

Decision No. 247

B,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on December 13, 2000, by B against the International Bank for Reconstruction and Development. The Applicant's request for anonymity was granted by the Tribunal, pursuant to an Order of March 2, 2001. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Francisco Orrego Vicuña (a Vice President of the Tribunal) as President, Thio Su Mien (a Vice President of the Tribunal), Bola A. Ajibola and Elizabeth Evatt, Judges. The usual exchange of pleadings took place. The case was listed on June 28, 2001.

2. This case concerns a complaint by the Applicant that the Bank abused its discretion in not extending her contract or regularizing her position. Issues of discrimination, particularly on medical grounds, and unfair evaluation, as well as questions of access to the Bank's buildings, have also been brought to the Tribunal in the context of this application.

3. The Applicant joined the Bank in October 1992 and her contract ended on November 30, 1999. The Applicant held first a full-time Temporary appointment as a Research Assistant in the Energy Sector Management Assistance Programme. Later she had a similar type of appointment as a Projects Assistant with the Europe and Central Asia Country Department III, Human Resources Division. After joining in 1997 the Human Development Sector Unit within the same Department (ECSHD), she accepted on June 12, 1998 a Long-Term Consultant appointment which was due to expire on June 30, 1999.

4. The Applicant had very positive performance evaluations from 1992 through 1997. The situation was not the same for the 1998-1999 review period. In 1998, she committed herself to a heavy work program on twelve different projects, thereby doubling the commitment considered full-time work. Indeed, it appears that her commitment ranged from 72 to 88 staff weeks, while 41 staff weeks was considered a normal full-time schedule. At her request, and after the first manifestation of health problems in 1998, her work program was reduced, a measure that was accepted by the Applicant.

5. After a mission away from headquarters in late September and early October 1998, the Applicant learned that discussions were being held to reduce her work program further. In the Applicant's view, this was intended to accommodate a Regular staff member who was joining Operations. On the basis of this belief, the Applicant, on October 29, 1998, submitted in protest her resignation effective immediately. The Applicant's manager believed that her decision was ill-advised, and he expressed his concern about the Applicant's well-being to the Bank's staff psychologist. Although her manager accepted her resignation on November 2, 1998, that same day, after discussions between the manager, the Applicant and the Bank's staff psychologist, the Applicant rescinded her letter of resignation and accepted an offer made by her manager to take extended leave in her home country.

6. While on leave, the Applicant fell ill and had to spend three months recuperating in her home country on a short-term disability leave granted by the Bank. Upon returning to work on February 16, 1999, she was informed that her responsibilities had been reassigned to other staff and that a new work program would be defined for her.

7. By that time, ECSHD was beginning a process of phasing-out its seven Long-Term Consultant appointments, including the Applicant's, whose contracts were due to expire in 1999 and 2000. It has been explained by the Respondent that this process was related in part to the Bank policy stated in Staff Rule 4.01, as revised effective July 1, 1998. Under paragraph 2.01(f) of this Rule, no new Long-Term Consultant appointments were to be made after June 30, 1998, and under paragraph 6.01(b), no appointment of this type could be extended beyond December 31, 2000. The Bank has also explained that the phasing-out responded in part to the budgetary constraints in ECSHD. Three Regular positions would be established to replace the Long-Term Consultants.

8. As a result of the above arrangements, the Applicant was notified on March 14, 1999, that her contract would be extended until September 15, 1999, and that it would not be extended or renewed thereafter. This extension was specifically made to provide the Applicant with six months' notice of the termination of her contract. After various requests from the Applicant, the contract was, however, extended again until October 30, 1999, and once more until November 30, 1999, this last extension to accommodate her unused annual leave. In all, the Applicant was given over eight months of advance notice that her contract would expire and would not be renewed.

9. In the March 14, 1999 notification, the Applicant was also informed of ECSHD's intention to recruit for three Regular positions, and it was noted that she might be interested in applying for the positions once they were posted. The Applicant in fact applied for two Operations Analyst positions in May. Sixty-two candidates applied for these positions, and an Operations Officer position, and a list of fifteen candidates was made for further consideration. The Applicant was included in the list at the very bottom, but when the list was further reduced to nine names she was not retained. The Applicant was unsuccessful in securing another position.

10. While the selection process was under way, the Applicant's performance review for the period January 1998 through March 1999 was also being finalized. In such review, her performance was rated below that of prior evaluations. The Bank stated that her performance evaluation, however, was not included in the file concerning her application for the Regular positions.

11. As the expiration of her contract was nearing, the Applicant requested in October 1999 an administrative review of the decision not to extend that contract or regularize her appointment. The Applicant claimed that because of a wrong perception of her medical condition, she had been discriminated against by a reduction in her work program, a poor performance evaluation, non-objective consideration for regularization, and "denial of [her] contract despite continuing need for [her] skills." The administrative review concluded that the Applicant's claims were without merit. An appeal followed and the Appeals Committee recommended that her requests for relief be denied.

12. A principal contention of the Applicant before this Tribunal is that upon joining ECSHD, she had been led to believe that regularization of her position would take place. This, the Applicant argues, was evident from discussions with management and confirmed by, among other things, positive performance evaluations, re-classification, non-acceptance of her resignation, encouraging her to apply for a Regular position, and extensions of her contract.

13. It is a fact that the Applicant frequently raised the issue of her regularization; however, she has presented no tangible evidence that she was ever offered assurances to this effect. Rather to the contrary, the record indicates that she was informed that the contract would come to an end and that extensions were only for a limited time and purpose.

14. The Tribunal has held time and again that a fixed-term contract does not give a right to its renewal or extension or to the conversion to a permanent position. (*Carter*, Decision No. 175 [1997], para. 13; *McKinney*, Decision No. 187 [1998], para. 10.) While the existence of something in the surrounding circumstances could give rise to such a right (see *Mr. X*, Decision No. 16 [1984], para. 38; and *Carter*, *supra* para. 13), this is not the situation in the present case.

15. The Applicant also contends that the decision not to extend her contract beyond November 30, 1999, was discriminatory as it was not based on a business rationale. She argues in this connection that staff numbers in ECSHD have increased, the projects on which she worked are still in the work program and there is a continued demand for her skills. The record, however, is clear to the effect that the Applicant was not singled out in a discriminatory manner, as the governing criteria for phasing-out Long-Term Consultants were explicitly laid down in the Staff Rules. The Staff Rules applied to all Consultants in that category. As a result, other Long-Term Consultants also saw their contracts come to an end. As was held by the Tribunal in *Lysy* (Decision No. 211 [1999], para. 71), a “finding of improper motivation cannot be made without clear evidence.” Such evidence is absent in this case.

16. The Applicant relates this allegation of discrimination in particular to her medical condition. The Applicant believes that her colleagues had a misperception of her situation and considered her affected by a medical disability. This would be in her view the reason why her work program was reduced and why she was not a preferred candidate for the available Regular positions.

17. The evidence, however, does not corroborate the Applicant’s assertions in this respect. The reduction of her work load was initially requested by the Applicant herself when she realized that she had over-committed her time. In fact, the record suggests that the excess work load caused, or contributed to, her illness. Moreover, the Respondent’s explanation as to why the Applicant’s work assignments had been distributed among other staff while she was away (i.e., that there was uncertainty as to when and if she would return to the Bank) is quite plausible. While it is arguable that a greater effort could have been made to accommodate the Applicant in a new work program when she returned to the Bank, the fact that this was not done cannot be considered an abuse of discretion. It is often the situation that staff members may encounter difficulties in creating a full work program when they rejoin an organization after an extended absence, especially when there are uncertainties as to the length of the absence.

18. It is also important to note in this connection that the Applicant’s manager was informed of the diagnosis only after the Applicant’s return from leave. The need to redistribute her work program arose from the fact of her absence. Further, her illness was not a factor in the selection process undertaken to fill the available Regular positions. The record shows that it played no role and that the selection was carried out in consideration of the relative strengths of each candidate on a competitive basis. The Applicant’s former manager, who had been directly involved in the prior redistribution of work and who had attended to the Applicant’s needs in 1998 and early 1999, did not participate directly in the short-listing of selected candidates.

19. In turn, the Applicant claims that her illness and absences resulted in an unfair performance evaluation for the period 1998-1999. True enough, the illness and related absences had an impact in the evaluation, but in fact such evaluation did not have any effect on the non-extension of her employment.

20. The performance evaluation was conducted with the usual formalities, with the participation of the manager who supervised her work during that period, and with the usual input from colleagues who had worked with her on various projects. The fact that the views of her colleagues were submitted in confidence is considered by the Applicant to be a violation of due process. The Tribunal notes, however, that the Applicant had the opportunity to comment on the assessments of her performance, which took into account the observations made by her colleagues.

21. The Tribunal has discussed the guarantees of due process in earlier cases. These guarantees refer precisely to adequate warning about criticism of performance or any deficiencies that “might result in an adverse decision being ultimately reached,” and the corresponding opportunity for the staff member to defend himself. (See, e.g., *Samuel-Thambiah*, Decision No. 133 [1993], para. 32.) This requirement was met in the Applicant’s performance evaluation.

22. Neither was the performance evaluation used for the purpose of the selection process. The packages of material for the selection process were prepared by a Senior Human Resources Officer well in advance of the

date on which the performance evaluation was finalized.

23. It must be noted that even if the performance evaluation for 1998-1999 had been as positive as the prior evaluations, this does not change the nature of a fixed-term contract and gives no right to renewal. The Tribunal has held in this respect that “good performance evaluations .... alone cannot suffice to overcome the clear termination date set forth in the contract of employment.... Whenever a person is initially employed by the Bank, it is assumed that his or her performance will prove to be satisfactory.” (*McKinney*, Decision No. 187 [1998], para. 16.)

24. The Applicant also complains that her managers violated her privacy in connection with her medical condition. There is no evidence that this took place. The consultations that her managers had with the Bank’s staff psychologist were based on a genuine concern for her health and well-being. It also appears that the Applicant’s medical condition was brought to the attention of the Bank’s officers by her relatives out of concern for her health.

25. The Tribunal is satisfied that the Bank did everything possible to accommodate the Applicant’s situation, including extending her contract three times in 1999 to address particular needs, making available necessary leave, and undertaking in 1998 the discussions that led to the rescinding of the Applicant’s resignation. This last event is particularly significant since if there had been any intention on the part of the Applicant’s managers to rid themselves of the Applicant, they could have simply accepted her resignation without facilitating or approving its rescission. But what was done was precisely the contrary.

26. The Applicant has also complained that she was not provided with any job-search assistance. It should first be noted that the Bank’s obligation to provide this kind of assistance relates not to the expiration of fixed-term contracts but to cases of termination of service on account of redundancy. (*McKinney*, Decision No. 187 [1998], para. 17.) While the Bank was not under an obligation to provide assistance in this case, such assistance was provided with the personal intervention of the managers, regrettably unsuccessfully. The Tribunal notes that the Applicant expressed her appreciation for such efforts.

27. After filing her application, the Applicant requested the Tribunal to be allowed to introduce a complaint about a subsequent development related to the restriction of access to the Bank Group’s campus. This request was granted by an Order of the Tribunal of May 31, 2001.

28. The Applicant complains that in November 2000, after having been authorized to enter the Bank to retrieve e-mail messages, she was asked to leave on the ground that she lacked proper authorization. It is further complained that as she was making a phone call to clarify the situation, another staff member forcibly hung the phone up and confiscated her driver’s license. In the Respondent’s view, the Applicant had entered the Bank without proper authorization and only after having been found out obtained a pass through the intervention of a former co-worker. However, at no point had she been authorized to access a Lotus Notes account or to print large volumes of documents. Security was asked to retrieve the documents the Applicant was attempting to take out of the Bank.

29. As a result of this incident, the Acting Vice President of Human Resources wrote to the Applicant on December 20, 2000, restricting her access to the Bank Group’s campus and “requiring a Bank Staff escort to accompany you at all times.” The Applicant considers this decision unjustified and based on groundless allegations, arguing further that she has lost money because of being unable to visit the Credit Union’s main office to clarify discrepancies in account statements.

30. In the Tribunal’s view, it would be a reasonable security measure in certain circumstances to deny or restrict access of a staff member to the Bank’s buildings or to a specific office, or to condition the access to the availability of an escort. The Tribunal has held that access to the Bank’s buildings is an issue connected with Bank security. (*Dambita*, Decision No. 243 [2001], para. 27.) The decision by the Acting Vice President of Human Resources in this case is not objectionable. Further, the Respondent has explained that the Applicant may visit the Bank and the main Credit Union office with a Bank escort, and that she has unrestricted access to

branches of the Credit Union in other buildings not affected by the decision.

31. What the Tribunal cannot condone is the attitude of one staff member to hang up forcibly the phone being used by the Applicant, an allegation which, if proven, would be most distressing. There is no firm evidence, however, to substantiate this incident. There is, however, convincing evidence about an equally distressing event, which is the confiscation of the Applicant's driver's license by the same staff member. Although the driver's license was returned, this was clearly an inappropriate and unacceptable measure, which was acknowledged as such when representatives of the Legal Department and Human Resources advised the ECSHD office manager to return the license to the Applicant.

### **Decision**

For the above reasons, the Tribunal unanimously decides:

- (i) to dismiss the application, except with respect to the complaint concerning the confiscation of the Applicant's driver's license; and
- (ii) to order the Respondent to pay the Applicant compensation in the amount of \$10,000 for the vexation suffered as a result of such confiscation.

/S/ Francisco Orrego Vicuña

Francisco Orrego Vicuña  
President

/S/ Nassib G. Ziadé

Nassib G. Ziadé  
Executive Secretary

At London, England, July 23, 2001