

Decision No. 70

Bechir C. Chakra,  
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 January 16, 1987, by Bechir C. Chakra, 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. By letter dated February 2, 1973 the Respondent offered the Applicant a regular appointment as a Bilingual Typist at a salary of \$6,365 per annum, the Applicant to take up duties not later than April 30, 1973. By letter dated April 30, 1973 the Respondent amended the offer of appointment stating that the Applicant would "be assigned as a Secretary, Grade 4," the salary to be at the rate of \$6,845 per annum. On the same day the Applicant accepted by letter the appointment offered with the amendment of April 30, 1973.

4. Prior to the classification of the Applicant's position under the Job Grading Program the Applicant held a position as Staff Assistant in the Arabic Translation Unit of the Language Services Division of the Respondent's Administrative Services Department and his position was at level G for which grade 16 was the approximate equivalent under the new system. 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 his current range for level G, he 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 April 25, 1986 the Applicant filed an appeal with the Job Grading Appeals Board (JGAB) against the decision to grade his position at level 15. In its report dated September 30, 1986 the JGAB found that:

(a) The ADM 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 Arabic 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.

(d) Even though there was no clear statement in the results of the administrative review of the rationale behind the practice of not recognizing language skills in the grading of positions, the practice was general and not arbitrary as might have appeared to the Appellant.

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

(f) If it were decided to take language into account in the grading of positions, it would take 23 "language points" to move Appellant's position from slightly below the middle of the grade 15 range to grade 16.

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

7. By letter dated November 24, 1986 the Vice President and Controller, acting on behalf of the Respondent, advised the Applicant that he accepted the recommendation of the JGAB to confirm the grade level 15 for the Applicant's position.

#### The Applicant's main contentions:

8. 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 being placed at the same grade level as monolingual staff assistants.

9. 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 his bilingual skills, he was at a long-term disadvantage for the purposes of merit increases because he would reach the ceiling of compensation for his grade earlier than monolingual staff. Thus, the fact of his recruitment at a higher salary should have no relevance to job grading.

10. Through the Respondent's previous grading system the Applicant was graded at level G on the basis of his professional capability and experience. The Respondent should, therefore, honor the terms of employment as amended through 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 the Respondent has denied the Applicant the right recognized 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.

11. 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.

12. 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.

13. 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 his previous grade. The Respondent's decision to limit the grandfathering period to two years was arbitrary.

14. The Applicant requests that he 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:

15. 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.

16. Since at the time of his recruitment in 1973 the Applicant was placed at a salary level in his grade two and one half steps above the salary level at which he would have been placed had he been monolingual, recognition was given to his bilingual skills, although, as was the practice at the time, no explanation was given for 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 1973 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.

17. 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.

18. 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.

19. 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 his position's grade, there is no deprivation of an essential right.

20. 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.

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

22. 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:

23. 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 his previous grade level for only a limited period of two years?

24. In regard to the first issue the Applicant contends that, because language skills were mandatory in the qualifications for his position, the decision not to consider language skills for purposes of grading was discriminatory in that it resulted in his 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.

25. As was stated in Eindhoven, 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.

26. 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.

27. 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 to 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.

28. 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 himself has not invoked the existence of a right indefinitely to maintain his former grade. His contentions have been essentially concerned with the repercussions of the impugned decision, assuming that it is correct, with respect to his 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.

29. The Applicant's main contention is that his 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, he 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 his reply, the Applicant invokes, in support of his 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 he should be grandfathered in his previous salary level. He also contends that by freezing his salary the Bank would deny him 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.”

30. 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 he was before his 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