

Decision No. 24

Yvonne Durrant-Bell,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, A.K. Abul-Magd and P. Weil, Vice Presidents, and R.A. Gorman, N. Kumarayya and C.D. Onyeama, Members, have been seized of a complaint, received May 7, 1984, by Yvonne Durrant-Bell against the International Bank for Reconstruction and Development. After the usual exchange of pleadings, the case was listed on November 15, 1984.

The relevant facts:

2. At various times between November 1972 and June 1974, the Applicant with the assistance of an agency secured employment as a clerk-typist with the Respondent. In June 1974 she was given a temporary position as a clerk-typist in the Controller's Department. That department was not satisfied with her performance and requested that her services be terminated in October 1974 when her temporary appointment expired. Consequently, a temporary position was found for her until February 1975 in the Public Utilities Division, Eastern Africa Projects Department. She was then transferred to the Agricultural Credit and Livestock Division (ACLD) where her employment was extended several times till January 1976.

3. Despite the fact that there were unexplained discrepancies in her employment history, that she failed several times to pass the Bank's standard manuscript typing test, and that there was one recommendation against offering her a permanent appointment, on January 23, 1976 the Applicant was offered a regular appointment as Clerk-typist, Level "C", in the Eastern Africa Projects Department (EAPD). This offer was predicated expressly on the basis that she had performed satisfactorily during the past year as a temporary employee in ACLD. After the usual probationary period, she was confirmed in her position in August 1976.

4. The Applicant's Anniversary Evaluation (AER) for the period January-December 1976 stated that, although the quality of her typing still needed improvement, she had "progressed reasonably well." Hence, her supervisor recommended that she be promoted to Level "D". The Applicant was given this promotion in January 1977, after receiving an above-norm merit increase for 1976, and in March 1977 her title was changed to Secretary. After the agricultural divisions were reorganized, the Applicant was assigned in July 1977 to the Southern Agriculture Division of EAPD. In the Applicant's AER for the period January-December 1977, one of her supervisors stated that the Applicant was unable to perform adequately at Level "D" and that her promotion to that level had been recommended to stimulate performance rather than because of actual performance. He recommended a six-month trial period under new supervisors followed by further evaluation, and also noted that it had been made clear to the Applicant what was required of a "D" level secretary. She received a below-norm merit increase for 1977, effective January 1, 1978.

5. Her Division Chief arranged to place the Applicant with her new supervisors by September 1978. She did not enter on this new arrangement until after February 1979 because she went on maternity leave. The Applicant's AER for the period January-December 1978 set out the revised arrangements and indicated that a mid-year review would be conducted in August 1979, at which time a recommendation would be made as to whether the Applicant was to be retained in the division. The Applicant's new supervisors were instructed to provide her with continuous feedback on her performance. The Division Chief concluded that although the Applicant should

continue to work as a regular staff member in the division, the quality of her work was marginal and he confirmed that, if any slippage was reported, he would request her transfer from the division. The Applicant's AER for the period January-December 1979 noted that there had been an improvement but that substantial improvement in the accuracy of her work was necessary for her to be considered fully competent in her "D" grade. The Applicant received a norm merit increase for 1979, effective January 1, 1980. The Applicant's AER for the period January-December 1980, signed by her Division Chief in February 1981, noted improvement in her work and in her ability to take constructive criticism.

6. In May 1981, however, her Division Chief wrote to the Personnel Management Department (PMD) requesting that the Applicant be transferred from the division by June 30, 1981 because of her history within the department. In February and April 1981, there had occurred some operational mistakes on the part of the Applicant and she had come into conflict with the Administrative Secretary in the division. The Division Chief agreed to keep the Applicant on his budget for a maximum of six months, through November 1981, while a trial assignment was being arranged. The Applicant simultaneously requested a transfer. When she met with her Personnel officer on June 15, 1981 to discuss the situation, the Applicant was advised that because (i) she had never passed the Bank's typing test after 26 attempts and (ii) her cumulative record of performance in the Bank was poor, her chances of being voluntarily selected for a permanent position in the Bank were not good.

7. Efforts to find a trial assignment for the Applicant elsewhere in the Bank were not successful and at the end of September 1981 a series of temporary assignments were arranged for the Applicant till September 1982. Although PMD and the Applicant continued to look for a permanent assignment for the Applicant, managers were reluctant to accept her for various reasons, including her work record. During that time, the Applicant did receive at least one commendatory report on her work. By August 1982 no formal trial assignment had been identified. The Applicant was still being carried on EAPD's budget, although she had left that Department nearly a year before.

8. The Applicant went on maternity leave and then home leave from September 20, 1982 to January 21, 1983. On December 10, 1982, a meeting was held within PMD to discuss the Applicant's employment status. The results of this meeting were communicated to the Applicant on December 13, 1982 by her Personnel Officer and also in a memorandum dated January 14, 1983 by the Division Chief, PMD. From January through April 1983, the Applicant was to be assigned to the Temporary Assignment Program (TAP) and was to continue to try to locate a position within the Bank. That memorandum also provided that, if she failed to locate a position by April 30, 1983, she would be placed on special leave and separated from the service of the Bank effective November 30, 1983. The Applicant was not successful in finding a position within the stipulated time. Therefore, the separation arrangements described in the memorandum of January 14, 1983 from the Division Chief, PMD, were re-confirmed by him in another memorandum to the Applicant, dated April 25, 1983. The Applicant did not sign and return a copy of the memorandum as requested.

9. On April 27, 1983 the Applicant met with the Vice President, Personnel and Administration (PA), to request that the decision to terminate her employment be rescinded. On May 24, 1983 the Vice President, PA, notified the Applicant that, having reviewed the situation, he had concluded that the termination decision should be upheld. He urged the Applicant to take advantage of the services being offered to her by both the Medical Department (MED) and PMD.

10. After the Applicant's special leave had begun, the Acting Division Chief, PMD, sent the Applicant a memorandum dated June 23, 1983 reflecting some new arrangements which would help her financially. She would receive the equivalent of ten months' salary paid in a lump sum instead of the six months' salary previously offered, this payment to be made on the date of her separation, June 30, 1983, and not on November 30, 1983. The Applicant did not accept the proposal. By memorandum of June 24, 1983 the Acting Vice President, PA, reaffirmed the decision of the Vice President, PA, to uphold the termination of the Applicant's employment and he further pointed out that appropriate recourse now lay with the Appeals Committee. The Applicant subsequently presented her case to the Appeals Committee.

11. Because the hearing by the Appeals Committee went beyond the expiration of the Applicant's special leave,

this leave was extended through January 16, 1984. In its Report of December 22, 1983, the Committee unanimously recommended that the Bank's decision to terminate the Applicant's employment be upheld, noting that it did not find that the Applicant had been discriminated against or harassed. The final decision in her case was taken by the President of the Bank who accepted the Committee's recommendation and so informed the Applicant on January 4, 1984. By letter of January 10, 1984 to the President, the Applicant expressed her view that her case remained open and unresolved and stated that she intended to turn her case over to her attorney. By letter of January 26, 1984 from PMD the Applicant was advised that the appropriate forum for any further action was The World Bank Administrative Tribunal.

The Applicant's main contentions:

12. The Applicant was quite suitable for Bank employment. She had satisfactorily fulfilled her probationary requirements and had been promoted, because she had demonstrated the capacity to perform according to the standards required for the job.

13. The decision to transfer her out of the Southern Agriculture Division was discriminatory and a harassment. Her Division Chief took objection to the Applicant because of some misinformation given him by his Administrative Secretary.

14. PMD failed to secure a meaningful trial assignment for the Applicant before terminating her employment, in spite of a satisfactory evaluation from one Division Chief in particular.

15. The Respondent failed to provide the Applicant with the necessary training to upgrade her skills to meet its internal market requirements and to remedy shortcomings identified in her AERS.

16. The Respondent failed to live up to its separation offer made in the memorandum from PMD dated June 23, 1983.

17. The Applicant requests:

- (i) payment to her of a lump sum equivalent to 15 months of net salary as of May 1, 1983;
- (ii) enrollment at the Respondent's expense at the Northern Virginia Community College to undertake training under the Executive Secretarial Program;
- (iii) payment to a placement agency in an amount up to 20% of one year's salary to place her in a permanent job after the training referred to in (ii) above;
- (iv) payment of her attorney's fees.

The Respondent's main contentions:

18. The Applicant's transfer from the Southern Agriculture Division was precipitated by operational errors and her conduct and attitude towards the Administrative Secretary, all of which concern work performance. It could not be said that there had been continued improvement in performance.

19. The Respondent undertook and attempted for more than a year to locate a suitable trial assignment for the Applicant but without success. There was no failure on the part of the Respondent to live up to its undertaking.

20. The Respondent had provided the Applicant with job-related training, particularly in the use of CB Display technique. She could not be expected to have training in word processing because this was not job-related for most of the time she worked in the Southern Agriculture Division. Moreover, word processing training had just begun in the division at the time her departure from the division was being effected. PMD was from March

1982 willing, as an exception, to give her training while she was in temporary assignments, but she did not respond to this invitation till March 1983 when training was arranged as requested by her. In any event, skills training would not have cured certain of the Applicant's shortcomings such as accuracy, concentration, working under pressure, reaction to constructive criticism and relationships with supervisors.

21. The Respondent had made an alternative offer regarding separation arrangements in June 1983, but this had been refused by the Applicant. As this was an alternative and because it had been refused, the original offer made in January and April 1983 still stood. Hence the Respondent had not failed to live up to its separation offer.

Considerations:

22. The central issue before the Tribunal in this case is whether the Respondent failed to observe the provisions of the contract of employment or the terms of appointment of the Applicant by terminating her employment on January 4, 1984 on the basis of unsatisfactory performance.

23. According to the Applicant, said non-observance occurred as a result of:

- a. the fact that her performance at the time of termination was not unsatisfactory and that the Respondent was motivated by prejudice and discrimination;
- b. the Respondent's failure to live up to its undertaking to secure a six months' trial assignment for the Applicant before its decision to terminate her services;
- c. the Respondent's failure to provide the Applicant with the necessary training to upgrade her skills in order to meet the Respondent's internal market requirements;
- d. the Respondent's failure to live up to its separation offer contained in a memorandum dated June 23, 1983.

The Tribunal will examine respectively these four contentions.

24. According to Article V, Section 5(b), of the Bank's Articles of Agreement, the President has the power to dismiss staff members if their service is unsatisfactory. The Tribunal follows the established principle that the determination whether a staff member's performance is unsatisfactory falls within the management's discretion.

25. The Administration's appraisal in this respect is final, unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure (Saberi, WBAT Reports 1982, Decision No. 5, paragraph 24; Suntharalingham, WBAT Reports 1982, Decision No. 6, paragraph 27; and Buranavanichkit, WBAT Reports 1982, Decision No. 10, paragraph 26).

26. The record of this case does not substantiate the contention that in judging the Applicant's performance as unsatisfactory, the Respondent was motivated by prejudice or discrimination against the Applicant. Since her confirmation in a regular appointment in August 1976, the Applicant's AERs had shown major weaknesses from which she never fully recovered.

(a) The AER covering the period from January to December 1976 alluded to "her problem with inaccuracies in typing which seems to stem from her lack of concentration. Mistakes are usually with simple words and expressions."

(b) The AER covering the period from January to December 1977 referred to "certain areas of secretarial functions that require the demonstration of job-related initiative and responsibility as defined in the

Personnel Manual for a "D" level secretary and which should be improved upon." In the same AER, the Applicant's Division Chief described her performance as "considerably below what should be expected from a "D" grade secretary." At the end of 1977 she received a merit increase 50% below norm.

(c) The AER covering the period from January to December 1978 revealed doubts in the minds of the Applicant's supervisors as to her ability to continue working in the Division. She was informed by her Division Chief that the outcome of the recommended mid-year review of her work would determine whether she "should be retained in the Division."

(d) Although the AER covering the period from January to December 1979 referred to unmistakable signs of improvement in both quantity and some aspects of quality of the Applicant's work, her Division Chief and her Department Assistant Director stated the reservation that only when there was a substantial improvement in accuracy would they be able to consider the Applicant as fully competent in her "D" grade. At the end of 1979 the Applicant received a merit increase 25% below norm.

(e) The AER covering the period from January to December 1980 testified without reservation to a steady improvement in the Applicant's performance. Her immediate-in-line supervisor stated that "her accuracy has greatly improved and she has now agreed to devote more efforts to details and systematic approach to her work." Her Division Chief in February 1981 expressed almost unqualified satisfaction with the Applicant's performance, expressing his happiness "to see that Mrs. Durrant-Bell's performance continues to improve, and that there is promise of future development."

27. The Tribunal cannot help but take note of the drastic turn that took place in judging the performance of the Applicant between the date of the 1981 AER and May 22, 1981 when the Division Chief sent his memorandum to PMD asking that the Applicant be transferred from the Division and the Department.

28. The Applicant finds in this drastic change proof of prejudice and discrimination. The Respondent, on the other hand, advances the explanation that two incidents that took place in February and April 1981 precipitated the request for the Applicant's transfer and eventually the termination of her employment. The incidents resulted from the Applicant's negligence in placing orders with the Print Shop as well as from her hostile attitude towards the Administrative Secretary.

29. Taken together, the negative aspects of the Applicant's performance as evidenced by the various AERs and the two incidents related to the print shop constitute a reasonably valid basis for the Respondent's judgment that the Applicant's performance was unsatisfactory.

30. As to the Applicant's complaint that PMD failed to secure a meaningful trial assignment for her before terminating her employment, the record shows that the Respondent in fact tried for more than a year to locate a suitable trial assignment for the Applicant. Between September 28, 1981 and September 3, 1982, the Applicant was assigned to eight different departments and divisions in the hope that a permanent assignment might result from one of those short-term assignments. This, however, did not materialize.

31. In any event the Respondent is under no obligation to secure a new position for every employee facing termination of his or her employment. The responsibility for finding a new position does not fall on the Respondent alone. The Applicant is equally expected to make a similar effort. The Tribunal stated in Saberi (WBAT Reports 1982, Decision No. 5) that PMS 4.04 dealing with reassignment of staff members does not concern itself with staff members on the verge of being terminated for unsatisfactory performance. One of the essential criteria for reassignment announced in PMS 4.04 is that the staff member be "qualified for the position for which he wishes to be considered." The Tribunal concludes, therefore, that the Respondent's failure to locate a new position for the Applicant does not, under the circumstances, amount to a non-observance of the contract of employment or the terms of appointment of the Applicant.

32. The Applicant contends that the Respondent failed to provide her with the necessary training to upgrade

her skills and to remedy the shortcomings identified in her AERs. However, in the AER covering the year 1978 the Applicant admits to have obtained training in the new technique of CB Display, and to “have accomplished this new technique.” The Tribunal also notes that the Personnel Officer of PMD stated in a memorandum dated March 15, 1982 that while the Applicant was being placed in the temporary assignment unit, she should be provided with the necessary orientation and training, including word processing, relative to her functions as a secretary. The record shows that the appropriate job related training was made available to the Applicant. However, training in word processing took place only at a very late stage of the Applicant’s service and for a short period of five days. The Respondent explains the delay by stating that although the Personnel officer of PMD had advised the Applicant to indicate to him training opportunities she wished to pursue, she did not return to him on this matter until March 1983 when she requested the five-day word processing course. The Applicant does not seem to challenge this explanation. Moreover, some of the weak points in the Applicant’s performance were related to aspects which would not have been remedied through training.

33. The Tribunal comes now to the last complaint of the Applicant, namely that the Respondent did not live up to its separation offer of June 23, 1983. In answering this contention, the Respondent argues that the separation offer of June 23 was an alternative to the one made earlier on April 25, 1983, and that since the Applicant rejected the arrangements called for on June 23, the earlier and less favorable offer of April 25 remained in effect. In the opinion of the Tribunal, the Respondent is under no obligation to implement an offer that was unequivocally turned down by the Applicant and which was in fact made as a part of an amicable settlement that did not materialize.

34. On the basis of the above examination of the Applicant’s contentions the decision by the Respondent to terminate the employment of the Applicant shall stand.

35. The Tribunal takes note, however, of certain discrepancies and inconsistencies in the treatment of the Applicant’s case by the Respondent:

(a) Whereas the 1976 AER clearly shows all of the Applicant’s supervisors concurring in the recommendation to promote her to “D” level on the basis of “her improving performance and her ability to handle increased responsibilities” and also shows that “she has performed above “C” level,” one year later the Respondent states through the Applicant’s Division Chief that the Applicant’s promotion to “D” level was “based on the desire on the part of her direct supervisor to see whether a promotion would help stimulate her performance” and that “in no way does it seem that the promotion was made in recognition of a “D” grade performance by a “C” grade secretary.”

(b) There is a discrepancy between the conclusions reached in the Applicant’s 1981 AER all attesting to considerable improvement in her performance and the sudden change of attitude expressed in the Memorandum of May 22, 1981.

(c) There is a similar discrepancy in the Respondent’s evaluation of the two incidents that took place at the print shop. The Chief, Industrial Projects Department, Division I, describes the second incident as a “small problem” that does not affect the Applicant’s performance and should not “weigh on judging her ability in working harmoniously with others” and he stressed “again that this should not be held against her”. On the other hand, the Applicant’s Division Chief, in his memorandum of May 22, 1981, finds in the two incidents enough reason to precipitate the decision to have the Applicant transferred from his Division no later than June 30, 1981.

36. These discrepancies and inconsistencies must have left the Applicant without the indispensable clarity as to the exact position of the Respondent concerning her worthiness, entitlement to promotion on the basis of merit and performance, and her right accurately to assess the prospects of her career with the Respondent. For these reasons and taking also into account the more generous terms of the Respondent’s offer of June 23, 1983, the Tribunal decides that the Respondent shall pay the Applicant an amount equivalent to three months of her net base salary.

Decision:

1. The Tribunal orders the Respondent to pay the Applicant an amount equivalent to three months of her net base salary.
2. All other pleas are hereby dismissed.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington, D.C., March 22, 1985