

Decision No. 331

**Merlinda Ingco,
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

1. The World Bank Administrative Tribunal has been seized of an application, received on July 22, 2004, by Merlinda Ingco 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, and composed of Elizabeth Evatt (a Vice President of the Tribunal) as President, Robert A. Gorman, Sarah Christie and Florentino P. Feliciano, Judges. The usual exchange of pleadings took place. The Applicant's request for oral hearings was denied. The case was listed on April 7, 2005.

2. On April 20, 2005, after the case had been listed, the Applicant requested that the Tribunal receive additional documents which came into her possession on April 9, 2005. In light of the Applicant's special circumstances, the Tribunal granted the request and allowed the Respondent to comment upon those documents and the accompanying statement.

3. The Applicant contests the decision to declare her position redundant and the failure of the Bank to find her alternative employment. She asks principally for rescission of the redundancy and for compensation.

History

4. The Applicant is an economist. She joined the Bank in 1988 as a Consultant. She was assigned to the International Trade Division in 1991, on a three-year, Fixed-Term contract in the International Economics Department. Thereafter, her Fixed-Term appointment was extended several times. In 1998, she was transferred to the Development Economics Research Group (DEC-RG) and, in May of that year, to the DEC-Rural Development and Natural Resources Sector Unit.

5. The Applicant worked on international trade-related research. She says that her work played a significant role in securing substantial funding for a joint agricultural trade project with the World Trade Organization (WTO). However, she says that her Research Manager, Mr. A, was not enthusiastic about this project, and wanted her to relinquish it. She was able to move to the East Asia and Pacific Rural Development Sector (EASRD), which provided cross-support for her salary and confirmed her in an Open-Ended appointment as an Economist in EASRD, with effect from July 1, 1998. She split her time between her operational work and the WTO project.

6. In October 1999, the Applicant was praised by Mr. X, the Director of the Rural Development Department (RDV, which later became the Agricultural and Rural Development Department ARD) for her excellent work on the Agriculture and WTO project, and for organizing a Conference on Agriculture and the New Trade Agenda in regard to WTO. When the Applicant was later asked to move her WTO project, the Director, RDV, agreed to its transfer to his department, which was part of the Environmentally and Socially Sustainable Development Network (ESSD). This occurred in January 2000. The Applicant was then a Senior Economist, level GG, working on trade issues; she remained at that level until her redundancy.

7. The Applicant had good assessments up to 2000. In June 1996, her work had been praised highly in a letter by the Director of the International Economics Department and she had received a professional growth promotion. The Applicant says that her work was praised by the Director, RDV, in 1999 and by the Director of the WTO Trade and Finance Division in 2000. She had many publications and edited books together with colleagues.

8. The Director, RDV, Mr. X, retired in mid-2000 and was replaced by Mr. Y. The Applicant claims that after Mr. X retired, she found herself in a hostile working environment. She claims that two staff in DEC-RG criticized her work and wanted to take over her agricultural trade project and the funds that went with it. She says that nasty e-mails were sent, and that her Research Manager, Mr. A, told her at the time of her OPE discussion in 2000 that her "coffin had been ordered."

9. The Applicant says that delays developed in the WTO project and that she was unfairly criticized for this in her 2000 OPE discussions by the new Director, Mr. Y, and by the Sector Manager, RDV. She claims she was told that she was not a team player and that she had many enemies. Her 2000 OPE rates her as Fully Successful and Superior in regard to her policy papers. The Director, Mr. Y, commented in the OPE that she was technically and professionally strong. She was advised to focus on improved prioritization of tasks and timeliness, and to work on greater collaboration and networking skills.

10. The Applicant met with the Ombudsperson in July 2000 and raised her concerns about unfair comments in her OPE. She was referred to the Senior Psychologist at the Bank's Health Services Department (HSD) and saw him on July 26 and 31, 2000. She told him that she had anxiety and depression arising from her feelings of being treated unfairly and being unrecognized. The Applicant saw the HSD Senior Psychologist again in March 2002. She said that she had been told to look outside her department for work. She complained of unfair treatment and gender bias, and was anxious and depressed. The Senior Psychologist noted that she was to be referred to a psychiatrist for re-evaluation and treatment.

11. The Applicant continued to publish papers and to participate in conferences in her area of expertise.

12. In the Applicant's 2002 OPE (for the period covering April 1, 2001 to March 31, 2002), she was rated Fully Successful in regard to her work results and in most of her behavioral assessments. But in one respect, "teamwork," she was rated only Partially Successful. Her Manager, Mr. B, said that she worked hard, was technically competent and that she produced good and useful work, although sometimes not in a timely fashion. In the behavioral area, he commented that her people skills inhibited her from being fully effective in teams. Overall, there were questions about her interpersonal skills and her ability to prioritize. But usually her work was of high quality. The Applicant expressed confidence in her ability to overcome problems.

Decision to set up new Trade Department

13. In 2002, the Bank decided to create a new Trade Department (TD) to coordinate the trade activities of four units: ESSD; Poverty Reduction and Economic Management (PREM); DEC; and the World Bank Institute (WBI). The Bank says that it made this decision to improve its capacity to meet the demand for its services following a significant growth in its trade work. The Applicant claims that an underlying motive was that the Vice President of DEC wanted to take the WTO trade project into his department. In July 2002, Mr. C was appointed Director of the new TD.

14. Most of the trade functions of ARD were to be moved to the TD. Three staff were working on trade in ARD at that time: a level-GI Senior Advisor, Mr. L; a level-GH Advisor, Mr. M; and the Applicant, then a level-GG Senior Economist. The Applicant's Manager, Mr. B, informed her in person and by an e-mail of August 21, 2002 that, due to the reorganization, "the two positions in ARD which are currently allocated fully to trade will therefore be eliminated." This referred to Mr. L and to the Applicant. In his e-mail, Mr. B informed the Applicant that her redundancy had nothing to do with her performance and that her performance was fully satisfactory. He wanted to give her plenty of notice, and would help her to secure alternative employment. He stated that she should look for positions and could contact the Senior Human Resources Officer, Mr. K. Mr. L later

accepted a Mutually Agreed Separation package and left the Bank on September 30, 2002. Mr. M was retained in ARD to oversee the remaining trade work in liaison with the new TD.

15. The Applicant saw the Senior Psychologist again on August 9, 2002 complaining of depression and anxiety arising from her feelings of being threatened and pressured to relinquish her project. She was referred to the National Center for the Treatment of Phobias, Anxiety and Depression. In the interim, she was referred to the Chief Medical Officer (CMO), HSD, for possible treatment.

16. The Applicant alleges that the Economic Adviser, DEC, proposed that she be transferred to the new TD, but that the new TD Director, who was a friend of her former Research Manager, Mr. A, objected that the new department did not need her, but only her portfolio and the grant money she had secured.

17. The Request for Approval of Severance Payment for the Applicant was dated August 16, 2002 and approved on March 7, 2003. On August 21, 2002, the Applicant's Manager, Mr. B, e-mailed the TD Director about the future of the Applicant. He pointed out that staff from DEC, PREM and WBI working on trade issues would be absorbed into the new department, but those working on agricultural trade issues in ARD would not be absorbed. Agricultural trade would be dealt with by staff in the new department in liaison with Mr. M. He understood the reluctance of the TD Director to take the Applicant although, he stated, "you have indicated that she can apply to any of the Trade Department jobs opening up at her level. The reason given is that you are reorganizing the work; it is not a direct transfer of the ARD program to the Trade Department; and I agree with this explanation." He observed that their discussion had not resolved the issue of finding alternative employment for the Applicant.

18. On August 23, 2002, the TD Director replied to say that the Applicant could apply for positions in TD, but that "the concerned managers in the Trade Department have been clear that *given the history* and the competition for these jobs, they are doubtful that she will be selected." [Emphasis added.] He stated that he would consider her as an external Consultant when the restrictions lapsed.

19. Meanwhile, on August 22, 2002, the Applicant's Manager informed her that he would consult the Rural Sector Board to enquire about an appropriate position for her. After the Board met on August 28, 2002, he informed the Applicant in an e-mail on August 28, 2002 that she had been shortlisted for a Senior Rural Economist position in the South Asia region.

20. The Applicant was concerned that the Rural Sector Board of ARD might view her too narrowly. She wanted a PREM board to review her broader capacities as an economist. The Human Resources Service (HRS) approached the TD Director about referring her case to a PREM Board, but no action was taken.

21. In September, the Applicant was shortlisted for two positions. She did not receive an offer of employment, however.

Reorganization of agricultural trade work

22. In early October 2002, the Human Resources Committee of the ARD Sector Board (also referred to as the "Rural Sector Board") met again to review the Applicant's redundancy. It concluded that there were no positions in the sector that matched her skills and experience other than the position for which she had been shortlisted.

23. In October 2002, there were discussions about the phasing out of the ARD's work on agricultural trade and incorporation of that work into the new TD. On October 17, 2002, the TD Director wrote an e-mail to the Applicant's Manager, Mr. B, stating that he assumed that the budget resources associated with the Applicant's position would be transferred to the TD for the global trade agenda issues. This led the Vice President, ESSD, to contact the Vice President, PREM, on October 23, 2002 to suggest ways in which the Applicant might be deployed in TD: if her work on global trade agenda issues were reassigned to PREM, she should be reassigned to PREM; if the TD work were organized in a manner that was *sufficiently different* to that undertaken by the Applicant in ESSD, it would not be necessary either that she be reassigned or that budget

resources be transferred. He believed, however, that she should be shortlisted for appropriate trade positions in PREM and he asked that she be given serious consideration for continued employment in PREM. The record contains no evidence of a response by the Vice President, PREM, to the suggestion of the Vice President, ESSD.

24. In October and November 2002, the Applicant applied for various positions. She was shortlisted for some, but did not receive any job offers. In October 2002, her Manager supported her request for a staff exchange with the Asian Development Bank (ADB), but she could not qualify for an exchange without a re-entry guarantee. In late 2002, the Bank was willing to pay for her to travel to the Philippines to seek a position with the ADB. Nothing came of this.

25. The Applicant says that she became clinically depressed in mid-November 2002, and was unable to attend work until February 2003. Her Leave and Attendance record shows that she was absent from November 11, 2002 until January 21, 2003 (with sick leave in November and December, and annual leave in January). The Bank says that she stayed away without approval; Security contacted her and she said she was unwell. In December 2002, the Applicant's Manager, Mr. B, requested that HSD assess the Applicant for Fitness for Duty (FFD).

Suspension of redundancy process

26. In January 2003, the Bank suspended the Applicant's redundancy process because of her ill health. On January 16, 2003, the Applicant's Manager sent her an e-mail expressing concern about her health and her long absence of two months without contact and without any medical report. Her Manager indicated that she had failed to attend the HSD for an assessment, and that it had been put to him that her case be treated as an "abandonment of office." He asked her to visit the HSD Doctor on January 21. He also asked her to come to see him, or he might consider contacting her family in the Philippines because he was concerned for her personal well-being.

27. The Applicant saw the HSD Doctor on January 21, 2003. He noted that she said she had been sick for 6 weeks with flu and pneumonia, then depression; she claimed to be then working full-time. He referred her to an Independent Examiner for the FFD assessment. On January 22, 2003, the Senior HRS Officer asked the HSD Doctor whether there were any limitations on the Applicant's ability to work in the short term, during the FFD process. The HSD Doctor replied the next day that he saw no reason why she should not be at work "if she is willing to." The Senior HRS Officer informed the Applicant's Manager of this.

28. On January 24, 2003, the Manager, Mr. B, decided to restart the redundancy process on the basis of the HSD Doctor's opinion, even though the FFD evaluation was pending. He so informed the Acting Director, HRSVP, on January 28 commenting that "[i]f the Fitness for Duty recommends a different course of action (e.g., Termination due to ill health) this redundancy request will be withdrawn/cancelled and substituted with a more appropriate course of action."

Review by the Severance Review Group and Economic Policy Board

29. The Applicant's redundancy was considered by the Severance Review Group (SRG) on January 30, 2003. The written rationale for the redundancy explained that the Applicant's specialization was in trade, that her skills were not fungible in ARD, and that her functions were no longer needed. Though she was not a strong candidate, the ARD Board had shortlisted her for a number of regional vacancies. The SRG requested that, "given the transfer of the Agricultural Trade work to PREM, the relevant PREM Sector Board (in this case EP [Economic Policy]) review [her case] for (a) opportunities within the sector, and (b) an assessment of her skills based on her cv and OPEs to see if there is a match with current and emerging work program needs in the Trade area." The TD Director was informed of this on February 4, 2003.

30. The EP Sector Board reviewed the Applicant's case on February 5, 2003. The Board considered that she did have competence on sector trade issues. Their advice was that, "[g]iven the expanding Trade portfolio in

the Bank ... [the Applicant] should consider applying for suitable vacancies that may arise in her field of competence." An e-mail from HRS to each member of the Board, on February 7, 2003, asked about suitable vacancies coming up in the next six months for which the Applicant could apply. By February 14, 2003, no vacancies had been identified.

31. According to the Applicant's leave record, she had returned to work on January 21, 2003. She saw the Independent Medical Examiner for the first time on January 30, 2003. She e-mailed her Manager, Mr. B, on February 3, apologizing for her lack of communication and saying that she had not forgotten the doctor's certificate for her sick leave in November and December. She was following up with her doctor. "I greatly appreciate your understanding and help. I'm getting up to speed on the substantive priority tasks. I will send you an update shortly." On February 26, she saw the Independent Medical Examiner again. The Examiner submitted his report to HSD on February 28, 2003.

32. The Applicant had meanwhile seen the Senior Psychologist on February 4, 2003, to discuss the FFD assessment. He explained to her that its purpose was "to get guidance for her and her managers about her ability to work, as well as to be sure she is getting proper treatment." She saw him again on February 11, and was referred back to the National Center where she could see a psychiatrist for evaluation. It was noted that she had resisted treatment. The Applicant saw the psychiatrist and returned to the Senior Psychologist on February 21 and March 5, 2003, still expressing concern about her job and about the FFD evaluation.

Redundancy notice is issued

33. On March 6, 2003, the HSD Doctor informed the Applicant's Manager that the Applicant had been found Fit for Duty; she would need to make occasional visits to her medical provider to continue her treatment.

34. It appears that the Applicant had a relapse during March. On March 7, 2003, her physician at the National Center for the Treatment of Phobias, Anxiety and Depression noted that she had been under his care since February 19, and that she would need at least four weeks to get better and return to work. The Applicant says that she completed a Workers' Compensation Claim Report on March 5, 2003, indicating that she was suffering from major depression and post-traumatic stress disorder due to job changes; she stated the cause was "high sustained stressful and hostile working environment, post trauma." She says that she was awarded benefits in June 2003, retroactive to March 3, 2003.

35. The Applicant requested leave for March 10-13 and for March 17-21. Her Manager, Mr. B, tried to arrange meetings with the Applicant and others, including the HSD Doctor, but as she was absent these did not take place. She replied that she had been to the urgent care center and was ill with a virus, and that she had been under stress and needed leave. On March 11, 2003, the Manager, Mr. B, told her to stay home and get better.

36. From March 13 to 16, 2003, the Applicant was hospitalized for severe depression. She undertook outpatient treatment at the hospital and was hospitalized again for periods from March to May. She had e-mail contact with the office during that time about work and about leave.

37. On April 6, 2003, the Applicant informed her Manager and her colleague "M" that she was in the hospital. The Manager was concerned about the length of time she had been absent; he told her by phone that she should go on disability benefits, and referred her case to the HRS. On June 3, 2003, the Applicant was approved for short-term disability benefits retroactive to March 11. The relevant Staff Rule applied was Staff Rule 6.06, paragraph 3.08.

38. The Applicant's Notice of Redundancy, signed by the Vice President, ESSD, and dated March 4, 2003, was delivered to the Applicant on March 11, 2003. The request for severance pay had been approved and signed on March 7, 2003. The Notice was to take effect from March 14, 2003. Following a six-month reassignment period, the Applicant's last day of work would be September 13, 2003. The redundancy decision was taken under Staff Rule 7.01, paragraphs 8.02(b) and 8.03, which apply when a specific position in an organizational unit must be abolished.

39. Following representations made by the Applicant's legal representative that she had not received the Notice of Redundancy until April 10, 2003 because she had been hospitalized, the Bank revised the Notice on June 24, to allow her 6 months from April 10 for the job-search period. Her separation date then became October 9, 2003.

40. The Applicant left the Bank's service in October 2003. She has continued to receive treatment for her illness up to the time of these proceedings, both as an inpatient and as an outpatient. She received Disability Benefits at the rate of 100% of her salary until she left the Bank's service. Since then, she has continued to receive benefits at the rate of 70% of her salary, and is eligible for such benefits until age 62. The Applicant ascribes her health condition to the way in which her job was taken from her.

Appeals Committee

41. On July 8, 2003, the Applicant filed a Statement of Appeal with the Appeals Committee. She was unable to attend a hearing.

42. The Appeals Committee determined that the abolition of the Applicant's position was the result of a genuine reorganization, that her functions were not continued, and that the redundancy was appropriately dealt with under paragraph 8.02(b) of Staff Rule 7.01. It found that the Bank was not required to delay the redundancy because of the Applicant's illness, or to wait while her disability claim was pending, and that the Bank had consulted the relevant Sector Boards. Management had been considerate, had extended the period of notice, and had encouraged the Applicant to pursue disability benefits. Her sick leave had been dealt with properly in accordance with Staff Rule 6.22. The Committee also found that there was no evidence to support the Applicant's claims that her privacy, safety and security had not been safeguarded.

43. On January 22, 2004, the Appeals Committee recommended that all of the Applicant's claims be denied. She was notified of the Bank's acceptance of this recommendation on March 13, 2004.

Tribunal Application

44. On July 22, 2004, the Applicant filed an application with the Tribunal.

45. The Applicant seeks rescission of the Bank's decision to declare her position redundant on the ground that the Bank's decision was arbitrary, capricious, improperly motivated, irregular and unfair. The Applicant claims that she could not take advantage of the reassignment period due to her illness, and that the Bank did not help her during that period. She seeks reinstatement, a fair FFD examination, and a reassignment period before separation on redundancy grounds, or if she is not fit, a separation under medical separation rules. She also seeks compensation, legal fees and costs.

46. The Bank says that the redundancy was carried out according to the rules, that the Applicant was treated fairly, and that the Bank tried to find alternative employment for her.

Considerations

Redundancy and reassignment issues

47. The decision to declare a position redundant is an exercise of discretion by the Bank, and interference or review by the Tribunal is limited to cases where there has been an abuse of discretion, because the decision is arbitrary, discriminatory, improperly motivated or carried out in violation of fair and reasonable procedures. (*Kahenzadeh*, Decision No. 166 [1997], para. 20; *Mahmoudi (No. 2)*, Decision No. 227 [2000], para. 24.) The Tribunal insists on the strictest observance of fair and transparent procedures in implementing the Staff Rules relating to redundancy (*Yoon (No. 2)*, Decision No. 248 [2001], para. 28.)

48. The Applicant claims that her redundancy was not genuine because some of her work continued in ARD or in the new TD. She points to her good record, her successful work on international trade and agriculture, her many publications, her successful conferences and the commendations which she received from senior management in the Bank and the WTO. She argues that her success led to jealousy on the part of her colleagues. As a result, she was subjected to a hostile working environment. She claims that the trade reorganization was used as an excuse to fire a long-serving and exceptionally productive staff member.

49. The Applicant claims that the review by the ARD Sector Board in August and October 2002 was defective and premature. She argues that her work on agricultural trade was the foundation for the new TD and that she ought to have been considered for assignment to that department. She claims that the Bank labeled her wrongly as an agricultural economist, whereas she was trained as a trade economist or a poverty reduction economist and should have been considered in that light.

50. The Applicant submits that there was bad faith and improper motivation on the part of the Bank. In particular, she alleges that her former Research Manager, Mr. A, improperly influenced his friend, the new TD Director, against her. As a result, the TD Director wanted the resources assigned to her, but not her. She claims that he blocked attempts to have her credentials reviewed in a timely manner by a PREM Board before being submitted to the SRG, despite her requests to that end. The Applicant argues also that the responses from the EP Board members to the request made in February 2003 to look for vacancies for her have been suppressed by the Bank.

51. The Applicant requested, and the Tribunal directed, on November 30, 2004, that the Bank produce “[a]ny and all staffing or organizational charts or plans or similar documents for the new trade department evidencing the names, position, grades and tasks of all personnel within that department beginning from the time it was created until the effective date of [the] Applicant’s redundancy.” The Bank replied that no documents existed which corresponded to the request. The Applicant argues that it is up to the Bank to show that the jobs in the new department differed from hers. She remains convinced that her work was usurped and given to others, even if no one was doing exactly the same tasks that she had been doing.

52. The Bank argues that the Applicant’s redundancy was genuine. Her responsibilities as a level-GG Senior Economist in ARD were abolished and her position was not replaced with one substantially the same. She was not targeted, as her colleague Mr. L also lost his position. There was no basis for reassigning the Applicant to the TD. The work of the Applicant and others was redistributed to suit the requirements of the new department.

53. The Bank submits that there is no evidence that the TD Director tried to prevent her from being considered for the TD, or that he was hostile towards her. He had raised the question of transferring the budgetary resources underpinning her position. Ultimately, however, the TD “decided to reorganize its work in a manner that was in fact sufficiently different to [sic] that being undertaken by Applicant.”

54. The new TD Director declared later in a written statement, filed with the Appeals Committee on October 14, 2003, that the reorganization had allowed the Bank to bring together fragmented work on agriculture, to derive scale economies, reduce overlap, and create space for staff upgrading. The TD managers had pooled experts on agriculture under the overall guidance of Mr. M, who had taken a joint appointment in Trade and ARD. They decided to strengthen the team by recruiting a senior H-level agricultural researcher, “a position that remains open.” The TD Director said that the Applicant “could have applied to any of several new positions that were created in the Trade Department” but had not done so. He also said that his relationship with the Applicant was positive and that he did not know of her medical condition when the reconfigured program was decided.

55. The Bank says that it treated the Applicant with consideration and gave her early oral notice of the redundancy in August 2002 so that she could get an early start in seeking other opportunities. The Senior HRS Officer assisted the Applicant. She was shortlisted for a number of positions. Help was offered in regard to possible employment in the ADB. The Bank went beyond good faith efforts to place the Applicant in a position, but it was not obliged to create a position. Good performance did not insulate her from redundancy (*McKinney*, Decision No. 187 [1998], para. 16 and *Martin del Campo*, Decision No. 292 [2003], paras. 46-47).

56. The Tribunal finds that it is clear from the record that the Applicant's redundancy was not connected with any performance issues on her part. The abolition of her position in ARD was the result of a genuine reorganization. After the reorganization, no one in ARD was carrying out the same or substantially similar duties as she had performed. Her colleague Mr. M continued to work in agricultural trade, but his duties were different from, and at a higher level than, those of the Applicant.

57. The Tribunal also finds that the Applicant's Manager, Mr. B, made efforts to help her to find a new position from the time he informed her of the impending redundancy in August 2002. She was shortlisted for some jobs. She could have applied for positions in the ADB, but she apparently did not do so; her illness may have prevented this. Her Manager showed sympathy for her situation and her illness, and he suspended the redundancy process for a period.

58. Staff Rule 7.01, paragraph 8.03, provides that a redundancy decision is to be made by a Vice President responsible for the position, after consultation with the "applicable Sector Board" or Staffing Group, and with the concurrence of the Manager, Human Resources Service Center. It appears that the ARD Sector Board was considered the appropriate Board for the Applicant in August 2002, even though at that time it was clear that the trade work would go to the new TD when the details were settled. On one view, the new TD may have been a more or equally likely destination for her. Both her Manager, Mr. B, and the Vice President, ESSD, tried to find a way for the Applicant to be reassigned to the new TD, but without success.

59. The Applicant's request, in September 2002, for her situation to be looked at by a PREM Board was reasonable in view of the fact that the trade work in which she had been engaged was being concentrated in the new TD. But, despite the approaches which were made on her behalf, her case was not in fact referred to a PREM Board until the Severance Review Group requested this action on January 30, 2003.

60. The exchanges between the Applicant's Manager and the Vice President on the one hand, and the TD Director on the other in August and October 2002 suggest that the TD Director was "reluctant" to find an opening for the Applicant because the work was being reorganized. She could apply for a position but, "given the history," she was unlikely to succeed. The TD Director later requested the transfer of the resources underpinning the Applicant's position. Although there is no evidence to support the Applicant's claim that her former manager, Mr. A, was hostile or that he influenced the TD Director against her, the Director's remark suggests that factors other than her qualifications and work capacity may have made him disinclined to create any opportunity for her in his department.

61. The positions created in the new TD were later described as "sufficiently different" from that of the Applicant (a term also used in *Arellano (No. 2)*, Decision No. 161 [1997], para. 35), and if that were the case, there was no obligation to transfer her. But there is no information about the positions which were created in the new TD, and it remains unclear why the efforts by her Manager to place her there failed. No positions in the new department were drawn to her attention.

62. The Tribunal has observed that there is a proactive duty on the Bank to help redundant staff look for other opportunities. The Applicant had been a successful worker in the agricultural trade area. The circumstances in which the redundancy occurred suggest that her case ought to have been considered as one for possible assignment to the new department and that it ought to have been promptly brought to the relevant PREM Sector Board (*Jakub*, Decision No. 321 [2004], para. 71). This did not in fact happen until February 2003. The Tribunal considers that the delay in bringing the Applicant's case to a PREM Board may have prejudiced her chances of finding employment in the new department, especially as by February she was affected by her illness. The Bank should accept responsibility for this delay.

63. In these circumstances, the Tribunal concludes that the Bank failed to apply diligently its Staff Rules regarding redundancy and that this caused damage to the Applicant for which she should be compensated.

Job-search period and Applicant's illness

64. The Applicant claims that the Bank failed to meet its obligation to provide her with security in employment (Principle 2 of the Principles of Staff Employment) in that it failed to assist her in seeking another position during the six months immediately following the effective date of the notice of redundancy, as required by paragraphs 8.06 and 8.07 of Staff Rule 7.01.

65. The Applicant claims that after the Notice of Redundancy was issued, the Bank took no proactive measures to identify positions for her. She submits that even if she could not take steps herself to look for positions because of her disability, the Bank should have taken steps to find her a position, but did not do so.

66. The Applicant complains also that the Bank acted unfairly by making her redundant when she was under a disability and unable to take advantage of the six-month reassignment period. It should have awaited her return to work. She claims that the Bank should not have relied on the FFD report, as by the time it was submitted on March 6, 2003, she had already relapsed.

67. The Bank says that the Applicant's illness played no role in the decision to make her redundant. It had taken her illness into account by suspending the redundancy process for a period. She later acknowledged the Bank's efforts on her behalf.

68. The Bank says that the Applicant's redundancy was approved by the SRG "only after Applicant was found by an Independent Medical Examiner to be fit for duty." It submits that the fitness assessment was not discredited by the Applicant's later hospitalization, since the HSD Doctor later said that an FFD assessment is a snap-shot-in-time evaluation. Staff may be reasonably well and fit during one period and thereafter suffer a relapse; he had, in any event, recommended continuing treatment. The Bank submits that once the approvals for the redundancy were complete, it was not practical to suspend it again.

69. The Bank says, further, that it was fair to the Applicant in that it extended the period of the redundancy notice when she claimed that she had not received it until April; this gave her another month. The Bank says that it has never questioned the status of the Applicant's health since the redundancy. However, it made little sense to provide job assistance to her when her medical condition had deteriorated to such a point that there were problems contacting her and that she had difficulty in responding to queries. Once it was apparent that her deteriorating health hindered her ability to participate in job-search efforts, the Bank encouraged her to apply for disability benefits, and made every effort to help her in this.

70. The Bank argues that this was a reasonable course. Otherwise the Applicant would have to be retained in active employment even though she could not work. She is receiving benefits equal to 70% of her salary and, according to the Bank, she can continue to receive benefits as long as she is eligible, i.e., up to age 62, independently of whether she remains a staff member.

71. The Bank also argues that the Staff Rules do not proscribe the Bank from terminating the employment of a disabled staff member; in fact they expressly permit this.

72. The Tribunal considers that the Applicant's managers acted fairly in suspending the process of redundancy for a period because of her prolonged absence and illness from November 2002 to January 2003. However, the decision was made to resume the redundancy process on the basis of the preliminary opinion of the HSD Doctor, without waiting for the report of the Independent Examiner. This was somewhat premature, even though it appears that the Applicant had by then returned to work. The Tribunal notes that on January 28, 2003, the Applicant's Manager, Mr. B, had been willing to contemplate withdrawing the redundancy and instead terminating her service on the ground of ill-health (depending on the outcome of the FFD test). It notes also that, contrary to what the Bank says, the Applicant's case was in fact considered by the SRG on January 30, 2003, more than a month before the Independent Expert's report was received, and that the redundancy process was in fact complete, apart from the final Notification of Redundancy, before the FFD report was received.

73. The Independent Examiner found the Applicant fit. However, during the period of the FFD assessment, in February 2003, the Applicant was seeing the Senior Psychologist, HSD, and had been referred to a psychiatrist at the National Center for the Treatment of Phobias, Anxiety and Depression. She was undergoing treatment at the Center before the FFD report was completed and forwarded to the Manager on March 6, 2003. Her own doctor said on March 7, 2003, that she was not able to work for medical reasons. This may not have been known to the Bank on that date. However, within a short time she was hospitalized, and she never returned to work. The Bank accepted by then that she was ill, but it had completed the redundancy process by then and was no longer willing to delay it further.

74. The Bank's argument that the Staff Rules do not proscribe the Bank from terminating the employment of staff incapacitated by ill health is unhelpful, as it is not clear how the relevant Rule (Staff Rule 7.01, paragraph 7) would have applied to the Applicant or whether she could have applied for a disability pension under the Staff Retirement Plan.

75. Although the Applicant argues that the Bank should have suspended the redundancy process again after her relapse until she recovered, she also argues, perhaps inconsistently, that the Bank should also have been more proactive in seeking positions for her even though she was unable to engage in a job search herself.

76. The Bank is obliged to make genuine efforts to find alternative positions for redundant staff (*Marchesini*, Decision No. 260 [2002], para. 44; *Marshall*, Decision No. 226 [2000], para. 39). The Tribunal considers that the Bank did make some efforts to reassign the Applicant after she was first informed of her redundancy. This was discussed earlier. Once the Bank had issued the redundancy notice, however, fairness required that it take into account the extent to which the illness or incapacity of the Applicant affected her ability to seek further employment or engage in a job search. If, after receiving the notice of redundancy, the Applicant had recovered sufficiently to seek other employment during the job-search period, it would have been appropriate for the Bank to provide further assistance, even beyond the final date of her employment. But, sadly for the Applicant, she appears not to have recovered a fitness for work or the ability to undertake a job search, or to take advantage of any opportunities that might arise. Although the Tribunal has said that efforts from both sides are needed as regards reassignment (*Marshall*, Decision No. 226 [2000], para. 45), the Applicant's illness in that period made it difficult for the Bank to do anything proactive.

77. It appears to the Tribunal that if the Bank had not so precipitately resumed the redundancy process in January 2003, a further suspension might have been an option in March, because the redundancy procedures would still have been continuing. Given that the Applicant did not recover, it seems that in due course the issue would have had to be resolved either in the same manner or, possibly, by using the disability provisions.

78. The fact that the redundancy decision led to, or was followed by, illness on the Applicant's part does not necessarily invalidate that decision. The preliminary decision to make her redundant had been made before any illness on her part. Nevertheless, the Bank's hasty action in finalizing the redundancy process before the FFD assessment was received may have deprived the Applicant of the benefit of a further suspension of the redundancy and was, in the circumstances, unfair. She should receive compensation for this.

Claims of harassment and hostility

79. The Applicant has complained of professional harassment and a hostile environment which, she argues, contributed to the refusal of the Bank to consider her reassignment to the TD. Among her complaints are Mr. A's comment about her coffin having been ordered. If in fact that statement was made, and the Bank does not deny this, the Tribunal observes that such a remark indicates a level of insensitivity that is particularly inappropriate in a multinational organization such as the World Bank. (See *Malekpour*, Decision No. 322 [2004], para. 27.) The Applicant raised her concerns about unfair treatment with the Ombudsman and with the Senior Psychologist, HSD, in July 2000.

80. The Bank argues that the Applicant's claims do not relate to the abolition of her position and are not supported by any evidence. It says that the Applicant never sought any help in respect of these claims. In fact,

she later acknowledged that the Bank had been understanding towards her. In response, the Applicant asserts that one e-mail of thanks does not allay her grave concerns about inexcusable conduct.

81. The Tribunal observes that the Applicant expressed her concerns about being treated unfairly as early as July 2000 to the Ombudsman and to the Senior Psychologist. Her claims of harassment and unfair treatment are rather general, and there is nothing in the material to support her allegation of overt or underlying hostility towards her. The Tribunal cannot find the allegation to be supported by the record.

Conclusions

82. The Tribunal concludes that the Bank failed to follow strictly the Staff Rules relating to redundancy, in that it failed to take the Applicant's case to the PREM Board in good time and failed to consider in a proactive way the possibilities which may have arisen for incorporating her into the new TD. It concludes further that the Bank's hasty action in finalizing the redundancy process before the FFD assessment was received may have deprived the Applicant of the benefit of a further suspension of the redundancy and was unfair. She should be compensated for these failures. A partial award of costs is also appropriate.

Decision

For the above reasons, the Tribunal decides that:

- (i) the Respondent shall pay the Applicant compensation in the amount of fifteen months' net salary;
- (ii) the Respondent shall pay the Applicant costs in the amount of \$12,000; and
- (iii) all other pleas shall be dismissed.

/S/ Elizabeth Evatt
Elizabeth Evatt
President

/S/ Nassib G. Ziadé
Nassib G. Ziadé
Executive Secretary

At London, England, May 13, 2005