

No. 14

Dolores Gregorio,
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, R. Gorman, N. Kumarayya, E. Lauterpacht and C.D. Onyeama, Members, has been seized of a complaint, by Dolores Gregorio, received on October 21, 1982, against the International Bank for Reconstruction and Development. The Applicant and the Respondent agreed to the consolidation of this and another proposed application arising from the same circumstances and the President permitted such consolidation. The consolidated application was received on February 22, 1983. The Respondent filed its Answer. The Applicant did not exercise her right of filing a Reply. The case was listed on June 30, 1983.

The relevant facts:

2. The Applicant was employed by the Respondent on January 4, 1971, as a level "D" secretary. In June 1974, she was selected for a vacancy in the Organization Planning Department (OPD) where she remained for most of the balance of her employment career with the Bank. From the outset of her employment through 1979, the Applicant's annual evaluation reports (AER) were on the whole quite affirmative and complimentary, particularly after her move to OPD. The principal exception was her AER for 1976, which referred to certain problems in the timely performance of routine tasks as well as the lack of a good working relationship with other staff members. Her evaluations once more assumed an affirmative tone upon her assignment as secretary to Richard B. Lynn of OPD, in early 1977.

3. Almost from the beginning of her employment with the Bank, the Applicant expressed her interest in a promotion to a more challenging position. She particularly sought assignment to a position involving personnel administration, a field related to her ongoing academic studies at George Washington University. These aspirations were expressly endorsed by Mr. Lynn; for example, he stated in the Applicant's 1978 AER that "her interest in pursuing a personnel management career should be encouraged", and he suggested a possible assignment as a staff assistant secretary in the Personnel Department as a first step to an assistant-level personnel position.

4. In March 1979, the Office Technology Division (OTD) was established within OPD, and Mr. Lynn was appointed Division Chief. During the early months of transition, the Applicant assumed the necessary supervisory and coordinating functions for the Division, and her position was accordingly reclassified, on July 1, 1979, as that of Administrative Secretary (D/E/G). At the same time, OPD recommended that the Applicant be promoted to level 'E', the normal full working level for an Administrative Secretary. Mr. Lynn's written appraisal of the Applicant's experience and abilities, prepared in support of the July 1979 recommendation for promotion, was strongly affirmative. The Personnel Management Department (PMD), however, informed her department that her promotion could not be considered until after her January 1980 AER had been completed.

5. In the Applicant's 1979 AER, Mr. Lynn noted (on February 6, 1980) that there had been some "difficulties" during her transition from general secretary to administrative secretary, but he stated that overall she had become a most constructive and effective worker; once again, he supported her objective of moving on to work for the Bank in the area of personnel management and human resource development. The following day, Mr. Lynn submitted another recommendation for the Applicant's promotion to Administrative Secretary at level "E",

noting that she had been competently serving in such position for the Office Technology Division since its inception nearly a year before.

6. A number of events took place rapidly at the beginning of February 1980, and the Applicant's performance – as viewed by Mr. Lynn, and by the Director of OPD, Bruce W. Rohrbacher – took a very sharp turn for the worse over a period of some two months. Beginning in February, Mr. Lynn's duties were modified substantially within OTD; there was also a move of the department (OPD) to a different Bank building; Mr. Lynn assumed the position of Acting Director of OPD during Mr. Rohrbacher's vacation in March; and Mr. Lynn came to work much more closely with the lady who was then the Senior Staff Assistant for OPD, and much less closely with the Applicant. As was subsequently noted in a memorandum to the Applicant prepared in July 1980 by Mr. Rohrbacher, it was already evident to him in February that she was becoming resistant to the new work patterns required of Mr. Lynn, and that she "became inflexible and uncooperative". He had also observed the Applicant's resentment of the Senior Staff Assistant, and her instigation of discontent among other secretaries, as manifested particularly by her sustained complaints at a meeting of April 9, 1980 attended by the Senior Staff Assistant and all of the secretaries working under her. Although Mr. Rohrbacher had endorsed Mr. Lynn's favorable 1979 AER for the Applicant, the perceived rapid deterioration in her performance since February 1980 induced Mr. Rohrbacher to change his view.

7. Mr. Lynn's increasing discontent was crystallized on April 10, 1980, when he received a telephone call from the Personnel Management Department regarding certain of Mr. Lynn's comments in his February 1980 recommendation for the Applicant's promotion. In that conversation, Mr. Lynn reiterated the Applicant's adjustment problems in making the transition in early 1979 from general secretary to administrative secretary, and he noted that her increasing desire to do full-time personnel work seemed to have led to a "decreasing interest in regular (including administrative) secretarial work". He also acknowledged to PMD that he had given the Applicant "the benefit of the doubt" in his somewhat premature promotion recommendation, and he outlined a number of performance problems that had emerged within the previous two months, including her lack of motivation, her flawed administrative support, and her contribution to strained relationships among the departmental secretaries. Later on April 10, Mr. Lynn articulated the same criticisms in a conversation with the Applicant; they were also the subject of discussion in a meeting of April 16 of the Applicant with Mr. Lynn and Mr. Rohrbacher. It was at one of these April meetings that Mr. Lynn informed the Applicant that he was withdrawing her promotion recommendation but that he was willing to work with her for three additional months to resolve the mentioned problems.

8. On June 16, 1980, in a memorandum to PMD, Mr. Lynn recorded a meeting he had had with the Applicant earlier that month, in which he pointed out several aspects of her continued unsatisfactory performance (at which time she acknowledged that she presently had "zero motivation" for her job). He also stated to PMD that: "I believe that it would be in the best interests of all concerned, including hers, to terminate her services in this department". In a memorandum dated July 3 from Mr. Rohrbacher to the Applicant, it was pointed out that since their meeting of mid-April "you have done less and cooperated even less than before", and that her work reflected a failure to adjust to Mr. Lynn's changing duties. Noting that the Applicant had indicated her lack of job satisfaction and her inability to work with her associates in her current position, Mr. Rohrbacher urged her to seek employment elsewhere and offered to help her relocate – but not through the reinstatement of any recommendation for promotion (as the Applicant had earlier requested).

9. After investigating the matter, PMD concluded that the deterioration in the Applicant's performance made it necessary to remove her from OPD. The Applicant was warned that her cooperation in a new assignment was necessary to avoid termination of her services. Although PMD initially directed a transfer to a particular department as a level "D" staff assistant, it concluded that the Applicant might not be given a fair chance there, and instead directed her assignment as a level "D" secretary in the Projects Advisory Staff (PAS), effective September 2, 1980. Although PAS initially resisted the assignment (citing, among other things, "a couple of problem cases" among the secretarial staff), the Financial Adviser there, to whom she was assigned, ultimately expressed a willingness to work with her (noting her apparent intelligence and capability) and carefully to supervise and evaluate her work. PMD informed the Applicant in writing that her future employment with the Bank would be in jeopardy if her performance with PAS was evaluated as unsatisfactory.

10. On October 17, 1980, in an interim written evaluation to PMD, the Applicant's supervisor in PAS stated that the Applicant was unable efficiently to discharge her duties, citing inter alia poor quality work, lateness, erratic performance, refusal to follow articulated priorities, inability to work in cooperation with others, and the need by the supervisor to provide the Applicant with an inordinate amount of guidance. After six months with PAS, the Applicant's performance was again rated as unsatisfactory in a memorandum to PMD dated March 3, 1981. Her supervisor, although noting some excellent qualities and work, concluded that the Applicant's overall performance was seriously deficient for substantially the same reasons as before. He summarized his views by stating: "I cannot place full trust in her performance and attitude; and ... she does not want the position, believing she is capable of fulfilling a position of greater challenge".

11. Pursuant to her supervisor's request, the Applicant was removed from her position at PAS, and placed on administrative leave, with full salary and benefits, as of March 9, 1981.

12. During the next four months, the Applicant discussed her future at the Bank with representatives of PMD. At a meeting of July 16, 1981, the Applicant was asked to choose by July 20 between a three-month trial assignment as a level "D" secretary or separation from the Bank. Continuing to reiterate her belief that her abilities and service record entitled her to a higher position with the Bank, the Applicant declined to choose either of the proffered options. PMD extended her deadline, first into late August and then late September. The Applicant retained an attorney, who met with the Respondent's attorney on October 13, 1981, at which time the possibility of a mutually agreeable arrangement was explored at length, to no avail. On December 4, 1981, the Applicant met with the Vice President for Administration, Organization and Personnel (AOP) and presented an explanation of the course of events since early 1980 – again without choosing between the options placed before her in July 1981. After reviewing the Applicant's full performance record at the request of the Vice President, PMD wrote to her on December 18, 1981, pointing out that "you were repeatedly asked and given deadlines ... to decide between accepting another trial assignment as a level D secretary or termination. Your own failure to respond to our efforts require (sic) that your services be terminated from the Bank effective close of business January 18, 1982."

13. On January 5, 1982, the Applicant filed an appeal with the Appeals Committee, which heard the testimony of witnesses and rendered a decision on July 16, 1982. The Appeals Committee concluded that "the Respondent's decision to terminate the employment of the Appellant was justified and was not made on grounds that were unfair and discriminatory." It concluded, however, that the deterioration in the Applicant's performance in early 1980 may have in some degree been aggravated by the abrupt manner in which OPD had withdrawn her promotion recommendation, and it therefore urged the Bank to explore the possibility of the Applicant's rejoining the Bank Group on a trial basis with a probationary status at a "D" level position. The Bank on July 23, 1982 rejected this recommendation, but chose instead to give the Applicant (in addition to full pay and benefits while on administrative leave from March 9, 1981 to January 18, 1982) a cash payment equivalent to four months' net salary.

14. The Applicant filed an application with the Tribunal on October 21, 1982.

15. On December 30, 1981, several days after she had been notified of her dismissal, the Applicant filed a request for approval of home leave benefits for herself and her husband and children, to depart March 15, 1982 and return April 30, 1982. In August 1982, after the decision of the Appeals Committee, the Applicant renewed her request but it was denied by the Director of the Compensation Department (COM) and the Chief of the Benefits Division, COM, who explained, in letters of August, September, and October 1982, that the Applicant was ineligible for a home leave allowance at the time requested by virtue of Personnel Manual Statement (PMS) 3.45; it was explained to her that she would not have been a Bank staff member when the home leave period was to commence, and that she would not be able to serve for six months upon her return.

16. On November 3, 1982, the Applicant submitted her application for resettlement benefits for herself and her husband and children to Manila, the Philippines. On August 27, 1982, the Applicant had been informed by the Compensation Department that PMS 6.05 ordinarily requires actual resettlement within ninety days of

termination but that under the circumstances of her situation the ninety-day period would be extended until November 26, 1982. She was subsequently reminded by COM of this resettlement deadline, and of the fact that it was not Bank policy to pay the monetary equivalent of resettlement benefits (or any other allowances not actually utilized by the staff member).

17. On November 9, 1982, COM wrote to the Applicant requesting documentation of the fact that her husband was giving up local employment and that packing and shipment of her household and personal effects would be completed by November 26. Although the Applicant on November 19 furnished a typed document from her husband (without his signature) stating: "It is my intention to give up my residency in the United States and to resettle in the Philippines", the Chief of the Benefits Division informed the Applicant that it was his conclusion – from the vagueness of her husband's statement and from her failure to make shipping arrangements – that she had no present intention to resettle to the Philippines. The Applicant did not receive the requested resettlement benefits.

18. Although the Bank's denial of home leave and resettlement allowances was not appealed by the Applicant to the Appeals Committee, the Bank stipulated that it would not object to the Applicant's consolidation of these issues in her application to the Administrative Tribunal challenging her dismissal. The President of the Tribunal approved such consolidation.

The Applicant's main contentions:

19. The termination of the Applicant's employment was improper, for both substantive and procedural reasons.

20. The substantive flaws in the termination were several. First, the reason given for termination – failure to respond to the Bank's efforts to secure a trial reassignment to a secretarial position – is not one of the proper and recognized grounds for dismissal under the Respondent's Policies and Procedures (Statement No. 1.08, dated July 1, 1968). Second, even if this were to be regarded as a legitimate ground for dismissal, the Applicant did in fact respond to the Bank's efforts, personally and through her attorney. Third, the decision of her supervisor in OPD to withdraw his recommendation for the Applicant's promotion and instead to recommend her prompt dismissal was discriminatory and retributive. Fourth, the principle of "proportionality" was violated by imposing a discipline as severe as dismissal for the rather modest delinquency of "failing to respond" to the Bank's efforts.

21. The Bank also failed to follow proper procedures in terminating the Applicant's employment. As was found by the Appeals Committee, the Applicant was not properly warned that her promotion recommendation was in jeopardy, and her situation was not properly monitored by PMD thereafter. Moreover, when the Bank later presented the Applicant with an ultimatum, she was not given sufficient information on which to base a decision whether to accept a new secretarial post or terminate her employment, and she was ultimately left unsure of the Bank's basis, within the framework of its own rules, for such termination.

22. The Bank, by refusing to afford the Applicant her home leave entitlements, improperly deprived her of a vested claim to which she had an acquired right. Her request for home leave was timely filed, and the fact that she had at that time received notice of termination of her employment did not destroy her eligibility for this entitlement; for these purposes she remained a "staff member" under PMS 3.45, as amended, until the date of her repatriation, or at least until her dismissal was confirmed by the Bank subsequent to the decision of the Appeals Committee.

23. The Applicant also had an acquired right to an amount equivalent to repatriation expenses, without the need to demonstrate that she and her family have actually given up their residency and returned to the Philippines. PMS 6.05 imposes no such condition upon the entitlement to a repatriation allowance, and the Bank's unilateral imposition of such a condition at the time of the Applicant's dismissal deprives her of a vested right.

24. The Applicant claims:

- (a) for improper termination of her employment, reinstatement or three years' net pay plus additional compensation because of exceptional circumstances;
- (b) compensation for moral injury, damage to reputation and loss of career;
- (c) compensation based on the reasonable value of home leave and resettlement benefits;
- (d) compensation for losses resulting from the Applicant's preparation to return to her country; and
- (e) legal costs.

The Respondent's main contentions:

25. None of the decisions or actions of which the Applicant complains constitutes non-observance of her contract of employment or terms of appointment as required under Article II of the Statute of the Tribunal.

26. Throughout her years of service with OPD, the Applicant's performance had been erratic; although her evaluations were often favorable, her supervisors also pointed out her difficulties in performing routine tasks and in getting along with other secretaries. Her work in that Department became markedly deficient in early 1980, and her deficiencies were explicitly called to her attention by the Chief of her Division (her immediate supervisor for several years) and by the Director of OPD. The reasons and excuses offered by the Applicant – among them, her supervisor's allegedly discriminatory reprisal – are false and unsupported.

27. After the Bank facilitated her placement in the Project Advisory Staff (PAS), and provided her with ample warning that her employment would be jeopardized by unsatisfactory performance, she was given a fair opportunity to perform adequately, but failed to do so. Her supervisor reported her to be unsatisfactory in her work and attitude, and she was properly removed from PAS (and placed on administrative leave with full pay).

28. The Applicant was offered one more trial assignment, but she was neither prompt nor diligent in responding. Her employment was terminated thereafter with generous termination benefits (voluntarily augmented by the Bank in view of some of the findings of the Appeals Committee, which in any event found her dismissal to have been justified). This action by the Bank was neither discriminatory nor disproportionate, nor in any other respect improper.

29. There is no substance to the Applicant's contention that the Bank gave her inadequate notice of the reasons for her dismissal. Oral and written warnings, from OPD and PAS, and from PMD as well, were explicit in informing her that continued employment was conditional upon improved performance and/or cooperation with the Bank's reassignment efforts.

30. The Applicant had no vested right to any home leave benefits, for she failed to satisfy the conditions set forth in PMS 3.45. One must be a "staff member" at the time home leave is to be taken, and (under the Bank's rules then prevailing) it was necessary to remain in service for at least six months after return from home leave (or else refund all or part of the expenses paid by the Bank). The Applicant requested home leave from March 15, 1982, but her employment was terminated on January 18, 1982 – not after her intra-Bank appeals were exhausted, let alone when she was repatriated to her home country.

31. The Bank's policy concerning resettlement benefits, PMS 6.05, conditions the payment of such benefits upon actual timely returning to settle in one's home country. Because the Applicant failed to show that she and her family were in fact giving up residency and employment in the United States and were resettling in the Philippines, she is ineligible for resettlement benefits, which under no circumstances are treated as a vested monetary award in lieu of actual reimbursement.

Considerations:

32. This case involves three issues: the question of termination, the question of home leave and the question of

resettlement.

(a) The question of termination

33. The Applicant's principal contention is that the termination of her employment was procedurally and substantively improper, and therefore constituted a non-observance by the Respondent of her contract of employment and terms of appointment.

34. As to procedure, she claims that the letter informing her of termination was flawed, because it articulated a ground for dismissal – failure to respond to the Bank's efforts – that is not a valid ground for termination of services. The Tribunal finds this contention unconvincing, for it is obvious that the Applicant was dismissed on account of unsatisfactory service and that she was aware of that fact. It is true that the letter of December 18, 1981 from PMD to the Applicant referred to the Bank's having "repeatedly asked and given deadlines... to decide between accepting another trial assignment as a level 'D' secretary or termination," and concluded that "your own failure to respond to our efforts require (sic) that your services be terminated from the Bank" effective thirty days later. But both the content of the letter, especially the reference to her prior performance evaluations, and the entire context in which it was written – most particularly a meeting two weeks earlier with the Vice President, AOP, which focused principally upon the Applicant's explanation for her allegedly deteriorating performance from early 1980 through early 1981 – made it quite clear that the ground for dismissal was unsatisfactory service. That is an explicitly recognized basis for the termination of employment of a Bank staff member, by virtue of Policies and Procedures Statement No. 1.08 on which the Applicant herself relies.

35. Although PMD had contemplated termination after the Applicant's failure to perform satisfactorily in PAS, it offered her a "last chance" to demonstrate her competence in another secretarial position; the Applicant's own failure to avail herself of that opportunity (if such was the case) could not validly be invoked by her as a shield against dismissal on account of her earlier unsatisfactory service – and that is all that PMD was communicating to the Applicant in its termination letter.

36. The Tribunal believes that a letter informing a Bank staff member of the termination of his or her employment should explicitly state the true reason for such termination, and it has so held in the Skandera Case, (Decision No. 2 at para. 28). Thus, the letter informing the Applicant of her dismissal should have referred to her unsatisfactory service as the principal basis therefor. Nonetheless, as stated above, there were in this case no reasonable grounds for the Applicant to have been confused about the reason for the Bank's action.

37. The Applicant also raises another challenge to the procedures culminating in her termination. She claims that the terms of the reassignment option offered by the Bank were so vague as to render it impossible for her to formulate the action she would have had to take in order to avoid dismissal. The Tribunal rejects this contention. When the option to accept reassignment to a secretarial position was initially placed before the Applicant, she sought clarification in a series of questions which were adequately answered by the Bank. Thereafter, the reassignment proposal was the subject of frequent discussions and correspondence. The Tribunal thus concludes that the terms of the option were not so obscure as to be unfair or prejudicial to the Applicant.

38. It must therefore be considered whether the Applicant was properly dismissed for unsatisfactory performance. As this Tribunal has held earlier, in Suntharalingam v. International Bank for Reconstruction and Development (Decision No. 6, para. 27):

"The determination whether a staff member's performance is unsatisfactory is a matter within the Respondent's discretion and responsibility. The Administration's appraisal in that 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".

39. The Applicant points to her many years of loyal and effective service as an employee of the Bank and the high commendations given her in her annual evaluation reports, particularly by Mr. Lynn from mid-1977 through February 1980, and his recommendations for her promotion (and for her assignment to more demanding personnel-management work) in July 1979 and again in February 1980. She contends that her work in OPD was not regarded as unsatisfactory until Mr. Lynn mistakenly took personal offense at certain comments allegedly directed at the Senior Staff Assistant during the secretarial meeting of April 9, 1980. She alleges that the prompt withdrawal of the recommendation for the Applicant's promotion, and the recommendation of Mr. Lynn on June 16, 1980 that her services in OPD be terminated, can be attributed only to his discriminatory and prejudicial attitude as a form of personal retribution. She also contends that subsequently her supervisor in PAS found her work unsatisfactory because he had already made up his mind against her at the time PMD insisted upon her assignment to PAS in September 1980, and because she refused to give him a long-term commitment to PAS; her refusal, however, was pursuant to her understanding with PMD that she could continue to apply for a promotion from the outset of her assignment to PAS.

40. The Tribunal does note, with some surprise, how rapidly her supervisors' appraisals turned against her between February and April 1980. It appreciates that a staff member such as the Applicant – with a long record of generally well-regarded service and with long-standing aspirations for and confidence in promotion to more challenging work – might well be at a loss to explain, on grounds other than a supervisory vendetta, her sharply deteriorating performance evaluations. But the Tribunal also notes that the record provides reasonable support for the judgments made regarding her performance both in OPD and later in PAS.

41. The Applicant makes no suggestion that Mr. Rohrbacher, Director of OPD, harbored a grudge against her. Yet, he also observed an "inflexible and uncooperative" attitude by the Applicant as early as February 1980, in the face of needed changes in her and Mr. Lynn's work patterns, as well as an "immature" resentment of Mr. Lynn's need to work more closely with the Senior Staff Assistant for the department. Soon after his return from vacation on March 31, and before the secretarial meeting of April 9, Mr. Rohrbacher learned that the Applicant was actively contributing to disaffection among the secretaries; and he observed that after the April 9 meeting, cooperation improved among the other secretaries but not on the part of the Applicant. Even apart, then, from the itemized performance weaknesses brought to the Applicant's attention by Mr. Lynn the day after the April 9 meeting, the Director of her department had already observed serious flaws in her work and attitude, and he indeed found them to have become aggravated from mid-April to early July 1980. At that time, he informed the Applicant of his conclusion that she ought to seek a reassignment, which he would try to facilitate. The Applicant responded in detail to Mr. Rohrbacher's memorandum with a memorandum of her own later in July.

42. Having examined all pertinent documents, the Tribunal does not find sufficient evidence to substantiate the contention that the decision to reassign the Applicant from OPD was arbitrary, discriminatory or improperly motivated. Even if it were the case that the Applicant's behavior at the April 9 secretarial meeting prompted an overall assessment of her performance during the preceding two months, and the withdrawal of her promotion recommendation, the conclusion by her supervisors that her work both before and after April 9 was unsatisfactory finds reasonable support in the record before the Tribunal, and no motive unrelated to the quality of those services has been established.

43. The Tribunal reaches the same conclusion regarding the determination of PAS that as of March 1981 her performance over the preceding six months was unsatisfactory. The evidence before the Tribunal warrants the conclusion that her supervisor in PAS, although hesitant about the reassignment from the outset, was open-minded and patient. His evaluation at the end of six months pointed out the Applicant's strengths, but explained in detail how they were outweighed by her erratic and unreliable performance and her serious problems of motivation and attitude. Although the Applicant may have believed in good faith that her assignment to PAS might prove to be short-lived by virtue of other promotional opportunities, she should have given her fullest commitment to her duties in PAS, particularly in view of the September 2, 1980 memorandum from PMD to the Applicant stating that:

"If your performance in PAS does not meet the Bank Group's standards and is evaluated as unsatisfactory, PMD may be unable to assist you further in identifying any other suitable assignment in the Bank, and your

continued employment as a Bank staff member may be subject to review”.

44. Even though the Tribunal has concluded that the Respondent did not act improperly in reaching its judgment that the Applicant's service had been unsatisfactory, it is also necessary to address the issue whether – as of the date of her dismissal – the Applicant had made reasonable efforts to respond to the Bank's proposal to reassign her to another secretarial position. This was indeed not the ground for her dismissal, but the Bank had assured her that her employment would not be terminated provided she exercised the reassignment option. The Tribunal must therefore consider whether the Bank's ultimate withdrawal of that option, for “failure to respond to our efforts,” was exercised without arbitrariness or discrimination.

45. The Bank first orally communicated to the Applicant on July 16, 1981 a choice between a trial reassignment or separation from the Bank, with a July 20 deadline, and again in writing on August 20, with an August 28 deadline. A series of oral and written communications then followed from the Applicant or her attorney, but she had made no commitment to either option as late as December 18 when she was informed by PMD that she had failed to respond to the Bank's efforts and that her services were to be terminated.

46. The Applicant asserts that throughout this period she made reasonable efforts to address the option given her, and that any delays were the product of ambiguities in the Respondent's position. The Tribunal concludes otherwise. Any plausible claim of ambiguity was dispelled by a letter from PMD to the Applicant dated September 22, 1980, spelling out in detail the meaning and implications of the proposed trial assignment. The record before the Tribunal fails to support the Applicant's claim that the Respondent acted arbitrarily when it withdrew the option – and terminated her employment – some three months after the September letter and five months after the option was initially communicated to the Applicant.

47. The Applicant's final contention concerning the substantive validity of the termination of her employment is that such termination violated the principle of “proportionality,” that is, that there must be some reasonable relationship between the staff member's delinquency and the severity of the discipline imposed by the Bank. The Tribunal has the authority to determine whether a sanction imposed by the Bank upon a staff member is significantly disproportionate to the staff member's offense, for if the Bank were so to act, its action would properly be deemed arbitrary or discriminatory.

48. To the extent that the Applicant contends that dismissal is disproportionate to the alleged wrong of her “failure to respond” to the Bank's efforts, that contention is irrelevant, because her dismissal was based on her prior unsatisfactory service. To the extent that the Applicant contends that dismissal was disproportionate in light of her long and satisfactory service record, the Tribunal has in effect already rejected that contention by virtue of its conclusions in paras. 38 through 43.

(b) The question of home leave

49. The Tribunal next considers the Applicant's claim that the Respondent improperly deprived her of an “acquired right” to the home leave allowance for which she applied on behalf of herself, her husband and three children on December 28, 1981. Although the Applicant had been informed ten days earlier regarding the termination of her services effective January 18, 1982, her home leave application reflected an intention to depart on March 15, 1982 and to return on April 30, 1982. Both before filing her request for home leave benefits and after the decision of the Appeals Committee in July 1982 – when the Applicant revived the home leave issue – the Respondent informed the Applicant that she was ineligible for such benefits principally because she would have been unable to resume employment with the Bank for six months upon her return from home leave, as provided in PMS 3.45 (dated December 1974) as modified by Personnel Manual Circular No. 820-5-75 (dated May 19, 1975).

50. PMS 3.45 (1) states:

“The basic objective of the World Bank Group's home leave policy is to enable expatriate staff members and their families to maintain their association with the cultural and social environment of their home

countries upon completion of their service with the Bank Group”.

“Staff member” is defined in PMS 3.45 (2) as “a person holding a Regular, Fixed- Term, Secondment or Technical Assistant appointment”. Paragraph (17) provides that: “A staff member whose official duty station is outside the home country shall be eligible for home leave...,” and paragraph (23) provides that: “Full cost of travel shall be provided by the Bank Group for the immediate family of a staff member...” (Later paragraphs set forth in some detail the reimbursable components of travel costs.) The most pertinent provision, PMS 3.45 (27), provided initially that: “A staff member shall remain in the service of the Bank Group for at least twelve months after the return from the last home leave,” and that a staff member who failed to satisfy this requirement was obligated to repay the Bank all, or a pro rata part, of the travel costs. On May 19, 1975, Personnel Manual Circular No. 820-5-75 modified this latter policy, as follows:

“... this requirement will be changed to provide that the staff member is expected to remain in service for at least 6 months after return from the last home leave ... If a staff member’s service, after return from home leave, falls short of the necessary minimum, he or she will be required to refund the appropriate proportion of the home leave travel cost”.

There seems to be no dispute on the part of the Respondent that these provisions of PMS 3.45 as modified establish terms of employment enforceable by Bank staff members. As this Tribunal has previously held (see the [Buranavanichkit Case](#) (1982), Decision No. 7, at para. 4):

“Although no comprehensive Staff Rules or Regulations have formally been prescribed by the Respondent, parts of the Personnel Manual Statement (PMS) may be considered as stating the conditions of employment as regards those aspects of the relationship covered by them”.

51. The parties have devoted considerable attention to the question whether the Applicant was indeed, at the pertinent time, a “staff member” eligible for a home leave allowance under PMS 3.45. The Respondent is certainly correct in observing that the basic objective of home leave as set forth in PMS 3.45 (1) may be used in order to interpret otherwise ambiguous provisions in the Statement, and that this “objective” paragraph and other paragraphs of PMS 3.45 make it clear that a staff member becomes entitled to home leave allowance only if he or she actually travels home; in that sense, there is no acquired or vested right to the monetary equivalent of such travel expenses without leaving one’s duty station and present residence. Respondent is also correct when it contends that the Applicant’s status as a “staff member” – at least for the purposes under discussion – terminated when her employment was effectively terminated on January 18, 1982. PMS 3.45 (2) defines a “staff member” as one holding an appointment, and the Applicant cannot be deemed, within the ordinary use of language, to have held her position as a secretary with the Bank after her appointment was terminated and her Bank income ceased.

52. The Applicant argues that she was entitled to be regarded as a staff member at least until thirty days after July 23, 1982, when she was told that the Bank accepted the Appeals Committee’s conclusion that she was properly dismissed – and she even contends that her “ties with the Bank are not severed until the staff member is repatriated to the country from whence recruited.” This is an untenable position, which could potentially prolong the Bank’s obligations to its former staff members well beyond the common understanding of the employment relationship and beyond the understanding reflected in the Bank’s own governing documents. The Bank’s Statement No. 1.08, Policies and Procedures on Termination of Employment, provides no support for the Applicant’s contention; and, as the Respondent has pointed out, PMS 7.01, which deals with staff members’ appeals of Bank decisions through administrative channels including the Appeals Committee, explicitly provides in paragraph 19:

“The filing of an appeal with the Appeals Committee shall not have the effect of suspending action on an administrative decision which is the subject of the appeal”.

The termination of the Applicant’s appointment thus took effect on January 18, 1982, and not six months later after the decision of the Appeals Committee or at some indefinite date of future repatriation.

53. Even if the Applicant was, then, no longer a “staff member”, for purposes of the home leave allowance, after January 18, 1982, it might still be argued that the crucial date for determining her right to home leave was when she became eligible for such leave (which was before her termination date) and not when she actually was to travel home. But that issue need not be decided by this Tribunal. Just as PMS 3.45 created the Applicant’s rights to a home leave allowance it could also subject that right to certain conditions – and it was clear at the time of the Applicant’s request for such allowance that she could not satisfy the condition of “remain[ing] in service for at least 6 months after return from the last home leave”. The Tribunal finds no support, given the basic objective of home leave, for the Applicant’s contention that the “six-month return” condition was intended to apply only to staff members who voluntarily quit their employment and not to those dismissed by the Bank. Nor does the Tribunal agree that the obligation of the non-returning employee to reimburse the Bank is, under the terms of PMS 3.45, anything less than complete. In short, quite apart from the question whether the Applicant was eligible for home leave at the time she applied or at the time she might have begun such leave, it was clear at the time her employment terminated that she could not satisfy the condition of six-months’ additional service when her leave was concluded.

54. As a final argument, however, the Applicant relies upon Personnel Manual Circular No. Pers. 2/82 which modified the “six-month return” condition of PMS 3.45 yet again, but which was not promulgated until March 1, 1982, some six weeks after the termination of the Applicant’s employment. Circular No. Pers. 2/82, after referring to the then controlling “six-month return” rule, went on to provide:

“In order to assist staff members and their families who face the need to visit their home country shortly before leaving the Bank this rule will no longer apply. In future, staff members who leave the Bank on or after the eligibility date for their last home leave will not be required to repay any part of the cost of the travel or the home leave allowance. They will normally be expected, however, to serve in work status for at least thirty days, the usual notice period, after their return from home leave.”

The first and third quoted sentences would prevent the Applicant from invoking this significantly more lenient home leave policy. But even if that were not the case, it would appear that this circular was promulgated too late to benefit her; she was properly treated by the Bank as ineligible for home leave benefits at the time she requested them, and there is no obligation on the part of the Bank to modify this valid decision as a result of a change in general policy effected after the Applicant’s employment had been terminated. Certainly, it would have been an appropriate exercise of the Bank’s discretion to grant the Applicant’s request – both because of the flexibility contemplated in the third sentence quoted above from Circular No. Pers. 2/82 and because the Applicant’s home leave claim was being reconsidered by the Bank in late 1982, after the decision of the Appeals Committee. But the Respondent was not obligated so to act by virtue of the Applicant’s pertinent conditions of employment, which is the only issue before this Tribunal.

(c) The question of resettlement

55. The Applicant’s final claim relates to the Respondent’s denial of her request for a resettlement allowance upon the termination of her employment with the Bank. When this request was presented by the Applicant after the decision of the Appeals Committee, the Director, COM, wrote to her on August 27, 1982: “Your entitlement to resettlement allowance is subject to your giving up your residency here and returning to settle in your home country within 90 days from termination. In your circumstances, I am making this 90 days from the date of this letter”. Although the Applicant challenged this ninety-day resettlement requirement as unsupported by Bank policies and as altogether novel in practice, the Director, COM, in letters to the Applicant invoked PMS 6.05, para. 4, which provides:

“Travel of staff members and their immediate families and shipment of personal and household effects must be completed within 90 days of the staff member’s termination. In exceptional cases the [Director, COM] may authorize a reasonable extension of this period”.

He also informed the Applicant that requiring actual resettlement within ninety days of termination of

employment was a “consistent Bank practice”. Although the Applicant then filed a formal request for resettlement benefits, indicating a departure date of November 26, 1982 (the deadline date set by COM), COM responded on November 9, by noting that the Applicant had furnished no evidence of imminent resettlement, including proof of her husband’s relinquishment of local employment and despatch of packing and shipping instructions to the Bank’s shipping office. On November 19, the Applicant furnished a typed, unsigned statement from her husband to the following effect: “TO WHOM IT MAY CONCERN: It is my intention to give up my residency in the United States and to resettle in the Philippines”. In early December, the Benefits Division wrote to the Applicant stating that she had provided no satisfactory evidence of intention or specific plans to resettle, and later that month, after receiving word from the Applicant’s attorney, the Bank’s counsel wrote to him that “It seems reasonably clear that Ms. Gregorio did not qualify for the resettlement benefits because she did not resettle within the time provided in the policy and an extension thereof”.

56. The Applicant contends that this denial of her resettlement allowance constituted, in effect, a violation of the conditions of her employment. She claims, first, that the requirement of resettlement within ninety days was imposed by the Bank in violation of the Applicant’s vested rights; and, second, that even if such a requirement was valid, she should be deemed to have satisfied it, in view of her timely good faith efforts to resettle.

57. The Tribunal agrees with the Respondent that the Bank was not imposing upon the Applicant, for the first time, the requirement of resettlement within ninety days of termination. That requirement was expressly set forth in PMS 6.05 (4), quoted above. The Tribunal agrees as well with the Bank’s assertion that this PMS does not contemplate a cash payment in lieu of actual resettlement expenses. This is compelled not only by the explicit language quoted above but also by the very specific provisions in PMS 6.05 that deal with such matters as travel, shipment, import duties, insurance, and attendant Bank procedures.

58. However, in light of the Applicant’s most difficult circumstances in late 1982, the Tribunal finds that there are in this case manifestly exceptional circumstances of the sort envisioned in PMS 6.05 (4) which justify a reasonable extension of the period required for furnishing satisfactory evidence of the Applicant’s firm intention to exercise her right of resettlement, by giving up residency in the United States and returning to settle in her home country. The Tribunal therefore decides that the Applicant be given an additional period of ninety days, commencing with the date on which the decision of the Tribunal in this case is communicated to the parties, to exercise her right to resettlement in compliance with the requirements set forth in PMS 6.05.

Decision:

For these reasons the Tribunal unanimously decides:

- (1) to extend until ninety days from the date on which the present judgment is communicated to the parties the period in which the Applicant may exercise her right of resettlement in compliance with the requirements set forth in PMS 6.05;
- (2) to dismiss all other pleas in the application.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C.F. Amerasinghe
Executive Secretary

At London, September 6, 1983