

## JUDGMENT CASE NO. 28

### FRANK S. ORLANDO vs. IDB

The Administrative Tribunal of the Inter-American Development Bank Thereinafter the "Tribunal"),

Composed of Judge Alfredo Martínez-Moreno, President, Judge Thomas Buergenthal, Vice President, Judge Ildélio Martins, Judge Baltasar Cavazos-Flores, and Judge Guillermo López-Guerra considered the case under the procedure prescribed by Articles 20, 21, 22 and 23 of the Rules of the Tribunal (hereinafter the "Rules").

Complainant was represented by his attorney, Robert D. Sloan. The Bank was represented by Gay Davis Miller, of the Office of the General Counsel of the Inter-American Development Bank (hereinafter the "IDB" or the "Bank"). In addition to the written pleadings, the Tribunal asked the Executive Secretary to hear the testimony of witnesses and on 9 February 1993 the full Tribunal heard oral arguments.

#### WHEREAS:

A. On 12 February 1992 Mr. Frank S. Orlando, a citizen of the United States of America and a former staff member of the Bank,\* filed a complaint with this Tribunal.

The documentary evidence produced and oral testimony received have served to establish the following facts:

1. Complainant worked for the Bank since 1970 in the Department of Economic and Social Development (DES) formerly known as the Technical Department.
2. In 1972 he was awarded leave with partial pay to complete his Ph.D. dissertation.
3. Complainant worked with Mr. Simon Teitel, then Senior Advisor in DES, to complete the 1982 Report on the Economic and Social Progress in Latin America (1982 IPES) which had projections for growth in Latin America. Complainant contributed in the report's forecasting. Shortly after the 1982 IPES was issued in August 1982, the debt crisis in Latin America erupted.
4. Mr. Willy Van Ryckeghem joined the Bank in September of 1982 as Chief of the Country Studies Division of the Economic and Social Development Department (ECC). Shortly thereafter, in November of that same year, Complainant was assigned to work under Mr. Van Ryckeghem's supervision as the Economist for Mexico.
5. In 1983 the British Overseas Development Institute invited the Bank to revise its forecasts from the 1982 IPES at a conference in London. Mr. Van Ryckeghem

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\*On the date this judgment is issued, Complainant is no longer a staff member of the Bank.

recommended against the Bank's participation in the conference because the forecasts of the 1982 IPES were too optimistic.

6. In 1985, by means of an econometric model, Mr. Adolfo Rufatt, economist, estimated forecasts which were to be used by the Country Economists in preparing the 1985 IPES. When Complainant attempted to use the model, he was unable to duplicate Mr. Rufatt's results. When Complainant inquired, he found that Mr. Rufatt had used add-factors which complainant deemed improper. In a meeting called by Mr. Van Ryckeghem in May of 1985, Complainant protested the use of the model.

While Complainant maintains that the forecasts for the 1985 IPES were improperly calculated, Mr. Van Ryckeghem and Mr. Rufatt maintain the they were developed using procedures which are generally accepted in the profession.

7. In Complainant's performance evaluation for that period, Mr. Noé, then his supervisor, included comments which Complainant found unacceptable. Complainant appealed his 1985 performance evaluation to Mr. Urrutia, then Manager of DES. Complainant was then appealing two issues: (i) the use of the model which included add-factors and (ii) the negative comments which appeared in his performance evaluation.

Mr. Urrutia appointed a committee to review Complainant's performance evaluation. The committee recommended that no changes be made.

8. Mr. Urrutia, on the same day, in two separate communications ruled that no change be made to the performance evaluation and that Complainant be transferred to work under Mr. Teitel's supervision (out of Mr. Van Ryckeghem's chain of supervision).

Complainant accepted these terms as an adequate solution to his complaints.

9. In 1990, as a result of a reorganization of the Bank, Mr. Van Ryckeghem was promoted to Deputy Manager of Complainant's Division and Complainant's position, once again, fell under the supervision of Mr. Van Ryckeghem.

B. Complainant petitions this Tribunal for the following:

1. That Complainant be transferred to an appropriate position within the Bank which excludes Mr. Willy Van Ryckeghem from Complainant's chain of supervision.\*\*

2. That Complainant be granted special leave for a period of one year to conduct research, study and/or teach in an appropriate institution in order to assist in reestablishing Complainant's reputation and career in the Bank.

3. That Complainant's merit pay increases for periods prejudiced while Mr. Van Ryckeghem served as Complainant's supervisor be adjusted retroactively to the average for the institution. That the average also apply to future merit pay increases, prorated until the effective date of transfer.

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\*\* At the time his complaint was filed, Complainant was still a staff member of the Bank.

4. That Complainant be granted a payment in the amount of two years of his basic net salary as compensatory damages for the harm caused to his professional reputation and the anguish which Complainant has endured due to the violations of the terms of his employment by his supervisor, Mr. Van Ryckeghem, and the Bank.

5. That Complainant be reimbursed all attorney's fees and associated legal expenses required to pursue this Complaint.

6. In the event that the President of the Bank decides to exercise the power granted to him in Article IX(1) of the Statute, that Complainant be granted compensation in the amount of three years of his basic net salary.

C. In support of his petitions, Complainant made the following arguments:

1. Complainant's rights under the terms and conditions of his contract of employment have been violated by Mr. Van Ryckeghem as Complainant's supervisor and by the Bank in connection with the grievance filed.

2. The Bank failed to review Complainant's grievance on its merits, either in the Administrative Department or in the Conciliation Committee. Over the course of approximately one year, not a single meeting was convened with Complainant to discuss the merits of his allegations nor was other probative evidence examined and evaluated.

3. Over the course of several years Complainant's supervisor, Mr. Van Ryckeghem, misrepresented the results of his work. Mr. Van Ryckeghem ignored Complainant's requests for clarification.

4. Specifically, Complainant alleges that the following Bank Personnel Policies have been violated:

a. Pursuant to Personnel Policy 323 "supervisors are required to acquire and broaden their knowledge and understanding of the principles of human relations and the application of such principles so as to earn the respect and confidence of the personnel being supervised." Complainant submits that the actions taken by Mr. Van Ryckeghem failed to earn the respect and confidence of Complainant.

Personnel Policy No. 323 also states that supervisors are to "encourage employees to express their points of view on matters affecting their work and interests" and "to discuss with them any pertinent subject which affects them." Mr. Van Ryckeghem acted to quash rather than encourage Complainant's rights under these provisions.

b. Pursuant to the IDB Code of Ethics Mr. Van Ryckeghem was to maintain high standards of honesty, integrity and impartiality and never knowingly discriminate so as to harm Complainant. Complainant maintains that Mr. Van Ryckeghem, with respect to Complainant, acted in a completely contrary manner.

c. Pursuant to Personnel Policy 324 "[t]he individual performance of an employee depends among other important factors on the level of motivation he has on the job --which will remain high as long as the work environment is the result of healthy supervision practices ... and impartial, fair performance evaluations." Yet, Complainant was forced to perform in an unhealthy work

environment which was instituted by Mr. Van Ryckeghem. As a result, Complainant's performance evaluations have suffered.

Personnel Policy No. 324 further requires supervisors to promote dialogue between the supervisor and the employee and to encourage the professional development of the employee. Complainant contends, however, that Mr. Van Ryckeghem stifles staff initiative, encourages docility on the part of staff in the face of unacceptable conduct bringing the Bank into disrepute and, as in Complainant's case, can be highly destructive to individual careers and lives.

5. During the months immediately preceding the filing date of the Complaint, and in full knowledge of Complainant's preparation of his Complaint, senior Bank officers began a campaign of proposals in order to have Complainant agree to leave the Bank under personnel rules covering unsatisfactory employees. As Complainant has always acted in the highest tradition of the Bank in terms of competence, honesty and loyalty, he has refused any such proposals.

6. Complainant has suffered monetary loss, mental anguish, and irreparable harm to his professional reputation and career because he dared to do his duty as a loyal employee with high standards for his work at the Bank.

7. Complainant maintains that there have been clear violations of the Bank's Personnel Policies as well as its obligation to conduct an open, fair, good faith grievance process which have caused Complainant to unjustly suffer irreparable harm, not only to his professional reputation and career, but also in his personal relations.

D. The Bank answered the Complaint and asked the Tribunal to dismiss the petitions on the following grounds:

1. Complainant suffered no injury on account of Mr. Van Ryckeghem.

a. Complainant never received a negative performance evaluation under Mr. Van Ryckeghem's supervision. Of the seven performance evaluations on record for Complainant, only two are in the highest category. Three of the five rated his performance in the middle range and were drafted when Mr. Van Ryckeghem was not in the line of supervision. However, Complainant did not protest the evaluations received from supervisors other than Mr. Van Ryckeghem.

b. Complainant claims he was damaged by his 1985 evaluation due to Mr. Van Ryckeghem's finding that the performance evaluation drafted by Complainant's immediate supervisor was "well-founded and I see no reason to change it." In addition, this evaluation was reviewed by two "referees" who found no reason to change it.

Complainant asserts a causal relationship between his having complained of errors in the 1985 IPES and his evaluation. This is not true. Complainant's evaluation was no worse than-usual and he was not denied merit pay.

c. Complainant's reassignment to another supervisor in September 1985 was not a result of his challenge to the performance evaluation, but a result of the need for technical staff to work on a special study. Complainant did not continue to protest the results of his 1985 performance evaluation, nor did he again raise

the issue of his challenge to the 1985 IPES until Mr. Van Ryckeghem was promoted to Deputy Manager in 1990.

Complainant asserts that when Mr. Van Ryckeghem was promoted, the "administrative remedy" granted to him in September 1985 was "withdrawn." If Complainant's 1985 reassignment was not intended as a remedy for his claim, even though it was something he found satisfactory, it could not have been "withdrawn", and he is not entitled to claim a right to have it maintained. No promise was made to him that Mr. Van Ryckeghem would never again held a position with supervisory authority over him.

2. Mr. Van Ryckeghem's appointment to a position with authority over Complainant in 1990 was not unreasonable.

a. Mr. Van Ryckeghem was well qualified to occupy the position of Deputy Manager by virtue of his educational background and experience and was duly appointed by the President of the Bank. The exercise of supervision over Complainant's work by a duly appointed supervisor is not a violation of the terms and conditions of his service even if he doesn't agree with the supervisor.

b. When Complainant was required to work under the supervision of Mr. Van Ryckeghem in 1990, it was because that was the most appropriate application of his skills to the needs of the Bank.

3. Complainant has not been damaged by Mr. Van Ryckeghem's appointment to a supervisory position in DES.

Complainant claims to have been damaged in relation to his merit pay as a result of Mr. Van Ryckeghem's supervisory role in DES. Complainant's merit pay award was determined in accordance with the criteria established by the new merit pay system implemented in 1990. His reward category was consistent with his previous performance record. His pay was also above the minimum set for a satisfactory performance and his pay increased his level as a percentile on the salary range for his grade. In addition, Mrs. Marulanda, as Manager of the Department, made the final decision concerning merit pay, yet Complainant has not alleged a bias on her part.

4. The Personnel Policies cited by Complainant do not apply to this case.

a. Personnel Policy 323, Work Relations between Supervisors and Employees, is a statement of principles, not a checklist for specific actions. Nevertheless, the record does show that while Mr. Van Ryckeghem has often not finally agreed with Complainant, he has in fact listened to his point of view before acting.

b. Personnel Policy 324, which was in effect from 1 September 1983 to 27 March 1991, stated certain objectives and then indicated that the evaluations would be conducted under instructions and procedures issued by the Human Resources Department. Complainant did not agree with the result of his performance evaluation in 1985 and challenged it. The evaluation was reviewed and found to be appropriate. The evaluation became final and Complainant accepted his merit pay accordingly. If he wished to continue to challenge the result of that evaluation, he should have done so at that time.

Moreover, the evaluation was not drafted by Mr. Van Ryckeghem, nor is there any indication that Mr. Van Ryckeghem unduly influenced Complainant's immediate supervisor to lower the evaluation. As a result of the evaluation Complainant, received his merit pay increase. Accordingly, there is no basis on which to conclude that Complainant was in any way injured by Mr. Van Ryckeghem in violation of that policy in 1985.

c. The Ethics Code is intended to guide and govern the staff in their relationships with the outside community. It does not create individual employment rights for staff members.

5. An appropriate investigation into Complainant's claims was conducted. Complainant was not denied an opportunity to continue his claim, and in accordance with Personnel Policy 326 he was not required to wait before moving his claim to the next level of review if he felt the investigation was taking too long.

6. The damages sought are inappropriate.

Complainant has not demonstrated that any action of Mr. Van Ryckeghem has damaged his professional reputation or career, or that Mr. Van Ryckeghem has violated the terms and conditions of Complainant's employment. In the absence of damages, the issue of whether any irregularities or improprieties have occurred is irrelevant.

There is no evidence that the Bank or its officers have acted improperly towards Complainant. Thus, the Bank is under no obligation to compensate him for any anguish he may have suffered.

The Statute of the Tribunal provides that the parties must bear their own costs. Therefore, the request for attorney's fees is inappropriate.

#### **AND WHEREAS:**

For the reasons given below, there is no need for the Tribunal to rule on the propriety of the econometric procedures to which Complainant objects.

Having reviewed the evidence, the Tribunal cannot identify an injury suffered by Complainant that may be attributed to the Bank through actions of one of its officials acting as supervisor of the Complainant.

Complainant received at all times his evaluations (seven in all) and merit pay, which were reflected in salary increases.

There is no evidence that the presence of a particular official in Complainant's line of supervisors may have been decisive in determining the outcome of a performance evaluation (or merit pay) to which Complainant may object.

Complainant has not shown that failure to share his views about matters within his specialty may have harmed him professionally. Nothing indicates that the Bank, through one of its officials, may have attributed to Complainant work that was deficient or wrong. Indeed, there is no evidence that Complainant was penalized for refusing to use an econometric model he disagreed with.

**THEREFORE:**

The Tribunal finds no violation of the employment terms of Mr. Frank S. Orlando and, since there is no injury, there is no possibility of recovering damages. Consequently, the claims are dismissed.

Washington, D.C., 12 February 1993.

Alfredo Martínez-Moreno  
President.

Thomas Buergenthal.

Ildélio Martins.

Baltasar Cavazos-Flores.

Guillermo López-Guerra.

Hernán Sáenz-Jiménez  
Executive Secretary.