

Decision No. 109

Jennifer Alleyne, Olivia S. Boyd, John W. Huang,
Carol M. Knorr, Irene R. Landwehr, Constance M. Lawrence,
Sun K. Park, Miguel B. Quintos, Mary L. Slinkard
Hilda Villanasco and Nina Wong,
Applicants

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of P. Weil, President, A.K. Abul-Madg and E. Lauterpacht, Vice Presidents, R. A. Gorman, E. Jimenez de Arechaga and Tun Suffian, Judges, has been seized of eleven applications, received between October 19, 1990 and December 5, 1990, by Jennifer Alleyne, Olivia S. Boyd, John W. Huang, Carol M. Knorr, Irene R. Landwehr, Constance M. Lawrence, Sun K. Park, Miguel B. Quintos, Mary L. Slinkard, Hilda Villanasco and Nina Wong, against the International Bank for Reconstruction and Development. Twenty-four other associated applications were filed on the same date. The President made certain procedural decisions, the last of which required that the above eleven applications be grouped and decided together. The usual exchange of pleadings took place. The Tribunal decided to refuse the request of the Applicants for certain preliminary measures relating to the provision of information. The Staff Association made a request and was permitted by the President to file briefs as an amicus curiae in the thirty five cases. The cases were listed on February 26, 1992.

The relevant facts:

2. Before the Job Grading Program in 1985 the Applicants were employed by the Respondent as follows:

Applicant Alleyne as Staff Assistant at level G (corresponding to level 16 in the new structure);

Applicant Boyd as Senior Staff Assistant at level H (corresponding to level 17 in the new structure);

Applicant Huang as Senior Sanitary Engineer at level N (corresponding to level 26 in the new structure);

Applicant Knorr as Staff Assistant at level G (corresponding to level 16 in the new structure);

Applicant Landwehr as Staff Assistant at level G (corresponding to level 16 in the new structure);

Applicant Lawrence as Secretary at level E (corresponding to level 15 in the new structure);

Applicant Park as Staff Assistant at level G (corresponding to level 16 in the new structure);

Applicant Quintos as Disbursement Officer at level L (corresponding to level 23 in the new structure);

Applicant Slinkard as Staff Assistant at level G (corresponding to level 16 in the new structure);

Applicant Villanasco as Staff Assistant at level G (corresponding to level 16 in the new structure);

Applicant Wong as Staff Assistant at level E (corresponding to level 15 in the new structure).

As a result of the Job Grading Program which comprehensively reassessed the contents of positions

throughout the Bank the Applicants' positions were downgraded as follows:

- Applicant Alleyne's to level 15;
- Applicant Boyd's to level 16;
- Applicant Huang's to level 24;
- Applicant Knorr's to level 15;
- Applicant Landwehr's to level 15;
- Applicant Lawrence's to level 14;
- Applicant Park's to level 15;
- Applicant Quintos' to level 22;
- Applicant Slinkard's to level 15;
- Applicant Villanasco's to level 15;
- Applicant Wong's to level 14.

By letters, dated September 26, 1985, from the Chairmen of the Job Grading Steering Committee all the Applicants, except Applicants Boyd and Landwehr, were informed that their salaries would continue to be administered within the range of their positions' former level for a two-year period. Applicant Boyd received a similar letter, dated May 29, 1986 and Applicant Landwehr received a similar letter, dated July 24, 1986.

3. After the Tribunal's judgment in Pinto, Decision No. 56 [1988], the Respondent, after consultation with the Staff Association, submitted to the Executive Directors new proposals regarding the "grandfathering" of salaries of those staff members whose positions had been downgraded as a result of the Job Grading Program. Thereafter, the Applicants received a general notice, dated December 9, 1988, from the Vice President, Personnel (VPP) and circulated to all staff which stated that those staff members whose positions had been downgraded as a result of the Job Grading Program would be treated for compensation and review purposes "in the same manner as staff members in the former grade of the position even after the two-year salary grandfathering period has expired."

4. In July 1989 the Applicants received memoranda, dated July 3, 1989, from the Director, Personnel Operations (PEROP), stating that their new salary protection grades for the purposes of salary administration was their former grade (equivalent to the appropriate level in the new system of grading). In 1989 the Applicants' salaries were adjusted within the range of their former grades.

5. In a circular dated August 21, 1989 the Director, Personnel Policy (PPO), announced to the staff that as a result of the implementation of the Revised Compensation System on May 1, 1989, the Executive Directors had taken some important decisions concerning the protection of salaries of staff downgraded either because of a job reevaluation or the Reorganization. He stated that, in particular, downgraded staff would for two years have their salaries administered within the salary range of their former grade; if, after two years, their salaries were within the range of their lower grade, their salaries would be administered within that range; if at the end of the two-year period or thereafter, their salaries exceeded the maximum of their new and lower grade range, and if they were fully satisfactory performers, they would receive the minimum increase as established under the Revised Compensation System. The Director also stated that Staff Rule 5.06 would be amended to reflect these decisions.

6. After the 1990 salary review the Applicants received Personnel Action forms, dated May 31, 1990, in which their percentage salary increases in the 1990 salary review were indicated as being 4.2%, which was the minimum increase for satisfactory performance at all levels.

7. The Applicants requested administrative review of the salary adjustment decisions but these requests were denied by the Respondent by memoranda, from the Director, Personnel Policy (PPO). These memoranda were dated between July 24 and October 18, 1990.

8. By memorandum, dated August 17, 1990, Applicant Boyd filed an appeal with Appeals Committee. In a report, dated October 26, 1990, the Appeals Committee declined to hear the case, because the decisions being challenged were decisions of the Executive Directors. The Respondent had intimated in its memoranda

denying administrative review that the Applicants could proceed directly to the Tribunal, if they so desired.

The Applicants' main contentions:

9. The policy and practice of “grandfathering” the salaries of the Applicants at their former grade levels during the four years 1985 to 1989 which was confirmed by memoranda from the VPP made continued “grandfathering” of their salaries an essential condition of employment for the Applicants, which could not be unilaterally changed by the Respondent.

10. Limitation of “grandfathering” of salaries to two years is a violation of the essential condition of employment entitling staff members to periodic salary increases in which various relevant factors had to be taken into account. This was particularly so because the salaries of the Applicants could reach a level where they would be frozen. The fact that the “minimum increase” was given to those whose salaries were at or near the top of their range and might otherwise have been frozen does not change the situation.

11. Principle of Staff Employment 6.2(c) which requires the Respondent to “institute and maintain programs which permit the [Bank] to reward staff members according to their performance and contribution to the [Bank's] objectives” was also violated because the limitation of the “grandfathering” of salaries was inequitable.

12. The limitation of the “grandfathering” of salaries was retroactively enforced.

13. There was discrimination between the Applicants and those staff members who earlier had been in the same grade as the Applicants but had not be downgraded. The difference in their positions was based on pure chance and was unjustifiable.

14. The failure to continue to “grandfather” the Applicants' salaries violates the Principles of Staff Employment which require that the Respondent establish programs to reward staff performance, because, though their performance continued to be satisfactory or better, their grades had been lowered and they were subjected to a mechanistic system of compensation adjustment which did not promote performance at a high level by downgraded staff members.

15. The Applicants requested the following relief:

- (a) specific performance by the Respondent of its contractual commitments to the Applicants to administer the Applicants' salaries within the range of the Applicants' former grade levels prior to the Respondent's downgrading of the Applicants' positions in 1985 for the convenience of the Respondent;
- (b) specific performance by the Respondent of its obligation and duty periodically to review the Applicants' salaries taking into account relevant factors;
- (c) in the event that it is determined that compensation to the Applicants is appropriate under the circumstances, payment of compensation in an amount equal to the adjustment by which the Applicants' salaries could have been increased in 1990, if their salaries had been administered within the grade range of their positions prior to downgrading, plus the related adjustments in pension and other benefits;
- (e) reasonable interest on the amounts withheld from the Applicants plus costs and attorneys fees incurred by the Applicants and the World Bank Group Staff Association, which has played a crucial role in the support of these applications in terms of providing guidance and legal support to the Applicants as well as in preparing an amicus curiae memorandum for the benefit of the Tribunal;
- (f) continued administration of the Applicants' salaries within the adjusted ranges of their former grades;
- (g) enunciation by the Tribunal of the extent to which the basis for its decisions in the Applicants' cases is generally applicable to downgraded staff;
- (h) a requirement that the Respondent inform the Applicants and any other affected staff on a timely basis of their rights related to the downgrading of their positions; and

(i) a requirement that the Respondent modify the Staff Rules in accordance with the Tribunal's decision following consultations with and agreement of the World Bank Group Staff Association.

The Respondent's main contentions:

16. No essential condition of employment had been established that staff members whose positions had been downgraded should have their salaries administered permanently within the range of the former grades of their positions.

17. Though the announcement by management of the decision of the Executive Directors to continue the administration of salaries of staff members whose positions had been downgraded within the range of their former grades did not contain an explicit temporal limitation, it also did not explicitly state that such administration would continue indefinitely and, therefore, could not be construed to give such staff members a right permanently to have their salaries administered within the range of their former grades.

18. No practice had been established which could not be changed by the manner in which the salaries of the Applicants had been administered for four years after their positions had been downgraded. The Respondent only had a policy which was subject to change.

19. The Applicants received the minimum salary increase in 1990 when their salaries were administered for the first time within the range of their current lower grades. This was not the result of a "mechanistic approach" to salary administration and was not a violation of the Respondent's obligations in regard to the adjustment of salaries. The salary administration system was such that their salaries would never reach the maximum of their current grades when they would be entitled only to the minimum salary increase for satisfactory performance.

20. The policy of the Respondent relating to the administration of salaries of staff members whose positions had been downgraded in 1985 was changed after careful consideration, after consultation with the Staff Association, prospectively and not retroactively, and in a reasonable manner so that there was no abuse of discretion.

21. No declaratory effect should be given to the decision of the Tribunal in the event that it is favorable to the Applicants, because it is not the function of the Tribunal to give advisory opinions or to do other than render a decision in the case before it which is binding between and only applicable to the parties.

22. No attorney's fees or costs should be awarded. The Applicants did not incur any nor has a statement of expenses been filed.

Considerations:

23 The Applicants were employed as staff members of the Bank at the time of the 1985 Job Grading Exercise, when the positions held by them were reevaluated and allocated to a lower grade. Pursuant to Staff Rule 5.09, the Applicants' salary increases effective May 1986 and May 1987 were "grandfathered" so as to be calculated within the salary range of their previous higher-rated position. Despite the terms of that Staff Rule which would have terminated such grandfathering after two years, the Respondent announced in a desk-to-desk circular (FYI/88/114) dated December 9, 1988 and signed by the Vice President, Personnel, that staff members downgraded in the Job Grading Exercise would have their salaries administered at their previous grade level "even after the two-year salary grandfathering period has expired," and that such salary calculation was to be retroactive to May 1, 1988. On July 3, 1989, the Applicants were informed in personalized memoranda from the Director, Personnel Operations, that their salary protection, hitherto keyed to their alphabetical grade level would thereafter be keyed to their corresponding numerical grade levels which were the product of a revised compensation system that took effect on May 1, 1989. The Applicants' 1989-90 salary was thus administered yet again within their previous higher salary range.

24. On August 21, 1989, through another desk-to-desk circular (FYI/89/88), this one from the Director,

Personnel Policy Department, the Applicants were informed that salary grandfathering would end, effective the next salary period, and that thereafter staff members holding downgraded positions would have their salary administered within their new lower grade level. The Applicants' 1990 increase was therefore calculated under this revised compensation system, and their salary increase was less than they would have received had it been administered within their former higher grade level.

25. The facts of the Applicants' cases, and the claims put forward in their pleadings, are in all pertinent respects, save one, identical to those in Abdi et al., Decision No. 108 [1992], where the Applicants were also downgraded in the course of the 1985 Job Grading Exercise. In Abdi et al., the Tribunal rejected the claim that the termination of salary grandfathering after two years, and the administration thereafter of the Applicants' salary within their new lower grade level, were violations of the terms of their contract and the conditions of their employment.

26. The singular factual difference of pertinence that must be assessed here is that the 1989-90 salary of each of the Applicants in this case was above, at, or very slightly below the maximum of their new lower salary range, so that their salary increase could not be fully administered within that range. Accordingly, pursuant to the terms of revised Staff Rule 5.06, § 3.01, their 1990 salary increase was set by the Respondent at 4.2%, the minimum salary increase for a staff member performing satisfactorily. The Respondent had no discretion to award a salary increase greater than 4.2% (although it could have awarded less, had the performance of any of the Applicants been less than satisfactory), unlike the Applicants in Abdi et al. whose 1990 salary increase could be administered fully within their lower grade level such that the percentage increase could have been (and, in all instances but two, in fact was) in excess of 4.2%.

27. As the Tribunal has already held in Abdi et al., the termination of salary grandfathering, beginning in May 1990, did not violate any express provision in the Applicants' contract of employment, for the Respondent cannot reasonably have been found to have given an assurance, expressly or impliedly, that salary grandfathering for all staff members downgraded in the 1985 Job Grading Exercise was to continue indefinitely.

28. The Tribunal also rejected the contention of the Applicants in Abdi et al. that the Respondent's termination of salary grandfathering constituted in effect a unilateral modification of an essential right of the Applicant as defined by the Tribunal in de Merode, Decision No. 1 [1981]. The Tribunal concluded that neither a consistent and longstanding practice, nor confirmatory statements manifesting an obligation, gave rise to a duty on the part of the Respondent to continue salary grandfathering indefinitely.

29. Moreover, to the extent that staff members have an essential right to "periodic salary increases reflecting changes in the cost of living and other factors," de Merode, the Respondent did not fail to comply with that essential condition of their employment. It is true that the Applicants' 1990 salary increase in Abdi et al. could have exceeded, and most did exceed, 4.2%, while the salary increase of the Applicants here was set at that percentage and could not exceed it. Nonetheless, the Tribunal concludes here as well that the Respondent did not improperly modify any essential condition of the Applicants' employment. The reasons are those that the Tribunal has already set forth in Klaus Berg (No. 2), Decision No. 99 [1990], and confirmed as well in Maningas, Decision No. 107 [1992], in which the 1990 salary of the Applicant there, who had been downgraded in connection with the 1987 Bank-wide Reorganization, was limited by the 4.2% minimum salary increase for staff members performing satisfactorily. All of the Applicants here did receive a salary increase in 1990 of 4.2%, as provided by Staff Rule 5.06, § 3.01, and in each case this reflected a discretionary judgment by the Respondent that their performance was satisfactory.

30. Finally, for the same reasons as those set forth in Gabriel, Decision No. 106 [1992], Maningas and Abdi et al., the Tribunal concludes that the Respondent's decision regarding the Applicants' 1990 salary increase did not violate the Principles of Staff Employment.

31. In view of the Tribunal's disposition of the merits of the Applicants' claim to indefinite salary grandfathering, it is unnecessary to consider the request of the Staff Association, as amicus curiae, that the Tribunal direct the Respondent to extend to all staff members similarly situated any affirmative relief granted to the Applicants.

Decision:

For the above reasons the Tribunal unanimously decides to dismiss the Applications.

Prosper Weil

President

C. F. Amerasinghe

Executive Secretary

At London, May 8, 1992