

Decision No. 91

Anne Harrison (No. 2),
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 President, and F. K. Apaloo, R. A. Gorman, E. Jiménez de Aréchaga, and Tun Suffian, Judges, has been seized of an application, received May 4, 1989, by Anne Harrison, against the International Bank for Reconstruction and Development. The Tribunal ordered the Respondent to produce certain documents and to answer interrogatories. There was the usual exchange of pleadings. The case was listed on February 28, 1990.

The relevant facts:

(a) The Reorganization

2. The general facts relating to the 1987 Reorganization are as stated in paragraphs 5 to 40 of Decision No. 40.

(b) The particular facts of the case

3. The Applicant was employed by the Bank in April 1984 as Data Administrator in the office of the Vice President, Economics and Research Staff (ERS). At that time her position was ungraded. During the 1984-86 Job Grading Exercise the Applicant was informed that her position had been graded at level 24. Upon timely administrative review, the Applicant was notified on July 21, 1987, that the grade of her position was adjusted to level 25.

4. Previously, as a result of the Reorganization, a new Senior Vice Presidency for Policy, Planning and Research (PPR) was created, absorbing the functions and activities previously performed in ERS. The functions which the Applicant performed were divided and ascribed to three different positions in PPR. These positions were graded at levels 25 and 26.

5. The Applicant was not considered for a position during the management-selection round of the Reorganization in early June 1987. She therefore raised with her Personnel Officer the question whether she was not a "manager" eligible for the management-selection round according to the definition in Staff Rule 5.09, para. 1.05 (b); and the question whether, not having been selected in that round, she would be eligible for separation from the Bank under the Enhanced Separation Package (Package B). The matter was referred to the Legal Department of the Respondent, which ruled that she had indeed been a "manager". Soon after being informed of this determination on June 23, 1987, the Applicant signed a form expressing her intent to leave the Bank with Package B. Package B was available to managers not selected in the management-selection round of the Reorganization, even without the necessity of remaining in consideration for reassignment in the Bank-wide staff selection round.

6. During round one of the staff selection process, the Director, International Economics Department, PPR, advised the Applicant that he was prepared to offer her a position at level 24 in the Data Division or in the Systems Division. He believed this to be the level of the position that she had previously held, and in fact her grade level had not yet been raised to grade 25 through administrative review. The Applicant stated that she

was not interested in such position.

7. In July 1987, the Applicant filed an application with the Tribunal contesting the termination of her services during the Reorganization. The Tribunal held that the Applicant had not validly waived her right to appeal to the Tribunal by agreeing to Package B (the terms of which purported to effect such a waiver); but it also concluded that she had not exhausted internal remedies. The Tribunal gave the Applicant an opportunity to exhaust such remedies and, if appropriate, to reapply to the Tribunal.

8. The Applicant therefore requested administrative review of her non-selection. The Vice President, Personnel and Administration, advised her by letter that he found no basis for her complaints or for her request for damages. The Applicant then filed an appeal with the Appeals Committee. The Committee found that under Staff Rule 5.09 the Applicant should have been fully considered in the managerial selection round, which had not been done. The Appeals Committee recommended that the Bank reimburse her for the time spent in pursuing her appeal, for reasonable travel and legal expenses associated with the appeal, and "less quantifiable, emotional costs," which the Committee estimated at approximately US\$5,000.

9. The Senior Vice President, External Affairs and Administration, stated that he did not agree with the Committee's analysis and that the Applicant had not met the standard set by the Tribunal for the grant of compensation beyond that provided in the Enhanced Separation Package. Nonetheless, he offered the Applicant \$5,000 in settlement of her claim, but the Applicant declined to accept the offer.

The Applicant's main contentions:

10. The Applicant was not afforded an opportunity to be considered in the managerial selection process during the reorganization, as she should have been and as the Respondent admits she was entitled to have been. This resulted in her being deprived of security in her employment, without due process and in violation of the conditions of her employment.

11. There was no question of abolition of functions performed by the Applicant but only of reassignment of such functions to three different new positions.

12. A staff member at grade level 24 who was not a manager was appointed to one of the successor positions, while the Applicant was not considered for it.

13. The Applicant's performance had always received very high marks.

14. Once the door for managerial selection was closed the Applicant had no prospect except to accept a demotion if she had accepted a position in the Bank.

15. It is misleading to argue, as the Respondent does, that the Respondent had embarked within days on corrective actions which had been cut short by the Applicant's refusal to be interested in anything other than Package B.

16. The Applicant's situation cannot be compared to other situations in the Job Grading Exercise where minor procedural errors arising from ambiguity in job grading criteria had resulted in prejudice to the staff members concerned. The Applicant's case is much more serious.

17. The Applicant requests (i) compensation in the amount of three years' net salary, since rescission or specific performance is not an appropriate remedy in the circumstances, and (ii) costs and attorneys' fees amounting to \$10,133.63.

The Respondent's main contentions:

18. The Applicant fit into none of the categories of staff intended to be covered by the definition of "manager"

and at the time of managerial selection had not been cleared for promotion. She was, therefore, rightly in none of the categories of staff included in the Bank-wide roster for managerial selection.

19. Within one week of the Applicant's bringing the definitional ambiguity in the Staff Rules to the attention of the Respondent, the Respondent took prompt steps to remedy the situation in the Applicant's case.

20. The Applicant could have been considered for other positions of a non-managerial nature at her own grade level had she agreed to participate in the subsequent selection process but, since she elected early to take Package B, the Respondent was precluded from considering her for any such positions.

21. The Respondent's error in not considering the Applicant in the managerial selection round was a minor one arising from a genuine ambiguity in the drafting of the relevant Staff Rule. Since the Respondent was ready to take corrective action, the injury to the Applicant, if any, was negligible, particularly in the light of the generous severance payments she received under Package B, which were \$52,632 in excess of what she would have received if she had left with the normal severance package upon redundancy.

22. The Applicant has not shown that the damage she suffered was in excess of the differential amount she received under Package B.

23. There are no circumstances in this case which would warrant the award of costs. In any event the Applicant is not entitled to expenses for travel and subsistence while appearing before the Appeals Committee.

Considerations:

24. The Applicant contends that she was entitled by the Respondent's written rules to be considered for assignment in the management-selection round of the Reorganization. The Respondent contends that she was not so entitled because she was not at the time a "manager" as defined in Staff Rule 5.09, para. 1.05 (b):

... a person designated to administer an employment relationship whose level is division chief or equivalent or above, or, if there is no such person, a person so designated whose level is higher, and advisers in structured positions. A person whose level is equivalent to division chief is a person whose immediate supervisor is at the level of assistant director, department director or above.

The Applicant had responsibility for supervising several employees (i.e. , "administer an employment relationship") and she reported to a department director. It is also pertinent that in the Applicant's performance review signed by the Vice President, ERS, on October 16, 1986, the latter stated: "In my judgment, Ms. Harrison's work is fully equivalent to that of a Division Chief."

25. Although the Respondent contends that managers were properly selected only from a limited number of job categories or grade levels not including the Applicant's, its contentions are inconsistent with the clear definition in Rule 5.09, para. 1.05 (b). These contentions are also inconsistent with the Bank's contemporaneous treatment of the Applicant at the time of the Reorganization. The Respondent's own legal department concluded at that time that the Applicant was a "manager" eligible for consideration in the management-selection round. Moreover, the Bank proffered the Enhanced Separation Package as the terms of the Applicant's termination of service even though she did not keep her name in contention for assignments in the later staff selection round. This was a privilege accorded by the Respondent only to persons eligible for assignment at the management-selection stage.

26. It is noteworthy that the Appeals Committee also concluded that the Applicant was a "manager" under the pertinent Staff Rule. It stated: "Simply put, the Bank accepted that the Appellant met the definition of a manager, and managers who were not selected had the right to select Package B without having to go through the Bank-wide staff selection process ... The Committee agrees with the Bank that the Appellant meets the definition of a 'manager'..." The Respondent has failed to explain why it is taking a position that is contrary to its position taken at those earlier times in the course of the termination of the Applicant's service.

27. It appears that the Respondent simply overlooked the Applicant at the time of the management-selection round. Less apparent is the Bank's reason for having done so. Its oversight may very well have been the result of the fact that the management-selection round took place in very early June 1987, while the grade level of the Applicant's position was not upgraded from 24 to 25 through administrative review until some seven weeks later. In its pleadings before the Tribunal, the Respondent attempts to attribute the Applicant's non-selection to ambiguities in the pertinent Staff Rule, which the Bank promptly acted to rectify as soon as they were called to its attention. The Tribunal does not believe that the Staff Rule was unclear; but even if it was, the Bank's legal department construed it in the Applicant's favor at the time, and she and her supervisors within the Bank acted in reliance upon this construction at the time of her separation from the Bank. The Respondent offers no explanation why the Tribunal should ignore these compelling facts so long after the event.

28. It is therefore the conclusion of the Tribunal that the Respondent's failure to consider the Applicant in the management-selection round of the Reorganization constituted a non-observance of the Applicant's contract of employment as a staff member, in that it violated the Staff Rules governing the Reorganization. It remains to determine whether the Applicant suffered any compensable injury as a result of this non-observance, and if so what the proper remedy should be.

29. It cannot be concluded with any assurance whether the Applicant would have been assigned to a managerial position had she been timely considered in the Reorganization process. It is, however, rather significant that the three identifiable positions into which her previous position as Data Administrator were distributed were graded at levels 25, 25 and 26, and that the persons assigned to those positions in the Reorganization had previously served in positions graded at levels 24, 26, and 26, respectively. In other words, the Applicant – whose grade level was determined properly to have been 25 – was at a grade level similar to those actually retained to do comparable work after the Reorganization. More important, her work was graded after the Reorganization at levels of 25 and 26, and her previous performance reviews unequivocally demonstrated that she was able to perform such work in a highly satisfactory manner.

30. There is thus every probability that the Applicant would have been given serious consideration for assignment to a comparable position as "manager" in the Reorganization had she been properly considered by the Bank in the management-selection round. It is appropriate to place the burden on the Respondent to demonstrate otherwise, given the fact that it was the Bank's failure so to consider her that constituted a violation of the Applicant's rights in the case at hand.

31. The Respondent contends, however, that the Applicant's failure to accept a staff position offered her at grade level 24, after she had opted to leave the Bank with Package B, warrants denying her any compensatory remedy. In effect, the Respondent contends that the termination of the Applicant's service with the Bank resulted not from any improper non-selection in the management-selection round but rather from her own decision to remove herself from consideration in the later staff-wide selection rounds and to choose instead separation with Package B.

32. The Tribunal does not share this view. It is true that the Applicant could have chosen to keep herself in consideration for other assignments through the staff-selection process. It appears that there would have been available positions at her then grade level and even managerial positions that had not been filled in the management-selection round. The fact remains, however, that the Bank had improperly and without explanation excluded her from being considered for a suitable managerial position in the management-selection round, and that she was reasonably concerned about her prospects for such a suitable position thereafter, particularly in view of the fact that at the time of the staff-wide selection process her current position was still being graded by the Bank at level 24 and had not yet been upgraded as a result of administrative review. In choosing Package B under these circumstances, a choice that was indisputably available to her under pertinent Staff Rules, the Applicant ought not fairly to be regarded as eliminating thereby her claim against the Respondent for her earlier non-selection.

33. In determining the relief which the Applicant may properly claim for the non-observance of her contract of

employment, the Tribunal is mindful that the Applicant must show that the compensation to which she is entitled for the injury suffered is “demonstrably in excess” of the contractual increment received by her under Package B when compared with the pay and benefits ordinarily payable under Section 8 of Staff Rule 7.01 upon termination in usual cases of redundancy: Harrison, Decision No. 53 [1987], para. 30.

34. The Respondent contends, apparently without challenge by the Applicant, that such increment is approximately \$52,632. The Applicant seeks compensation in the amount of three years’ net salary, along with costs and attorneys’ fees. She claims that by having to seek part-time employment elsewhere since her departure from the Bank, the Applicant has suffered, among other things, from uncertainties as to her future income, loss of pension rights, and the need to provide for her own health and old-age insurance. She also claims that compensation for these additional burdens “exceeds by far the differential between Package B and what she would have received under Staff Rule 7.01 Section 8.”

35. The Tribunal is convinced that the injuries sustained by the Applicant as a result of the Respondent’s failure to consider her in the management-selection round are tangible and substantial, and that they exceed the ‘Package B increment’. Accordingly, it orders that the Respondent pay to the Applicant seven months’ net salary as compensation and \$6,000 in costs.

Decision:

The Tribunal unanimously decides that:

- (i) the Applicant be paid seven months’ net salary as compensation;
- (ii) the Applicant be paid \$6,000 in costs; and
- (iii) all other pleas be dismissed.

Prosper Weil

/S/ Prosper Weil
President

C. F. Amerasinghe

/S/ C.F. Amerasinghe
Executive Secretary

At Washington, May 25, 1990