of the need for timely compliance with this Administrative step; that the furniture meets the established standards as to the number of pieces assigned to staff members but not as to their description which is a remarkable departure from the standards in terms of the sobriety and moderation required by the policies, and that this has represented excessive and unjustified spending of US\$120,000. Mr. Santa Cruz espoused the comments made in Mr. Ojeda's report and forwarded them on the same date to the Budget and Services Subdepartment. On April 21, 1982, the Administrative Manager sent a memorandum to the Executive Vice-president in which he explains the background to the purchase of the furniture, reports that the departure from standards "has caused excessive spending calculated at approximately US\$120,000 and causing the offices in Argentina to have an appearance that may be termed luxurious," and recommends that the Auditor General be asked to "conduct an audit on the procedure followed to purchase the furniture for that Field Office and INTAL, and other supplies and its compliance with the standards established by the Bank." In reply to that memorandum, on May 7, 1982, the Executive Vice-president, Mr. Curtin, told the Administrative Manager that in regard to "the serious overruns on approved expenditures" resulting from the information, by a copy of this memorandum to the Auditor General, Mr. William L. Taylor, he was giving him instructions to proceed to order a special audit at the earliest date he deemed advisable, in order that the procedures followed by the Field Office in Argentina, the communications, requests and authorizations exchanged on this matter between the Field Office and Headquarters, may be documented and clarified and the reasons leading to the excessive spending may be looked into and ascertained. He added that all merit increase to all staff members in the Field Office, INTAL and the Administrative Services Division who were involved in this matter, were to remain in suspense until the question was fully cleared up.

I) The audit was entrusted to a senior auditor, Mr. Ademar Toro, and was completed in April 1983. According to his conclusions, the most significant flaws detected have to do with: 1) allocation of space in excess of real needs and beyond institutional standards; 2) design of the offices with elements unusual in the Bank and

inconsistent with sobriety and economy; 3) selection and purchase of furniture well above Bank standards set forth in the Field Office Manual; 4) undue delay in submitting to the Administrative Services Division the layout blue print and the list of furniture to be purchased; 5) use of a purchase system which did not lead to free and sufficient competition; 6) failure to comply in several cases with instructions from Headquarters on submitting summaries of the studies made to select contractors for certain works and the contracts signed; and 7) the absence of timely steps to ensure the speedy construction of the INTAL auditorium. The auditor adds that "financial transactions and protection of assets were carried out, in their basic aspects, in line with Bank standards"; that "in general, financial transactions were duly accounted for, adequately reported and supported with sufficient documents"; and that "it should be noted that the magnitude of the project required considerable dedication and effort on the part of the Representative and the Deputy Representative, as well as from the Administrative sector, who carried on this work in addition to their regular duties."

J) The "serious overruns on approved expenditures" mentioned by the Vice-president in his memorandum of May 7, 1982, which served as the basis for the decision to conduct an audit, never existed and was actually a misunderstanding on the part of the Vice-president, which was cleared up by explaining that it was only an excess in terms of Mr. Ojeda's estimated cost of purchasing in the United States furniture that met the standards and shipping it to Buenos Aires. This is borne out by the audit itself and by the statements of the witnesses for the Bank, Messrs. Toro and Ojeda.

K) On May 29, 1984, 13 months after the audit, the Administrative Manager informed Mr. Ribeiro in a confidential note that Management had completed its study of the auditor's report and it was the opinion of the Bank that these installations and furnishings exceed the standards of sobriety and economy which ought to characterize the Bank offices; that this was due, to some extent, to Mr. Ribeiro's failure to exercise good judgement and to pay sufficient attention to his obligation, as a member of Management, to assist the Bank in avoiding wasteful and unnecessary expenditures; and that he trusted Mr. Ribeiro would keep these responsibilities more clearly in mind in the future. A confidential note of a similar tenor was sent on the same date to Mr. Eduardo R. Conesa, Director of INTAL, but in it he is told that, while he was not primarily responsible for the events, it is a matter of concern and regret that he had not played a more positive role in seeking to ensure that wasteful and unnecessary expenditures were avoided.

L) Mr. Ribeiro replied to the confidential communication from the Administrative Manager on June 19, 1984, by a memorandum in which he rejects the views expressed about his performance and advises him that he has sent a note, for the same reason, directly to the

President of the Bank; and later, on September 12, 1984 he proceeded to return to the Administrative Manager the confidential memorandum mentioned, requesting that "those improper views about my performance in this matter" should not be recorded in his personal file.

M) The suspension of merit increases ordered by the Executive Vice-president preventively, was never reported to Mr. Ribeiro, nor is there a decision from any Bank authority lifting that suspension or confirming it for a specific length of time. It was only three years later, because of inquiries made by Mr. Ribeiro when he returned his evaluation to Mr. Jones, the Operations Manager, on October 22, 1984, surprised at not having received a merit increase for several years despite his excellent ratings, that in a confidential memorandum of May 6, 1985 the Administrative Manager informed him, for the first time, that despite his ratings, he had not been given an increase because the Vice-president had suspended all increases to the persons involved in the building and furnishing of the new offices in Buenos Aires pending completion of the audit he had ordered, and that according to that audit report, responsibility attached to Complainant for the failure to meet IDB standards on sobriety and economy, for which reason "you were sent a written reprimand and the merit increase pending consideration was not approved."

N) As established by the report from the Bank in response to a measure ordered by the Tribunal on its own authority the only penalties imposed as a result of the suspension ordered by the Vice-president and the auditor's report, were those known as "written reprimand" sent to Messrs. Ribeiro and Conesa and the withholding of merit increases to Complainant.

O) During the years when Complainant was in charge of the outfitting and furnishing of the offices in Buenos Aires, in the year when the audit took place and in the following year when he was sent the written reprimand, Mr. Ribeiro's performance evaluations continued to be very good and made him eligible for a merit increase.

P) The Bank does not have a regulatory system for the imposition of disciplinary measures, with the exception of certain isolated rules that do not apply in the instant case, such as for instance, the unjustified failure to observe working hours (Policy 322), termination of service on the grounds of unsatisfactory performance (Policy 325) and termination of service for misconduct (Policy 325).

AND WHEREAS

I. The overarching issues in this case are whether Complainant was improperly denied merit and equalization increases in his salary compensation for several years because of procedural deficiencies by

the Bank and whether the substantive reasons for those denials were supported by proper documentary and testimonial evidence.

II. It is undisputed that Complainant's performance of his responsibilities in the management of the Buenos Aires field office, since 1981, when he first assumed that position, whenever occasion for rating his performance, was always rated as "generally at or above the norm."

III. It is also undisputed that the budget allocation of the outside amount for the outfitting of the new offices was not exceeded and that there was a need to avoid delay in arranging and making contracts, within soon to expire budget allocations, for the outfitting of the new offices for their future occupants.

IV. It also appears, without significant contradiction, that the Bank, itself, did not exercise close or even adequate supervision over Complainant's activities in arranging for the outfitting of the new offices, either by inspection, or making sure that Complainant's reports on the progress of the outfitting were prompt and sufficiently complete or descriptive to the Bank's satisfaction prior to authorization being given of the purchase to be made.

V. It is also clear that when the Executive Vice-president suspended the application of the increase standards to Complainant and other involved personnel in the Buenos Aires field office, pending resolution of the question whether the outfitting of the new offices had been handled in conformance with Bank standards respecting "sobriety and economy," he was exercising a discretion within his and the Bank's responsibilities.

VI. While the record reveals sharp and even acrimonious exchanges between the parties, there is no occasion from the record to characterize the Bank's conduct as discriminatory toward Complainant. On the other hand, the Bank's supervision was less than meticulous, and was at least lackadaisical, thus permitting what it was later to conclude were inadequate standards of sobriety and economy. On the other hand, as there has been no specific decision by the proper IDB official to deny Complainant the salary increases he seeks and as Mr. Ribeiro's performance evaluations have always been "Generally at or above the norm," it is unfair from every standpoint to deprive him of those increases, especially since he was never informed of even the decision to suspend them, adopted by the Executive Vice-president when he ordered the audit.

Accordingly, the Tribunal decides:

1. To rescind the decision communicated by the Administrative Manager in his confidential memorandum of May 6, 1985 insofar as it

denies Complainant payment of the merit increases for which he was eligible.

2. To restore to Complainant all merit adjustments unpaid to him and to recompose Complainant's salary retroactively to December 1, 1981.

3. Payment of interest is denied.

Dr. Graterol Calles, the Vice-president, concurs in the decision, as follows:

"I feel bound to dwell on the omissions incurred by the Bank in failing to issue a clear and precise administrative decision on Mr. Ribeiro's salary increases, leaving him clearly defenseless in the absence of timely notice that they had been suspended and, subsequently, denied. This is far more important, in my view, than discussing whether omissions by the Bank with regard to the outfitting of its offices in Buenos Aires are sufficient to warrant a rating of good or bad for the performance of Complainant in this additional task entrusted to him. It is plain, from the evidence collected, that the Executive Vice-president, by memorandum of May 7, 1982, ordered an audit to ascertain whether "serious overruns on approved expenditures" had taken place in the outfitting of the IDB offices in Buenos Aires and suspended, at the same time, merit increases to any officials involved at both the Field Office and INTAL; but there is absolutely no evidence that this decision to suspend merit increases was notified to those concerned, including Complainant; nor is it proven that after the audit the Executive Vice-president, in the exercise of his authority, decided to deny the merit increases to Mr. Ribeiro.

The absence of an administrative decision by the proper authority in this matter left Complainant in a state of utter defenselessness; the record shows that he learned of the denial of his merit increases only through a confidential memorandum sent to him by the Administrative Manager on May 6, 1985, with no decision from the Executive Vice-president to support the notice of denial of merit increase given by the Administrative Manager to Complainant. The record does show, on the other hand, that Complainant did not receive his salary increases and this denial the Administrative Manager, in his memorandum of May 6, 1985, characterizes as a penalty, adding that Mr. Ribeiro received moreover a written reprimand because of the conclusions arrived at in the audit report. If so, Complainant was twice penalized for the same fault, the existence of which has not been established in this decision.

To impose penalties, the Bank must take account of the essential formalities which must be observed, such as written notice to the employee, specification of the impropriety for which he is being disciplined, and the grounds for imposing the penalty. None of this was done in this case and I must draw attention to it, for even though

I am well aware that the Tribunal may not interfere in the administrative sphere proper to the Bank, it does nevertheless review the consistency of the Bank's administrative actions with its regulatory framework. Accordingly, for the sake of the educational function which the Tribunal must perform, I find it necessary in this case to point out the serious omissions incurred.

I therefore concur with the majority opinion in upholding the complaint to the extent set forth in the operative paragraphs of this decision."

Dr. Gordillo concurs in the decision as follows:

"I concur with the conclusions of the majority opinion because (a) the budgetary allocation was not exceeded and there was a need to avoid delays in the signing of contracts; (b) Bank management could have asked for fuller accounts or explanations before authorizing the awarding of contracts, the IDB standards of sobriety and economy being a matter of discretion at that time; (c) I agree that the Bank's conduct cannot be characterized as persecutory or arbitrary in its origin, this decision notwithstanding, because the questions of fact that were in doubt were cleared up gradually by the evidence produced prior to and during these proceedings. It is my view, consequently, that the complaint should be upheld to the extent indicated in the majority opinion, in which I therefore concur."

Mr. Smith concurs in the decision as follows:

"I agree that the complaint succeeds, with the result that the Complainant should be paid the merit increases retroactively which he was denied. The grounds for my decision are:

(a) that it has not been established by the Bank that the Executive Vice-president, in whom alone the authority was vested, authorized the denial of the merit increases to the Complainant after he had seen the report of the Auditor General. To the contrary, the available documentary evidence showed that all that the Executive Vice-president authorized was a reprimand of the Complainant, which, purportedly was issued in the memorandum of the Administrative Manager on May 29, 1984.

(b) that, in any event, the excesses with which the Complainant was accused amounted, in my opinion, to no more than errors of judgment which did not warrant a penalty as severe as the permanent denial of the relevant merit increases. In my judgment, a reprimand was sufficient.

Insofar as there is a claim for the equalization portion of the general merit salary increase in 1984, the Bank has, in my opinion,

established that the grant of this increase was properly denied as the Complainant did not qualify for that portion of the increase."

Washington, D.C. 3 April 1987.

Charles D. Breitel
Judge

Gonzalo J. Facio
President

Eugenio Velasco
Executive Secretary