

Decision No. 65

Gillian Rochelle Kaplan,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and A. K. Abul-Magd, Vice Presidents, and R. A. Gorman, E. Lauterpacht, C. D. Onyeama and Tun Suffian, Judges, has been seized of an application, received December 18, 1986, by Gillian Rochelle Kaplan, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on August 3, 1987. On March 18, 1988 the Respondent filed an additional statement which the Tribunal made part of the record.

The relevant facts:

(a) The Job Grading Program

2. The general facts relating to the Job Grading Program are as stated in paragraphs 2 to 10 of Decision No. 56.

(b) The particular facts of the case

3. The Applicant had occupied the position of Loan Officer in the Country Programs Department, Pakistan Division, of the South Asia Region since February 1, 1981. Effective October 1, 1982 she was promoted to level L, equivalent to grade 23 in the new grade structure.

4. During the Job Grading exercise the Applicant's position was evaluated by matching it to generic criteria for the position of Loan Officer and her position was evaluated as LOA-C with a grade 22 assigned to it. On September 26, 1985 the Chairmen, Job Grading Steering Committee (JGSC) informed the Applicant of the new grade allocated to her position and also stated that since the salary range for grade 22 was lower than the range for her former grade L, she was entitled to salary protection or "grandfathering" for two years starting October 1, 1985.

5. On November 20, 1985 the Applicant filed a request for administrative review under Staff Rule 9.04 in which she stated that "... [T]he written official letter of notification advises me that my position has been assigned to grade 22; it does not state anywhere that I personally have been given a new grade." On February 11, 1986 the Applicant was notified of the result of the administrative review to confirm grade 22 allocated to her position.

6. On February 13, 1986 the Applicant wrote to the Chief, Job Evaluation Unit (JEU) and on February 14, 1986 to the Secretary, Job Grading Appeals Board (JGAB) inquiring about procedural requirements for an appeal. On March 21, 1986 she wrote to the Chairmen, JGSC, reiterating her intention to appeal and seeking confirmation in writing that her personal grade had, in the new system, changed from L to 23. On March 24, 1986 in response, the Chief, JEU, confirmed to the Applicant that her personal grade was the one of which she was informed by the Chairmen, JGSC, in their letter dated September 26, 1985. He stated that she would be "grandfathered" in the salary range for old grade L for a period of two years from October 1, 1985.

7. From May 27 through August 18, 1986 the Applicant exchanged correspondence with supervisors trying to determine who had taken the decision to downgrade her to level 22 and to deprive her of her personal grade level 23. Her supervisors tried to clarify her understanding of the grading of her position at level 22 and her carrying of a personal grade level L for the two-year period of salary protection.

8. On August 18, 1986 the Applicant filed an appeal with the Appeals Committee. She contested the decision to deprive her of her personal grade despite the fact that she was still expected to function fully as a level 23 Loan Officer, and the allegedly capricious application of Section 2.01(a) of Staff Rule 5.06 which resulted in reversal of a career growth promotion. The Respondent contended that the Appeals Committee lacked jurisdiction since the Appellant was complaining about the grade given to her position during the Job Grading exercise, such that exclusive jurisdiction lay with the JGAB. The Appellant reiterated that she was complaining about the capricious application of Section 2.01(a) of Staff Rule 5.06, and not about the grade given to the position she occupied.

9. On October 22, 1986 the Appeals Committee rendered its decision stating that it lacked jurisdiction in this case. On December 11, 1986 the Applicant wrote to the Chairman of the Appeals Committee requesting him to review the Appeals Committee decision on jurisdiction. The Chairman responded that the Appeals Committee decision was well-founded, since her appeal raised questions which properly belong to the job grading sphere and over which the Appeals Committee had no jurisdiction.

10. On March 18, 1988 more than six months after the listing of the case, the Respondent filed an additional written statement informing the Tribunal that the Applicant departed the service of the Bank as a result of the reorganization after receiving the Enhanced Separation Package (Package B) of severance pay and benefits.

#### The Applicant's main contentions

11. The Respondent cannot avail itself of its decision to change an existing grading structure and the grade of the position of which the Applicant is an incumbent to deprive her of a personally-obtained grade.

12. The Applicant was promoted to level L effective October 1, 1982 and in September 1985 the Department Director evaluating her performance stated that the Applicant's performance had been very satisfactory at "present Level L". He did not mention a loss of grade although this was known to him back in February 1985. In May 1986 the Applicant's Division Chief informed her that he was not aware that she would be deprived of her personal grade as a result of the grading of her position at level 22 and he encouraged her to appeal the loss of her personal grade.

13. The Respondent's capricious application of Staff Rule 5.06 section 2.01(a) has resulted in reversal of the Applicant's career growth promotion. It was strictly within the policies and procedures governing promotion, and in particular Personnel Manual Statement (PMS) No.4.05 issued in November 1978, that the Applicant attained a designated Level L on October 1, 1982 and the Bank should not now be permitted to deprive her of such professional growth promotion.

14. The Applicant has a right to be "grandfathered" indefinitely for purposes of Respondent's compensation administration and should not suffer because the Respondent decided unilaterally to change its grading structure. In all previous instances affecting staff "grandfathering" has been provided for during the entire period of employment.

15. Despite loss of grade level, the Applicant is still expected to function fully as a level 23 Loan Officer insofar as the so called "downstream" work is concerned; her responsibilities in this area have, in fact, increased due to numerous staff changes in the Division.

16. The Applicant's contract of employment contained no provisions that would allow her to be deprived any time of a salary level she might have attained, except on grounds expressly stated in the Bank's rules and regulations at the time she entered employment.

17. The Applicant's pleas were that:

- (a) the decision not to accord the Applicant a personal grade 23 at the time her position was graded at level 22, be rescinded;
- (b) the Applicant be maintained for purpose of compensation administration at grade level 23.

#### The Respondent's main contentions

18. The Applicant did not hold a personal grade at the time of the Job Grading exercise. Prior to the Job Grading exercise personal grades were the result of express arrangements between the Bank and a staff member who was expressly permitted to maintain his or her higher grade while he or she was assigned to a lower level position. Personal grades were used sparingly in order to resolve difficult personnel problems and were considered to be an anomaly that the Job Grading exercise intended to address.

19. The Applicant does not have a right to be grandfathered indefinitely for purposes of compensation administration. The Applicant has no right to retain indefinitely the compensation associated with a particular level, since nothing in the conditions of employment of Bank staff guarantees that a staff member will attain or continue to hold a position graded at a particular level. It was expressly stated in the Applicant's contract of employment that her appointment is "subject to the conditions of employment of the Bank at present in effect and as may be amended from time to time".

20. The salary protection arrangements ("grandfathering") for those of the staff whose positions have been downgraded are an integral part of the Respondent's classification of positions which is a policy formulation within the Bank's discretionary power.

21. The formula for a two-year salary protection was developed and incorporated in Staff Rule 5.06 to replace, in some instances, the use of the personal grade device which was deemed to be an anomaly in many cases.

22. The Bank management and the Executive Directors showed care and sensitivity in introducing the new grading and salary structure in order to alleviate the impact of the change upon the staff. The salary protection policy was not hastily adopted but was reviewed thoroughly and objectively and showed a concern for the staff through inclusion of a two-year transition period.

23. The Applicant's current salary was not and will not be reduced. At the expiration of the two-year grandfathering period, during which her salary will be administered at the range of her former grade, the then-current salary, if it has reached or exceeded the maximum for the range of her new grade, will be frozen until the maximum of the new grade catches up.

24. The two-year salary protection may be controversial, but it is not arbitrary. To extend indefinite salary protection to the Applicant would be to pay her more than the value of her position has been determined to be worth.

25. The two-year period will give the Applicant and others similarly situated time to adjust and make decisions regarding their future, whether in the Bank or elsewhere, while they have the benefit of the higher compensation attached to their former grade.

26. The Applicant's plea for permanent grandfathering at grade 23 should be denied and her Application should be rejected. Further, the Applicant is no longer eligible to receive the relief she requested, namely that she be maintained for purposes of compensation administration to grade 23 since she left the Bank on October 31, 1987, because she received Package B at the grade level 23 and because she has not satisfied the criteria established by the Tribunal in Harrison for additional relief in cases involving Package B recipients.

#### Considerations:

27. The Applicant is requesting the rescission of the decision not to accord her a grade 23, when her position was graded at level 22. She is requesting that the Respondent maintain her, for purposes of compensation administration, at grade 23, contending that she has a right to be "grandfathered" indefinitely.

28. The Tribunal notes that there was no reduction of the Applicant's salary at the time her position was graded but that her salary would have been frozen when it had reached or exceeded the ceiling of the salary of the new grade accorded to her position as a result of the grading exercise. Thus, the decision complained of had no immediate effect on her salary and could not have had any effect until at least two years had elapsed.

29. On October 31, 1987 the Applicant left the service of the Bank, and in connection with her departure she received the Enhanced Separation Package (Package B) of severance pay and benefits. The Applicant's departure took place one month after the expiration of the two-year grandfathering period. During that month no salary review took place, and consequently the Applicant did not incur any financial loss as a result of the expiration of the limited grandfathering period. On March 18, 1988 the Respondent informed the Tribunal of the Applicant's separation from service, and of its contention that, as a result of these developments, the Applicant was not entitled to any further compensation. Although the Applicant was duly notified, she did not respond to that contention.

30. In light of the above the application has become moot.

Decision:

For these reasons the Tribunal unanimously decides to dismiss the application.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary

At Washington, D.C., May 26, 1988