

JUDGMENT CASE NO. 16 *

JULIO C. CABO vs. IDB

The Inter-American Development Bank Administrative Tribunal,

Composed of Dr. Gonzalo J. Facio, President, Dra. Elita Graterol, Vice President, Hon. Charles D. Breitel, Dr. Luis Coronel de Palma, Dr. Augustín Gordillo, and Hon. Kenneth G. Smith, considered the case, following the procedures established in Articles 20, 21, 22 and 23 of the Rules of the Tribunal.

The complainant appeared assisted by his attorney Mr. Ovidio Martínez. The Bank was represented by Gay Davis Miller, Esq., of counsel. In addition to the written submissions the Tribunal heard oral arguments on 10 November 1987.

WHEREAS:

1. On December 26, 1986, Mr. Julio César Cabo, an Argentine national, Public Accountant and former contract employee of the Inter-American Development Bank filed a complaint with the Tribunal, petitioning for:
 - A. Reversal of the decision of June 16, 1986 by Mr. Nelson Ocampo, Human Resources (HUR) Deputy Manager, not to renew Complainant's contract with the Bank, which expired on August 31, 1986.
 - B. Reversal of the decision of August 28, 1986 by Mr. Luis Sánchez Masi Administrative Manager, confirming as final the administrative decision of the Bank that Complainant's employment contract would end on August 31, 1986.
 - C. Payment by the Bank, as damages, of an amount equivalent to two years of the salary earned by Complainant in the position he held on August 31, 1986.
2. In support of his petitions, Complainant gave an account of facts that may be summarized as follows:
 - A. Complainant Julio César Cabo joined the Bank on May 1, 1979 as messenger in the ADM/COM Section.

*The Spanish text alone is authoritative.

On October 1, 1980, he was assigned duties as BMA/FTC Computer Terminal Operator and performed these duties until April 30, 1981.

On May 1, 1981, he was assigned duties as Accounting Officer within the same BMA/FTC Section and discharged them until August 30, 1981.

On September 1, 1981, he was assigned duties as Budget Officer in the ADM/COM, which he performed until May 31, 1982.

On June 1, 1982, he was again assigned duties as messenger in the ADM/COM Section and carried them out until October 31, 1982.

In the performance of accounting duties that were professional in nature, and although his position was that of messenger, Complainant received positive evaluations for his work and was even congratulated by his supervisors.

- B. At that time, the Bank had a Junior professional program designed to train professionals with limited work experience, for future positions of responsibility in administrative and operational activities of the Bank. His supervisors proposed him for the Junior professional program and on October 29, 1982 the then HUR Deputy Manager conveyed to Complainant an offer of a temporary contract as a Junior professional under the Bank program.

Complainant began to take part in the Program and discharged all duties assigned to him. On October 25, 1983, however, HUR Deputy Manager advised him that his relationship with the Bank would end on December 31, 1983.

Complainant set in motion the procedure provided for under Personnel Policy No. 326 because the decision by HUR Deputy Manager was unjustified and in breach of his contract. The Conciliation Committee heard complaint No. 025 and adopted preliminary recommendations to the effect that Bank Management should give Complainant an extension of six months on his contract as a Junior professional, in other words, until September 30, 1984, and should assign him to a Department other than that where he had previously worked.

Bank Management did not accept the recommendations of the Conciliation Committee and on July 18, 1984 Complainant filed a complaint with the Tribunal.

The Tribunal decided to hear the case and on August 21, 1984, while Management was in the process of filing its answer, Mr. Luis Sánchez Masi, the Administrative Manager, offered Complainant a compromise agreement to withdraw the complaint and accept a temporary appointment in the Bank, in keeping with the terms of employment established in Administrative and Personnel Policies. As required by Management, Complainant also signed a "Settlement and Release of Claims."

- C. The employment contract stated that it was a temporary appointment in the Bank, subject to the employment terms set out in Administrative and Personnel Policies, and that it would run from September 1, 1984 to August 31, 1986.

Complainant accepted the employment contract on the understanding that it could be extended when it expired, in accordance with Administrative and Personnel Policies of the Bank and established practice, as in the case of Complainant's past contracts.

The document titled "Settlement and Release of Claims" that Management made Complainant sign as part of the agreement, is a statement by which Complainant accepts the employment contract as compensation for withdrawing his claim of July 18, 1984 against the Bank dealing with his participation in the Junior professional program. The "Settlement and Release of Claims" document refers solely to the aforesaid employment relationship and the complaint filed thereon.

- D. The contract given to Complainant was a temporary appointment from September 1, 1984 to August 31, 1986 in the position of HUR Assistant, Administrative Department (DPA), Grade X.

Complainant was assigned duties in the Recruitment Section without being given a job description to show the duties and responsibilities of the position.

The Section Chief put him to work classifying employment applications of consultants and vacancy candidates, as well as doing other administrative duties.

From the outset, the Section Chief told Complainant that, in her view, he lacked basic technical training in the area of personnel to produce the quantity and

quality of work required in the Section; and that she felt he would not further his career in the area of personnel.

- E. In mid-1985 the Section Chief ordered Complainant to stop his classification work and in early August 1985 advised him that there was no longer enough work in the Section for HUR Assistant and that she had so informed Messrs. Corridor and Ocampo to secure his transfer as soon as possible.

On September 2, 1985, the secretary of Mr. Luis Sánchez Masi, HUR Deputy Manager, who up to that point had a Grade X in Secretarial Services was transferred to the Recruitment Section. By this transfer, she was given a professional position, Grade IX. She was assigned the very duties and responsibilities that Complainant had discharged in the Recruitment Section since September 1984, and which had been gradually taken away from him. Following her promotion, the duties assigned by the Section Chief to Complainant were to answer the telephone, look for lost files, make copies and give messages.

- F. Management based the ending of Complainant's employment contract solely on expiration of the initial term of two years. Management has not given any other cause to justify the failure to extend Complainant's services in the Bank.

- 3. In addition, Complainant alleges the following in support of his claim:

- A. The provisions of the temporary contract from September 1, 1984 to August 31, 1986 in no way established that Complainant's term of employment could not be extended. Nor did Management, in offering the contract to Complainant, advise him that it would in no case be extended, let alone that Complainant would be barred from any other position in the Bank when the contract expired.

When he took up his duties in this position, Complainant was already a public accountant in Argentina. He had worked for the Bank under the Junior professional program and, prior to that, had done accounting work even while holding the position of messenger.

- B. The Chief of the Recruitment Section, to which Complainant had been assigned, received instructions from higher officials about Complainant and his employment

relationship with the Bank, and this led to an obvious bias against his work.

- C. The subordinate duties assigned to Complainant, which were inappropriate for a staff member with professional training, were probably designed to humiliate him into submitting his resignation.
- D. Eliminating Complainant's duties and refraining from assigning him other functions consistent with his professional training, was part of a plan to promote a particular person to a professional position and subsequently terminate Complainant's services in the Bank.
- E. The administrative decision by the Administrative Manager to promote that person to a professional position in the Recruitment Section without observing the provisions of Personnel Policy No. 315 and without posting the vacancy, prevented Complainant from exercising his right to apply for the position on the basis of his professional training and experience in the Bank.

The situation created in the Recruitment Section and in the Administrative Department against Complainant, owing to his having acted several times in defense of his rights, has reached the point where he became the victim of an unlawful generic penalty in the sense that he is barred from filling any position whatever in the Inter-American Development Bank, even posted vacancies open to competition in which Complainant has shown that he meets all requirements and is best qualified among all the applicants.

- F. The duties and responsibilities assigned to Complainant in September 1984 were not eliminated in the Recruitment Section; they were assigned to the person who was promoted to a professional position in September 1985.

This promotion was not based on service needs of the IDB but on the desire to favor her.

- 4. In support of his petitions, Complainant relies upon the following legal arguments:

- A. The IDB Tribunal has jurisdiction to hear and settle this complaint under Article II(1) and (4) of the Statute of the Tribunal. Complainant was a staff member of the Bank until August 31, 1986 and the complaint is based on failure to observe his employment contract, breach of the personnel policies, rules and regulations

applied by the Bank, and general principles of labor law and precedent.

The complaint must be ruled admissible because Complainant has complied with Article II, (a), (b) and (c) of the Statute of the Tribunal.

- B. Personnel Policy No. 311 establishes the categories of employees according to length of appointment. These categories are: Permanent, Temporary, Employees assigned to the Board of Executive Directors, Employees for Special Programs, Summer Employees and Other Temporary Employees. The requirements for each of these categories show that Complainant's contract does not fall under these categories and is consequently governed by Personnel Policy No. 325.
- C. Personnel Policy No. 325 lays down the following principle with regard to employment in the Bank:

"Employees have security of tenure in their positions consistent with their satisfactory performance and with the requirements of the Bank."

After establishing this principle, the same Personnel Policy No. 325 goes on to list the types of termination as follows: voluntary resignation, reduction in staff, prolonged illness, unsatisfactory service, misconduct, retirement and death. In other words, the IDB Personnel Policies do not refer specifically to fixed-term employment contracts such as Complainant's contract thereby rendering it, by its nature and terms, a contract under which the staff member is recognized "security of tenure."

- D. Personnel Policy No. 312 on System of Selection of Candidates and Personnel Policy No. 315 on Filling of Vacant Positions establish the principle of promotion based on merit and competition, stating a restricted list of exceptions.
- E. The Administrative Tribunals of international organizations have ruled as follows:

"An international organization has no right to terminate the employment of a staff member without justification and without stating and providing the reasons, when the contract expires."

"The possible extension of a fixed-term employment contract must be decided by Management with due regard not only for current regulations and the terms of the contract but also for all circumstances prevailing when the services of the staff member were terminated."

"Although the extension of a fixed-term contract is, as a rule, a question of discretionary authority of Management in these organizations and depends on its need for the employee's services, account must be taken in these cases of labor law principles that protect the employee and may be stated as follows:

- (i) Exercise of discretionary authority by Management must comply with established regular procedures;
- (ii) The cause of failure to extend the contract should not be an improper or unjustified cause and should take into account the interest of the Institution and the right of the employee to remain in his job.
- (iii) The authority issuing the decision should not exercise its powers by overstepping or abusing its authority."

Complainant indicates that these statements are to be found in the following decisions:

- 1) Judgement No. 4 of the U.N. Tribunal
 - 2) Judgement No. 298 of the U.N. Tribunal
 - 3) Judgement No. 415 of the ILO Tribunal
 - 4) Judgement No. 593 of the ILO Tribunal.
5. The Bank filed a "Motion to dismiss without further proceedings" that was denied by the President of the Tribunal in a ruling that also set a term for the Bank to answer the complaint.
6. The Bank answered the complaint and asked:
- A. For dismissal of the complaint in its entirety.

- B. That the Tribunal order Complainant to pay damages to the Bank for breach of the agreed settlement.

7. In support of its petitions, the Bank argues as follows:

- A. On July 18, 1984, Mr. Julio Cabo filed a complaint with the Administrative Tribunal of the Inter-American Development Bank against the Bank's intention not to extend his employment beyond his fixed-term contract as a Junior professional, on the grounds that Mr. Cabo's services as a Junior professional had turned out to be unsatisfactory to the Bank and that under the terms of his contract in that Program, the contract could be renewed only if his services were satisfactory.

On August 20, 1984, Mr. Cabo signed a "Settlement and Release of Claims" in which he agreed to withdraw his complaint and refrain from making any claims against the Bank "in consideration of the offer of a temporary employment contract for the term of two years, at an annual salary of \$28,044" In return for accepting the offer made by the Bank Mr. Cabo agreed, among other things, that the employment contract he was being offered would be subject to the applicable IDB Personnel Policies except as otherwise provided in the "Settlement and Release of Claims" and agreed to release and forever discharge the IDB from any claim arising from his employment at any time up to and including the date of the "Settlement and Release." In addition, he agreed to compensate the Bank for any expense on account of claims relating to his former employment. He acknowledged that he fully understood that the employment offered in consideration of his acceptance was limited to two years and that the Bank had "no obligation whatsoever to extend any period of employment after that time." Mr. Cabo signed the "Settlement" specifically agreeing to be bound by it, acknowledging his signature and that he had signed to that effect on August 20, 1984 before a Notary Public.

In a letter of August 17, 1984 delivered on August 21, 1984, Mr. Cabo provided the Tribunal with a copy of the "Settlement and Release of Claims" "in accordance with the agreed terms." The Tribunal recorded the fact that Case No. 3 had been withdrawn as a result of an agreement signed for that purpose.

- C. The Inter-American Development Bank offered Mr. Cabo an employment contract for the agreed term of two years, with the agreed salary, on the same date that Mr. Cabo advised the Tribunal of the settlement. Mr. Cabo's signature on this contract bears the date August 20,

1984, the date on which the "Settlement and Release of Claims" was signed.

- D. From September 1, 1984 to August 31, 1986, Mr. Cabo was assigned work in the Recruitment Section of the Human Resources Administration Subdepartment. In the course of his two-year contract Mr. Cabo received two performance evaluations. For the period November 12, 1984 May 31, 1985 Mr. Cabo received an overall performance rating of "Generally below the Norm." From June 1, 1985 to May 31, 1986 his performance was rated as "Generally at or Above the Norm" and specified that "at his own request" Mr. Cabo had been assigned more elementary duties in an effort to improve his performance review.
- E. In June 1986 the Bank reminded Mr. Cabo that his contract was about to expire, advised him that it would not be renewed, and reminded him that under the terms of the "Settlement and Release of Claims" the Bank's obligations towards him had been fully met.
- F. Mr. Cabo applied for two vacancies posted in May and August of 1986. In each case it was found that Mr. Cabo was not the most qualified candidate and the positions were awarded to other Bank employees, one permanent and one temporary.
- G. Mr. Cabo was treated impartially by his supervisors and he was assigned work that he should have been able to perform.

Mr. Cabo showed himself incapable of performing the duties assigned to him and his performance remained below the norm until he requested, and was assigned, very simple tasks well below his alleged skills.

Mr. Cabo took part in the competition for vacancies, in the course of which his qualifications were reviewed according to their merit along with those of other candidates. The unbiased nature of the review was borne out by the signature of the Staff Association Representative.

8. In support of its petitions, the Bank furthermore argues as follows:

- A. The "Settlement and Release of Claims" signed by Mr. Cabo on August 20, 1984 bars him from relying upon the arguments made in his December 26, 1986 complaint before this Tribunal or before any other body.

It is clear from the dates of the various documents and the dates of Recordation of the Settlement Agreement with the Tribunal that the Settlement Agreement and the employment contract were part of a single transaction, and the employment contract was provided for the very specific purpose of complying with the Settlement and Release.

Under the contract offered the Bank's obligation to employ Mr. Cabo would terminate with the expiration of that contract and any Personnel Policies of the Bank would apply "except as otherwise provided in the Settlement and Release" Even if Bank Personnel Policies gave the right of continued employment to temporary staff on fixed-terms contracts Mr. Cabo would be prevented from asserting such rights under those policies by his promise to be bound by the terms limiting the Bank's obligation to the two-year term of the contract.

The principles of law on which the Bank relies are simple and universal ones. Law and society function on the basis of a common understanding that parties to an agreement must be bound by it. They are not permitted to enjoy the benefits provided by the other party pursuant to a contract and then to ignore their own promises in return.

Mr. Cabo agreed in the Settlement and Release of Claims that the Bank would not be bound to continue his employment beyond the two-year term and he agreed that the Personnel Policies would apply to his employment during that period except as otherwise provided by any provision of the Settlement Agreement. Mr. Cabo has not provided evidence that the Bank violated the terms of his agreement. The Bank has complied exactly. Mr. Cabo has violated the agreement by bringing this complaint.

- B. Even if Mr. Cabo had not agreed that the Settlement Agreement would take precedence over any conflicting Personnel Policies he would have no basis to claim entitlement to a continuation of his employment beyond the two-year term of the contract.

In accordance with the Settlement Agreement Mr. Cabo worked for the Bank from September 1, 1984 to August 31, 1986 on the basis of an employment contract which began "I offer you a temporary appointment in the Inter-American Development Bank" The contract stated the employment term to be from September 1, 1984 to August 31, 1986. Moreover, the contract provided that "in conformity with the corresponding policies, you as well as the Bank, may terminate this appointment without

other requisite than a written notification 30 days in advance of the termination of your services." Mr. Cabo was also sent a copy of a Notice of Personnel Action indicating a temporary contract with a fixed expiration date.

It is clear from the terms of the contract that Mr. Cabo's appointment was a finite one pertaining to the category of "other Temporary Employees" under Personnel Policy 311 (A)(ii)(f). This Policy describes such employees as those hired for definite periods to cover specific needs of the Institution. In this case the specific need was the commitment assumed by the Bank in the "Settlement and Release of Claims" to provide employment for two years.

The period of employment of temporary Bank employees concludes automatically at the expiration of the contract. Personnel Policy 325, cited by Mr. Cabo, does not apply to the expiration of the contracts of temporary employees. Expiration of a fixed-term employment contract is an automatic event, in contrast to termination which is a specific action interrupting the period of service.

- C. But even if Personnel Policy 325 were applied, this provision stipulates that employees enjoy security of tenure in their positions "consistent with their satisfactory performance and with the requirements of the Bank." In other words, security of tenure as offered by Personnel Policy 325 is subject to the level of performance and the needs of the Institution.
- D. Just as the policies provided no right of continued employment to Mr. Cabo neither did the Bank act in any way to lead him to believe that his employment would be continued. He was warned in advance by the settlement agreement and by the contract provisions that no extension of the contract term was to be offered. No Bank official offered him any expectation that his employment contract would be continued. His unsatisfactory performance evaluations should also have been a clear indication to him that he was not in a position to expect that the Bank would wish to continue his services. Finally, the Bank warned him well in advance that his contract would not be extended to give him ample time to seek employment elsewhere.

No Bank policy or practice provides the right to a fixed-term temporary staff member to a continuation of employment upon the expiration of the contract. No Bank policy or general principle of law requires an

international organization to retain the services of an individual who was hired with no expectation of extended employment and whose services have been unsatisfactory or minimally useful at best, when that individual has specifically agreed to the limited employment term, has been reminded well in advance of the contract expiration, has been warned that his services have not been specially useful and has been told that no extension is contemplated.

- E. The assertions by Mr. Cabo in his complaint concerning the promotion of another staff member to a vacant position in the Human Resources Administration Subdepartment are similarly without merit. Filling vacant positions with qualified candidates in the same office is clearly permitted by Personnel Policy 315(A)(2)(I) as an exception to the requirement to announce vacant positions. Moreover, the description of the duties of the position to which that person was promoted in September of 1985 included the possibility of supervising personnel assistants performing work similar to that assigned to Mr. Cabo. Mr. Cabo had received a very poor performance report for work as an Assistant at the administrative level for the period immediately preceding the selection to fill the vacant position. It is not reasonable to assume that he would have been the best candidate for the higher level position in any event.
- F. The Bank entered in good faith into an agreement of release and settlement of claims with Mr. Cabo and in good faith gave full compliance to its obligations under that agreement. Mr. Cabo after receiving the full benefit of the consideration rendered by the Bank, has brought a complaint asserting rights which are clearly not consistent with the terms of that agreement. Mr. Cabo has been treated fairly and reasonably by the Bank. His services though less than satisfactory were continued in compliance with the Bank's promise to employ him until August 31, 1986. His complaint is wholly frivolous in that there is no valid basis on which he makes his claims and in that his claims are in direct conflict with the evidence he himself submitted and are not supported by the legal authorities he cites.

Further, Mr. Cabo's complaint contains several assertions related to his employment by the Bank prior to the date he signed the Settlement and Release of Claims. To that extent, it violates his agreement to hold the Bank harmless against all claims relating to his employment up to and including August 20, 1984. Because he further agreed in return for the consideration offered by the Bank to relinquish all claims and to

protect the Bank and save it harmless from any expenses by reason of litigation with reference to that period of his employment and because that agreement was in reference to a case (No. 3) then before this Tribunal, and the agreement was registered with this Tribunal, it is proper that the Tribunal award reasonable damages to the Bank because the Bank has been burdened by "litigation" in violation of the agreement due to the necessity of submitting a response to the complaint. It is emphasized that the Bank does not seek such compensation as reimbursement of costs under Article V of the Tribunal Statute but rather as a general damage suffered. Article 30 of the Rules of the Tribunal provides "all questions or circumstances that might occur and that are not necessarily provided for in these Rules shall be resolved by decision of the Tribunal in each particular case."

9. For its petitions, the Bank relies basically on the following legal grounds:

- A. The "Settlement and Release of Claims" signed by Mr. Cabo on August 20, 1984 which governs the interpretation of issues raised in this case.
- B. Personnel Policies 311, 312, 315 and 325.
- C. Article 30 of the Rules of the Tribunal.
- D. In addition the Bank comments on the judgements cited by Complainant as follows:

Mr. Cabo has cited four Administrative Tribunal cases in support of his arguments that a right to continued employment exist as a principle of law (the Bank has not been able to locate the third text quoted by Complainant in any of the four opinions cited, Mr. Cabo did not give specific citations). In judgement No. 4 of the United Nations Administrative Tribunal, the claim related to temporary indefinite contracts, noted in that case by the Tribunal to have a different character than other temporary contracts. The Tribunal found that a reason should be stated for terminating such agreements, while noting also that "as a general rule, it is difficult to see how the failure to renew a fixed-term contract . . . can be regarded as inflicting an injury justifying recovery on the contract by the holder of the expired agreements."

Judgement No. 298 of the U.N. Administrative Tribunal involved the claims of a woman who had worked for the United Nations for 12 years, then after a break of

approximately three months had worked for the U.N. again without interruption for sixteen years. The Tribunal in that case, even after many years of continued employment, held that her right to recover was based on the fact that assurances had been given her that her employment would continue. This is clearly not the situation with Mr. Cabo who was frequently and directly informed that there was no basis to expect his contract to be extended.

Judgement No. 415 of the International Labor Organization Administrative Tribunal involved a temporary staff member who was not considered for a posted vacant position for which she was qualified and to which she had a right of preference as an existing staff member. Mr. Cabo was objectively considered for the two positions for which he applied and in each instance another Bank staff member was selected.

In judgement No. 592 of the ILO Administrative Tribunal, the Tribunal dismissed the claim of a temporary staff member to a right to a contract extension or permanent contract while observing that even though a decision not to renew should be based upon a reason, "that does not mean any fixed-term official may claim the right to stay indefinitely." In that case, a performance report which was not wholly favorable was the primary reasons supporting the decision not to renew.

10. In filing its observations to the answer Complainant made particular emphasis on the following:
 - A. The Bank does not directly and specifically impugn the facts of the complaint, let alone prove that they are not true and consequently confirms them as true.
 - B. The "Settlement and Release of Claims" refers only to Complainant's participation in the Junior professional program since October 1982.
 - C. The new employment contract in effect from September 1, 1984 through August 31, 1986 was an extension of Complainant's employment relationship with the Bank which had began on May 1, 1979.
 - D. Nowhere in the "Settlement and Release of Claims" was it stated that this would be the last contract given by the Bank to Complainant or that Complainant would be unable, when the contract expired, to continue the services he performed since May 1979.

- E. Neither the clauses of the "Settlement and Release of Claims" nor even a broad interpretation of its stipulations can justify, particularly in the area of Labor Law, denying Complainant the right recognized in Personnel Policy No. 325 which states that "Employees will enjoy in their jobs a security consistent with satisfactory performance and the needs of the Bank."
 - F. Management did not end the services of Complainant by claiming that his performance was not satisfactory and that the Bank no longer needed his services. The facts of the complainant show that his most recent evaluation was satisfactory and that the functions assigned to him had not been eliminated and are necessary.
11. In its reply to observations on the answer the Bank insisted on the following:
- A. Mr. Cabo was given a two-year contract for the sole purpose of complying with the terms of the Settlement and Release of Claims and that agreement stated that the Bank would be under no obligation whatsoever of further employment beyond that term.

The Bank denies that the Personnel Policies would give Mr. Cabo any right to continued employment and the Policies make no difference given Mr. Cabo's agreement to accept employment for a limited term with no obligation by the Bank to continue that term. The relationship of the facts set forth in the complaint with Mr. Cabo's allegations and claims becomes meaningless if the essential circumstance of the basis of Mr. Cabo relationship with the Bank is ignored.
 - B. Mr. Cabo's performance was inadequate since the beginning and it only improved when he was assigned clerical duties (at his own request) to improve his performance rating level. The promotion of another staff member to a higher level position in the same department does not require competition and Mr. Cabo's performance record would be unlikely in any event to make him the first choice for a higher-level position.
 - C. The Bank terminated Mr. Cabo's employment because the term of his contract expired. That appeared to the Bank to be a perfectly adequate reason to end Complainant's employment specially when coupled with the fact of Mr. Cabo's specific agreement that the Bank would have no obligation to continue his employment.
 - D. There was no situation such as cited by Mr. Cabo where an individual had worked under successive contracts on

an uninterrupted basis for a great many years and had been led to believe the employment would continue. Mr. Cabo's final contract could not in any such case be considered an uninterrupted continuation of his prior employment relationship with the Bank and it was not, in any sense, intended to be a link in a chain of contracts to be continued into the future. Mr. Cabo knew that it had a limited and separate purpose from his previous Bank employment. It was concluded for the sole purpose of extending his employment for a specific and very definitely limited period of time.

- E. Even if the Tribunal were to set aside the provision in the Settlement agreement that gives its terms precedence over Bank Personnel Policies (stating it was "subject to the applicable Personnel and Administrative Policies of the Bank except as otherwise provided in this Settlement and Release . . . ") the Personnel Policy 325 provision quoted in Mr. Cabo's arguments ("security in their positions") does no more than guarantee due process to a staff member during the term of his appointment. No Bank policy recognizes the right of any temporary employee on a fixed term contract to extend his employment beyond the end of that term. The Bank has always considered that temporary contracts end automatically at the end of the contract term without specification by the Bank. The interpretation which Mr. Cabo seeks the Tribunal to recognize is contrary to the Bank's interpretation of this policy and practice over the many years it has been in effect and such an interpretation would make all employees "permanent" a result clearly not intended by the meaning of a category of employees labeled "temporary."
- 12. The parties submitted copious documentary evidence consisting mainly of administrative resolutions, memoranda, internal correspondence, rules, Policies and decisions by other administrative tribunals. There was no controversy over the authenticity or validity of any document. The Tribunal admitted the testimonial evidence offered and Dr. Eugenio Velasco, Executive Secretary was commissioned with hearing it. Luis Sánchez Masi, Nelson Ocampo, Helen Edwards, Barry Oertel, Henry Green. Charles Brannan, Robert Deal and Patrick Young declared.
 - 13. In accordance with the evidence brought before the Tribunal the following facts have been established:
 - A. Complainant, Julio César Cabo entered the Bank May 1, 1979 as Messenger in Section ADM/COM and remained in a messenger post until October 31, 1982. In addition to his duties as messenger he was assigned duties as Computer Terminal Operator BMA/FTC, Accounting Officer

BMA/FTC, and Budget Officer ADM/FTC. His performance was satisfactory.

- B. On November 1, 1982, Complainant voluntarily resigned his permanent post as an administrative employee in order to join on a temporary contract, as a professional, the Bank's Junior Professional Program. On October 13, 1983, his performance for the period November 1, 1982 through August 31, 1983 was evaluated as "Generally below the Norm" with Mr. Cabo's stated disagreement. On October 25, 1983, he was informed that his employment relationship with the Bank would end December 31, 1983.
- C. Complainant then appealed to the Conciliation Committee which determined that Mr. Cabo should be given an opportunity to achieve a real improvement of his professional capacity through September 30, 1984. Management rejected this recommendation and Mr. Cabo established a complaint before this Administrative Tribunal on July 18, 1984, after the term of the contract had expired.
- D. While the process was pending, acting on a recommendation by the Executive Director for Mr. Cabo's country, as testified by the Administrative Manager Luis Sánchez Masi, the latter offered Mr. Cabo a compromise, namely: in return for Mr. Cabo withdrawing his complaint about renewal of the expired contract, the Bank would employ him for two years (subject specifically to Bank Personnel Policies) provided he would sign a "Settlement and Release of Claims" agreement which stated that the Bank would have no obligation to extend the period of employment after the new temporary contract expired, that Complainant regarded himself as fully compensated for all claims against the Bank and agreed not to make any claims in the future. Complainant's attorney has stated before the Tribunal that he advised his client to sign and Mr. Cabo accepted the proposal, signed the "Settlement and Release of Claims" agreement and withdrew his complaint on August 20, 1984, a two-year contract effective September 1, 1984 being simultaneously signed.
- E. Complainant started working under this new temporary contract on September 1, 1984 in a Grade X (Administrative) post, as Assistant HUR/DPA. His first performance evaluation was "Generally below the Norm" and Mr. Cabo signed it under protest.
- F. At his own request Mr. Cabo was then assigned simpler duties. In his second, and last, evaluation that covered the period June 1, 1985 through May 31, 1986 he was evaluated as "Generally at or above the Norm" with

the observation that he had performed administrative and not professional duties during the 12-month period being evaluated.

- D. On September 2, 1985, a permanent staff member of the IDB was promoted without competition to a professional post in which she performed some of the duties from which Mr. Cabo had been relieved at his own request. The person promoted belonged to the same Department but not the same Division or Office and, at the time of the transfer, was attending college but was not a professional, having worked previously under the direct supervision of the Administrative Manager.

AND WHEREAS:

14. It has not been established that the settlement entered into by Mr. Cabo with the advice of Counsel, had been made under duress or fraud; nor did Complainant in due time assert its invalidity, or otherwise question the validity of said settlement.
15. That settlement amounted to: (a) Complainants' discontinuing Case No. 3, (b) obtaining, as of September 1, 1984, for a period of two years, a contract of temporary employment as grade 10 (Administrative staff).
16. Inasmuch as these were contracts for employment under two different categories (professional and administrative) without continuity --interrupted from March 15 through August 31, 1984-- and for a specified time limit, it does not follow from the settlement and simultaneous contract that it was the intention or the understanding of the parties to enter into or to have previously entered into, a permanent contract.
17. Besides, it is not an accepted principle of labor law or international administrative law, that temporary or limited term contracts are null and void or are construed as permanent, nor do the facts of this case sustain the interpretation that different temporary contracts, not having continuity and relating to different grades and categories, gave Mr. Cabo tenure beyond the time limit expressly provided.
18. Neither the terms and conditions of the settlement nor the Personnel Policies, whether expressed or implied, suggest the Bank's duty to offer permanent positions for which Mr. Cabo might apply. The fact that no such opening was publicly posted for grade 8, therefore, does not infringe on Complainant's rights under either the settlement or his contract for grade 10.
19. Furthermore, Complainant was successively turned down in two later openings for lower positions similar to the permanent one

he had resigned from in 1982. The fact that he was turned down and that both his claims arising therefrom are simultaneously rejected by this Tribunal in Cases Nos. 17 and 18 further indicates that he has no legitimate grievance as a result of the Bank's failure to post position in grade 8.

20. As for the Bank's petition that Complainant should pay damages or costs, the Tribunal rejects it on the following grounds: First, that there is no general provision in that sense in the Bank or the Tribunal's rules; Second, that if such a provision were to be established as a rule it would discourage the Bank's employees to press before this Tribunal for what they may deem to be their rights.
21. Noncompliance with a uniform method of selection and promotion, of both its permanent and temporary staff, may be a concurring factor in creating situations as in this case which it would be desirable to avoid in the interest of both the Bank and its staff.
22. By reason of what has been stated, this Tribunal rejects both Mr. Cabo's claim and the Bank's petition for "damages."

Washington, D.C. 13 November 1987.

Agustín Gordillo
Judge

Gonzalo J. Facio
President

Hernán Sáenz-Jiménez
Executive Secretary