

JUDGMENT CASE NO. 17 *

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. Agustín 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 12 November 1987.

WHEREAS:

1. On April 29, 1987, Mr. Julio C. Cabo, an Argentine national, Public Accountant and former staff member of the Inter-American Development Bank filed a complaint with the Tribunal, petitioning for:
 - A. Reversal of the decision that ended the competition relative to Vacancy Notice No. 86/09 regarding position 819, Document Control Assistant. This decision is the one mentioned (but not cited) in the memorandum dated July 10, 1986 sent by Mrs. Antonieta Gutiérrez to Complainant.
 - B. Reversal of the decision made by Ms. Helen Edwards on July 29, 1986 which denied Complainant access to the documentation of the competition.
 - C. Reversal of the decision made by Mr. Nelson Ocampo, Deputy Manager HUR on August 12, 1986 which confirms the candidate selected in the competition and the confidentiality of the competition's documents.
 - D. Reversal of the decision made by Mr. Nelson Ocampo, Acting Administrative Manager on September 11, 1986 which confirms his previous decision and is the final administrative decision.

*The Spanish text alone is authoritative.

- E. Reversal of the selection of Miss. Carmen E. Engler for position 819 because she did not comply with the High School education required by Vacancy Notice 86/09.
 - F. Without prejudice to the Tribunal's decision on the petitions above, the Tribunal is asked that Position No. 0819, Document Control Assistant, Grade XII, Operations Department, Financial Transactions Unit, which was the object of the competition and Vacancy Notice No. 86/09, must be filled by the applicant Julio Caster Cabo because he proved, by the documents submitted, that he met all Studies/Education, experience and language requirements and because he proved that he is better suited, better qualified and able and is better fitted than all other candidates.
 - G. As an alternative to the petitions made above and in the event that those petitions should be denied, let the Tribunal find that the processing of competition and Vacancy Notice No. 86/09 to fill Position No. 0819 by Management was in breach of the applicable provisions and failed to observe proper procedure and that due process was not observed in respect of Mr. Julio Caster Cabo.
 - H. Should the President of the IDB decide, in keeping with Article IX of the Statute of the Tribunal, that it is in the interest of the Bank not to comply with the decision which the Tribunal may render ordering Position 0819 to be awarded to Mr. Cabo, the amount of compensation to be paid by the Bank to Mr. Cabo should be the equivalent of two years of the salary he earned in the last position he held in the Bank prior to the termination of his services.
 - I. To find that Management has injured Complainant Julio César Cabo by barring him from legitimately exercising his rights as a candidate in the competition pertaining to Vacancy Notice No. 86/09 and by failing to appoint him to fill Position No. 0819 despite his having proven by documentary evidence that he was the candidate best fitted and qualified. Consequently, to have the Tribunal order the Bank to pay Complainant Julio César Cabo compensation in the amount of fifty thousand dollars (US\$50,000) in keeping with Article 13(2)(e)(iv) of the Rules of the Tribunal.
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. On October 1, 1980, he

was assigned duties as BMA/PTC, Computer Terminal Operator, and performed these duties until April 30, 1981.

On May 1, 1981, he was assigned duties as Accounting Officer in the same BMA/PTC Section and performed them until August 30, 1981.

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

On June 1, 1982, he was again assigned the duties of Messenger in the ADM/COM Section and performed them until October 31, 1982.

In performing accounting duties that were professional in nature, assigned to him even though his position was that of Messenger, Julio César Cabo received positive evaluations for his work and was even congratulated by his supervisors.

- B. In 1982 the Bank had a Junior professional program to train young professionals with limited practical experience so that they might fill positions of responsibility in administrative and operational functions within the Bank.

On October 28, 1982, on a proposal from the supervisors of Complainant, HUR Deputy Manager offered Mr. Cabo a contract under the Junior professional program of the IDB and Complainant worked under that program until August 31, 1984.

- C. On September 1, 1984, Management gave Mr. Julio César Cabo a contract expiring on August 31, 1986 in accordance with the terms of employment set forth in the IDB Administrative and Personnel Policies, to work as HUR Assistant, DPA Department, Grade X.
- D. On March 27, 1986, Management published Vacancy Notice No. 86/09 for Position No. 0819, Document Control Assistant, Grade XII Operations Department, Financial Transactions Unit.
- E. On April 11, 1986, Mr. Julio César Cabo, as a staff member, submitted his application for Vacancy Notice No. 86/09, Position No. 0819, stating that he had joined the Bank in May 1979, had studied at the National University of Entre Ríos, Argentina, between 1970 and 1975, where he had obtained his Certified Public Accountant degree; that he had worked for the Bank in various positions and knew Spanish, English and Portuguese.

Subsequently, on June 6, 1986, he delivered to Mrs. Antonieta Gutiérrez, the Officer in charge of Vacancy Announcement No. 86/09, a memorandum on his educational and professional background, attaching a certificate from "The American University" in Washington, D.C. showing that he had completed all requirements for a graduate certificate in Business Management.

- F. On July 2, 1986, Mrs. Gutiérrez, the Human Resources Officer, informed Complainant Julio César Cabo that the process of selecting candidates for Vacancy No. 86/09 had ended and the position was about to be filled by another person.
- G. On July 7, 1986, Complainant Julio César Cabo sent Mrs. Gutierrez, the Officer in charge of Vacancy Notice No. 86/09, a memorandum informing her that, as a candidate and staff member of the IDB, he intended to set in motion the procedure provided for in Personnel Policy No. 326; to this end, he asked for copies of the documents relating to Vacancy Notice No. 86/09 which he specifically identified. On July 10, 1986, Mrs. Gutiérrez replied to Complainant "that since the reports, files and documents dealing with candidacies in recruitment and selection procedures are confidential, your request cannot be granted." This refusal to provide Complainant with the official documents concerning the Vacancy Notice was repeated by the Chief of the Recruitment Section, by HUR Deputy Manager, Mr. Nelson Ocampo, and by the Acting Administrative Manager, who was the same Mr. Ocampo who had already decided the case.

In the complaint he filed with the Conciliation Committee on September 26, 1986 (Case No. 067) Complainant Julio César Cabo also requested that the Committee ask Management to send him the official documents relating to Vacancy Notice No. 86/09, which documents he identified specifically.

On November 11, 1986 in its reply to the complaint Management attached several documents (which it did not identify in its reply) but warned that those documents were for the exclusive use of the Committee.

On December 18, 1986, the Conciliation Committee asked Management for additional documents on the competition and Vacancy Notice No. 86/09 and on January 7, 1987 Management delivered those documents, indicating that they were restricted in order to protect not only the confidentiality of selection materials but the individual rights of candidates.

- H. On May 6, 1986, Mrs. Marta Plaza Johnson, representative of the Staff Association, and Antonieta Gutierrez, from the Selection and Employment Section, met to review the applications of competition candidates for Vacancy Notice No. 86/09.

As for Candidate Julio César Cabo, he was rated "overqualified" because he had a university degree. He was the only one so qualified among the candidates who were Bank employees. This rating of Mr. Julio César Cabo was approved by Mr. José Santaballa, Chief EMD/SES; Mr. Ricardo Blanco, Chief COB/SAL; Mr. Juan Manuel Corredor, Chief EMD/CHF; and Mr. Nelson Ocampo, HUR Deputy Manager.

- I. Although candidate Julio César Cabo had been rated "over qualified" in the competition for Vacancy Notice No. 86/09, the Employment and Development Division, the Operations Department and a panel appointed to review the qualifications of candidates in the competition decided that candidate Julio César Cabo would not be interviewed in recommending a slate of candidates. In this manner, Julio César Cabo was definitively eliminated as a candidate in the competition.
- J. Complainant Julio César Cabo has never been informed of the grounds for that decision which violated his rights by eliminating him from the competition. The only information was provided by Mr. Carlo Binetti, Acting HUR Deputy Manager, in the reply to Complaint No. 067 filed with the Conciliation Committee, which states the following:

"The panel appointed by the respective department made a thorough review of the background and available evaluations of the preselected candidates, suggesting interviews with five of them, not including Mr. Cabo. The decision by the panel was based on objective and discretionary criteria under the regulatory framework governing the Bank. The final decision was obviously adopted in the general interest of the Bank itself and not against it."

- K. The person selected in the competition for Vacancy Notice No. 86/09 to fill Position No. 0819, Miss Carmen Emilia Engler, did not meet the requirement announced in Vacancy Notice No. 86/09 regarding Studies/Education, namely a high school degree.

A Business Secretary degree is obviously not a high school degree nor even its equivalent, in light of its educational content and the fact that it comprises only nine months of studies. It is not consistent with high school education in the IDB member countries.

3. In addition, Complainant alleges in support of his claim to have established the following:

- Studies at the National University of Entre Ríos, Argentina, from 1970 to 1975 and at The American University, Washington, D.C. in 1986.
- That he holds a Certified Public Accountant degree in Argentina since 1975.
- Experience in administrative and professional work because of his services in the Bank from May 1979 to August 1986, a total of seven years and three months.
- That he is fluent in Spanish and English and knows some Portuguese.

Meanwhile Miss Carmen Engler established:

- Studies from 1967 to 1978 at the Federico Proebel Pre-School, Instituto María Auxiliadora, Instituto Inmaculada Concepción and Instituto Sagrado Corazón. These studies appear to be at the elementary level.
- A Business Secretary degree after studying from February 1977 to November 1978.
- Courses of a single month taken from October 1979 to November 1979 and from November 1980 to the end of that same month.
- Services performed in the Bank since July 1984, in other words, two years and six months; and work in private industry from April 1979 to July 1983.
- Fluency in Spanish and in English.

Notwithstanding, Miss Engler was selected as the best qualified candidate.

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

- A. The Administrative Tribunal of the IDB has jurisdiction to hear and decide this complaint in accordance with Article II (1) and (4) of the Statute of the Tribunal.
- B. The complaint is admissible because Complainant has fulfilled Article II (2)(a), (b) and (c) of the Statute of the Tribunal and Article 15 of its Rules, having exhausted all remedies available within the Bank, including the appeal to the Conciliation Committee.
- C. Personnel Policy No. 315(a)(5)(f) states that an applicant who does not agree with the selection process in a given case may resort to the claim procedure established in Personnel Policy 326, this is, to appeal before the Conciliation Committee.
- D. Personnel Policy No. 312 on the System for Selection of Candidates lays down the principle that the Bank selects its staff on the basis of qualifications and skills and that the primary consideration that the Bank will take into account in appointing personnel will be the highest possible degree of efficiency, competence and integrity.
- E. Personnel Policy No. 315 (B)(4) and (5) refers to the competition procedure to fill vacancies. The fact that it is a competition procedure excludes, by definition, the power of Management to operate freely without regard to applicable regulations. Bank Management does not have discretionary powers in filling vacancies for which a competition has been called. Management's call for selection by competition to fill a vacancy, is an administrative decision which gives rise to rights and obligations in respect of both the IDB staff and Management; and Management has an obligation to comply and ensure compliance with the terms and requirements it spells out in the relevant Vacancy Notice.

In the instant case, Bank Management did not observe the terms and requirements of Vacancy Notice No. 86/09 in that it entered Miss Carmen Engler as a candidate even though she did not meet the requirement of having a high school degree.

In addition, Bank Management breached Personnel Policy No. 312 and No. 315 by eliminating Complainant Julio César Cabo from the competition. He had shown that he met all requirements in the Vacancy Notice.

- F. The legal system governing employment in the Bank is a set of rules which recognizes the principle of due

process in procedures followed by Management with regard to the rights of staff.

The Tribunals of international organizations have repeatedly stated that the principle of due process must be respected and applied in employment relations with the staff. To cite but one example, Judgment No. 74 of December 5, 1958 by the Administrative Tribunal of the United Nations, which states:

"The Tribunal is of the opinion that rules of equity and justice require access to documents held by Management insofar as they relate to the employee and are relevant to the procedure under consideration." If this is not observed, the employee will not be guaranteed "due process" in preparing and presenting his case.

- i) Management refused the request made several times by Julio César Cabo, a candidate in the competition for Vacancy Notice No. 86/09, to be given the official documents pertaining to the competition so as to exercise his rights under Personnel Policy No. 315(a)(5)(f). The official documents were never delivered to him, nor was he allowed to know their contents.
- ii) The decision of September 11, 1986 was made by Mr. Nelson Ocampo who had already heard and decided the case, thereby denying to Complainant the right of appeal provided for in Personnel Policy No. 326.

- G. Under the employment system established by IDB, Management must adopt its decisions within the limits of its authority by applying principles and rules to the proven facts, in a just and rational manner that will not constitute an overstepping of authority.

In labor law, the overstepping of authority by the employer to the detriment of the rights of the employee is illegal and decisions adopted in such cases are invalid.

In this case, Management decided that candidate Julio César Cabo would not be interviewed in the process of drawing up the list of applicants to be recommended, and in this fashion Julio César Cabo was definitively eliminated as a candidate in the competition. The fact that Complainant had qualified for the competition notwithstanding.

5. The Bank answered the complaint and asked for a dismissal in its entirety because it is not valid or justified.

6. The Bank, in support of its petition gives the following account of the facts.

A. At the time he participated in the competition for position 0819, Mr. Cabo was a temporary employee of the Bank whose employment contract was for the period from September 1, 1984 to August 31, 1986.

The Vacancy Notice was posted on March 27, 1986. The stated qualifications were one year of experience in administrative work, the ability to speak Spanish, knowledge of another of the Bank's languages, and a secondary level education.

B. Twenty-three individuals applied for the position, including five permanent staff members, eight temporary, and ten external candidates. Mr. Cabo applied for the position on April 11, 1986. His application was considered along with those of the other candidates and he was listed among those "qualified" with the notation that he was "overqualified" by virtue of having a university degree. The determination that Mr. Cabo was qualified was recorded by means of a document co-signed by a representative of the Staff Association of the Bank. Ms. Carmen E. Engler, the individual to whom the position was eventually awarded, was also a temporary employee and was also certified as qualified on the same document.

C. This information was provided to the Operations Department which appointed a panel to review the curricula of the qualified candidates. On the basis of the panel's initial review, nine candidates were selected for further consideration. All of these individuals were Bank staff members. Mr. Cabo was among them.

D. The panel requested the performance evaluations of the nine remaining candidates in order to determine the individuals to be interviewed. The date of the request for the evaluations was June 2, 1986. As of that date, Mr. Cabo's two most recent performance evaluations had rated his performance as "consistently below the norm." On June 11, 1986, the Operations Department requested that HUR arrange interviews with five individuals. Mr. Cabo was not among the individuals for whom interviews were requested.

- E. On June 24, 1986, the coordinator of the panel officially notified the Operations Department that after reviewing the qualifications and evaluations of the nine individuals, five individuals had been selected for interviews, and based upon criteria established by the panel, three finalists had been selected. Ms. Carmen Engler was considered the best candidate. The Operations Department notified the Human Resources Subdepartment of the three finalists and of the recommendation of the panel that Ms. Engler be selected.
 - F. On July 2, 1986, Mr. Nelson Ocampo, Deputy Manager, Human Resources Administration Subdepartment (HUR) informed the Administrative Manager of the panel's recommendation and Mr. Sánchez Masi signed his approval of the selection of Ms. Engler. On that same date Ms. Antonieta Gutiérrez notified Mr. Cabo that he was no longer a candidate.
7. In support of its petitions, the Bank argues as follows:
- A. The facts as presented by Mr. Cabo are not accurate, and do not justify his claims.
 - i) The Bank does not contest that Mr. Cabo has administrative level experience.
 - ii) Mr. Cabo's employment history as a Junior Professional is equally irrelevant. Again, the Bank does not deny he had that experience. Mr. Cabo's superiors found his performance as a Junior professional to be unsatisfactory. His "work" in that Program was consequently terminated as of October 31, 1983. Mr. Cabo's employment contract was extended for two months due to a delay in completion of his final performance report, but he was relieved of his duties. Thereafter, Mr. Cabo's contract was continued until March 15, 1984 for the sole purpose of allowing the Conciliation Committee to complete its deliberations on claims he had presented. By no means did Mr. Cabo work in the Program until August of 1984.
 - iii) Mr. Cabo failed to note that the contract offered to him in 1984 was given as compensation for a settlement agreement made with the express stipulation that upon completion of the contract the Bank would have no further obligation to employ Mr. Cabo. Mr. Cabo also failed to note

that the services he provided under that contract were again unsatisfactory until his duties were reduced in complexity to a bare minimum for the purpose of enabling him to improve his performance rating. At the moment of the competition here in question, however, the effective performance evaluation for Mr. Cabo was that which showed his performance to be "consistently below the norm."

- iv) Mr. Cabo indicated on his application form that he had entered the Bank in May of 1979, without having noted that his service was interrupted between March and September of 1984, and that under the contract in effect at the time of the competition he had "entered" the Bank in September of 1984.
- v) In the complaint, Mr. Cabo also mentions having provided Mrs. Gutiérrez on June 6, 1986 with a memorandum concerning his background and a Business Management postgraduate certificate. The closing date for completed applications, as established on the position announcement, was April 17, 1986.
- vi) Mrs. Gutiérrez did not inform Mr. Cabo that he was not qualified for the position, only that another individual was being selected.
- vii) No Bank policy establishes the right of a staff member to request copies of confidential documents relating to other staff members upon request.
- viii) Review of claims under Personnel Policy 326 is established by function. Both the Manager and Deputy Manager were in agreement that Mr. Cabo's complaints were without foundation. The response of the Manager was prepared during his temporary absence from the Bank and signed by Mr. Ocampo on his behalf with the authorization of Mr. Sánchez Masi. Mr. Cabo's access to the next higher level of review was not prevented or delayed.
- ix) Mr. Cabo was classified as "overqualified" based upon the information provided in his application concerning his education level. The fact that Mr. Cabo was rated "overqualified" would have been a cause for inquiry as to Mr. Cabo's

suitability for the position. The goal in selecting from among the candidates was to find the individual most suitable for the position, not simply the individual with the highest education level.

- x) There were a large number of qualified candidates. Any factors affecting the suitability of candidates would have been taken into consideration. The fact that Mr. Cabo's qualifications were not a close match for the position and the fact that his recent performance record was very poor were clearly relevant to the fact he was not selected.
 - xi) The course of study pursued by Ms. Engler in Honduras is equivalent to a general high school education. It differs only in that the emphasis is not upon college preparatory courses. Moreover, the fact that the secretarial course completed by Ms. Engler is equivalent to a secondary education is verified in the preelection report submitted by Mr. Cabo as evidence of his own "qualified" status. By the signature of its representative on that document the Staff Association of the Bank also has confirmed its agreement that Ms. Engler was qualified.
 - xii) Mr. Cabo did not indicate the courses he had taken at The American University on his application form for the competition. Similarly, the application form did not list his work experience except the work for the year from 1980 to 1981 noted above. In fact, he was not employed by the Bank from March until September of 1984 and his "employment" from the end of October 1983 to March of 1984 was continued in a technical sense only for he was relieved of his duties during that period. His "experience" in the Bank is thus not as extensive as he claims.
- B. The points of law argued by Mr. Cabo are not valid, no violation of policy affecting Mr. Cabo has occurred.
- i) The Statute of the Tribunal provides that the "Tribunal shall hear and pass judgment when a member of the staff of the Bank alleges nonobservance of the contract of employment or terms and conditions of appointment" which must be understood as the terms and conditions of

appointment of such staff member. Nothing in Mr. Cabo's employment contract, which was a temporary contract for a fixed term of two years, gave him the right to be selected over other qualified candidates of the same employment status (temporary employees) in a competition for a vacant position. In addition, the "terms and conditions" of Mr. Cabo's appointment included an Agreement for Settlement and Release of Claims signed on August 20, 1984 which specifically provided that upon the expiration of that term of employment the Bank would have no obligation whatsoever to continue to employ Mr. Cabo.

- ii) The Bank accepts Mr. Cabo's right to claim under Personnel Policy 326, which governs appeals to the Conciliation Committee. (The Committee found Mr. Cabo's claim to be without merit). The Bank does not accept the validity of Mr. Cabo's claim to the Tribunal.
- iii) The Bank also relies on Personnel Policy 312 and upon the similar provision in Article VIII of the Agreement Establishing the Inter-American Development Bank which require the Bank in choosing staff to select individuals of the highest efficiency, competency and integrity, and considers that the Bank, both in having eliminated Mr. Cabo during the selection process, and in choosing Ms. Engler, has followed this prescription for selecting staff. The Bank complied with the applicable procedures in selecting from among the candidates for position 0819. On the other hand, Paragraph 8, of Subsection B. provides that after eliminating the applicants who do not meet the basic qualifications, the Bank may review any additional information considered necessary to aid in the selection process, including performance evaluations. Paragraph 9, provides that the candidates will be interviewed when it is considered necessary. The policy clearly gives discretionary authority to the Bank, therefore, to review all of the qualifications of the candidates and to proceed with the selection as deemed appropriate. This goal was aptly described in Judgment No. 49 of the OAS Administrative Tribunal as selection of the candidate who possesses the "qualifications that meet the prime purpose of the position in the most natural fashion."

- iv) Administrative Policy AM-302, footnote 1, provides that Bank documents dealing with personal histories are confidential. The documents requested by Mr. Cabo related to information provided to the Bank by other candidates.

The confidentiality of such documents cannot be protected if any staff member, by merely filing a claim, is considered entitled to receive copies of the personal and professional histories of other individuals. His rights in this situation do not take priority, they must be balanced with the rights of others. Assurance that due regard will be given to each of these conflicting legal interests is possible only if such documents are revealed on the basis of the protections afforded by providing them to the Conciliation Committee and the Administrative Tribunal, rather than directly to the staff member.

His claim was reviewed by the Bank management and by the Conciliation Committee on the basis of all of the relevant facts. Mr. Cabo was told the reasons for the Bank's actions and informed of the conclusions reached. He was not denied due process in the review of his claim.

- 8. In filing its observations to the answer, Complainant made particular emphasis on the following:

- A. The first basic issue raised in this complaint is that selection by Bank Management of the person that was to fill Position No. 0819, Grade XII, Operations Department, as announced in Vacancy Notice No. 86/09, was to be carried out by posting, in a competition based on the merits and qualifications established by the candidates.

The fact that we are dealing with a competition based on the qualifications of candidates is clearly established in Personnel Policy No. 312 on System of Selection of Candidates and in Personnel Policy No. 315 on Filling of Vacant Positions.

As it was a competition based on qualifications, Management and its officials and any other committees, groups or panels taking part in the proceedings of this competition, did not have discretionary authority in making recommendations or taking decisions. In everything they did they had to abide by the applicable provisions and, in particular, provide proper

justification, based on the official posting documents, for their decisions, views and opinions, because these could adversely affect the legally protected rights of competing candidates.

In the documents attached by the Bank to its answer, there is a record of several procedures carried out inconsistently with the rules in effect, in the manner of discretionary authority.

- B. The competition procedure and the decisions taken pursuant to it were irregular, did not comply with applicable provisions and failed to specify proper grounds. Management denied Complainant access to competition documents and he was unable to rely on them in filing his complaint.

Among those competition documents are:

- i) The memorandum of May 10, 1986 from HUR Deputy Manager, conveying to the Operations Manager the information on the personal background of each candidate. He advises him, also, that in submitting the slate of finalists, he must supply the documents supporting the choice.
 - ii) The memorandum of June 11, 1986 from Operations Manager to HUR Deputy Manager on the selection of five candidates to be interviewed. Candidate Julio C. Cabo was not mentioned and the memorandum gives no reason for his elimination or for the selection of the chosen five.
 - iii) The memorandum of June 24, 1986 by Mr. Raimundo Domínguez on the proceedings of the panel dealing with the preselected candidates, the five persons chosen for interviews, and the three finalists. It states, moreover, that the panel recommended Mrs. Carmen Engler in first place. This memorandum does not state any justification for the decision.
- C. The person chosen in the competition to fill Position No. 0819 did not meet the requirement set in Vacancy Notice No. 86109 on studies/education, which is high school education.

The Bank's allegation that Business Secretary studies in Honduras are the equivalent of a general high school

education is a statement nowhere proven and no more than a mere opinion of the IDB representative.

- D. Performance Evaluations are mentioned only in subparagraph 8, of paragraph B. Personnel Policy No. 315. This subparagraph 8 states that Performance Evaluations will be taken into account to "decide if any tests or examinations are needed in accordance with the position level . . . "

Performance evaluation ratings are by their very nature relative measurements. They are not comparable, of course, when dealing with positions that are of different level and duties.

The two performance evaluations submitted with the answer to the complaint are: The first of October 13, 1983 dealing with the professional duties of a Grade VII position then discharged by the Complainant. The second, of June 28, 1985 for the position of Assistant, Recruitment Section, Grade X, with professional duties.

The posting to which this complaint refers, on the other hand, has to do with the position of Document Control Assistant, Grade XII which has no professional duties. None of the evaluations of Ms. Engler or of any other candidate refers to professional duties and, consequently, they cannot be compared with those two evaluations of the Complainant.

- E. By memorandum of June 24, 1986 the Operations Manager conveyed to HUR Deputy Manager the recommendation to hire Ms. Carmen Engler to fill Position No. 0819. But the Operations Manager did not inform HUR Deputy Manager that Ms. Engler had failed to show that she had a high school degree, a basic requirement of Vacancy Notice No. 86/09. She had shown only that she had a Business Secretary degree, having studied for it from February 1977 to November 1978, in other words, for only one year and nine months, a period of time insufficient in any country to obtain a high school degree.
- F. Complainant Julio C. Cabo submitted documentary evidence showing that he met all the requirements in Vacancy Notice No. 86/09. In determining his eligibility to compete he was rated "overqualified," being the only internal candidate to receive such a rating.

- 9. In its reply to observations on the answer the Bank insisted on the following:

- A. The Bank must determine the candidate most appropriate to the needs of the institution based upon a number of factors which in combination make a candidate relatively more or less suitable and the decision is therefore a discretionary one. It is subject only to the limitations that the review must be according to the established process and that the decisions not be arbitrary or be biased.
- B. Personnel Policy 315 does not constitute a waiver of the inviolability of the Bank's archives as established in the Agreement Establishing the Inter-American Development Bank. The selection process was not irregular, it followed the established procedures and standard practice of the Bank and was free from bias or improper motives. Mr. Cabo was not denied due process, he was informed of the process being followed, was given an equal opportunity to compete with other candidates on the same basis, and was informed of the result.
 - i) Nine of the original 21 qualified candidates were considered to have sufficiently suitable qualifications to be given further consideration. The fact that Mr. Cabo was thereafter eliminated on the basis of his own work history from among that group of nine qualified candidates, makes the personal history documents of other candidates irrelevant to Mr. Cabo's own fate in the selection process.
 - ii) The memorandum which describes the basis on which five individuals were selected to be interviewed obviously explains that those who were not selected were eliminated on the same basis, that is, qualifications and performance evaluations. This process was not unjust to the applicants or unreasonable in selecting who would best serve the Bank.
 - iii) The panel used the discretionary powers granted in accordance with Personnel Policy 315 to choose as the recommended finalists the three individuals they considered the best for the Bank. It was entirely appropriate and consistent with the policy that they do so. The decision was a reasonable one and is sufficiently justified if it was reasonably suited to the goal of selecting the most suitable candidate for the Bank.

- C. The issue of whether or not Ms. Engler should have been among the list of qualified candidates is not dispositive to a decision on Mr. Cabo's claim because he was not among the finalists. If she were eliminated another candidate would have been selected. However, the Bank does note that Ms. Engler's secretarial course was at the "liceo" (secondary school) level rather than primary school level, and that verbal assurances have been provided by the Honduran Embassy that the Instituto Sagrado Corazón (liceo hondureño) is in fact at the high school rather than an elementary school level. The requirement set forth on the Vacancy Notice under "Education" was a secondary level of education. There was no requirement of a specific course of study, but rather simply an indication that the Bank considered that an education at least at the level of a secondary school was necessary to be able to perform the functions of the vacant position.
- D. To some extent the Bank can judge the potential performance of a candidate for a position by looking at his previous performance in other positions. Though the work is not identical, the work habits noted can be indicative of the potential of each candidate and knowledge of the strengths and weaknesses of the candidates can be helpful to the panel which has the task of narrowing the field of candidates.

Paragraph B.8(8) of Personnel Policy 315 provides that HUR and the Department which has the vacancy will take into account any information considered necessary in reviewing the candidates. If they consider it necessary to review the performance evaluations for the candidates they may do so and in so doing are acting in accordance with the policy.

- E. When Ms. Engler was recommended for position 0819 it was understood that she was qualified for the position, and that her qualifications had been reviewed in relation to the specific requirements of the position. It was not necessary to prove she was the most qualified candidate based solely upon her formal education. Her selection was based in part upon objectively confirmed information such as experience, performance record, etc., and in part upon the judgment of the individuals in the Bank department where she would be working as to her suitability to the needs of the department for the vacant position.

- F. Mr. Cabo is attempting to mislead the Tribunal by his continued insistence that he has a "right to be a member of the staff of the Bank." Mr. Cabo has no such right. He had certain rights as a member of the staff at the time of the competition among them to be considered objectively along with other candidates for a vacant position, but he had no right to be selected if he was not considered to be the most suitable candidate.
 - G. Mr. Cabo appears to be basing his claim on three fundamental points. His claim fails on each. First, is his belief in a right to be a member of the Bank staff. This right does not exist. Second, he believes Ms. Engler to be unqualified. She was and is qualified and more important, even if she were not, Mr. Cabo would not have been selected. Third, Mr. Cabo believes he should not have been eliminated from the list of candidates. The process of selection is also of necessity a process of elimination. Not every qualified candidate can be selected. Not every qualified candidate is the best or the most suited to the requirements of the position. Mr. Cabo was eliminated as were other qualified candidates on the basis of a normal, non-arbitrary selection process. He has not been damaged in any special or personal way in not being selected. Losing a competition is not a harm for which the Bank owes compensation to Mr. Cabo.
- 10. The parties submitted copious documentary evidence: administrative resolutions, memoranda, internal correspondence, applications, formulas, rules, Policies and decisions by other Administrative Tribunals related with the proceedings of competition 86/09 for the selection of a Document Control Assistant, position 819 (Grade XII). There was no controversy over the authenticity of any document. The President of the Tribunal admitted the testimonial evidence offered and commissioned Mr. Hernán Sáenz-Jiménez, Executive Secretary with hearing it. Marta Plaza Johnson, Antonieta E. Gutiérrez, José Santaballa, Carlo Binetti, Oswaldo Roselló, Mireya Guzmán, Celia Ponce and Rubens Vaz da Costa declared. The President of the Tribunal also called for the further testimony of Mr. Mauricio Thomae whose deposition was also received by the Executive Secretary who was specially commissioned.
 - 11. 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, Budget Officer ADM/FTC. His performance was satisfactory.

- B. Complainant resigned his permanent post and joined the Bank's Junior professional program on November 1, 1982. His performance was deemed unsatisfactory with Mr. Cabo's stated disagreement. On October 25, 1983, he was informed that his relationship with the Bank would end December 31, 1983. As of October 31, 1983, he was relieved of his duties. Mr. Cabo then appealed to the Conciliation Committee which determined that Mr. Cabo should be given an opportunity through September 30, 1984. Management rejected this recommendation and extended his contract to March 15, 1984. Mr. Cabo then established a complaint before this Administrative Tribunal on July 18, 1984. While the process was pending, the Administrative Manager, Mr. Luis Sánchez Masi offered Mr. Cabo a transaction proposal whereby he was offered employment for two years.
- C. Complainant started working as provided by his new temporary contract on September 1, 1984 in a Grade X (Administrative) post, as Assistant HUR/DPA. His first performance evaluation which covered the period up to May 31, 1985 was "Generally below the Norm" and Mr. Cabo signed it with objections. 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 not professional duties during the 12-month period being evaluated. The evaluation form was signed by his supervisor on June 19, 1986 and approved by Division Chief EMD/CHF (Mr. Binetti) on June 23, 1986 and by the Deputy Manager HUR (Mr. Ocampo) June 30, 1986. On August 31, 1986, Complainant ceased to be a Bank employee.
- D. On March 27, 1986, the Bank published Vacancy Notice No. 86/09 to fill position No. 819 Document Control Assistant, Operations Department, Financial Transactions Unit. The requirements for the position were: Studies: high school; Experience: one year in administrative duties; Languages: Proficiency in Spanish and knowledge of another of the Bank's Official languages.
- E. On April 11, 1986, Mr. Cabo submitted an application for position 819 where he stated:
 - i) that he had worked with the Bank since 1979;

- ii) that he was a Public Accountant from the University of Entre Ríos;
 - iii) that he had related experience in BMA from 1980 to 1981;
 - iv) that he was fluent in Spanish and English and had knowledge of Portuguese.
- F. On April 14, 1986, Miss Carmen E. Engler submitted an application for competition 86/09 regarding position 819 where she stated:
- i) that she had worked with the Bank since February 1983;
 - ii) that she was a Business Secretary from Instituto Sagrado Corazón;
 - iii) that she had taken several one month courses some in November 1979 and some in November 1980;
 - iv) that she had related experience at Banco Atlántida, Tegucigalpa from April 1979 to August 1983;
 - v) that she was fluent in Spanish and had knowledge of English.
- G. A total of 23 applications were received and analyzed on May 6, 1986 by Mrs. Antonieta Gutiérrez from SES and Mrs. Marta Plaza Johnson, representing the Staff Association. They determined that there were 21 qualified applicants among whom there was Carmen E. Engler, whose Business Secretary diploma they considered equivalent to a high school diploma and Julio C. Cabo, both temporary Bank employees. It was noted that Mr. Cabo was overqualified because he had a university degree.
- H. On June 6, 1986, Mr. Raimundo Domínguez, panel coordinator informed in a memorandum that he had requested the performance evaluation of nine of the qualified candidates among whom were Miss Engler and Mr. Cabo. The Selection and Employment Section gave the panel verbal information regarding the performance evaluation requested. On June 11, 1986, the Operations Manager, Mr. Vaz da Costa, determined that five candidates should be interviewed among whom was Miss Engler but not so Mr. Cabo. The panel recommended his elimination on account of his performance evaluations and because he exceeded the qualifications required in the Vacancy Notice. The panel also decided not to state those reasons.

- I. The five candidates were interviewed and the panel recommended three among whom was Miss Engler in the first position, because she was familiar with the job. On June 24 the Operations Manager requested HUR for Miss Engler's appointment.
- J. On July 2, 1986, Miss Engler's appointment was approved. On that same date Mrs. Antonieta Gutiérrez informed Mr. Cabo that somebody else had been chased for position 819.
- K. On July 7, 1986, Complainant requested copies of the competition documentation in order to institute the actions authorized in Personnel Policy 326. On July 10 Mrs. Gutiérrez informed him that those documents were confidential and that he would not be supplied with them.
- L. On July 16, 1986, Complainant made the same request to Ms. Helen A. Edwards, Chief EMD/RER who on July 29 confirmed the denial. On that same day Mr. Cabo appealed before the Deputy Manager HUR, Mr. Nelson Ocampo who on August 12, 1986 reiterated the decision to maintain the confidentiality of the files and documents and confirmed the selection the Bank made in competition 86/09. Complainant appealed then before the Administration Manager but Mr. Nelson Ocampo, Acting Manager on September 11, 1986 ratified his earlier decision.
- M. On September 26, 1986, Mr. Julio C. Cabo brought his complaint before the Conciliation Committee which on February 3, 1987 decided not to continue with the proceedings.

AND WHEREAS:

- 12. It bears noting that, irrespective of the vicissitudes experienced by Complainant in his various jobs in the Bank, his position since September 1, 1984 and at the time of the events that gave rise to this complaint, was that of HUR Assistant, DPA Department, Grade X, a position he secured as a result of the settlement of August 20, which he signed with benefit of counsel, of his own free will, and without later bringing against it any challenge alleging any flaws. Employment was to cease on August 31, 1986. The origin of the position --the discontinuance of Complaint No. 3-- gives it a special character, apart from its temporary nature, which cannot be overlooked in weighing Mr. Cabo's actions and claims.

13. The documents and evidence produced and the arguments of the parties fail to show that the Bank did not abide by Complainant's employment contract or the terms and conditions of his appointment, for he was not prevented from taking part in the competition for Vacancy 86/09 and was selected in the course of a qualifying round conducted by the panel.

The Tribunal is troubled by the Bank's initial refusal to make available to Complainant the documents pertaining to the competition, and assumes that this will not be the case in the future. In the instant case, however, it believes that it shows neither arbitrariness nor abuse of authority towards Complainant, and does not warrant voiding the outcome of the competition, particularly when it would not, in any case, benefit Complainant.

14. Mr. Cabo's temporary appointment does not by itself entitle him to a vacant position. Having a higher academic degree does not mean being better "qualified," in the sense of "suited," to fill a vacancy, if other factors, evaluations, experience in the performance of similar jobs, behavior and relations with fellow staff members indicate that the chosen candidate is better suited to the position.
15. The person chosen to fill Position 86/09 proved that she had a Business Secretary degree which the Bank, with the aid and consent of the Staff Association representative, accepted as a high school diploma. This is consistent with Chapter III of the Education Law of Honduras.

Because the panel selected two more finalists, Complainant would not benefit from rescission of the appointment, on grounds of failure by the candidate selected to meet the required level of schooling.

16. Inasmuch as no injury is caused to Complainant by his failure to win a competition in which there was no transgression of any Personnel Policy of the Bank or universal principle, his claim to compensation from the Bank is groundless.

ACCORDINGLY, the complaint is dismissed.

Washington, D.C. 13 November 1987.

Luis Coronel de Palma
Judge

Gonzalo J. Facio
President

Hernán Sáenz-Jiménez
Executive Secretary