

Decision No. 185

Mahnaz Ezatkhah,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on January 16, 1997, by Mahnaz Ezatkhah 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) and Bola A. Ajibola, Judges. The usual exchange of pleadings took place. The case was listed on April 7, 1998.

2. This case deals mainly with the Applicant's complaint that the decision to declare her position redundant was based on a pretext, was against the interests of efficient administration and was implemented contrary to the applicable Staff Rules. The Applicant also alleges various acts of discrimination and denial of equal treatment with other staff regarding outplacement assistance. She further claims that the Bank did not pay her for overtime work.

3. The Applicant joined the Bank's London Office Division of the European Office Department in October 1981 as a Secretary, level B. In 1984, she was promoted to level C and in 1986 her position was regraded to level 16. Her position title was changed to that of Staff Assistant in 1988 and to Specialized Staff Assistant in 1992. At the time she was declared redundant in May 1995 she held the title of Senior Specialized Staff Assistant, level 16. The Applicant's supervisor between July 1981 and March 1994 was the Administrative Officer of the London Office. The Applicant and her supervisor had a strained relationship and the Applicant complained several times to Directors, Personnel Officers, Ombudsmen, the Staff Association and the Ethics Officer of misconduct and discrimination by her supervisor.

4. An internal Report dated April 27, 1993, entitled "The Future of the London Office," recommended changes in the London Office and concluded that "in light of the need for a major effort to mobilize support for the Bank and its work in the UK ... the most plausible future for the London Office would be to reinvent it." The Report proposed also that the mission, role and staffing of the London Office should be recast to transform it from an administrative support unit to a public affairs unit which would be closely linked to external affairs functions in Paris and Washington. Regarding personnel changes in the Office, it was proposed that the Administrative Officer should retire and that the reconstituted Office should be headed by a higher level staff member who would report to the Chief of the External Affairs Unit in the Paris Office. One or both of the two support level staff would be offered jobs in the new Office depending on the arrangements made for sharing support level staff with the IFC.

5. In December 1993, the Administrative Officer took leave until March 31, 1994 (the day of her retirement) and the other support level staff (the Applicant's colleague) became Acting Head of the London Office. Also in December 1993, the Applicant filed a formal complaint with the Ethics Officer stating that: (i) despite her longer Bank service, the other support level staff had been named acting head; and (ii) there had been a long history of discrimination against her by the former Administrative Officer. The Ethics Officer, in a letter dated May 17, 1994, stated, among other things, that following his investigation he could find no evidence to support the Applicant's allegations of discrimination against her by the Administrative Officer or of discrimination with respect to the decision to appoint her colleague as the acting head of the Office.

6. In June 1994, the appointment of a Resident Representative for the United Kingdom was announced. The announcement stated that

the role of the London Office should be transformed from essentially an administrative support unit into an office dedicated to external affairs activities (including the Public Information Center) in the U.K. and Ireland, closely linked and reporting to the European Office in Paris. Logistical and administrative services formerly provided by the London Office staff will no longer be available.

The function of the Administrative Officer in the London Office was replaced by providing that the Resident Representative for the United Kingdom should report to the Director of the European Office in Paris.

7. In a Report on the London Office dated April 1995, the Resident Representative, after having assessed “over the past couple of months” how the set-up in London might need to be adapted to ensure that the “UK effort” was delivered “with maximum efficiency and impact,” concluded that there was a need for quite substantial restructuring of work assignments and skills. He explained, among other things, the underlying rationale for the changes, the existing structure and the proposed new structure. According to the proposed new structure, the following five new positions were to be created: (i) Resident Representative; (ii) Communications Consultant; (iii) Program Assistant, level 16/17; (iv) Junior Staff Assistant, level 13/14; and (v) Temporary Assistant. With regard to the level 16 Program Assistant position, he noted that it would be more focused on the priority work to be handled by the London Office. He observed that this position would provide the technical and administrative support to the External Affairs Department, London Office (EXTLD) program, and would be able to absorb some other administrative functions, thus becoming a truly rational level 16/17 position. He remarked that this proposal would result in a clear, more logical and cost effective reallocation of the functions, resulting in the abolition of one of the level 16 positions “under Staff Rule 7.01, paragraph 8.02(d)” (emphasis added). This provides that “[e]mployment may become redundant when the Bank Group determines in the interests of efficient administration that:... [s]pecific types or levels of positions must be reduced in number.” The Resident Representative concluded that of the two level 16 Specialized Staff Assistants, the Applicant’s colleague would be the more appropriate to fill the position of Program Assistant because a major portion of the functions dealing with the technical aspects of the organizational and administrative support with respect to the media efforts was currently within the position held by her. In light of the Resident Representative’s assessment, a formal request was made that the Applicant’s position be declared redundant under Staff Rule 7.01, paragraph 8.02(d).

8. During a meeting with the Resident Representative on May 25, 1995, the Applicant was presented with a memorandum addressed to her from the Counselor to the President, Office of the President (EXC), dated May 10, 1995, in which it was stated that her position was to become redundant with effect from June 1, 1995 “in accordance with Staff Rule 7.01, paragraph 8.02(b)” (emphasis added). This covers redundancy when “[a] specific position in an organizational unit must be abolished.” On July 11, 1995, the Chief of the Personnel Management Department sent the Applicant a memorandum outlining the terms and conditions of her redundancy, which included provisions about her special leave, training, career and outplacement counseling and traveling for the purpose of job or house searches. Thereafter, a number of employment search-related actions were undertaken by the Respondent at the request of, or in agreement with, the Applicant.

9. On August 3, 1995, the Applicant filed a request for administrative review of the decision to declare her position redundant. The administrative review upheld the decision to declare the Applicant redundant. On November 28, 1995, she was given 60-calendar days’ notice of termination. She filed an appeal with the Appeals Committee against the decision of the Bank to declare her position redundant, but it was dismissed.

10. In her application to the Tribunal, the Applicant, in addition to her main claims mentioned in paragraph 2 above, asserts that there were procedural irregularities in the administrative review and Appeals Committee processes. She seeks reinstatement to a position in the Bank’s office in London and the payment of compensation for moral and economic damages in the amount of three years’ net salary. She also requests attorney’s fees for the costs associated with the obtaining of permanent residency in the United Kingdom and for assistance with the appeals proceedings and with the application to the Tribunal.

11. The Tribunal will first address the main contentions of the Applicant which all relate to redundancy. In addressing these contentions it is relevant here to point out that redundancy decisions are within the discretion of the Bank and that the Tribunal will review them only to determine whether they constitute an abuse of discretion, as being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure (*Saberi*, Decision No. 5 [1982], para. 24).

12. (i) The first of the Applicant's contentions is that there was no true redundancy because many of her responsibilities are still carried out in the office. The facts are set out in paragraphs 6 and 7 above.

13. In the light of these facts, the Tribunal can find nothing to substantiate the Applicant's allegation that there was no true redundancy. The reorganization of the London Office was motivated by a desire to enhance the efficiency of the new role of the Office. In this context, it was not unreasonable for the Applicant's supervisor to have recommended that the Applicant's colleague occupy the newly-created Program Assistant position since she was the person already familiar with the new functions.

14. (ii) The Applicant contends secondly that the reorganization of the London Office was not done in the interests of efficient administration, as required by Staff Rule 7.01, paragraph 8.02, because there have been budgetary increases in staff instead of decreases. It appears, indeed, that there have been budgetary increases with regard to staff. The Respondent itself admits that the budget of the London Office increased after the Applicant was declared redundant. The Tribunal notes, however, that the factors determining whether a reorganization is efficient include not only the staff budget, but also the redefined work strategies and the priorities resulting from the new structure. Even if a staff budget is increased, staff reductions can be made based on a different business rationale. In this case, the increase in the budget occurred in the areas of communications and public relations both of which were new or additional work priorities in the restructured London Office. The Tribunal finds that it was within the Respondent's discretion, according to its new business plan, to abolish a position part of whose tasks were phased out and to use the funds from this abolition, and any additional necessary funds, to support the new structure of the Office.

15. (iii) Thirdly, the Applicant claims that the redundancy of her position was the product of retaliation against her because of her complaints against her former supervisor. Both the Applicant and the Respondent acknowledge that the Applicant and her former supervisor had a strained relationship and that the Applicant had complained several times about her supervisor. The Applicant claims that because of these strained relations and her mistreatment by her former supervisor she was put at a disadvantage at the time of the reorganization. The Applicant has in this respect alleged that if her old Performance Review Records (PPRs), containing her former supervisor's evaluations of her performance, had been corrected, they would have presented a different picture of her to her new supervisor and she would have been in a much stronger position both when the decision on the redundancies was taking place and during the time she was searching for alternative employment.

16. On this point, the Tribunal first notes that, even during the many years that the Applicant was under the supervision of her former supervisor, she received merit increases and promotions based on some good performance reviews. The Tribunal further notes that the Applicant failed to challenge, by requesting timely administrative remedies, the PPRs of which she now complains. The record shows that the Applicant had complained formally only to the Ethics Officer and that this complaint, made in December 1993, was about discrimination by her former supervisor. Following an investigation, the Ethics Officer informed the Applicant in May 1994 that no grounds existed for her complaints. The Applicant did not take any other formal action after the completion of the investigation. This complaint cannot now be properly reviewed by the Tribunal.

17. (iv) Fourthly, the Applicant also argues that it is not clear whether the redundancy of her position was declared pursuant to Staff Rule 7.01, paragraph 8.02(b), or 8.02(d). Although in other documents on record it appears that her redundancy was recommended and requested pursuant to paragraph 8.02(d), the notice of redundancy given to her stated that her position was being declared redundant pursuant to Staff Rule 7.01, paragraph 8.02(b). The question thus arises as to whether the new Program Assistant position that was created was materially different from or essentially the same as the Senior Specialized Staff Assistant position

previously occupied by the Applicant. The Tribunal finds that the two positions differed materially from each other. In Brannigan (Decision No. 165 [1997], para. 23), the Tribunal held:

To demonstrate the abolition of a position it is not enough that there may be some differences between the old and new positions; the differences must be ones of substance. The Tribunal has emphasized in this respect the need for the Bank to show a clear material difference between the new position and the position that was made redundant.

18. As stated above, the record shows that the new position required its occupant to perform a number of tasks commensurate with the new role of the London Office as an external affairs unit, while the old position occupied by the Applicant required her to perform mainly administrative tasks. The Tribunal notes that, in spite of some tasks common to both the Applicant's former position and the new position (*i.e.*, performance of some administrative tasks), there were material differences between them. In addition, the tasks assigned to the former positions held by the Applicant and her colleague were different. Thus, there was no reduction in the number of specific types or levels of positions pursuant to paragraph 8.02(d). The Respondent, thus, properly applied Staff Rule 7.01, paragraph 8.02(b), in the declaration of the Applicant's redundancy, a decision about which the Applicant was duly notified. Further, the guarantees of Staff Rule 7.01, paragraph 8.03, apply only with respect to paragraph 8.02(d).

19. The Applicant also alleges that the "discrimination case" continued even after May 1994 and that her new supervisor, the Resident Representative, had in November 1994, threatened her with redundancy unless she dropped the case. The Resident Representative denies having made such a threat. It is not clear in what respect her "discrimination case" continued, because the investigation had been concluded in May 1994, prior to the alleged threat by the Resident Representative, and the Applicant had been informed of the result. The Applicant, therefore, has not established a link between her problems and complaints against her former supervisor, and the declaration of redundancy of her position by a new supervisor more than a year after her former supervisor had retired. Accordingly, the Tribunal dismisses the Applicant's claim that the redundancy of her employment was based on a pretext.

20. The Applicant also raises a number of claims regarding the Respondent's reassignment obligations before the termination of her employment. In particular, she argues that the Respondent failed to follow the procedures set forth in Staff Rule 5.01, paragraphs 2.06, 3.04 and 5.02; Staff Rule 7.01, paragraph 8.05; and Staff Rule 5.06. Likewise, she asserts that she did not receive reassignment support comparable to that of Headquarter Staff and that there were omissions from her personnel records which resulted in her not being considered for other positions.

21. The record does not provide evidence of any abuse of discretion with respect to the requirements of Staff Rule 5.01. Nor does it appear that the Applicant did not receive comparable support to that of staff at Headquarters. She received the same financial package as other staff and was in frequent contact with the Job Search Center, despite the geographical distance. She has not proved that access to the facilities in the London Office was not offered to her. Furthermore, she has not attached evidence in the form of receipts to show the costs she claims to have incurred for faxes, telephones and other expenses.

22. Nonetheless, a careful examination of the record does indicate that the Respondent abused its discretion with respect to its obligations under Staff Rule 7.01, paragraph 8.05, and Staff Rule 5.06. Staff Rule 7.01, paragraph 8.05, as it then provided, stated as follows:

The Director, Personnel Management Department, or a designated official, *shall seek to place the staff member in another position among existing or known prospective vacancies in his type of appointment within the Bank Group, the duties of which are commensurate with his qualifications, or for which he can be retrained in a reasonable period of time, as provided in paragraph 8.06. Placement may also be offered in a vacant lower level job for which the staff member is qualified and which he is willing to accept under Rule 5.06, "Assignments to Lower Level Positions."* (Emphasis added.)

23. The Applicant has argued that she was qualified for, and that she should have been offered, pursuant to



Staff Rule 7.01, paragraph. 8.05, and Staff Rule 5.06, any of the three new positions in the London Office or, at least, the lower-graded position of Junior Staff Assistant. The Tribunal has already addressed in paragraphs 13, 17 and 18 the Applicant's claim that she should have been selected for the Program Assistant position. With respect to the other two positions, of Communications Consultant and Junior Staff Assistant, the Tribunal finds that the decision not to reassign the Applicant to either of them was within the discretion of her new supervisor. It finds, however, that this discretion was not exercised reasonably in not offering the Applicant the Junior Staff Assistant position.

24. Although neither Staff Rule 5.06 nor Staff Rule 7.01, paragraph 8.05, imposed an obligation on the Respondent to place a staff member in another position and, particularly, in a vacant lower level position, they did impose an obligation on the Respondent to make an effort to place the staff member in existing or known prospective vacant positions for which he or she was qualified. This implied an obligation at the least to notify the staff member of the existence of such a vacancy and to let her apply for it. Although the Respondent assisted the Applicant generally in her attempts to secure alternative positions, it failed to offer her the immediate vacant position of Junior Staff Assistant in her unit. This was the only way in which the Respondent could have demonstrated that it had genuinely tried to find the Applicant an alternative position for which she was qualified and to ensure that it had fulfilled its duty to make an effort to place her in such a position or at least to give her an opportunity of being considered for one. Whether the Applicant was finally selected or would have accepted an offer to occupy an alternative position is not material.

25. In this case, the Applicant was neither notified of the existence of, nor offered, any of the other positions created in the London Office and in particular that of Junior Staff Assistant. The Communications Consultant position required professional experience in media and public relations, skills which the Applicant apparently did not have. Thus, the Respondent was justified in not offering it to her. The Junior Staff Assistant position, however, was an entry level position and its duties consisted of "[r]eception and telephone (*general plus PIC*); word-processing and graphics workstation support, especially for communications consultant; routine office clerical and accounting functions; assistance with arrangements for meetings and events; assist visiting Bank staff" (emphasis added). These were some of the duties which the Applicant had performed in the past fully satisfactorily and which she was more than qualified to perform at the time of the redundancy of her employment. Furthermore, the section addressing personnel aspects in the Report entitled "The Future of the London Office" proposed that either or both of the old support level staff would be offered jobs in the new office and that "either or both of them could succeed." The Report concluded that "[t]he grade(s) of the job(s) should, however, be reviewed. In the event the grading review concluded that (in one or both cases) lower grade(s) was/were appropriate, 'grandfathering' provisions should apply." The fact that the original plan of the London Office reorganization provided that both of the original support level staff at the office could succeed in the new environment, even in lower graded positions for which grandfathering provisions would apply (under Staff Rule 5.06), reinforces the Tribunal's conclusion that the Applicant should have been offered the position of Junior Staff Assistant and belies the allegation of the Respondent that the Applicant was not qualified to occupy this position.

26. The Applicant also makes a number of additional but less significant complaints in respect of her treatment by the Bank. While the Tribunal finds that these complaints are in part justified, it does not perceive that they caused the Applicant any material damage and it will, therefore, not deal with them further.

## DECISION

For the above reasons, the Tribunal unanimously decides that:

- (i) the Respondent shall pay the Applicant compensation in the amount of \$40,000 net of taxes;
- (ii) the Respondent shall pay the Applicant costs and expenses in the amount of \$3,000; and
- (iii) all other pleas are dismissed.

Elihu Lauterpacht

---

President

Nassib G. Ziadé

---

Executive Secretary

At London, England, May 15, 1998