

Decision No. 69

Lucy Z. Breton,
Applicant

v

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and A. K. Abul-Magd, Vice Presidents, and R. A. Gorman, E. Lauterpacht, C. D. Onyeama and Tun Suffian, Judges, has been seized of an application, received April 2, 1987, by Lucy Z. Breton against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on April 6, 1988.

The relevant facts:

(a) The Job Grading Program

2. The general facts relating to the Job Grading Program are as stated in paragraphs 2 to 10 of Decision No. 56.

(b) The particular facts of the case

3. On September 26, 1985 the Applicant, a Records Management Assistant in the Administrative Services Department, was notified that her position was allocated grade 19. Prior to the job grading exercise her position was at level 3, the equivalent of Grade 18 in the new grade structure.

4. On December 26, 1985 the Applicant filed a request for administrative review of the job grading decision for the reasons stated below:

1. The description submitted is not accurate.
2. It is not the same description agreed to with my manager before I left on home-leave on June 12, 1984. Furthermore, the description submitted does not bear my signature,
3. The basis for comparison of my position is incorrect. My position was compared to that of an Information Center Supervisor when it should have been compared to that of a Documentation Systems Analyst in the Documentation Systems Section, and
4. I believe that my position should be graded at level 22 which is equivalent to the level K that the officers doing similar work have had. Nevertheless, if my Unit Chief's position is now graded at level 22, I suggest that my position be graded at level 21.

5. In the rationale for the evaluation made for the administrative review, it was stated that the Applicant's position required practical vocational experience in the field of records management and that the knowhow required of the position was not commensurate with the level of knowhow characteristic of grade 20 and above. On April 1, 1986 the Chief, Job Evaluation Unit (JEU), notified the Applicant that the grading of her position at level 19 was confirmed.

6. On May 9, 1986 the Applicant filed a statement of appeal before the Job Grading Appeal Board (JGAB) challenging the job grading decision on the grounds enumerated in paragraph 3.01 of Staff Rule 9.04 and requesting the Board to recommend that her position be graded at level 22. In a memorandum attached to the

statement of appeal, the Applicant stated inter alia that:

- (i) in 1984, while she was on home leave, her supervisor changed her position description and drastically toned down such aspects of her position as know-how, difficulty and accountability, and he eliminated the paragraphs concerning the impact of the Applicant's position Bank-wide;
- (ii) the functions described in the position description she attached to her Statement of Appeal to the JGAB are the same functions that have traditionally been performed by staff at level K (equivalent to level 22) in the Records Management Division for over 15 years; and
- (iii) she has, therefore, been performing high-level functions at an assistant level grade and with an assistant's title.

7. On September 26, 1986 the JGAB found that:

- (a) The Evaluation Committee has not incorrectly evaluated the Appellant's position as designated by the Appellant's Department.
- (b) The Appellant, however, is consistently carrying out responsibilities of a higher level than the designation of her position.
- (c) In these circumstances, it is appropriate (as suggested in Paragraph 9 of the Respondent's Answer) for a complete job audit of the Appellant's position to be conducted.

Accordingly, the JGAB recommended that a job audit be conducted immediately and that pending completion of the audit, and without prejudice to the results of the job audit, the Appellant's position be maintained at grade 19.

8. On November 24, 1986 the Vice President and Controller (VPCTR), acting in lieu of the Vice President, Personnel and Administration (PA), who had disqualified himself because of prior involvement in the case, informed the Applicant that he had asked the Director, Compensation Department, to arrange a complete job audit of her position as a matter of urgency, and that pending the outcome of this job audit her position would remain at grade 19.

9. On February 26, 1987 the VPCTR informed the Applicant that in accordance with the findings of the completed job audit, he had decided that grade 20 was appropriate for her position with effect from October 1, 1985. Furthermore, he stated that:

I have also accepted JEU's analysis that there seem to be two levels of complexity of records review work in positions like yours, with the higher level characterized by:

- large size of client, e.g., department rather than division
- higher level of client management to be convinced
- greater volume and variety of records
- greater degree of professional independence
- difficult professional working relationships
- resistance to change

I agree with JEU's recommendation that positions like yours be graded at two levels – viz 19 and 20 – to appropriately reflect the differing levels of complexity in their work. Criteria along the lines of those above should be used to differentiate between the levels.

10. On March 10, 1987 the Applicant sent a memorandum to the Chief, JEU, in which she stated that:

I received a letter dated February 26, 1987 from Mr. Hans C. Hittmair informing me of the results of the COM-Job Evaluation Unit's audit of my position.

The statement, however, is not well reasoned out and I have no way of knowing whether or not the job

audit was done reasonably.

Please review the outcome of the job audit and, in accordance with Staff Rule 9.04, paragraphs 2.02, 2.03, and concurrently with the agreement of the authorities mentioned in paragraph 2.04, provide me with all the documents collected and generated during the job audit so that I could consider a job grading appeal.

11. The same day, the Chief, JEU, replied to the Applicant stating that:

1. The decision made regarding your grading by Mr. Hittmair was made subsequent to your Job Grading Appeal and not as part of the on-going job evaluation and grading process. The reasons for his decision were set out in his letter to you dated February 26, 1987.

2. I am unable to conduct an Administrative Review of a decision made as the outcome of a Job Grading Appeal.

12. On March 11, 1987 the Applicant sent to the Secretary, JGAB, a memorandum, the content of which was similar to the one she had sent on March 10, 1987 to the Chief, JEU.

13. On March 23, 1987 the Secretary, JGAB, replied to her in the following terms:

Thank you for your memorandum dated March 11, 1987 with the request for the Board to provide you with documents related to the job audit of your position.

The Job Grading Appeals Board has completed its task with regard to Appeal No. 98, pursuant to Staff Rule 9.04, at the time the Board submitted the written report on September 29, 1986.

The documents requested in your memorandum are not with the Board.

14. On April 2, 1987 the Applicant filed an application with the Tribunal requesting, inter alia, release of the findings of the job audit pursuant to an order of the Tribunal or its President.

15. On April 16, 1987 the Chief, JEU, although reiterating his inability to conduct an administrative review for the reasons he had stated on March 10, informed the Applicant that she was free to consult the file on her position that was available in the JEU and that, if she wished to do so, she could make an appointment through his office.

The Applicant's main contentions:

16. The Vice President's decision of February 26, 1987, informing the Applicant that her position was placed at grade 20 as a result of the job audit, was insufficiently reasoned and did not give the Applicant the opportunity to evaluate the fairness or reasonableness of the audit.

17. The Applicant had a right to have access to the findings of the job audit which were at the basis of the decision to grade her position at grade level 20 and which she had not seen. In any case, her participation in the job audit was limited.

18. Due process required that the Respondent disclose to the Applicant the job audit findings as an essential right of the Applicant, and regardless of whether any rule mandated any such disclosure. It was inadequate that the Chief, JEU, had provided her only with the opportunity to consult the file on her position as a matter of courtesy and not as a matter of right, and that too only after the Applicant had filed her Application with the Tribunal. Not only was the action of the Respondent in denying the administrative review of an appeal and access to the job audit findings a violation of due process, but it detracted from the transparency of the job grading process.

19. The Applicant had not availed herself of the opportunity to see her file because she believed that this would be used by the Respondent as evidence that her application is moot.

20. Because the Applicant had been denied access as a matter of right to the audit documents underlying the grading decision of her position, she was not in a position to make a meaningful decision concerning the grade

allocated to her position.

21. The Applicant should be granted by the Tribunal the right to appeal the grading decision until 90 days after the date of the release of the job audit findings as mandated by the Tribunal, because the issue of access to one's own file is an essential right and it is important enough to create the exceptional circumstances provided for in Article II, para. 2 of the Tribunal's Statute, if one is to continue to take the Tribunal seriously as a decision-maker of last resort in matters of staff rights.

22. The Applicant requested the following:

- Rescission of the decision made by the Chief, JEU, to deny an administrative review and release the findings of a job audit, which, as per the decision of the Vice President and Controller dated November 24, 1986 was undertaken pursuant to a recommendation of the JGAB.
- Release of the findings of the job audit as per an order of the Tribunal or its President.
- Reservation of the Applicant's right to appeal the Vice President's decision of February 26, 1987 to confirm the grade of her position at level 20 until 90 days after the date of release of the job audit findings.

The Respondent's main contentions:

23. The Application should be dismissed as moot because the Chief, JEU, in his memorandum of April 16, 1987 to the Applicant, informed her that she was free to consult the file on her position in the JEU. Whether or not she has availed herself of this opportunity is immaterial.

24. This Tribunal had already addressed in Salle the issue of disclosure of personnel records by the Respondent and decided that the fact that the Respondent had afforded the Applicant's counsel access to the Applicant's file had rendered moot his request for disclosure before the Tribunal. In that case, the Tribunal also declined to consider the question of a duty to disclose where disclosure had already been made. Similarly it should decline to consider the converse of that duty, i.e., the "right" to disclosure asserted by the Applicant in this proceeding.

25. Whatever the rights of staff members and the duties of the Respondent concerning access to personnel records may be, they are not as such applicable to general, non-personal data in the Respondent's files such as the data pertaining to the evaluation of a position solely on the basis of the functions and responsibilities of the position, without regard to the incumbent or to individual qualifications or performance.

26. An appeal from the grading decision is time-barred. The Applicant's request to reserve her right to appeal the decision allocating her position to grade 20 "until 90 days after the date of release of the Job Audit" should be denied since the event giving rise to her application, i.e., the decision of the VPCTR, occurred on February 26, 1987 and no appeal was filed within 90 days therefrom.

27. There is no basis for a finding of "exceptional circumstances" under Article II of the Tribunal's Statute. An argument brought before this Tribunal over an essential right such as the access to one's personnel file cannot constitute "exceptional circumstances" under Article II of the Tribunal's Statute; if it did then the statutory time limits prescribed by the Statute could be extended by staff members simply by alleging with or without justification that an essential right had been violated. Further, the letter dated February 26, 1987 of the Vice President and Controller informing the Applicant of his post-job audit grading decision had in fact provided her with ample information for purposes of determining whether to proceed with an appeal. Even if she felt otherwise and was concerned to assure that recourse to the Tribunal, on the merits, was not foreclosed, she should promptly have accepted the Respondent's offer of access to the file on her position which was extended to her by the Chief, JEU on April 16, 1987.

Considerations:

28. Having occupied, prior to the Job Grading Exercise, a level 3 position (equivalent to present grade 18), and

seeing her position allocated to grade 19 in that exercise, the Applicant sought administrative review and a grade of 21 or 22. Administrative review resulted in the conduct of a job audit by the Job Evaluation Unit at the request of the Vice President and Controller and his subsequent decision, with proffered reasons, on February 26, 1987 to grade the Applicant's position at level 20. The Applicant has not at this time sought review by the Tribunal of that decision by the VPCTR. Rather, she contests the refusal of the Chief, JEU, on March 10, 1987 in effect to provide her with another administrative review and the documents she claims are necessary to determine whether the job audit was conducted properly. The Applicant seeks to have those decisions of the Chief, JEU, rescinded and a determination by the Tribunal that she shall be allowed ninety days from the release of the requested findings in order to appeal the decision of February 26, 1987 of the VPCTR to place her job at level 20. Shortly after the Applicant filed her application to the Tribunal the Chief, JEU, offered her access to the documents relating to the job audit, but she has since declined to examine those documents, seeking the Tribunal's determination that she should have been given access initially as a matter of right.

29. The issues for determination by the Tribunal are:

- (i) Was the JEU right to refuse the administrative review of the decision to place the Applicant's job at level 20?
- (ii) Should the Tribunal order release of the audit findings?
- (iii) Should the Tribunal reserve the Applicant's right to appeal to the Tribunal the decision of the VPCTR to confirm the grade of her position at level 20 until 90 days after the release of the job audit findings?

30. On the first issue the Applicant argues that the JEU was wrong to refuse on March 10 administrative review of the February 26 decision. She is mistaken. The administrative review provided for by Staff Rule 9.04 is a step in the process leading to an appeal to the JGAB. There was in fact such a review. The Staff Rule does not, however, give the Applicant the right to request a further administrative review of a job audit undertaken subsequent to, and in implementation of, a recommendation of the JGAB made as the outcome of an appeal.

31. On the second issue the Applicant argues that she had a right of access to the job audit findings and documents so that she would know whether placing her job at level 20 was fair and reasonable. The Bank has been willing to give such access since April 16, 1987, albeit only after the Applicant had filed her application with the Tribunal. In the circumstances the Tribunal holds that there is no need to order the Bank to do what it has already said it is willing to do.

32. On the third issue concerning the reservation of the right of appeal to the Tribunal from the decision of February 26, 1987 of the VPCTR until 90 days after the date of the release of the job audit findings by reason of the existence of exceptional circumstances under Article II, para. 2 of the Statute, the Tribunal holds that it is inappropriate for it to decide at the present time on the conditions or requirements of an application which is not before it.

Decision

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

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At London, November 7, 1988