

Decision No. 274

Selvi Joy Isaac,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on February 12, 2002, by Selvi Joy Isaac 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 Thio Su Mien (a Vice President of the Tribunal) as President, Robert A. Gorman and Elizabeth Evatt, Judges. The usual exchange of pleadings took place. The case was listed on August 1, 2002.
2. The Applicant was first employed by the Bank as a Short-Term Temporary on December 8, 1988, and she was regularized in September 1990 as a level 13 Secretary in the West Africa Department. In 1993, the Applicant was promoted to level 14, and several years later, during the reorganization of the Africa Region, she was assigned as a Team Assistant, level 14, to the Africa Technical Families' Regional Operations Support Unit (AFTSA), which later merged with another unit to become Operational Quality & Knowledge, Africa Technical Families (AFTQK).
3. In December 1998, the Applicant completed her training on the so-called IRIS system (Institutional Records and Information System), in which documents are scanned into a database for retrieval and use in digital format. In October 1999, the Applicant's Team Assistant position was reclassified as an Information Assistant position, and she was promoted to level 15.
4. The demand for IRIS services proved to be low, and the Applicant was never fully occupied with such work. She was thus asked to provide *ad hoc* support to the Regional Financial Management Adviser in the AFTQK financial management cluster. She also began to work in the procurement area with a Consultant, AFTQK, and this work – which the Applicant enjoyed and sought – came to consume 90% of her time. A new Team Assistant was hired to replace the Applicant with regard to assisting the Regional Financial Management Adviser.
5. In the summer of 2000, the managers of the Africa Region, seeking ways to adapt to significant budget pressures, determined that the Applicant's position as Information Assistant was not justified in light of the lack of demand for IRIS work. In September 2000, a severance payment was approved for the Applicant, on the ground that her position was being abolished pursuant to Staff Rule 7.01, para. 8.02(b) (abolition of position). The Applicant was then officially informed of her redundancy, which she challenged before the Appeals Committee.
6. In its August 6, 2001 report, the Appeals Committee determined *inter alia* that: (1) the Applicant had been improperly and arbitrarily declared redundant under Staff Rule 7.01, para. 8.02(b), as there did not appear to be a "true abolition" of her position given that another staff member had been hired thereafter to perform several of her tasks as Team Assistant; (2) the Applicant's redundancy was not in retaliation for the Applicant's earlier pursuit of a race-discrimination claim; and (3) Human Resources had failed to follow through with their obligation to assist the Applicant in seeking other positions within the Bank.

7. The Appeals Committee recommended the following relief:

- a) The redundancy decision should be rescinded;

b) The Appellant should immediately be reinstated into the Office Support Rotational Program [OSRP] for 36 months at the same level held by her prior to the redundancy [with retroactive pay and benefits from the date of her redundancy];

c) [A Human Resources Manager] or a Senior Human Resources Officer designated by the Human Resources Vice President should be assigned to supervise the Appellant's reentry into the Bank Group and should see that Human Resources staff members provide her with appropriate assistance, including periodic follow-ups, in seeking a permanent position;

d) As compensation, the Appellant should receive compensation in the amount of \$10,000; and

e) The Appellant should receive legal fees [as specified by the Appeals Committee].

8. On September 13, 2001, the Vice President, Human Resources (HR), wrote to the Applicant, reiterating the Appeals Committee's recommendations, and stating: "I accept the recommendations of the Committee." Although the Vice President, HR, stated that she had enclosed with her letter a copy of the report of the Appeals Committee, the report in fact was not included, apparently by oversight, and it was not received by the Applicant until October 19.

9. Also on October 19, 2001, the Applicant received a proposed Memorandum of Agreement from the Manager, Recruitment, which detailed the terms of the Applicant's entry into the OSRP, including a maximum period of service of 36 months and no severance pay upon the end of her term. The Applicant did not sign the Memorandum, contending that it failed to correspond to the promise given by the Vice President in her letter of September 13. In further communications in the month of November 2001, the Applicant particularly challenged the Bank's failure to give her "a regular appointment during my appointment to the Office Support Rotational System." Although the Manager, Recruitment, proffered the Memorandum again with very minor changes, including a statement that: "Your appointment type will remain as regular," the Applicant refused to sign it. Ultimately, she countersigned – as a result of coercion, she contends – the September 13, 2001 letter in which the Vice President, HR, had accepted the Appeals Committee's recommendations.

10. After beginning her service in the OSRP, the Applicant, on February 12, 2002, filed an application with the Tribunal. She asserted that the Respondent had not fulfilled the promises made by the Vice President, HR, through her September 13, 2001 acceptance of the recommendations of the Appeals Committee, so that there had been a breach of her employment contract. The Applicant's principal complaint was directed against the Respondent's alleged decision to "convert" her appointment from Regular to Fixed-Term, and she claimed entitlement to a position comparable to the one she had previously held, most significantly in its status as a "regular" position without any fixed duration. In her pleas, the Applicant sought not only rescission of the redundancy and enforcement of the Vice President's promises but also \$50,000 compensation (for "moral damages" and emotional distress) and \$10,000 in costs.

11. The Respondent, on the other hand, contended that its reinstatement of the Applicant into the OSRP for a term of 36 months was not an abuse of discretion and was entirely consistent with the relief recommended by the Appeals Committee.

12. On August 30, 2002, after the case was listed, the Tribunal received a letter from the Respondent stating that the Applicant "has been offered and has accepted an open-ended position with the Bank. ... As the gravamen of Applicant's claim is that her tenure with the Bank as a member of the Office Support Rotational Program (OSRP) was unduly limited to 36 months, it would appear that her acceptance of this appointment renders her claim moot." In her written response, the Applicant acknowledged that she had been "placed in a suitable regular staff position," and that she "agrees that her primary request for relief, e.g. that the Tribunal enforce Respondent's decision to rescind her redundancy, is now a moot issue." However, she asserted that she is still entitled to "moral damages," a Tribunal decision with respect to the "procedural irregularities" in her case, and legal costs.

13. The issue before the Tribunal is a narrow one. It is whether the Respondent, having agreed to accept all of the recommendations of the Appeals Committee, failed to implement them and thereby violated the Applicant's conditions of employment. The Tribunal was not requested by the Applicant to re-examine the propriety of her redundancy, no doubt because the Appeals Committee had already ruled in her favor and the Vice President, HR, had agreed to implement every one of the Appeals Committee's recommendations. Therefore, when the Applicant in her recent statement regarding mootness continues vaguely to challenge "procedural irregularities," that is altogether inappropriate to the extent this might be meant to refer to the circumstances surrounding her redundancy.

14. Nor is this case properly viewed as one seeking direct enforcement of the recommendations of the Appeals Committee. As the Tribunal has frequently stated: "The Tribunal is not an appellate body reviewing the proceedings, findings and recommendations of the Appeals Committee. Its task is to review the decisions of the Bank; it is not to review the Report of the Appeals Committee." (*Lewin*, Decision No. 152 [1996], para. 44.) "The function of the Appeals Committee is to assist the management of the Bank to determine for itself whether there has been a failure on the part of the Bank. The function of the Appeals Committee ends with its recommendation, which the Bank may or may not accept." (*de Raet*, Decision No. 85 [1989], para. 54.)

15. Here, however, the Bank *did* accept the recommendations of the Appeals Committee, and thereby took a decision to treat the Applicant in a certain fashion – much as the Bank does when it promulgates and applies a staff rule. The Respondent makes no issue of this, but rather contends that it has in fact complied in every detail with the promises made by the Vice President, HR. The core element of those promises – that the redundancy decision be rescinded – has indeed been satisfied, as the Applicant herself acknowledges in her recent statement that this matter has become moot.

16. What therefore remains is to determine whether the Applicant is entitled to compensation for what she terms "moral damages" and attorney's fees. It must be recalled that the Vice President, HR, in her letter of September 13, 2001, stipulated that the Bank was to pay the Applicant \$10,000 in compensation and legal fees up to \$5,000. Those remedies obviously were in respect of the claims presented earlier to the Appeals Committee, i.e. those relating to the Applicant's redundancy and subsequent job search. If the Applicant is to be awarded further amounts by the Tribunal, it must be because of a failure to implement the promises of September 13.

17. The Tribunal concludes that the Bank has in all major respects honored those promises but that it did abuse its discretion in minor respects beginning with September 13, 2001. Even if by inadvertence, the letter of the Vice President, HR, to the Applicant appears from the record not to have included a copy of the Appeals Committee report, and it was not until October 19, 2001 that the Applicant received a copy. Although the Respondent argues that there was no proof of harm to the Applicant resulting from the delay, it is clearly the case that – without the complete and sympathetic reasoning of the Appeals Committee before her – the Applicant could not be expected fully to appreciate the extent of her rights to reinstatement and compensation. The Respondent added to the Applicant's confusion by proffering to her the Memorandum of Agreement with much more elaborate and restrictive language than that of the Appeals Committee and the Vice President. This disadvantage to the Applicant was compounded by the confusion later created by the Bank in insisting that the Applicant's reinstatement was to a 36-month position while at the same time inserting in the revised Memorandum that "[y]our appointment type will remain as regular." The Tribunal does not view these failures to be extinguished by the fact that the parties both regard as moot the claims for rescission and reinstatement.

18. There is, however, inadequate evidence in the record to support the Applicant's contention that it was she, rather than the Bank, who played the principal role in securing the new position to which she has recently moved from the OSRP, and there is thus no basis for finding that the Bank abused its discretion in that regard.

19. The Tribunal finds, finally, that the Applicant's pursuit of her case before the Tribunal provided some additional impetus to the Bank in conscientiously searching for a permanent position, so that awarding some proportion of the requested attorney's fees is appropriate.

Decision

For the above reasons, the Tribunal decides that, in addition to the amounts already promised by the Vice President, HR, in her letter of September 13, 2001:

- (i) the Respondent shall pay the Applicant compensation in the amount of \$5,000 for intangible injury;
- (ii) the Respondent shall pay costs in the amount of \$2,500; and
- (iii) all other pleas are dismissed.

/S/ Thio Su Mien

Thio Su Mien
President

/S/ Nassib G. Ziadé

Nassib G. Ziadé
Executive Secretary

At Washington, D.C., September 30, 2002