Decision No. 130

Arda Kehyaian (No. 2),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of A.K. Abul-Magd, President, E. Lauterpacht and R.A. Gorman, Vice Presidents, and F.K. Apaloo, F. Orrego Vicuña, Tun M. Suffian and P. Weil, Judges, has been seized of an application, received April 10, 1992 by Arda Kehyaian against the International Bank for Reconstruction and Development. The Respondent filed requests, which were granted, to separate jurisdictional issues from the merits and to file an answer limited to the jurisdictional issues. Thereafter the usual pleadings were exchanged on the jurisdictional issues. At the request of the Applicant the Tribunal ordered the production of a document. Thereafter the Applicant, at the request of the Tribunal, filed an additional written statement and also requested an amendment to her pleadings. The Respondent's additional written statement filed, at the request of the Tribunal, in response to the Applicant's additional written statement was out of time and was rejected by the Tribunal. The Tribunal rejected the Applicant's request for oral proceedings and the taking of depositions from witnesses. Other additional written statements filed by the parties both before and after the listing of the case were rejected by the Tribunal. The case was listed on September 9, 1993.

The relevant facts:

2. The Applicant had been in the service of the Respondent since 1971. For the years 1986/87 and 1987/88 the Applicant had received very good performance reviews (PPRs), dated June 2, 1987 and April 25, 1989, respectively, from her higher level supervisors, when she was in both the Transportation Division (EM4T) and the Energy and Environment Division (EM4IE) of Country Department 4 of the Europe, Middle East and North Africa Region (EMENA).

3. In response to a complaint by the Applicant of sexual harassment on the part of one of her supervisors, the Senior Personnel Officer, by memorandum, dated September 27, 1988, reported to the Vice President, Personnel (VPP) that there was some merit in the Applicant's complaint and recommended that the supervisor concerned be orally reprimanded and warned that such harassment should not occur again. By memorandum, dated January 9, 1989, to her Division chief (of EM4IE), the Applicant took up the problem of career development and work opportunities, pointing out, inter alia, that (i) her complaint about sexual harassment had adversely affected her standing in the division; and (ii) that the administrative secretary of the division had unfairly given her a poor review in her 1987/88 PPR. In the Applicant's PPR for 1988/89, dated May 15, 1989, her immediate higher level supervisors wrote highly of her work and commended her.

4. By memorandum, dated July 21, 1989, to the Vice President, EMENA, the Applicant requested, among other things, administrative review of her 1987/88 PPR. By memorandum, dated September 1, 1989, to the Vice President, EMENA, she also requested an administrative review of her performance rating, which was satisfactory, for her 1989 salary review increase. By memorandum, dated October 10, 1989, the Vice President, EMENA, replied that he had concluded in regard to the first complaint that "there are not grounds for overturning the review you received." In regard to the second complaint he concluded that "your increase is …. fully within the Bank's policy and warrants no overturning."

5. Subsequent to this, on December 12, 1989, the Applicant filed an appeal with the Appeals Committee

alleging that her Division Chief had denied her merit increases in line with her performance, and that his conduct was intended to intimidate her with the annual performance evaluation, threats of probation and that the Staff Rules concerning performance evaluations had been abused, all of which constituted administrative harassment. This appeal was not decided.

6. In October 1990, as a result of the splitting of the division in which she had worked, the Applicant was assigned to a position as Staff Assistant in the Europe, Middle East and North Africa Region (EMENA), Country Department 4, Energy and Environment Division (EM4EE). By memorandum to the Applicant, dated December 13, 1990, the Division Chief of EM4EE drew the attention of the Applicant to a number of deficiencies in her performance and stated his expectations. By memorandum, dated December 19, 1990 to the Division Chief, the Applicant defended herself against the charges of poor performance. There followed an exchange of several memoranda between the Applicant and her manager on the subject. By memorandum, dated January 28, 1991, to the Director of her department, the Applicant complained of administrative harassment by the Administrative Secretary of EM4EE.

7. By memorandum, dated March 5, 1991, the Applicant's Division Chief drew her attention to deficiencies in her performance which still remained; he stated that there had been no significant change since the earlier memorandum, and he invoked Staff Rule 7.01, Section 11.02, dealing with unsatisfactory performance as a reason for termination of service. The Applicant was given three months in which to improve her performance and she was warned that "If after three months your performance remains unsatisfactory I shall request my department director,….to remove you from your position." By memorandum, dated May 22, 1991, the Vice President, EMENA, responded to the Applicant's request for administrative review of this decision by the Division Chief regarding her performance, stating that the decision was proper and properly implemented.

8. By memoranda, dated April 3, 1991 and April 5, 1991, to her Senior Personnel Officer and her Division Chief respectively, the Applicant complained about harassment, relating to a health problem she had in regard to smoke.

9. By letters, dated May 30, 1991 and May 31, 1991, to the Respondent, the Applicant's counsel initiated proposals relating to a mutually agreed separation for the Applicant. By letter to the Applicant's counsel, dated June 4, 1991, the Respondent described the terms on which it was prepared to enter into such a separation.

10. By memorandum, dated June 10, 1991, to the Acting Director of the Department, the Applicant's Division Chief stated that the Applicant's performance had not in his opinion improved, and he requested that she be removed from his division. By memorandum, dated June 21, 1991, to the Director, Personnel operations (PO) , the Vice President, EMENA, stated that he had concluded that the Applicant could not be reassigned within EMENA "with good prospects of satisfactory performance," and requested that she be reassigned elsewhere in the Bank.

11. By memorandum to the Applicant, dated July 22, 1991, the Acting Director, PO, advised the Applicant that no position existed in the Bank in which she could be placed with good prospects for satisfactory performance. He stated, further, that if she did not submit by July 25, 1991 a signed copy of the mutually agreed separation memorandum which had been sent to her, it would be assumed that she did not intend to enter into a mutually agreed separation, and notice of separation on grounds of unsatisfactory performance would be issued the next day. The Applicant returned to the Respondent the mutually agreed separation agreement duly signed by her and dated July 25, 1991. The agreement contained the following clause:

> In accepting these terms and conditions, you fully and finally settle and release all claims you might otherwise have against the Bank arising out of circumstances occurring or decisions taking on/or before the date of your acceptance. You understand that the settlement of these claims includes relinquishment of the right to appeal them to the Appeals Committee, the Job Grading Appeals Board, or the World Bank Administrative Tribunal.

12. By letter to the Applicant's counsel, dated July 26, 1991, the Respondent requested that the Applicant

withdraw pending appeals before the Appeals Committee and actions before the Tribunal.

13. In reply to a letter from the Applicant's counsel, dated September 11, 1991, requesting administrative review of certain complaints, the Director, PO, wrote a letter stating that he was declining to undertake such a review because those complaints had been settled and the Applicant had released all claims she might otherwise have had against the Bank arising out of circumstances occurring or decisions taken on or before the date of her acceptance of the mutually agreed separation.

14. Thereafter, in a decision dated January 10, 1992, the Appeals Committee concluded that it had no jurisdiction to decide two appeals filed by the Applicant on July 25, 1991 and October 15, 1991 relating respectively to the decision to terminate her services for unsatisfactory performance and the refusal of the Director, PO, not to conduct an administrative review of certain decisions of the Respondent. The Appeals Committee found that "the Appellant had failed to demonstrate any prima facie case of duress" which might have vitiated the mutually agreed separation agreement.

The Respondent's main contentions on the jurisdictional issues:

15. The Applicant entered into a full and final settlement and release of all claims she now raises against the Respondent in exchange for the payment of money and other benefits. The release agreement should be enforced.

16. There is no evidence that the Applicant entered into the settlement and release agreement under duress. She had to balance priorities in entering into this agreement, which cannot be characterized as duress.

The Applicant's main contentions on the jurisdictional issues:

17. The Respondent had at its disposal massive means of economic coercion which were used against the Applicant, considering that she was a staff member at the support level. Thus, there was duress which vitiated the settlement and release agreement.

18. The sexual and administrative harassment which the Applicant had encountered was also an element of duress which vitiated the settlement and release agreement.

19. Even if the settlement and release agreement is binding, the Applicant's grievances may be adjudicated upon and she may receive appropriate additional compensation for the injury done to her.

Considerations:

20. The question for consideration in this case is whether the separation agreement signed on July 25, 1991 was freely entered into by the Applicant and therefore, should be treated as a legal barrier preventing the Applicant from bringing the substance of her application before the Tribunal.

21. The Applicant contends that the series of events leading to her separation from the Bank resulted from a premeditated design by the Respondent to get rid of her, subsequent to her complaint against her former supervisor whom she had accused of sexual harassment and which resulted in the oral reprimand of the supervisor. The Applicant further contends that that decision was implemented through a series of prejudiced and inaccurate evaluations of her performance, and that in the end she was forced to sign the release agreement in order to escape the Respondent's threat that if she did not sign it before a certain date, her employment would be terminated the following day for unsatisfactory performance.

22. In order to substantiate her contention concerning the harassment incident, the Applicant requested the Tribunal to order the Respondent to produce the report dated September 27, 1988, of its investigation of the Applicant's allegations of sexual harassment. The Tribunal ordered the Respondent to produce that report.

23. The Tribunal examined the report for the purpose of determining whether it could have played any possible role as an element of duress, but has not been convinced of any relationship of cause and effect between the incident of alleged sexual harassment which took place in February 1988 and the Applicant's consent three years later, on July 25, 1991, to the settlement agreement.

24. As decided in Mr. Y, Decision No. 25 [1985], paragraph 26:

> In an enterprise employing as many staff members as does the World Bank Group, it is inevitable that there will be claims of improper treatment, as witness the appeals to the Appeals Committee and applications to this Tribunal. It would unduly interfere with the constructive and efficient resolution of these claims if the Bank could not negotiate – in exchange for concessions on its part – for a return promise from the staff member not to press his or her claim further. If such an agreed settlement were not binding upon the affected staff member, there would be little incentive for the Bank to enter into compromise arrangements, and there might instead be an inducement to be unyielding and to defend each claim through the process of administrative and judicial review. It is therefore in the interest not only of the Bank but also of the staff that effect should be given to such settlements.

This leaves for consideration the contention that the Applicant had no alternative but to sign the agreement and that failure to do so would have resulted in the immediate termination of her employment.

25. As stated in Kirk, Decision No. 29, [1986], paragraph 35:

> [T]he desire to avoid a less pleasant alternative is always the motivation for entering into a settlement agreement and cannot provide a basis for overturning it. As the Tribunal has previously noted: "That …. is the kind of balancing of priorities that inheres in every settlement, and it cannot properly be regarded as duress". (Mr. Y, para. 33)

The same point was made in Gamble, Decision No. 35 [1987], paragraph 25, where the Tribunal stated that

> [H]e [the Applicant] appears to have regarded those additional benefits as more important than the release of his claims against the Respondent….

The Applicant, however, tries to distinguish her own case from those precedents on the ground that what was endangered by the Bank's decision in her case was not merely some financial benefits but the very "existence" of her employment within the Bank.

26. Even if this were the case, this variation is not relevant. In all cases of release agreements the staff member is assumed to have balanced the benefits resulting from the different options he or she has, and finally to have decided to consent to the proposed agreement. In each case the staff member must have been under certain pressures leading him to opt for what appeared to him to be the more advantageous alternative. This kind of pressure is inherent in the process and cannot be treated as by itself constituting duress. The fact that the Applicant's counsel took part in negotiating the terms of the agreement and finally conveyed to the Respondent that these terms were accepted by the Applicant shows clearly that the Applicant's acquiescence in the release agreement was a free and considered choice.

27. Therefore, the agreement signed by the Applicant and the Respondent is valid and should be enforced and the Applicant cannot raise substantive contentions relating to the termination of her employment with the Respondent, arising from decisions taken on or before July 25, 1991.

Decision:

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

A. K. Abul-Magd

/S/ A. K. Abul-Magd
President

C. F. Amerasinghe

/S/ C.F. Amerasinghe
Executive Secretary

At Washington, D.C., December 10, 1993