

Decision No. 7

Nualnapa Buranavanichkit,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jimenez de Arechaga, President; P. Weil, Vice-President; A.K. Abul-Magd, R. Gorman, N. Kumarayya and E. Lauterpacht, Members; has been seized of a complaint, received October 1, 1981, by Miss Nualnapa Buranavanichkit, against the International Bank for Reconstruction and Development. After an extension of time granted at its request, the Respondent filed its Answer on December 1, 1981 and the Applicant submitted Observations thereon on December 29, 1981. The Applicant requested that certain witnesses be heard at oral proceedings pursuant to Rule 14(I). The Tribunal has decided that the hearing of witnesses in this case is unnecessary. The case was listed on April 26, 1982.
2. The Applicant has had two periods of employment with the Bank. The first, which is not the subject of the present case, was from 1974 to 1977. At that time she served as a secretary-typist and was subsequently promoted to staff assistant. In 1977 she left the Bank to pursue studies in business administration.
3. The second period of employment, out of which this case arises, began on December 3, 1979, when the Applicant was assigned as a Secretary, Level D, to the Agriculture and Rural Development Department. When interviewing her for this appointment the Personnel and Management Department (PMD) noted that "Miss Buranavanichkit in all honesty wants employment in the accounting field but will accept secretarial employment as a means to that end." Her appointment as Secretary, Level D, was recorded in the usual letter of appointment dated November 26, 1979 and was made probationary for the first year. The appointment was "subject to confirmation on or before the first anniversary of your reporting for duty at the World Bank" (i.e. on or before December 3, 1980).
4. The appointment was also subject to the conditions of employment of the Respondent "as the By-Laws or conditions of employment exist at present or as they may be amended from time to time." Although no comprehensive Staff Rules or Regulations have formally been prescribed by the Respondent, parts of the Personnel Manual Statement (PMS) may be considered as stating the conditions of employment as regards those aspects of the relationship covered by them. The PMS contains a section on "Probation" (No. 4-02) which should be regarded as containing certain conditions of employment relevant to this case. (See the de Merode Case (1981), Decision No. 1 of this Tribunal, at paras. 22 and 73.)
5. Among the provisions of this section which are relevant in this case are the following:
 - "3. The assignments during the probationary period should test the staff member but not exceed his capabilities. They should also give the staff member an exposure to the type of work that he is likely to be doing for the Bank and allow the Bank to assess the staff member's skills and capabilities."
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 - "6. During the staff member's period of probation, supervisors are expected to evaluate the staff member's performance every six months in accordance with procedures outlined in PMS No. 4.01, Staff Evaluation, Annex B. These formal evaluations are in addition to the special supervision and ongoing coaching given by supervisors to staff members on probation."
6. PMS 4.02 goes on to state (in paragraph 7) that each case must be carefully reviewed at the end of the

probationary period, following which one of three courses of action will be followed: confirmation of employment, termination of employment, or “where there is insufficient basis for making a proper evaluation” the extension of the probationary period.

7. A sub-section of PMS 4.02 identifies separately the respective responsibilities of immediate supervisors, of new staff members and of the Personnel Department. Amongst the tasks of the immediate supervisors is that of designing individual assignments to provide the new staff member with opportunities to show initiative and learn the job and of providing the new staff member with ongoing coaching, information, guidance and performance feedback (No. 4.02.11). The new Staff Members are responsible for seeking clarification of their individual work expectations and discussing with their supervisors all matters that impair their ability to carry out their assignments successfully (No. 4.02.12). Lastly, the Personnel Department is required, amongst other things, to ensure that the staff member on probation is evaluated in accordance with policy and to determine, with the recommendation of appropriate supervisors, whether the staff member should be confirmed for continued employment with the Bank.

8. The reference in PMS No. 4.02.6 above to Staff Evaluation procedures is to an extended section in PMS No. 4.01 which prescribes the Purposes, Criteria and Timing of the Evaluation as well as the individual responsibilities of those involved, including the staff member affected, the immediate supervisors, the next-in-line supervisors, the Department Directors and personnel officers.

9. With these provisions in mind, the Tribunal now reverts to the facts following on the Applicant's return to the Bank.

10. As is shown by the Interim Performance Evaluation of June 18, 1980, covering the Applicant's first six months of work, the Applicant performed “a variety of secretarial and staff assistant duties.” The evaluation of her immediate supervisors was generally favorable to the Applicant, speaking of the work she produced as being “neatly presented and well typed” and stating that she had “made substantial efforts to adjust to the Bank and its work pressures.” The same day the next-in-line supervisor expressed agreement “on the whole” with the evaluation of the immediate supervisors, though reference was made to some “difficulties” arising from “extreme eagerness to be helpful.” This evaluation noted that the points had been discussed with the Applicant and “agreement was reached that she would consider her priorities and actions with more thought to the reactions of others and to the possible consequences of erroneous understandings.” The evaluation concluded that the Applicant “is very willing and does good work.”

11. The Applicant's Anniversary Evaluation by her immediate supervisor dated January 21, 1981 reported that “in most areas she has discharged herself well”, that she was “efficient in her work”, that the materials she produces “are usually of a satisfactory quality”, that she does “not require close supervision” and that she has “maintained a cordial working relationship with her colleagues.” The only adverse comment was that “she should give more attention to setting secretarial priorities” – and even in respect of this he conceded: “She has made a strong effort to improve during the last few months, particularly in the area of office procedures. She has also made an effort to concentrate on her secretarial priorities and should continue to do so.”

12. The next-in-line supervisor's report also dated January 21, 1981 stressed the need for the Applicant “to concentrate on her secretarial duties”, though at the same time acknowledging that she “has shown considerable initiative in performing her duties.”

13. Only when one comes to the Report of the Assistant Director of the Department is there any clear articulation of a difficulty going beyond that stated by the immediate and next-in-line supervisors. This Report, dated February 18, 1981, refers to the Applicant's motives and attitudes and acknowledges as being beyond doubt the Applicant's secretarial skills. At the same time, the Report identifies in the Applicant “a strong preference for tasks related to computer programming” which had been the basis “on several occasions for a conflict in her work priorities and her seeming unwillingness to perform some secretarial tasks in a satisfactory manner. This situation had led to occasional conflicts with her supervisors.” The Assistant Director then wrote of considering the Bank's best interest bearing in mind “the small size of the Monitoring and Evaluation Unit

and the fact that two more research assistants had recently been added to the Unit.” He ended by asking for an extension of confirmation of six months.

14. Although the Assistant Director’s report was dated February 18, 1981 and it appears that the matter had been discussed between the Applicant and her immediate supervisors some time in late February, no written intimation of the proposal to extend the Applicant’s period of probation by six months was given to her until March 5, 1981 and then by the Acting Chief of her Unit only in response to an inquiry made by her in writing on March 2. The Acting Chief of the Unit said that the Applicant, having been recruited to work as a secretary, had shown a strong preference for non-secretarial work. He advised her that her probation should be extended to afford her an opportunity to seek alternative employment in the Bank or “provide satisfactory evidence of a change in your attitude to secretarial work.”

15. Eventually on March 11, 1981 the Acting Director of her Department saw her and notified her that she must serve an extended probationary period of six months. Since her confirmation was due in December 1980, this left her three months in which to adapt her performance to whatever it was that her supervisors were requiring of her.

16. It appears as if the nub of the problem by then was that the Applicant still wanted – as she had made plain from the outset of her employment – to be more involved in computer work and to be a staff assistant, while her Department wanted her to be a secretary and to be satisfied with that position. There was, it would seem, no significant criticism of her actual performance as a secretary. The Director of her Department concluded his memorandum of March 11, 1981 as follows:

“I would like to add that I feel that this is not a case of a person being unsuitable for the Bank, but rather that of a person who has ‘drifted away’ from her prescribed duties. I feel too that she may have been encouraged to do non-supervisory computing work by some of her earlier supervisors so being given a false impression of the scope of her work.”

Therefore, there appears to be some justification for the complaint in the application to the effect that “the Department, after recruiting the Applicant as a secretary, using her as a staff assistant because they were short of research assistants, awakening claimant’s interest for computer work, using her as a secretary also and putting heavy pressure on her, rejects her once she is no longer necessary, with the recommendation that some other Department may after all use her services.”

17. It is now necessary to focus more closely on what happened in the next three months – which were all that were left to the Applicant for the purpose of meeting the requirements of her extended probation.

18. On April 6, 1981 the Applicant sent a detailed memorandum of her position to the Acting Chief of her Unit. She noted that she had “on occasion been asked ... to do work which is out of my regular range of responsibility” and complained that she had not been given any written clarification of what she had done wrong. “It is unfortunate as well as unjust,” she said, “when an individual is not told what he has done wrong.” She also sent copies not only to the Director and other officers of her Department but also to the President of the Bank, the prospective President of the Bank, and to two Vice-Presidents. The Acting Chief of her Unit wrote on April 9 that part of the Applicant’s memorandum was “couched in indecorous language” and showed the Applicant’s “lack of a sense of propriety and judgment.” At the same time the Applicant was told that she had not been able to handle her disappointment “in a manner commensurate with the need for team-work and harmonious inter-personal relationships with other staff members”, including the Acting Chief of the Unit himself. Though the Applicant’s secretarial performance was adjudged “satisfactory in several technical respects” it was not so in respect to “whole attitude, personal behavior and ... team spirit.” The Applicant was warned that unless she showed “definite and continuing improvements in the areas outlined above” she was not likely to be confirmed at the end of June.

19. Other facts besides the Applicant’s memorandum of April 6 show the extent of her personal distress. She declined to discuss with the Acting Chief of her Unit the memorandum that he had dated April 9 because “she feared she might lose control of herself.” She is also on record as having said that she felt that the evaluation

was unfair and had ruined her career inside and outside the Bank.

20. However, by May 15, 1981 when the Applicant was sent the written feedback on her performance during the month of April, her Acting Chief of Unit said that

“during this period you showed improvements in your interpersonal relationship and cooperation with other staff members of the Unit. You have performed your secretarial skills efficiently ... you have settled down to a normal pattern of work-life.”

At the same time the feedback expressed “a continuing concern about your sense of propriety and judgment” – identifying specifically the absence of recognition by the Applicant of the impropriety of her memorandum of April 6, 1981 as well as the Applicant’s seeming non-acceptance of “the fact that taking recourse to other than normal procedures for appeal is wrong and unacceptable.” The Applicant was invited to take steps to assure the Acting Chief of the Unit on both these aspects of her performance as a staff member.

21. Thus urged to recognize that she had been wrong, the Applicant sent to PMD a memorandum dated May 20, 1981 in which she stated:

“While I do not retract that I feel that I have been treated unjustly in not being confirmed in my position after completing my 12 months’ probation, I sincerely regret any misunderstanding that may have been caused by the way that I have gone about things. But as I am sure you realize, I was under severe pressure and was very upset by the way I was treated.”

22. The third and final written feedback by the Acting Chief of the Unit, dated June 8, 1981, informed the Applicant:

“your performance was satisfactory – you were prompt in completing your assignments and did so with competence. You also had shown commendable initiative in assisting the administrative secretary and your fellow secretary. In your memo ... on May 20, 1981 you expressed regret at the misunderstanding ... (etc.) Yet it seems you still do not recognize that what you did was wrong and unacceptable. ... The performance of secretarial duties has been good but it still leaves considerable uncertainties and doubt as to your attitude and motivation for a secretary’s position ... We are not convinced at this time that you consider the position of a secretary as one which provides you job satisfaction and that you are fully motivated to continue to function as a secretary.”

23. The same Acting Chief of the Unit advised the Assistant Director, on June 30, 1981, as follows:

“During the month of June Miss Buranavanichkit’s performance as a secretary was fully satisfactory. She not only performed her own responsibilities competently but also voluntarily assisted her colleagues in handling the heavy load of work that falls on the Unit for the annual report. Her competence as a secretary has not been an issue. It was her attitude to the job that was in question. She has given no grounds for complaint on this score during the month which completes her extended probationary period. In view, however, of the history of her case during the previous months, it would be desirable from the administrative point of view that she does not continue to work in this Unit.”

24. The Assistant Director of the Department then wrote to PMD on July 2, 1981 enclosing the preceding report and stating “having once again carefully reviewed the entire history of this case, I too must endorse this decision.” In support of this conclusion concrete examples were given of difficulties created in the past by the Applicant in the performance of secretarial duties. These difficulties had not been pointed out in such detailed way in previous AER’s or written feedback. Once again, complaint was made about the “direct appeals to Senior Bank officials”, adding “this pattern of behavior reinforced our judgment by the middle of her extended probationary period that she has personality and attitudinal problems which are incompatible with her effectiveness as a secretary in the Unit.” Finally the Memorandum added that “since last January, we have also learned that she had similar problems, although not so acute, in her previous Bank employment.” Again, this was not documented in her written AER.

25. The Applicant’s employment was brought to an end by a memorandum from PMD to the Applicant dated

July 14, 1981 stating that “This will confirm the Bank’s decision to terminate your employment for unsatisfactory performance...”

26. Two questions must now be considered. The first is one of substance, namely, whether the Bank was justified in its conclusion that the Applicant’s performance was unsatisfactory. It must be recognized that the Bank necessarily possesses a certain discretion as to whether a person employed for a probationary period should be confirmed. Probation has as its purpose the determination whether the employee concerned satisfies the conditions required for confirmation. These conditions may refer not only to the technical competence of the probationer but also to his or her character, personality and conduct generally in so far as they bear on ability to work harmoniously and to good effect with supervisors and other staff members. The merits of the Bank’s decision in this regard will not be reviewed by this Tribunal except for the purposes of satisfying itself that there has been no abuse of discretion. In the present case, it appears that the conclusion which the Bank reached was founded on the conviction that the Applicant’s attitude towards her position as a secretary would not enable her to perform satisfactorily the work expected of her in that capacity. There is nothing that suggests that the Bank abused its discretion in reaching this conclusion.

27. In this respect, the Tribunal observes that the meaning of the expression “unsatisfactory performance”, as used by the Bank in the context of non-confirmation of probationary employment, is rather wider, perhaps, than that accorded to those words outside the Bank. As a result misunderstanding may occasionally arise and cause distress to the affected individual. It appears from the PMS that, for the purposes of the Bank the quality of “performance” is judged by reference to more than the technical proficiency with which a member of the staff performs the functions allocated to him or her. Also deemed relevant are a person’s ability to get along with others, temperament generally and even ability to derive satisfaction from his work in such a way as to ensure that he remains a contented and efficient member of the staff. In the present case the description of the Applicant’s performance as “unsatisfactory” does not relate to the technical competence of the Applicant as a secretary, but reflects primarily the Bank’s assessment of an incompatibility between the ambitions of the Applicant and the specific needs of the Bank.

28. The second question is whether the Respondent acted fairly in relation to the Applicant. At the beginning of that period of probation she was assigned non-secretarial duties; afterwards she was led to believe that the improvement in and concentration on her purely secretarial duties, together with an expression of regret for her unwise reaction in April, would result in confirmation; that such an outcome depended on current and future performance rather than past history. Yet the record shows that the final decisions by management as to her unsuitability and therefore as to termination were based not on the technical performance of the Applicant as a secretary, nor on her “performance” in the wider sense during the period of extension of her probation, but were determined by the history of her reactions and attitudes in the past. That this was largely a preconceived decision is confirmed by the fact that the Assistant Director clearly stated that such a conclusion had already been reached “by the middle of her extended probationary period.” And in this emphasis on past history the same official had recourse to undocumented information as to the alleged existence of “similar problems in her previous Bank employment.” However, these problems, far from being reflected in the AER’s of previous employment, are in fact clearly contradicted by them. Accordingly, because such information was not communicated or available to the Applicant, reliance on it is irregular and contrary to the principle of due process, since it could not be answered by her.

29. Furthermore, it is not contested by the Respondent that the AER on the basis of which the decision to extend probation was taken is incomplete since it does not include the comments of two of the supervisors who worked with the Applicant for eleven and seven months respectively. Yet this is a specific requirement of PMS 4.01, Annex B, No. 5, letter c. It follows that the reports on the basis of which that decision is made must be complete and contain a full assessment of the performance of the probationary official. As stated in PMS 4.02, para.7, these cases “must be carefully reviewed ... since the ties between the staff member and the Bank can be broken more easily at the end of the probationary period than later.”

30. For these reasons the Tribunal concludes that the treatment of the Applicant fell short of the appropriate standards of justice and this has effectively caused her harm. It is difficult to place a value upon such an

intangible injury. Since in the circumstances rescission of the decisions contested or specific performance of the obligation invoked is not a remedy appropriate to the injury done, the Tribunal will order the payment to the Applicant of compensation which it equitably assesses as one year's net base salary.

31. In respect of the Applicant's plea that "negative information on ... [her] service in the Bank, ..., should in no case be communicated to third parties" the Tribunal finds that the present judgment, being a public document, will by itself meet the purpose of this request.

DECISION

For these reasons the Tribunal unanimously decides:

- (1) that the Respondent shall pay the Applicant a sum equivalent to one year's net base salary;
- (2) it shall also pay the amount of U.S. dollars 1,250 for legal fees; and
- (3) the application is otherwise rejected.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At London, England, May 25, 1982