

Decision No. 181

Chandra Hoezoo,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on November 14, 1996, by Chandra Hoezoo 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 R.A. Gorman (a Vice 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 September 30, 1997.

2. The subject of the application is the Applicant's complaint that her position was made redundant in a manner contrary to the provisions of Staff Rule 7.01, paragraphs 8.02(d) and 8.03, and that the decision to this effect was based on improper motive as it was taken in retaliation for her complaints of sexual harassment.

3. The Applicant joined the Bank in 1977 at a level C position in the Northern Agricultural Division, Eastern Africa Projects Department. In the course of her career with the Bank she was transferred to other Divisions and was successively promoted to level D in 1979 and level E in 1983. This last position was equivalent to level 15, but as a result of the 1987 reorganization of the Bank she accepted a lesser graded position at level 14. On February 9, 1990 the Applicant transferred to the Agriculture and Environment Division of Country Department VI (AF6AE). In 1993 and 1994 she undertook developmental assignments in other Departments of the Bank. While on her second developmental assignment, the Applicant's position in AF6AE became redundant on March 31, 1995. The Applicant was then placed on administrative leave and a contemporaneous job search was taken which proved unsuccessful. Notice of termination was given on September 27, 1995. The Applicant's special leave terminated on September 8, 1997. The administrative review requested by the Applicant confirmed the earlier decision taken by the Respondent and in her appeal before the Appeals Committee she did not succeed in obtaining reinstatement. The application before this Tribunal was received in good time on November 14, 1996.

4. The Applicant contends first that the decision to make her position redundant was carried out in a capricious and arbitrary manner and was not in accordance with Staff Rule 7.01, paragraphs 8.02(d) and 8.03, which were the specific provisions invoked by the Bank. The Tribunal will accordingly examine whether these provisions are those that should govern the redundancy and, if so, whether they were properly applied.

5. The competent Departmental Management Team (DMT), composed of nine individuals, most of whom were in senior positions, decided in 1995 on a number of budget reductions, both in terms of programs and positions, in accordance with the policy established by the Bank at the time. Teamwork and technology skills were among the competencies identified as determining which staff members to retain in the Applicant's job classification and both performance and skills were, among other factors, taken into account in this connection. Three positions were ultimately abolished in the Department, with one staff member having volunteered to leave and two others having been made redundant. The redundancies were decided on the basis of a business plan designed in the interests of efficient administration. Since the reductions affected several positions at levels 14-17, the Tribunal concludes that paragraph 8.02(d) of Staff Rule 7.01 was the appropriate provision to apply in this case.

6. The proper application of this provision requires that the performance and skills of staff members be taken into consideration by the Respondent when determining how to reduce their number. While unsatisfactory performance “cannot alone furnish a basis for terminating service with the Bank on the ground of redundancy” (Jassal, Decision No. 100 [1991], para. 31; Fabara-Nuñez, Decision No. 101 [1991], para. 32), this does not mean that the performance or skills of a given staff member may not be taken into account when deciding, in the context of a redundancy procedure under Staff Rule 7.01, paragraphs 8.02(d) and 8.03, who should be retained. The Tribunal has held in this regard that “the extent of the Applicant’s skills was indeed considered by the Respondent, not to justify the redundancy on these grounds but, on the contrary, to consider whether she could be kept in the new structure of the Division” (Denning, Decision No. 168 [1997], para. 27). Indeed, if several positions are reduced in number under Staff Rule 7.01, paragraph 8.02(d), as is the case here, the Bank is required under paragraph 8.03 to take into account, among other elements, the performance of the staff members. In this respect, the guidelines governing redundancy in the Bank have been adequately followed.

7. The Applicant’s contention that the decision to make her position redundant was carried out in a capricious and arbitrary manner is related to the argument that it was based on an incomplete assessment of her performance. The Bank’s assessment of a staff member’s performance and qualifications is an important exercise of its managerial discretion, and the Tribunal will review such an assessment only for abuse of discretion (Jassal, Decision No. 100 [1991], para. 37). The record in this case shows that criticism of the Applicant’s performance began in the performance review for the period of 1987-1988, that is before she transferred to AF6AE, and continued uninterrupted during the following evaluation periods. In most cases such criticisms referred to tardy arrival, timeliness of work, performing below par, absence from workstation and other matters. In the review period of 1992-1993 the Applicant’s performance was judged unsatisfactory and a request was made that she be transferred from the Division. Developmental assignments followed thereafter and, in spite of the Applicant’s assertion to the contrary, it appears that criticism was also made of her performance in other Departments where these assignments were carried out. All such evaluations were taken into consideration, and properly so, at the time of deciding on redundancies on a competitive basis. It should be noted, however, that the Applicant is right in arguing that, except for the review period of 1992-1993, she was never given an unsatisfactory rating, a situation which may mislead the staff member in the thinking that he or she will be insulated against future adverse personnel decisions.

8. During the Applicant’s second developmental assignment, her eventual return to AF6AE was discussed by her both with the Personnel Officer in charge of the matter and with the Division Chief of AF6AE. The Applicant argues erroneously that, following normal practices, she should have been allowed to return to her original position, but that she was placed instead on administrative leave. The record shows, however, that the discussion did not in any way involve a commitment to ensure the Applicant’s return to AF6AE, but that, on the contrary, she was encouraged to seek other positions in the Bank since her performance had not been considered satisfactory to AF6AE. Moreover, as stated by the Tribunal:

the Bank does not lose its power of declaring a position redundant ... because the staff member is on a developmental assignment. Neither does an expectation of returning to a given position, or of being considered for participation in a team, preclude the implementation of a reorganization undertaken or insulate the staff member from such a process (Denning, Decision No. 168 [1997], para. 29; Montasser, Decision No. 156 [1997], para. 18).

9. The Applicant’s main contention is that the unsatisfactory performance review received for the review period of 1992-1993, her placement on developmental assignments for the two following years and her ultimate redundancy and termination, all originated in an incident and complaint of sexual harassment involving her supervisor at the time, who shall be identified as Mr. X. Retaliation on the part of the Bank was, in the Applicant’s view, the ultimate and improper motive on which the decision to make her position redundant was taken.

10. The Tribunal takes a serious view of this type of allegation and accordingly has examined in depth the documents produced by the parties. However, there is nothing in the record that supports the Applicant’s allegation of sexual harassment. A degree of informality seems to have characterized the working relationship

between the Applicant and Mr. X, but this does not amount to harassment or anything similar to it.

11. The incident involving Mr. X was alleged to have taken place in 1990 and the Applicant apparently informed the Project Advisor in the Department about the matter. It also appears that after receiving a critical performance evaluation from Mr. X for the 1990-1991 review period she mentioned the matter in passing to her Division Chief at the time. But none of these complaints was put in writing or otherwise documented. Although there is some dispute as to whether the Applicant's Division Chief expressly accorded the Applicant the opportunity to pursue the matter formally, it is in any event the case that she took no action at the time. It was only after the redundancy notice that the Applicant brought the alleged incident to the attention of the pertinent Personnel Officer. A formal complaint was made to the Ethics Officer only at the time that the administrative review was requested, that is on October 30, 1995, five years after the incident was alleged to have taken place. The investigation by the Ethics Officer, based on materials submitted and interviews with several staff members, concluded that there was insufficient evidence to proceed further. The Applicant refers to complaints of sexual harassment by other staff members against Mr. X, and asserts that Mr. X was eventually relieved from his managerial duties on these grounds. Neither of these events has been documented. No matter involving either the Applicant or Mr. X was brought to the attention of the Department's Gender Committee.

12. Some other key events also contradict the allegation that there might have been improper motive in the decision to make the Applicant's position redundant. The problems relating to the Applicant's performance became apparent much earlier than the date of the alleged incident with Mr. X. Even for the review period of 1991-1992, which followed the date of the alleged incident, the Division Chief made positive comments about the Applicant in the annual performance review. A link between the criticism of her performance and the alleged incident cannot therefore be established. Neither is there any evidence that the developmental assignments were linked to such an incident or that the Applicant was forced to accept such assignments. Rather, they were arranged in consultation with the Applicant so as to provide new opportunities to enable her to overcome the performance problems affecting her in AF6AE.

13. The Tribunal is therefore satisfied that there was no improper motive in the decision to make the Applicant's position redundant, nor is there any evidence that such a motive might have guided the performance reviews, developmental assignments or other relevant events. It must also be noted that the job search for alternative positions carried out before termination involved the necessary efforts normally carried out by the Personnel Officer.

14. The Tribunal has also examined a number of procedural questions raised by the Applicant in connection with the handling of the redundancy by the Respondent. The Applicant argues that every step relating to the implementation of Staff Rule 7.01, paragraph 8.03, should be the subject of a specific memorandum, a procedure that has not been followed in her case. Although this is a desirable procedure for the Respondent to observe, the steps taken follow generally from a business plan guiding a reduction of positions and are not always recorded in specific memoranda. To the extent that the staff member's performance and qualifications, the existence of volunteers for termination and other such factors are duly taken into account, the purpose of paragraph 8.03 will have been met, and this is indeed the case here.

15. The Applicant also argues that the decision to make her position redundant was retaliatory on the part of the former Division Chief, AF6AE, and Mr. X. Implicit in this argument is the question whether the redundancy decision was unduly influenced by the former Division Chief. The Tribunal has dealt on a number of occasions with the question of influence by an unsympathetic manager on a redundancy process and has taken a critical view when improper influence has been found (Klaus Berg (No. 2), Decision No. 99 [1990], para. 38). In the present case, however, as in a recent precedent, "[t]he Tribunal finds that there is no evidence that the Respondent abused its discretion in applying the selection criteria prescribed by Rule 7.01, paragraph 8.03, or that it was improperly influenced by supervisor X or the Director..." (Teferra, Decision No. 169 [1997], para. 17). In fact, decisions about this and other redundancies were taken by the DMT, which as noted above was composed of nine individuals, and which did not include at the time either the former Division Chief, AF6AE, or Mr. X. The new Division Chief, AF6AE, was the one who participated in the DMT, and there was no evidence of any improper influence on or by him.

DECISION

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

Robert A. Gorman

/S/ Robert A. Gorman
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At Washington, D.C., November 18, 1997