

Decision No. 161

Yolanda M. Arellano (No. 2),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Lauterpacht, President, R.A. Gorman and F. Orrego Vicuña, Vice Presidents, and P. Weil, A.K. Abul-Magd, Thio Su Mien and Bola A. Ajibola, Judges, has been seized of an application, received on February 14, 1996, by Yolanda M. Arellano against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on May 16, 1997.

2. The Applicant claims that her position was improperly declared redundant in 1994--a claim which requires a close scrutiny of the work performed by the Applicant in her original position and the work allocated to the positions which she claims eventually replaced it.

THE RELEVANT FACTS

3. The Applicant received her first regular appointment with the World Bank on May 23, 1977. On March 12, 1990, the Applicant was reappointed as a regular staff, level 14, in the Cofinancing and Financial Advisory Services Department (CFS). The Applicant was later transferred to the Cofinancing and Financial Advisory Services Department, Private Sector Development and Privatizing (CFSPS), where she was promoted to a level 15 Senior Staff Assistant and remained until her position was declared redundant effective September 1, 1994.

4. The Applicant's performance appraisals show that her work was well regarded by her supervisors. Her duties and responsibilities included, but were not limited to, consultant administration, coordination of mission travel, as well as secretarial and administrative support.

5. By memorandum from the Manager, CFSPS, dated July 26, 1994, all CFSPS regular and long-term staff and consultants were provided with a report on the reorganization of support services entitled "Realigning the Provisions of Support Services" (hereinafter "the Report").

6. In the Report, it was indicated that support services was an area that required urgent examination for improvement in terms of efficiency and effectiveness. A "Work Review" had been undertaken over a period of sixteen weeks, which included a qualitative questionnaire to all staff, Groupware sessions for all staff, informal discussion with most high level and some support level and research assistant staff, a review of support service reorganizations in the Bank and a review of "best practices" in the consulting industry.

7. The Report noted that support level staff were "generalists" in the way they delivered services, as they were expected to undertake mainly secretarial, administrative and clerical tasks. This posed several problems, including: (1) excessive turnaround time for simple and urgent tasks; (2) significant reduction in the accuracy level in output; (3) significant reduction in the effective capacity of the support level staff; (4) infrequent tasks taking an unacceptably long time; and (5) clerical tasks being given low priority. The Report further indicated that the current system of having "generalists" was antiquated and that there needed to be a better allocation of support staff as well as improved accountability.

8. In the light of the Report's findings, it was recommended that support services adopt a "tiered" specialist approach, whereby one group of specialists served the entire group and the other served subgroups of high level staff. The group-wide specialists would be used for all administrative tasks, document production and desk-top publishing, telephone answering, and office management. The second tier of specialists would undertake clerical tasks and coordinate support tasks for subgroups of high level staff.

9. The Report provided a description of the new positions. In pertinent part, the Staff Assistant Responsible for Administrative Support Functions (level 14/15) was to be responsible for: travel support for all divisional staff and short-term consultants; the time recording system for all divisional staff; consultant administration for short-term consultants; the updating and maintaining of the consultant referral service database; and reconciling monthly telephone bills. The Staff Assistant Responsible for Document Processing/Typing (level 13/14) was to be responsible for: document enhancement; desk top publishing, final editing, proof reading, and formatting; the production of tables, graphs, and pictures from handwritten originals; the preparation of transparencies; liaising with the Bank's art department, print shop, and publications department as appropriate; the initial trouble shooting for "DTP" and other software used in the division, including WORD, PageMaker, Canvas, and Excel; ad hoc tasks as assigned by the Administrative Secretary; and assisting Associates with task-related documents. In addition to the two Staff Assistant positions, four clerical positions were created which were to be filled by temporary staff.

10. In a memorandum to the Director, Personnel Management Department (PMD), of July 26, 1994, the Acting Vice President, CFS, addressed the staffing implications of the recommended reorganization of support services. He noted, among other things, that the proposal would result in six regular/fixed-term Staff Assistant positions being abolished and that two new Staff Assistant positions would be created -- Staff Assistant-Administrative (level 14/15) and Staff Assistant-Document Processor (level 13/14). He indicated that the staff currently occupying the six positions, including the Applicant, would be eligible to apply for the two newly created Staff Assistant positions if their current levels were the same or higher than the levels of the new positions. Pursuant to Staff Rule 7.01, paragraph 8.03, he requested the Director's agreement that the employment of the six staff members occupying the Staff Assistant positions be declared redundant.

11. The Applicant did not apply for either of the two post-reorganization Staff Assistant positions. On August 18, 1994 the Chief Personnel Officer formally advised the Applicant that her employment had become redundant in accordance with Staff Rule 7.01, paragraph 8.03, effective September 1, 1994. The memorandum also indicated that the World Bank Job Search Center (JSC) would assist the Applicant in finding a new position and that, should her search prove unsuccessful, she would receive further sixty-day notice that her employment was subject to termination under Staff Rule 7.01.

12. The record reflects that the Applicant unsuccessfully applied for a number of other vacant positions within the Bank. On February 22, 1995 the Chief, PMD, outlined to the Applicant the terms and conditions to the August 18, 1994 notice of redundancy.

13. On November 18, 1994 the Applicant made a formal request for administrative review of the decision making her position and the positions of all other support staff in CFSPS redundant. On December 6, 1994 the Vice President, CFS, indicated that he concurred with the redundancy determination.

14. On February 8, 1995 the Applicant filed a Statement of Appeal to the Appeals Committee. On November 8, 1995 the Appeals Committee recommended that the Applicant's requests for relief be denied. By letter dated November 13, 1995 the Senior Vice President, Management and Personnel Services, informed the Applicant that he accepted the Committee's recommendation.

THE APPLICANT'S MAIN CONTENTIONS

15. The Applicant's position was not redundant under Staff Rule 7.01, paragraph 8.02. The requirements of the Applicant's pre-reorganization Senior Staff Assistant position and the requirements of the post-reorganization Staff Assistant Responsible for Administrative Support Functions, level 14/15, position were essentially the

same, and the Applicant had the skills and training necessary to fulfill the new position requirements.

16. Assuming that the Applicant's position was declared redundant under Staff Rule 7.01, paragraph 8.02(d), the Respondent violated paragraph 8.03 by failing to take into consideration its listed factors.

17. The decision to declare the Applicant's position redundant was not taken in the interests of efficiency, but was motivated by a desire to terminate her employment and was an abuse of authority.

18. The Respondent abused its discretion in abolishing the Applicant's position without first reassigning the Applicant to one of the newly created post-reorganization positions, namely, the position of Staff Assistant Responsible for Administrative Support Functions, level 14/15. Administrative guidelines do not require, as a condition of reassignment, that the displaced staff member apply for a position.

19. The Respondent did not encourage the Applicant to apply for either of the two post-reorganization Staff Assistant positions. Failure to present neutrally to the Applicant the option of applying for either of the two Staff Assistant positions for which she was qualified was a breach of the Respondent's duty to act in good faith.

20. The Applicant's pleas are as follows:

(i) reinstatement in a regular position equal in grade and salary to her original position, plus payment of compensation; or

(ii) a fixed-term appointment for three years, plus payment of compensation; or

(iii) if neither of the above, then waiver of the restriction preventing the Applicant from working for the Bank as consultant, or through a local contractor or temporary agency, plus payment of compensation; and

(iv) punitive damages for anguish and stress.

THE RESPONDENT'S MAIN CONTENTIONS

21. The Applicant's former position was properly declared redundant under the Staff Rules and the redundancy decision was not an abuse of discretion.

22. The Applicant's former position was abolished under Staff Rule 7.01, paragraph 8.02(b), not reduced under paragraph 8.02(d).

23. The duties required in the two post-reorganization Staff Assistant positions are different from those of the pre-reorganization "generalist" Staff Assistant positions.

24. As the Applicant's position was abolished, not reduced, and because the Bank has no duty to reassign a staff member before the abolition of that staff member's position, the Respondent had no duty to place the Applicant in a new position. The Respondent's only obligation was to assist staff in seeking reassignment prior to separation and after a finding of redundancy.

25. The Respondent acted properly in the interests of efficient administration and with no improper motive, as the position duties had changed and because there is no credible evidence of improper motive.

26. The Respondent provided notice to the Applicant regarding the redundancy determination that was consistent with the Staff Rules.

CONSIDERATIONS

27. The central issue in this case is whether the Respondent failed to observe the conditions of employment of the Applicant by declaring her position redundant under Staff Rule 7.01 and by failing to assign her to one of the new jobs created as a result of the reorganization of support services in CFSPS. The Applicant contends that both the declaration of redundancy and the failure to assign her to one of the new jobs constitute an abuse of discretion by the Respondent.

28. Although the notification of August 18, 1994 did not specify the particular provision of Staff Rule 7.01, paragraph 8.02, under which the Applicant's position was declared redundant, the Respondent, in its Answer to the Tribunal, refers to paragraph 8.02(b). This provides that "employment may become redundant when the Bank Group determines in the interests of efficient administration that ... a specific position in an organizational unit must be abolished."

29. The Applicant contends that her position of Senior Staff Assistant was not really abolished, but that the number of such positions was only reduced and that, consequently, the Respondent should have selected from among the six staff assistants the ones best qualified to occupy the remaining positions in compliance with paragraph 8.03 of Staff Rule 7.01. This stipulates that: "[w]here positions are reduced in number, the selection of staff members whose employment is redundant shall be made on the basis of managerial judgment about the skills needed by the Bank...."

30. The Respondent's understanding of the outcome of the reorganization was that six positions within the Division, including that of the Applicant, would be abolished and that two new positions -- that of Staff Assistant-Administrative (level 14/15) and Staff Assistant - Document Processor (level 13/14) -- would be created. This understanding was recorded in a memorandum of July 26, 1994 from the Acting Vice President, CFS, to the Director, PMD. The same was stated in the letter of August 18, 1994 from the Chief Personnel Officer to the Applicant where he refers to "the decision to abolish the position to which you have been assigned in CFSPS."

31. The question of identifying the specific provision of Staff Rule 7.01 under which the position of the Applicant was declared redundant is of considerable importance, since the Respondent's obligation vis-à-vis the staff member under paragraph 8.02(d) of Staff Rule 7.01 is different from that under paragraph 8.02(b). In situations where positions are reduced in number, the selection of staff members whose positions are to be declared redundant under Staff Rule 7.01, paragraph 8.02(d), must take into account certain elements specified by Staff Rule 7.01, paragraph 8.03, namely:

- a) the performance of staff members;
- b) whether the abilities and experience of staff members can be used elsewhere in the Bank Group; and
- c) the existence of volunteers for termination who are willing to accept severance payments pursuant to paragraph 8.08.

On the other hand, if the declaration of redundancy is based on paragraph 8.02(b), the right to reassignment of staff members whose positions were abolished is determined by the general principles governing reassignment of staff members whose employment is terminated.

32. The question thus arises in this case whether the new positions that were created were in fact different from the one previously occupied by the Applicant or whether, on the other hand, they were in fact essentially the same.

33. It appears that, in spite of certain elements common to the pre- and post-reorganization positions, there are material differences between them. The pre-reorganization position required its occupant to perform a number of diversified tasks and required him or her to report directly to a higher level staff member. On the other hand, the two post-reorganization positions require the staff member to perform a very limited number of tasks of the same nature, for the entire work unit, under the supervision of an administrative secretary.

34. The Applicant's contention that she possesses the qualifications required for properly carrying out the responsibilities of the new positions is not conclusive in determining that the new positions are merely a continuation of the positions declared redundant. It will often be the case that some duties will be carried over from an abolished position to a newly created one, and that a staff member will be able to demonstrate the needed skills in the job application process. But that does not mean that the two positions are the same. The Respondent itself, while insisting on the different nature of the new positions, did not exclude the possibility that some of the support staff whose positions were abolished might still have been qualified to occupy the new positions.

35. The Tribunal concludes that the two positions were sufficiently different to justify the classification of the action in relation to the original position as an "abolition" of a post rather than as a reduction. The Applicant's position was therefore properly treated as abolished under Staff Rule 7.01, paragraph 8.02(b). The Respondent was not required to place the Applicant in one of the newly created positions.

36. The Applicant maintains that by declaring her position redundant, the Respondent did not act in the interests of efficient administration, as required by Staff Rule 7.01, paragraph 8.02, but was motivated by a desire to terminate her employment.

37. The record, however, does not substantiate the Applicant's contention. It shows rather that the reorganization of the unit was motivated by a desire to enhance the effectiveness of support services and to respond to various complaints from high level staff and from the support staff as well. To carry out this task, the Respondent in 1994 commenced an extensive study of the situation relating to support services and appointed a Task Manager to manage the study. A work review team composed of seven staff members from CFSPS was constituted. The team was assisted by external consultants. The study culminated in a detailed report of manifestly high professional and scientific quality. The recommendations made in the Report were subsequently endorsed and implemented by Management.

38. Nowhere in the record is there any evidence of prejudice or of any motive other than the desire to improve the quality of support services. The Applicant's PPRs reveal the appreciation and recognition by her supervisors of the good quality of her work. The Tribunal, therefore, does not accept the Applicant's allegation that the whole exercise was motivated by a desire to get rid of the support staff of CFSPS, including the Applicant.

39. The Applicant also contends that the Respondent abused its discretion by abolishing her position without first taking all appropriate steps to reassign her to one of the newly created post-reorganization positions.

40. The record shows that when the Manager met with the Applicant in August 1994, he explained to her that adoption of the Report's recommendations would mean that her position would be abolished and that this might, in turn, lead to termination of her employment with the Respondent. The Manager added that the Applicant could apply for either of the two new positions created as a result of the reorganization, but she did not do so.

41. The record also shows that the Respondent, in fact, genuinely tried to assist her in the search for another position. The Applicant met for this purpose several times with the job counselor and with the JSC personnel officer. She applied for six positions but she did not compare favorably with the other competing candidates. The fact that the Applicant could not find another position within the Bank Group does not imply any failure on the part of the Respondent to assist the Applicant before terminating her employment.

42. The obligation of the Respondent, in this respect, is not to reassign staff members whose employment was declared redundant under Staff Rule 7.01 but to try genuinely to find such staff members alternative positions for which they are qualified. It is an obligation to make an effort; it is not an obligation to ensure the success of such effort.

43. Having regard to the above, the Tribunal concludes that the Respondent did not act unfairly or arbitrarily in declaring the position of the Applicant redundant as a result of the structural changes introduced on the basis of the Report. Nor did the Respondent act arbitrarily or in a discriminatory manner in its treatment of the Applicant after declaring her position redundant.

DECISION

For the above reasons, the Tribunal unanimously decides to dismiss the application.

Elihu Lauterpacht

/S/ Elihu Lauterpacht
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At London, England, June 10, 1997