

Decision No. 111

Jennifer Bellini, Thuy Thu Le and Susan C. Kellerman,
Applicants

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of P. Weil, President, A.K. Abul-Magd and E. Lauterpacht, Vice Presidents, and R. A. Gorman, E. Jiménez de Aréchaga and Tun Suffian, Judges, has been seized of three applications, received October 16, 1990, by Jennifer Bellini, Thuy Thu Le and Susan C. Kellerman, against the International Bank for Reconstruction and Development. Thirty-two other associated applications were filed on the same date. The President made certain procedural decisions, the last of which required that the above three 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 Exercise in 1985 the Applicants were employed by the Respondent as Staff Assistants in the Legal Department at grade level G (corresponding to level 16 in the new structure). Their positions were downgraded to level 15 as a result of the Job Grading Exercise. By letters, dated September 26, 1985, from the Chairmen of the Job Grading Steering Committee the Applicants were informed that their salaries would continue to be administered within the range of their positions' former level for a two-year period.

3. After the Tribunal's judgement 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 Exercise. 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 Exercise 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. Soon after, the Applicants received memoranda, dated December 16, 1988, from their Chief Personnel Officer (CPO) which informed them that "your eligibility for continued salary grandfathering at your former grade has been confirmed."

5. In July 1989 the Applicants received memoranda, dated July 3, 1989, from the Director, Personnel Operations (PEROP), stating that their new salary protection grade for the purposes of salary administration was 16 (equivalent to the former G). In 1989 the Applicants' salaries were adjusted within the range for grade 16.

6. 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.

7. The Applicants then received memoranda, dated May 16, 1990, from the CPO which referred to a decision of the Executive Directors and the Staff Rule reflecting this decision according to which "the period of salary protection at the higher grade has ended" and stated that their salaries would be administered at grade level 15. The Applicants received Personnel Action forms, dated May 31, 1990, in which their percentage salary increases in the 1990 salary review were indicated. The three Applicants received the minimum increase for satisfactory performance (4.2%). Before the salary increase their salaries were just below the maximum of the range for level 15.

8. The Applicants requested administrative review of the salary adjustment decisions but these requests were denied by the Respondent by memoranda, dated July 17, 1990, from the Director, Personnel Policy (PPO).

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. The Applicants were further given personal assurances of continued "grandfathering" of their salaries by their CPO which made such "grandfathering" a condition of employment which could not be unilaterally changed by the Respondent.

11. 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.

12. 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.

13. The limitation of the "grandfathering" of salaries was retroactively enforced.

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

15. 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.

16. 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:

17. 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.

18. 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.

19. The memorandum from the CPO relied on by the Applicants did not state that they had a right permanently to have their salaries administered within the ranges of their former grades.

20. 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.

21. 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. Further, the salary administration system was such that the salaries of the Applicants would in future not again reach the maximum of their current grades when they would be entitled only to the minimum salary increase for satisfactory performance.

22. 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.

23. 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.

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

Considerations:

25. The Applicants were employed as Staff Assistants in the Legal Department of the Bank at the time of the 1985 Job Grading Exercise. As a result of that exercise, the position held by them were reevaluated and were downgraded from the letter-equivalent of level 16 to the letter-equivalent of level 15. At that time, Staff Rule 5.06 provided that the salaries of downgraded staff members would continue for a period of two years to be administered within the range of their former grade levels, after which they would be administered within the range of their new lower-graded positions. Despite this provision for salary "grandfathering" limited to two years, the Applicants were notified by the Respondent in December 1988 and in July 1989 that their salary for those two additional years (effective May 1, 1988 and May 1, 1989) would also be computed within the range of their previous higher-graded position.

26. In August 1989, through a desk-to-desk circular (FYI/89/88), 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 substance of this circular was thereafter incorporated in a revision of Staff Rule 5.06, § 3.01, promulgated in April 1990.

27. In May 1990, each the of the Applicants was informed that she had performed at least at a satisfactory level and also was informed of her salary increase for the 1990-91 salary period. The then-current salary of each of the Applicants was above, at, or very slightly below the maximum of her new lower salary range, so that her salary increase could not be fully administered within that range. Accordingly, pursuant to the terms of revised Staff Rule 5.06, § 3.01, the Applicants' 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).

28. The Applicants contend that the termination of their salary grandfathering and the resulting administration of their 1990 salaries within their downgraded salary range violated contractual assurances, essential terms of their employment as elaborated in precedents of the Tribunal, and the Principles of Staff Employment.

29. The claims put forward by the Applicants in their pleadings are in all pertinent respects identical to those of the Applicants in Alleyne et al., Decision No. 109 [1992], where the Applicants were also downgraded in the course of the 1985 Job Grading Exercise and, as a result, received a salary increase in 1990 limited to 4.2%. In Alleyne et al., the Tribunal rejected the claim that the termination of salary grandfathering after the two-year extension, the administration thereafter of the Applicants' salary within their new lower grade level, and the award of a 4.2% salary increase for 1990-91 were violations of the terms of their contract and the conditions of their employment.

30. The facts of the Applicants' cases here are, however, different in one possibly pertinent respect from those of the Applicants in Alleyne et al. In addition to receiving the desk-to-desk circular (FYI/88/114) dated December 9, 1988 and signed by the Vice President, Personnel, each of the Applicants also received a personalized memorandum dated December 16, 1988 from their Chief Personnel Officer. That memorandum stated, in pertinent parts:

1. Further to [the Vice President's, Personnel] FYI of December 9, 1988, I am pleased to inform you that your eligibility for continued salary grandfathering at your former grade has been confirmed.
2. Over the next few weeks, your manager, along with the Personnel Team will be conducting a

supplementary 1988 salary review. You will be informed of the outcome of this process by the end of January 1989.

The Applicants contend that this memorandum reinforced their reasonable understanding that salary grandfathering would continue indefinitely and constituted an assurance to that effect that became part of their terms of employment.

31. The Tribunal has, however, concluded in Andrews et al., Decision 110 [1992], that the memoranda of December 16, 1988, merely confirmed with respect to each of the Applicants the more general arrangements for determining 1988 salaries that were announced by the Vice President, Personnel, in the FYI circulated only a week earlier. As the Tribunal stated in Andrews et al. (paras. 31-32), "the December 9, 1988 FYI was not reasonably understood to be an assurance of indefinite future grandfathering," and the memoranda from the Chief Personnel Officer "do not, therefore, enhance the force of the Applicants' claim of entitlement to indefinite salary grandfathering."

32. 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

/S/ Prosper Weil
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At London, May 8, 1992