

Decision No. 71

Rosario Cardenas,  
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 March 19, 1987, by Rosario Cardenas, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on July 22, 1987.

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. The Applicant held the position of Administrative Secretary of the Language Services Division of the Administrative Services Department of the Respondent at level G, the equivalent of grade 16 under the new grade structure.

4. As a result of the Job Grading exercise the Applicant's position which was individually evaluated by an Evaluation Committee was placed at grade 15. The Applicant was informed of the allocation of grade and that because the salary range of grade 15 was lower than her current range for level G, she was entitled to salary protection for two years from October 1, 1985, the effective date of the new grade and salary structure.

5. The Applicant sought administrative review of the grading decision. The result of this review was that the grading decision was confirmed. The review document stated:

No Change: Remain at Grade 15: Position responsibilities comparable to those in generic Staff Assistant criteria. Additional responsibilities cited by incumbent not unusual, such activities performed by other Staff Assistants Bank-wide and hence qualify as "transferable" skills.

6. On May 5, 1986 the Applicant filed an appeal with the JGAB against the decision to grade her position at level 15. In its report dated November 24, 1986 the JGAB found that:

(a) The Evaluation Committee was fully aware of the dimensions of the Appellant's job.

(b) The Panel had no reason to question the judgment of the Committee that the responsibilities of the Appellant's position which was individually evaluated were comparable to those in the generic Staff Assistant criteria.

(c) The Spanish skills content of the Appellant's job would appear to be the element which distinguished it from such criteria. However, given the general grading rule that language skills were not to be taken into account, the decision not to recognize such skills in evaluating the Appellant's position was not arbitrary or discriminatory. The Panel noted the Evaluation Committee had concluded that but for this rule, additional

Hay points would have been awarded for language skills and that, if the present ruling were changed, the 'scoring of positions such as the Appellant's' should be reconsidered. It also noted that twenty-three (23) Hay Points would be required to shift the Appellant's position from slightly below the middle of Grade 15 to Grade 16.

(d) A factor related to the above-mentioned ruling is the practice of the Bank to recruit fully bilingual secretaries including staff assistants, on entry salaries \$800 higher than monolingual recruits, while maintaining their salary ceilings at the same level.

The JGAB recommended no change in the grade level allocated to the Applicant's position.

7. By letter dated December 17, 1986 the Vice President and Controller (VPC), acting on behalf of the Respondent, advised the Applicant that she accepted the recommendation of the JGAB to confirm the grade of the Applicant's position at grade 15.

#### The Applicant's main contentions:

8. Both the Evaluation Committee and the JGAB failed to give value to the Applicant's administrative duties over and above those of a generic staff assistant, resulting in discrimination.

9. Since language skills were a mandatory requirement in the qualifications for the Applicant's position, the decision not to consider language skills for purposes of grading was discriminatory in that it resulted in the Applicant's being placed at the same grade level as monolingual staff assistants.

10. Although the Respondent states that bilingual secretarial recruits entered on salaries \$800 higher than monolingual recruits, neither is it confirmed that this was the case with the Applicant nor was the Applicant aware of being recruited with an \$800 differential over monolingual recruits. In any event, since compensation is a function of meritorious performance and seniority, it should not be relevant to grading a position. Moreover, even if the Applicant had been recruited at a higher salary because of her bilingual skills, she was at a long-term disadvantage for the purposes of merit increases because she would reach the ceiling of compensation for her grade earlier than monolingual staff. Thus, the fact of her recruitment at a higher salary should have no relevance to job grading.

11. Through the Respondent's previous grading system the Applicant was graded at level G on the basis of her professional capability and experience. The Respondent should, therefore, honor her terms of employment as amended, as a result of promotion to level G, and be under an obligation to retain for the Applicant the salary structure once granted. By freezing the Applicant's salary at its September 1987 level, after two years of salary "grandfathering", the Respondent has denied the Applicant the essential right embodied in de Merode to benefit from "periodic [salary] adjustments reflecting changes in the cost of living and other factors". This right can be taken away only in exceptional circumstances and for cause, such as in the case of disciplinary action.

12. Even if the Tribunal were to determine that the grading exercise has affected a non-essential right of the Applicant, the change introduced by the Respondent did not meet the standard of care required in de Merode to change non-essential conditions of employment. The job grading reform was not carefully studied, and the changes were not made in a reasonable manner seeking to avoid excessive and unnecessary harm to staff members.

13. The Respondent has a history of unlimited grandfathering, as is demonstrated by the treatment of changes in pension eligibility and tax reimbursement. Thus, the Respondent's treatment of the Applicant was also contrary to the Respondent's practice of granting unlimited grandfathering in cases which also involved critical changes to staff rights and raised issues of equity vis-a-vis other staff.

14. The Applicant has, in accordance with Staff Principle 5.1(f), a right to be grandfathered without a time limit for structural salary adjustment increases at her previous grade. The Respondent's decision to limit the grandfathering period to two years was arbitrary.

15. The Applicant requests that she be graded at grade 16, with effect from October 1985, until such time as the Respondent shall have reviewed its grading and compensation policies to take language skills more properly into account.

The Respondent's main contentions:

16. Policy formulation which is not arbitrary, discriminatory, improperly motivated or reached without fair procedure does not violate a staff member's contract of employment or terms of appointment. The Respondent's policy of not taking into account language skills in job evaluation satisfied the tests stated above and was, therefore, not a violation of the Applicant's contract of employment or terms of appointment, particularly because the Respondent had other ways of recognizing language skills.

17. Since at the time of her recruitment in 1972 the Applicant was placed at a salary level in her grade two steps above the salary level at which she would have been placed had she been monolingual, recognition was given to her bilingual skills, although, as was the practice at the time, no explanation was given of the salary figures. The reason a premium of less than \$800 was given for bilingual skills was that the figure of \$800 was reached in 1982, while in 1972 the method of calculating the premium was different. That the benefit given the Applicant at the time of recruitment eventually became "lost" in the salary structure does not make arbitrary the policy underlying the grant of the benefit.

18. The Tribunal should not assign a point value to bilingualism and assign the Applicant to grade 16, because this would amount to a determination of policy which is not an appropriate role for the Tribunal.

19. The examples of permanent grandfathering cited by the Applicant which concern pensions and tax reimbursement do not pertain to salary upon downgrading and cannot be said to constitute a "history." The grandfathering of salary permitted to F/I staff upon their regrading was of a temporary nature and was subject to review upon the completion of the job grading exercise. Thus, this instance of what is alleged to be permanent grandfathering was subsumed in the limited grandfathering involved in this proceeding.

20. The decision in de Merode does not require permanent grandfathering. As long as the Applicant is entitled to future adjustments of salary applicable to the range of her position's grade, there is no deprivation of an essential right.

21. The standard of care required to change a non-essential term of employment such as the right to a grade was met in the formulation of the policy behind the grading methodology.

22. There was no violation of Staff Principle 5(1)f in the two-year grandfathering provision for salary.

23. Since according to well-established principles of international administrative law, grade should correspond to position and compensation should correspond to grade, the Respondent has not acted in violation of the Applicant's terms of employment in adopting a two-year salary grandfathering.

Considerations:

24. In this case there are two issues to be decided:

(i) Was the grading of the Applicant's position incorrect because it did not take into account the fact that the position had bilingual requirements?

(ii) In the event that the grading of the position is correct, was it arbitrary for the Respondent to grandfather the Applicant's salary at her previous grade level for only a limited period of two years?

25. In regard to the first issue the Applicant contends that, because language skills were mandatory in the qualifications for her position, the decision not to consider language skills for purposes of grading was

discriminatory in that it resulted in her being placed at the same grade level as monolingual staff assistants. The Respondent argues that it was not an abuse of discretion to exclude language skills in job evaluation but rather to recognize them in other ways.

26. As was stated in Einthoven, so long as “policy formulation is not arbitrary, discriminatory, improperly motivated or reached without fair procedure, there is no violation of the contract of employment or of the terms of appointment of the staff member.” (Decision No. 23 [1985], para. 43). The Tribunal will review the application of a policy to an Applicant in an individual case in order to ascertain whether there has been an abuse of discretion.

27. The Applicant challenges the Respondent’s policy of not assigning a higher grade to a position in which bilingual skills are required but rather recognizing the value of such skills by placing the incumbent of the position at the time of recruitment at a higher point in the salary scale of the grade. Not to take into account bilingual skills in the evaluation of a position, where such skills are a requirement for that position, is an abuse of discretion. No reason has been given by the Respondent to explain why a required language skill is not properly to be treated as a “know-how” component deserving of points under the Hay job-grading formula, and no such reason is self-evident to the Tribunal. The Tribunal, therefore, concludes that the grading of the Applicant’s position at level 15 was arbitrary.

28. It is not certain, however, that even had the Bank awarded Hay points to the Applicant’s position for the required bilingual skills, this would have resulted in an increase in the grade level of that position. Therefore, the Tribunal quashes the decision to assign the Applicant’s position to level 15 and remands the case to the Respondent so that a new decision on the grade of the Applicant’s position may be taken.

29. In regard to the second issue, it is clear that the Tribunal is not called upon to decide in the present case whether and, if so, under what conditions, the Respondent has the power to deprive a staff member of a grade previously held by him. In particular, the Applicant herself has not invoked the existence of a right indefinitely to maintain her former grade. Her contentions have been essentially concerned with the repercussions of the impugned decision, assuming that it is correct, with respect to her entitlement to continued salary increases. The Tribunal will, therefore, consider these contentions for the purpose of determining the Applicant’s rights in the event that after the remand the Applicant’s position is correctly graded at level 15.

30. The Applicant’s main contention is that her salary review increases after the effective date of the job regrading should not be limited by the two-year grandfathering requirement. The paragraph of Staff Rule 5.06 which provides for this reads:

A staff member whose position is graded at a lower level as a result of a formal job evaluation assumes the lower grade upon the effective date of the evaluation. However, for a period of 24 months thereafter, she will be eligible for increases as if the salary range formerly applicable to the position, adjusted for any increases in the salary structure, had remained in effect. .... If after 24 months the staff member has not been selected for a position at his previous or a higher level, future increases in his salary will be administered within the range of his new grade. If at this time the staff member’s salary exceeds the maximum of the salary range of the position occupied, the salary will remain unchanged until the maximum of the range exceeds that amount.

In her reply, the Applicant invokes, in support of her claim, para. 5(1)f of the Principles of Staff Employment, which states that the Respondent shall

establish procedures and conditions under which staff members may be assigned to positions graded at various levels, while providing reasonable measures to alleviate adverse effects on staff members assigned to positions graded or regraded at a lower level.

The Applicant contends, on the basis of the above Principle, that she should be grandfathered in her previous salary level. She also contends that by freezing her salary the Bank would deny her a “fundamental element in Applicant’s conditions of employment which the Bank does not have the right to change unilaterally,” namely, the right as embodied in de Merode (Decision No. 1 [1981], para. 112) to benefit from “periodic adjustments

reflecting changes in the cost of living and other factors.”

31. In de Merode (Decision No. 1 [1981], paras. 111 and 112) the Tribunal found “that a consistent practice of periodic adjustment has been established, and that the Bank makes these adjustments out of the conviction that it is legally obliged to do so”. The Tribunal concluded:

[I]n consequence....the Bank is obliged to carry out periodic reviews of salaries, taking into account various relevant factors. .... [T]he established practice, and statements confirming that practice, have created a legal obligation to make periodic adjustments reflecting changes in the cost of living and other factors. In the opinion of the Tribunal such an obligation is a fundamental element in the Applicant's conditions of employment which the Bank does not have the right to change unilaterally.

In Pinto (Decision No. 56 [1988], para. 40), where the same contention was raised as has been raised in this case, the Tribunal held:

The Tribunal concludes that the freezing of the Applicant's salary, from September 30, 1987, would deprive her, without justifiable cause, of the right to benefit from periodic adjustments reflecting changes in the cost of living and other factors, which the Tribunal has found to be a fundamental element in the Applicant's conditions of employment which the Bank does not have the right to change unilaterally. This is not to suggest that a staff member may under no circumstances have his or her grade reduced or salary frozen, for example, when this is done for cause as for disciplinary action. In the present case, however, the downgrading of the Applicant and her position was done not because of her misconduct but because of the organizational needs of the Bank; in such circumstance, the staff member is reasonably entitled to more equitable treatment, as appears to be contemplated by Staff Principle 5(1)f.

The Tribunal will apply the same ruling in this case and decides that the Applicant should, as from September 30, 1987, receive the periodic salary review increases approved by the Respondent for staff members in grade 16, the grade in which she was before her position was regraded.

Decision:

For the above reasons the Tribunal unanimously decides that:

- (i) the decision of the Respondent of November 24, 1986 insofar as it assigns a grade level 15 to the Applicant's position be quashed and remanded to the Respondent so that a new decision may be taken; and
- (ii) in the event that after the remand the Applicant's position is graded at level 15, the Respondent provide for the payment to the Applicant, as from September 30, 1987 of the periodic salary review increases approved by the Respondent for staff members in grade 16.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe

Executive Secretary

At London, November 7, 1988