

Decision No. 168

Irene T. Denning,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on July 17, 1996, by Irene T. Denning 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, F. Orrego Vicuña (a Vice President of the Tribunal), A.K. Abul-Magd and Bola A. Ajibola, Judges. The usual exchange of pleadings took place. The case was listed on May 16, 1997.

2. The Applicant complains that she was made redundant in violation of express reentry guarantees given by the Respondent and that such a decision was also in violation of Staff Rule 7.01, paragraphs 8.02 and 8.03.

### THE RELEVANT FACTS

3. The Applicant was notified of redundancy on December 1, 1994, on the ground that her position would be abolished with effect from January 1, 1995. At the time of this notification the Applicant held the position of Training Officer, level 23, in the Training Division of the Personnel Management Department (PMDTR), but had been requested to undertake a Developmental Assignment (DAIS) with the Operations Policy Group of the Operations Policy Department (OPRPG) beginning on February 1, 1994 and ending after one extension on December 31, 1994. The Applicant's Division Chief, PMDTR, confirmed in writing to the appropriate Personnel Officer that the Applicant was "guaranteed a re-entry to PMDTR at the completion of the DAIS assignment."

4. In the Applicant's performance review for the period from March 1, 1993 to February 28, 1994, the Management Review Group (MRG) indicated that upon her return to PMDTR her skills would need to be assessed against the skill needs in the Training Division. The MRG further noted that the Training Division was undergoing a review of its work priorities and skill needs and that "[i]n light of changing emphasis and requirements, there may not be a position for Ms. Denning at her level in which case, alternatives would be explored." In fact, several changes in training strategy were proposed which would have had specific consequences for the Training Division's staff, since it had five members, including the Applicant, who had been identified as not meeting the skill requirements or whose positions might be declared redundant.

5. The changes proposed led to the abolition of all quasi-managerial or administrative positions and emphasized the need for professional background in training. In particular, it was envisaged that there would no longer be any need for administrative coordination of seminars because this would be done by each professional staff member in charge of the specific training activity. In respect of the Applicant, the document, in explaining the proposed changes, stated that, although she had strong administrative and organizational skills, she did not have an undergraduate degree and had not, during her service in the Bank, undertaken any significant training program in the human resources field. The document also stated that the Applicant did not possess any training or background in instructional design and did not have any experience in training delivery. The paper concluded that the Applicant did not have the skills expected of a training officer at level 23 in this new context of changes in the Division.

6. After several options had been considered, the Applicant was made redundant under Staff Rule 7.01,

paragraph 8.02(b). The conclusion of the administrative review requested by the Applicant was that there was no reason to question the rationale leading to the decision to abolish her position or the measures taken to try to find her alternative positions. Subsequently, the Appeals Committee recommended that the Applicant's requests for relief be denied, a recommendation that was accepted by the Respondent.

### **THE APPLICANT'S MAIN CONTENTIONS**

7. The World Bank has violated Principles of Staff Employment and Staff Rules by failing to honor its reentry guarantee to the Applicant.

8. The only Staff Rules addressing reentry guarantees do not limit such guarantees to the specific position previously held, but instead "guarantee reentry to a position" in the department.

9. The Bank has violated an essential term or condition of employment, namely, the Applicant's explicit, written reentry guarantee, which was the condition upon which she accepted the OPRPG temporary assignment. The Bank's decision is, therefore, subject to strict review by the Tribunal.

10. The Applicant was not terminated under paragraph 8.02(b) of Staff Rule 7.01 but under some other paragraph of that Rule, whether 8.02(c), 8.02(d) or 8.03, addressing redundancy resulting from an employee's lack of requisite skills.

11. Making the Applicant redundant on the basis of her lack of formal qualifications, while failing previously to notify her of the need for enhancing them, constitutes a denial of due process.

12. The alleged lack of formal qualifications, which the Applicant more than made up for by continually updating her skills through training seminars, was the Bank's fault, not the Applicant's.

13. The Bank fails to give any specific example of how the Applicant's skills were lacking.

14. The Bank's actions against the Applicant appear to constitute a form of gender discrimination against her.

15. The Applicant sought reinstatement, back pay, compensation and costs.

### **THE RESPONDENT'S MAIN CONTENTIONS**

16. The Applicant's position was abolished under Staff Rule 7.01, paragraph 8.02(b). Nothing in the Skills Profile or the Management Review Record indicates that the Applicant's employment was declared redundant under paragraph 8.02(c) or (d).

17. Examination of the Applicant's skills is consistent with the redundancy decision.

18. The Applicant's argument that she possesses the skills needed by the reorganized training division is not supported by the record.

19. The Tribunal has upheld the Bank's decisions not to select a staff member for a position where the deficiencies in a staff member's skills could not be remedied by reasonable training, as is the case here.

20. The deficiencies in the Applicant's skills could not be redressed even if she had been provided with a longer notice period and a skills inventory.

21. The Applicant does not have an absolute right to continuous employment with the Bank.

22. Since the Applicant always remained in her position as the Training Officer for Planning and Coordination, it is unreasonable for her to expect to return to any other position in the Training Division upon completion of her

developmental assignment, especially since her situation cannot be compared with reentry guarantees provided to staff members on external service, under Staff Rule 5.02, or extended leave without pay, under Staff Rule 6.06, paragraph 6.03.

23. Since the Bank's actions with regard to the Applicant's redundancy are a legitimate exercise of managerial discretion, they should be evaluated under the abuse of discretion standard of review.

24. The Applicant's references to sex discrimination should be disregarded.

### CONSIDERATIONS

25. The first question that the Tribunal must examine is whether Staff Rule 7.01, paragraph 8.02, has been properly applied in this case. While the Respondent declared the Applicant's position redundant under letter (b) of this paragraph, the Applicant claims that this is simply a rationalization after the event, since what was really involved was either the redesign of a position under paragraph 8.02(c) or the reduction in number of several positions under paragraph 8.02(d). Because the Applicant was identified in a document of the Training Division on skills profile, and not by reference to the position she held, she maintains that this provides evidence that either paragraph 8.02(c) or paragraph 8.02(d) was relevant and, therefore, that the guarantees provided in paragraph 8.03 of Staff Rule 7.01 should apply.

26. The record shows, however, that the situations envisaged in paragraph 8.02(c) and (d) do not exist in this case. First, the duties assigned to this particular position were not redesigned as envisaged under paragraph 8.02(c), but were redistributed in a rather comprehensive reorganization of the Training Division. This responded to the approach that the task of coordinating seminars was no longer justified since this would be done by each staff member in charge of the substantive professional training and that therefore the Applicant's position should be abolished. Second, the situation is not one contemplated in paragraph 8.02(d) because the four positions eliminated were different and thus there was no reduction in the number of identical positions. Although these positions shared the characteristic of being quasi-managerial or administrative in nature, and in such comprehensive reorganization they had to give place to a professional type of training, this does not alter the fact that each position was entrusted with different tasks. Accordingly, the Tribunal is satisfied that Staff Rule 7.01, paragraph 8.02(b), was the appropriate rule for the Bank to apply in this case.

27. In any event, the extent of the Applicant's skills was indeed considered by the Respondent, not to justify the redundancy on these grounds but, on the contrary, to consider whether she could be kept in the new structure of the Division. This is the reason why the options of downgrading her position or reassigning her to another position were also discussed. The Tribunal has held that taking into consideration the grade and relative qualifications of staff members in making appointments in a reorganized structure is reasonable and it avoids a rigidity that would be inconsistent with the very objectives of a comprehensive staff reorganization (*Fernandes*, Decision No. 90 [1990], para. 29). However, in spite of the Applicant's training during her career with the Bank and her satisfactory performance reviews, neither of those options could be implemented and redundancy became the only alternative. The Applicant's former position, as she rightly says, did not require an advanced degree or formal training and relevant experience was enough. But the new professional structure of the Division did involve such a requirement and this shortcoming in the Applicant's qualifications could not have been remedied by the limited additional training which could have been offered under the Bank's rules. Because such professional requirements were the outcome of the reorganization of the Division, the Respondent could not have given advance notice to the Applicant of the need to increase formal training.

28. Staff Rule 7.01, paragraph 8.02(b), having been properly applied, the Tribunal must now examine the second major issue raised by the Applicant, namely, the question of the effect of the reentry guarantee given to her by the Respondent. A guarantee of reentry into the Training Division was indeed given to the Applicant in connection with her assignment in a different Department. The Bank rules envisage reentry guarantees in two situations: (1) one, under Staff Rule 5.02, paragraph 4.01, is where a written commitment is given to provide a position at the end of a staff member's External Service assignment; and (2) the second is under Staff Rule 6.06, paragraph 6.03, where a similar commitment can be given in cases of leave without pay of 31 or more

calendar days. Because these rules refer to “a” position and not to the position specifically held by the staff member, the Applicant maintains that a reentry guarantee given for a developmental assignment within the Bank entitles the staff member to return to *any* position within her Division and not just to the original position she had held. Aside from the argument that a return from an in-Bank assignment does not technically constitute a reentry, the application of those rules to the present situation is not warranted because the similarity between the two kinds of reentry is more apparent than real. Indeed, in the case of external service or extended leave without pay, guarantees might be given because the staff member will actually be leaving his or her position, while in a developmental assignment the original position is kept by the staff member. In any event, in the specific context of this case, it appears that what was really meant was a return to the position originally held by the Applicant and it is not reasonable to claim that any other position should be made available. Furthermore, if such were the case, the Applicant would need to be qualified to occupy the position available and this, as explained, was not the situation here.

29. It must also be noted that the Tribunal has held in other cases that the Bank does not lose its power of declaring a position redundant by the mere fact that a staff member is undertaking training (*Sukkar*, Decision No. 84 [1989], para. 39), nor does it lose it because the staff member is on a developmental assignment. Neither does an expectation of returning to a given position, or of being considered for participation in a team, preclude the implementation of a reorganization undertaken or insulate the staff member from such a process (*Montasser*, Decision No. 156 [1997], para. 18).

30. With regard to the Applicant's arguments about sex discrimination in connection with the decision taken, the Tribunal finds no evidence that this was the case.

## DECISION

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

Elihu Lauterpacht

/S/ Elihu Lauterpacht  
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé  
Executive Secretary

At London, England, June 10, 1997