

Decision No. 178

Sylviane Caronjot,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on October 23, 1996, by Sylviane Caronjot against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of E. Lauterpacht (President of the Tribunal) as President, P. Weil, A.K. Abul-Magd and Thio Su Mien, Judges. The usual exchange of pleadings took place. The case was listed on September 30, 1997.

2. The Applicant contests the Respondent's decision to declare her position redundant under Staff Rule 7.01, paragraph 8.02(c), and requests the Tribunal to quash the impugned decision as constituting an abuse of authority.

THE RELEVANT FACTS

3. The Applicant was employed by the Bank on July 2, 1990 as a Translator in the French section of the General Services Department (GSD), Translation Division (GSDTI). The work in this section was performed by Translators, Senior Translators and Revisers.

4. In an interim review of the Applicant's performance, dated January 9, 1991, which took place during her probationary period, the Applicant's supervisor, the Section Chief, GSDTI, concluded that the Applicant's talents gave her the potential to become a great asset to the section if she continued to work hard and improved in the areas where she was weak. The Applicant, at the time of her first annual performance evaluation (PPR) for the period of July 2, 1990 to July 1, 1991, was noted by her supervisor as having overcome her initial adjustment problems. She was confirmed at the end of her probationary period.

5. In her PPR for 1991-92 the Applicant's overall performance was given a positive evaluation; however, it was mentioned that her productivity level was below standard. In her PPR for 1992-93 it was noted that she did not consistently produce the high quality work that would be essential if she was "to contribute as fully and productively to the section's work as one would expect." Again in the PPR covering the period from March 1, 1993 to February 28, 1994, although the positive aspects of the Applicant's performance were fully recognized, the evaluating Section Chief went on to note that the Applicant has not demonstrated increased team spirit and that "she still has weaknesses in the area of interpersonal skills." The Management Review Group subscribed to the Section Chief's finding that "issues of teamwork have not improved." As a result, the Group recommended "ongoing monitoring of areas needing improvement and quarterly progress reports."

6. In April 1994, a policy paper was prepared by GSDTI's management for GSD management entitled "Provision of Translation Services in the World Bank." This paper discussed, among other things, the need to reevaluate the existing staffing level and profile in light of the changing business environment.

7. On July 1, 1994, the Division Chief, GSDTI, distributed to the Division staff a paper on the new GSDTI Staffing Strategy (hereinafter the "Staffing Strategy Paper") in which he indicated that the Division needed more Senior Translators and Revisers and fewer Translators. Ideally, it required only Revisers and no Translators. There was a need for staff whose work needed no revising and who were themselves capable of revising the

work of outside contractors and of providing them with feedback. The conclusion was that the Translators who, during FY95/96, had not demonstrated that they had the potential of becoming at a minimum Senior Translators should be separated. Two Translator positions were to be made redundant immediately. The other Translators were to be given one year to demonstrate that they had the potential to become Senior Translators. At the end of this period, those who had not been able to demonstrate that they had such potential were to be separated from the Bank's service. The decision as to whether a Translator had the potential to become a Senior Translator was to be made by the respective Section Chief with input from the Revisers in that section.

8. Also in the same paper the Division Chief, GSDTI, set the criteria to be used in determining whether Translators had the potential to become Senior Translators. According to the criteria, the Translators needed to be able:

- (i) to consistently deliver translations that were accurate, complete and free of grammatical errors, to cover the whole range of documents and meetings handled by the respective sections, and/or to cover a wide range of languages;
- (ii) to actively participate in the exchange of relevant technical, linguistic and terminological information with colleagues and to make a significant contribution to the section's terminological research effort; and
- (iii) to maintain on average the level of production/productivity set out in their Individual Performance Plan.

9. An interim review of the Applicant's performance was held on November 4, 1994. As recorded in a memorandum to the Applicant on that same date, the Section Chief indicated that the quality of her work was very good but that she still needed to take the recommended communications courses offered by the Training Division in the area of communications skills.

10. For the review period of March 1, 1994 to December 31, 1994, the Applicant's supervisor noted that the Applicant's overall performance had deteriorated sharply since the mid-year review. The Applicant's supervisor described analytically all the areas in which the Applicant's performance was problematic and concluded that, on the basis of her work, it would be very unlikely that the Applicant could qualify to become a Senior Translator. In the last section of her PPR the Applicant responded in detail to her supervisor's assessment of her performance, questioning the validity of, and the motive behind, her supervisor's comments.

11. A Management Review of this performance evaluation was held on March 6, 1995. In the Review it was mentioned that a decision on abolition of office would be made on June 30, 1995 as previously indicated in the Staffing Strategy Paper.

12. On June 1, 1995, the Section and Division Chiefs, GSDTI, met with Revisers to discuss whether the Applicant met the criteria listed in the Staffing Strategy Paper. By memorandum dated June 29, 1995, the Division Chief, GSDTI, informed the Applicant that he had recommended to the Senior Vice President, Management and Personnel Services (MPS), that her position be declared redundant effective August 1, 1995. He further stated that the decision to recommend redundancy had been made by the Section Chief and himself based on all of the criteria listed in the Staffing Strategy Paper. He said, among other things, that the Applicant did not consistently deliver accurate and complete translations, that she could not be entrusted with the whole range of documents handled by the French section since she had refused to do some assignments, that she had not made a significant contribution to the section's terminological research effort and that her productivity level was still low.

13. By memorandum dated July 25, 1995, the Senior Vice President, MPS, informed the Applicant, among other things, that her position had become redundant with effect from August 1, 1995. It was noted in the memorandum that this decision had been taken in accordance with Staff Rule 7.01, paragraph 8.02(c).

14. As indicated by a memorandum dated October 5, 1995, the Vice President, Financial Policy and Resource Mobilization, conducted the administrative review of the decision to declare the Applicant's employment redundant. He concluded that the decision had been based on work program needs and had been handled in

accordance with the provisions of Staff Rule 7.01.

15. The Applicant filed an appeal with the Appeals Committee on November 6, 1995. The Committee recommended that the appeal be denied but noted the lack of documentation to show that management had monitored and provided consistent feedback to the Applicant during the period of July 1994 to June 1995 when her potential for Senior Translator was being assessed. The Committee also identified poor management practices in the supervision and guidance provided to the Applicant and noted that the productivity criterion was ambiguous and the guidelines as to the standards at which Translators were expected to perform were wanting and were not understood uniformly by Translators. The Committee was impressed with the Applicant's strong technical skills and recommended that she be granted a waiver of any time restriction to seek free-lance work as a Translator for the Bank. The Vice President, Human Resources, accepted the Committee's recommendation that the Applicant's appeal be denied but did not accept the recommendation that the Applicant be granted a waiver of any time restriction to seek free-lance work as a Translator for the Bank.

LEGAL ISSUES AND CONSIDERATIONS

116. The Applicant contends that in declaring the Applicant's position redundant and terminating her employment under Staff Rule 7.01, paragraph 8.02(c), the Respondent abused its discretion, failed to apply the relevant Staff Rule properly and that the decision was motivated by a personal bias on the part of her supervisor. The Respondent, on the other hand, maintains that it applied Staff Rule 7.01 properly, that the Applicant had failed to meet the criteria qualifying an incumbent translator to occupy the revised position of Senior Translator and that the declaration of redundancy resulting in the termination of the Applicant's employment was an honest and correct exercise of managerial discretion.

17. Examination of the record of the Applicant's performance, as evidenced by her PPRs covering the whole period of her employment with the Respondent, shows that, since the early days of her employment, that performance was characterized by three features:

- a) her ability to produce at times very high quality work and her good style at all times;
- b) the uneven and unreliable level of performance which required systematic revision of her work; and
- c) her reluctance to accept feedback and corrections.

The above three features were recorded in all the PPRs of the Applicant as described above.

18. The relevance of the record of the Applicant's performance must be measured by examining the pertinent Staff Rule and the Respondent's application of the criteria for recommending her for the position of Senior Translator.

19. Staff Rule 7.01, paragraph 8.02(c), is the governing rule in this respect. It states that "[e]mployment may become redundant when the Bank Group determines in the interests of efficient administration that ... a position description has been revised, or the application of an occupational standard to the job has been changed, to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position...." What took place in the case of the Applicant falls clearly within this paragraph since the description of the application of the occupational standard to the job of the Applicant had changed as a result of implementing the new policy and introducing the requirement of a higher level of competencies for the job of Senior Translator. This change of job requirement was clearly motivated by considerations related to effective management.

20. It remains, however, to review the criteria formulated by the Respondent for determining the eligibility of incumbent translators for the redesigned job of Senior Translator. The Tribunal finds the criterion, with its three components, to be reasonably related to the objective of the managerial exercise. This objective was well defined by the paper entitled "GSDTI Staffing Strategy," which was distributed to GSDTI Staff, including the Applicant, on July 1, 1994, as follows:

at the professional level, the division needs more senior translators and revisers and fewer translators (ideally, only revisers and no translators), i.e., we need staff whose work does not need to be revised and who are themselves capable of revising the work of contractors and of providing them with feedback.

21. The Applicant's contention that she was in fact qualified for the job of Senior Translator seems to rest on the positive evaluation of her performance in almost all of her PPRs. This contention misses the difference between satisfactory performance within the framework of the job occupied by a staff member and the determination of the eligibility of a staff member to occupy a job whose required competencies have been changed. It is true that at no point had the Respondent described the Applicant's performance as unsatisfactory. The Applicant's employment was eventually terminated on the basis of redundancy and not for unsatisfactory performance. It does not help the Applicant, therefore, to invoke the many positive statements in her PPRs recognizing the excellent quality of some of the work she produced. In this respect, the negative aspects of her performance are more relevant, particularly those referring to erratic and inconsistent performance and to the lack of ability to work smoothly and harmoniously with a team, along with the continued need to revise her work. The Tribunal has consistently adhered to the principle that it "will not interfere with the exercise of [managerial] discretion 'unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure'" (*Klempin*, Decision No. 88 [1990], para. 21; *Saberi*, Decision No. 5 [1982], para. 24).

22. The fact that there might have been some personality conflict and problems between the Applicant and her Section Chief, the supervisor responsible for many of the negative remarks in the Applicant's PPRs, is not enough to substantiate the Applicant's allegation of abuse of discretion and personal bias on the part of the Respondent. The Section Chief had always been cognizant of the Applicant's strong points of performance. These strong points were elaborately described and incorporated in the PPRs. Moreover, almost every other supervisor, including members of the Review Group, agreed with the Section Chief in her evaluation of the Applicant's performance.

23. The Tribunal concludes, on the basis of the above, that the record does not substantiate the Applicant's allegation of abuse of discretion or ill motivation on the part of the Respondent. Nonetheless, the Tribunal notes that the guidelines as to the required standard of performance relating to both quantity and quality of work which would qualify the incumbent translators for the redesigned job of Senior Translator were not sufficiently precise. This lack of precision had a serious impact on the Applicant in depriving her of the guidelines necessary to help her adjust her efforts for improving her performance during the one-year period designated for a final determination on her future in the Bank. This flaw calls for compensation.

DECISION

For the above reasons, the Tribunal unanimously decides that:

- (i) the Respondent shall pay to the Applicant compensation in an amount equivalent to four (4) months' net base salary;
- (ii) the Respondent shall pay costs in the sum of \$7,500; and
- (iii) all other pleas are rejected.

Elihu Lauterpacht

/S/ Elihu Lauterpacht
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At Washington, D.C., November 18, 1997