

Decision No. 106

Grace L. Gabriel,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of P. Weil, President, A.K. Abul-Magd and E. Lauterpacht, Vice Presidents, and R.A. Gorman, E. Jimenez de Arechaga and Tun Suffian, Judges, has been seized of an application, received November 15, 1990, by Grace L. Gabriel, against the International Bank for Reconstruction and Development. Thirty four other associated applications were filed on the same date. The President made certain procedural decisions, the last of which required that the above application be treated and decided individually. The usual exchange of pleadings took place. The Tribunal decided to refuse the request of the Applicant for certain preliminary measures relating to the provision of information. The Staff Association made a request and was permitted by the President to file briefs as an amicus curiae in the thirty five cases. The case was listed on February 26, 1992.

The relevant facts:

2. The Applicant joined the Bank in November 1976 as a Secretary grade D.

3. At the time of the 1987 Bank-wide Reorganization the Applicant was holding a level 19 position. Because she was not selected for a position, she became eligible for the Enhanced Separation Package (Package B). However, the Applicant elected to remain in the Bank and be assigned to a lower level position at grade 17, as an Office Technology Assistant effective July 1, 1987. She was also granted a two-year salary protection. Consequently, at the time of the 1988 and 1989 salary review the Applicant's salary was administered within the range of her prior higher grade 19.

4. After the Tribunal's judgment in Pinto, Decision No. 56 [1988], the Respondent, after consultation with the Staff Association, submitted to the Executive Directors new proposals regarding the "grandfathering" of salaries of those staff members whose positions had been downgraded as a result of the Job Grading Program. Thereafter, the Applicant received a general notice, dated December 9, 1988, from the Vice President, Personnel (VPP) and circulated to all staff which stated that those staff members whose positions had been downgraded as a result of the 1985 Job Grading Program would be treated for compensation and review purposes "in the same manner as staff members in the former grade of the position even after the two-year salary grandfathering period has expired". The memorandum also stated that the applicability of this decision to staff who had accepted positions at lower grade levels as a result of the 1987 Reorganization was to be reviewed at a later stage.

5. In a circular dated August 21, 1989 the Director, Personnel Policy (PPO), announced to the staff that as a result of the implementation of the Revised Compensation System on May 1, 1989, the Executive Directors had taken some important decisions concerning the protection of salaries of staff downgraded either because of a job reevaluation or the Reorganization. He stated that, in particular, downgraded staff would for two years have their salaries administered within the salary range of their former grade; if, after two years, their salaries were within the range of their lower grade, their salaries would be administered within that range; if, at the end of the two-year period or thereafter, their salaries exceeded the maximum of their new and lower grade range, and if, they were fully satisfactory performers, they would receive the minimum increase as established under the Revised Compensation System. The Director also stated that Staff Rule 5.06 would be amended to reflect

these decisions.

6. In a memorandum, dated July 27, 1990, the Chief Personnel Officer (CPO) informed the Applicant that her salary increase for the 1990 salary review was administered within the range of her lower grade 17. The Applicant received a 4.3% salary increase which was above the minimum increase for fully satisfactory performance.

7. On October 2, 1990 the Applicant requested an administrative review of the decision to administer her salary within the range of level 17. However, by memorandum, dated October 15, 1990 from the Director, Personnel Policy (PPO) her request was denied.

The Applicant's main contentions:

8. The policy of "grandfathering" the Applicant's salary at her former grade level during the years 1987 through 1989 which was confirmed by the Board of the Bank, and a memorandum from the VPP, made continued "grandfathering" of her salary an essential condition of employment for the Applicant, which could not be unilaterally changed by the Respondent.

9. Limitation of "grandfathering" of salaries to two years is a violation of the essential conditions of employment entitling staff members to periodic salary increases in which various relevant factors had to be taken into account. This was particularly so because the salary of the Applicant could reach a level where it would be frozen.

10. Principle of Staff Employment 6.2(c) which requires the Respondent to "institute and maintain programs which permit the [Bank] to reward staff members according to their performance and contribution to the [Bank's] objectives" was also violated because the limitation of the "grandfathering" of the Applicant's salary was inequitable.

11. The limitation of the "grandfathering" of the Applicant's salary was retroactively enforced.

12. There was discrimination between the Applicant and those staff members who earlier had been in the same grade as the Applicant but had not been downgraded. The difference in their positions was based on pure chance and was unjustifiable.

13. The failure to continue to "grandfather" the Applicant's salary violates the Principles of Staff Employment which require that the Respondent establish programs to reward staff performance because, though the Applicant's performance continued to be satisfactory, her grade had been lowered and she was subjected to a mechanistic system of compensation adjustment which did not promote performance at a high level by a downgraded staff member.

14. The Applicant requested the following relief:

- (a) specific performance by the Respondent of its contractual commitments to the Applicant to administer the Applicant's salary within the range of the Applicant's former grade level prior to the Respondent's downgrading of the Applicant's position in 1987 for the convenience of the Respondent;
- (b) specific performance by the Respondent of its obligation and duty to periodically review the Applicant's salary taking into account relevant factors;
- (c) specific performance by the Respondent of its obligation to recognize and reward the performance of the Applicant;
- (d) in the event it is determined that compensation to the Applicant is appropriate under the circumstances, payment of compensation in an amount equal to the adjustment by which the Applicant's salary could have been increased in 1990 if her salary had been administered within the grade range of her position prior to downgrading, plus the related adjustments in pension and other benefits;

- (e) reasonable interest on the amounts withheld from the Applicant plus cost and attorneys fees incurred by the Applicant and the World Bank Group Staff Association, which has played a crucial role in the support of this application in terms of providing guidance and legal support to the Applicant as well as in preparing an amicus curiae memorandum for the benefit of the Tribunal;
- (f) continued administration of the Applicant's salary within the adjusted range of her former grade;
- (g) enunciation by the Tribunal of the extent to which the basis for its decisions in the Applicant's case is generally applicable to downgraded staff;
- (h) a requirement that the Respondent inform the Applicant and any other affected staff on a timely basis of their rights related to the downgrading of their positions; and
- (i) a requirement that the Respondent modify the Staff Rules in accordance with the Tribunal's decision following consultations with and agreement of the World Bank Group Staff Association.

#### The Respondent's main contentions:

15. The Respondent fulfilled its obligations toward the Applicant under the Principles of Staff Employment and Tribunal decisions by providing her with generous protective measures which alleviated the adverse effects of accepting a lower level position at the time of the Reorganization. The Applicant enjoyed two years of full salary protection at her former level 19, and the new salary administration system had provided her with more generous salary arrangements than the old system.

16. The Applicant received more than the minimum salary increase in 1990 when her salary was administered for the first time within the range of her new lower grade. Moreover, in the future she will be eligible for salary increases, performance warranting, exceeding the minimum increase, because it is anticipated that at each salary review the structural salary adjustment will be larger than the minimum increase for that given year.

17. The memorandum of December 9, 1988 from the VPP applied only to staff downgraded as a result of a job evaluation and not to the Applicant whose downgrading was the result of the Reorganization and whose "grandfathering" arrangements were determined by Staff Rule 5.09.

18. While the implementation of the new salary administration system did alter a non-fundamental element of the Applicant's contract of employment, it did not constitute an abuse of power, because it was not retroactive, it did not discriminate in an unjustifiable manner, it was carefully studied and provided for measures to avoid excessive or unnecessary harm to all downgraded staff while at the same time preserving levels of compensation that are equitable internally.

19. No declaratory effect should be given to the decision of the Tribunal in the event that it is favorable to the Applicant, because it is not the function of the Tribunal to give advisory opinions or to do other than render a decision in the case before it, which is binding between and only applicable to the parties.

20. No attorneys' fees or costs should be awarded. The Applicant did not incur any nor has a statement of expenses been filed.

#### Considerations:

21. The Applicant, who held a position graded at level 19 prior to the 1987 Bank-wide Reorganization, accepted assignment to a position graded at level 17 rather than leaving the Bank with the Enhanced Separation Package. Pursuant to Staff Rule 5.09, § 8.02, staff members thus assigned to lower-graded positions had their salary administered within their previous higher-level salary range for a period of two years. After this period of salary "grandfathering," salary increases were to be adjusted within the range of the new lower grade; a staff member whose salary was above the maximum of the lower-level range was to have his salary "frozen" until annual increases in the overall salary structure brought his salary within the lower range.

22. Pursuant to this arrangement for two-year salary grandfathering, the Applicant – who was reassigned in the Reorganization in July 1987 – had her 1988 and 1989 salary increases, effective on May 1 of each year, administered within the salary range for positions graded at level 19.

23. In the meantime, the Tribunal had held – in the cases of two staff members downgraded as a result of the 1985 Job Grading Program – that the “freezing” of salaries for such staff members after a two-year grandfathering period from 1986 to 1988 was a violation of an essential condition of their employment, i.e., that staff members receive “periodic [salary] adjustments reflecting changes in the cost of living and other factors,” Pinto, Decision No. 56 [1988]; Gavidia, Decision No. 66 [1988].

24. Principally in response to the Tribunal decisions in Pinto and Gavidia, the Respondent had announced in a desk-to-desk circular (FYI/88/114) dated December 9, 1988 that staff members whose positions had been downgraded as a result of job evaluations would continue to have their salaries administered within their previous higher-level salary range “even after the two-year salary grandfathering period has expired.” The new salary increases were to be effective retroactively to May 1, 1988. As for staff members such as the Applicant, who were in the midst of their two-year salary grandfathering period resulting from the 1987 Reorganization, FYI/88/114 stated:

Management will review, at a later stage, the applicability of this decision to staff who accepted positions at lower grade levels as a result of the 1987 Reorganization. Such staff currently have salaries that are still fully covered by the grandfathering arrangements determined at the time of Reorganization.

25. The Applicant was early in her second year of salary grandfathering at level 19 when, through another desk-to-desk circular (FYI/89/88) dated August 21, 1989, the Respondent announced that its Board of Executive Directors had “taken important decisions concerning the protection of salaries of staff whose positions have been graded as the result of job reevaluation or who have accepted lower level positions as a result of the Reorganization.” For both categories of staff members, their salaries were to be administered as follows:

For a period of two years, the salary will be administered within the salary range for the former grade;  
If, after two years, the salary is within the range for the lower grade, it will be administered within that range;  
If, after two years, the salary is above the maximum of the lower grade range, the minimum increase for satisfactory performance, as established under the Revised Compensation System, will apply, unless the individual's performance is less than satisfactory (in which case a lower increase amount would apply)....

The principal change reflected in this FYI was the elimination of the “freeze” on salaries after the two-year grandfathering period for downgraded staff members whose salary was at the top of their new lower salary range, and the substitution of a salary increase measured by the minimum percentage increase awarded to staff members performing satisfactorily. These terms were later incorporated in a revised version of Staff Rule 5.06, § 3.01, promulgated on April 16, 1990.

26. This policy was applied when the Applicant's salary increase was next calculated, so that effective May 1, 1990, her salary was administered within the salary range of her new lower-graded position at level 17. Because her then-current salary was not above the level 17 salary range but fell within it, she received a salary increase that took full account of her performance level and was not confined by the minimum increase (which for the 1990 salary year was 4.2%). Because, however, of the fact that the “salary matrix” used by the Bank to calculate salary increases takes into account where a staff member's current salary falls within his or her wide salary range, the Applicant apparently did not receive quite as large an increase as she would have gotten had it been calculated at her previous higher grade level.

27. The Applicant contends that the termination of her salary grandfathering and the resulting administration of her 1990 salary within the level 17 salary range violated contractual assurances, violated essential terms of her

employment as elaborated in precedents of the Tribunal, and violated the Principles of Staff Employment.

28. The Respondent in fact gave no assurances, to staff members accepting a lower-graded position as a result of the 1987 Reorganization, that salary grandfathering would continue beyond two years. Quite to the contrary, Staff Rule 5.09, § 8.02, as promulgated at the time of the Reorganization provided for the end of grandfathering, and thus the administration of salary increases at the Applicant's new lower-graded salary range, after two years. Circular FYI/88/114 merely stated that (as of December 1988) adherence to this policy was under review. It therefore cannot fairly be asserted that the Applicant, during her first year of salary grandfathering (1988-89), could have reasonably understood the Respondent to have undertaken a commitment to continue such grandfathering beyond the second year (1989-90), let alone to continue such salary grandfathering permanently. Nor did anything that was stated by the Respondent in its July 1989 individualized communications to persons downgraded in the 1985 Job Grading Exercise, regarding their 1989-90 salary increases, justify any such understanding on the part of the Applicant, who did not receive such a communication.

29. The Respondent's administration of the Applicant's 1990 salary increase within her current level 17 salary range thus violated no assurance, express or implied, purportedly given by the Respondent to the Applicant or to others affected by the Reorganization.

30. As to the Applicant's contention that the termination of salary grandfathering after two years constituted a violation of an "essential condition of employment," within the principles announced by the Tribunal in de Merode, Decision No. 1 [1981], and Pinto, Decision No. 56 [1988], the Tribunal has already unequivocally rejected this contention.

31. In Klaus Berg (No. 2), Decision No. 99 [1990], the situation of the Applicant was in all pertinent respects identical to that of the Applicant here. Mr. Berg had been employed in a level 26 position prior to the 1987 Reorganization and had accepted assignment thereafter to a level 24 position rather than terminate his employment with the Bank. After two years of salary grandfathering, his salary was administered within the range for level 24 positions, and because his then-current salary was well within that range he was given a salary increase for 1990 in excess of the minimum 4.2% for satisfactory performance. Among his claims before the Tribunal was one for indefinite grandfathering of his salary within his former level 26 range. He asserted that such a right was inherent in the essential right to "periodic salary increases" based on cost of living increases and other factors. The Tribunal rejected this claim, stating:

Under de Merode ... and Pinto ... the staff member is entitled to periodic adjustments of his salary. He is not guaranteed a certain percentage of increase in salary. The Tribunal notes, moreover, that in order to secure some financial remedy both to staff members whose position was downgraded as a result of a job evaluation and to staff members assigned to a lower level position in the Reorganization, as informed by the Respondent, the Executive Directors on August 3, 1989, approved certain salary protection arrangements to be applicable beginning with the 1990 salary review. In consequence, even when a staff member's salary at the end of the grandfathering period is above the range of the grade of his position, he will, nevertheless, be eligible for the minimum increase available to fully satisfactory staff members. His salary will not be frozen in violation of the right to periodic adjustments.

Thus, the Applicant here, as in Klaus Berg, did receive a salary increase that comported with the "essential right" articulated by the Tribunal in de Merode.

32. To the extent the Applicant contends that the Bank had embarked upon a "practice" of salary grandfathering that became binding when continued over time, the Tribunal rejects this contention. The Respondent initially informed the Applicant in 1987 that her salary would be administered within the range of her former, higher, grade level for only two years, and that her salary increases would be administered beginning in 1990 within her actual lower grade level. This arrangement was never altered with respect to persons downgraded as a result of the 1987 Reorganization. There was never any extension of grandfathering beyond that two-year period, which ended according to its terms when the Applicant's 1990 salary was



calculated at her lower grade level. Whatever might be said about the continuation of salary grandfathering, beyond the initial two-year term, for persons downgraded in the 1985 Job Grading Exercise, that cannot serve as the basis for any alleged “practice” for persons in the Applicant’s position.

33. Although the Applicant contends that, with the termination of salary grandfathering effective in 1990, the Respondent improperly substituted a “mechanistic” salary increase calculation for a calculation fully informed by discretion and based among other things on the staff member’s performance, that is clearly not the case here. Because the Applicant’s 1989-90 salary fell comfortably within the range of her current level 17 position as of May 1, 1990, her 1990-91 salary could be computed so as to give full weight to her performance; had her performance been rated even more highly than it in fact was, her 1990 salary could have reflected this fact through a higher percentage increase.

34. Viewing the duration of salary grandfathering under the circumstances of this case as a non-essential condition of the Applicant’s employment, it was subject to unilateral change by the Respondent provided such change complied with the requirements set forth in de Merode, at paras. 45-48. The Applicant has failed to point out any significant respects in which the Respondent has failed to satisfy those requirements, and the Tribunal concludes that such change – if in fact there was a change, given the initial two-year limit on salary grandfathering relating to the Reorganization – fully comports with its decision in de Merode.

35. Finally, the Applicant claims that termination of her salary grandfathering after two years violates certain Principles of Staff Employment. She relies on Principle 2 which prohibits unjustifiable differentiation among staff members, Principle 5.1(f) which requires the Bank to provide “reasonable measures to alleviate adverse effects on staff members assigned to positions graded or regraded at a lower level,” Principle 6.1(b) which requires that compensation should “help motivate staff members to perform to the best of their abilities,” and Principle 6.2(c) which requires that the Bank “reward staff members according to their performance and contribution” to the Bank’s objectives.

36. The Tribunal concludes that the Respondent has not violated any of these Principles of Staff Employment. Rather the Bank’s compensation policy for staff members downgraded in connection with the Reorganization, i.e., two years of salary grandfathering, is supported by these and other Principles. The dual purposes of that compensation policy were to align such staff members’ salaries with others in the Bank engaged in comparable work (at the lower grade level) while attempting to do this gradually and without “freezing” salaries or drastically curtailing salary increases for downgraded staff members performing satisfactorily.

37. This compensation policy accords with Staff Principle 2 in that it eliminates the inequities that would result if staff members performed work in one grade level while indefinitely being paid as if they were performing work at a higher level. To pay such staff members the same as persons doing higher-level work, and more than persons doing work at the same level, is inequitable to both comparator groups. Principle 6.1(c) in fact provides that a basic objective of the Bank’s compensation policy is to provide levels of compensation that are equitable internally. Obviously, Principle 5.1(f), which requires that the Bank alleviate hardships resulting from downgrading, is satisfied when the accommodation of a downgraded staff member’s salary to his new position is achieved gradually, as was the case for the Applicant. Her claim to permanent salary grandfathering is in effect one for complete elimination of hardships as distinct from their alleviation. And, so long as a staff member’s performance is taken into account in administering salary increases after the two-year grandfathering period expires, as was clearly the case with the Applicant here, the Respondent complies with Principles 6.1(b) and 6.2(c).

38. The Tribunal, therefore, concludes that the Applicant’s 1990 salary increase was calculated, pursuant to Staff Rule 5.06, § 3.01, in a manner that did not violate the terms of her contract or the conditions of her employment with the Bank.

39. The Staff Association, presenting pleadings as amicus curiae, requested that the Tribunal direct the Respondent to extend to all staff members similarly situated any affirmative relief granted to the Applicant. In view of the Tribunal’s disposition of the merits of this case, it is unnecessary to give further consideration to the

Staff Association's request.

Decision:

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

Prosper Weil

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President

C. F. Amerasinghe

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Executive Secretary

At London, May 8, 1992