

Decision No. 241

Aeran Lee,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on October 11, 2000, by Aeran Lee 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 Francisco Orrego Vicuña (a Vice President of the Tribunal) as President, Thio Su Mien (a Vice President of the Tribunal), A. Kamal Abul-Magd and Bola A. Ajibola, Judges. The usual exchange of pleadings took place. The case was listed on March 29, 2001.

2. This case concerns the Applicant's claims that the Bank: (i) abused its discretion in deciding to terminate her employment for redundancy under Staff Rule 7.01, paragraphs 8.02(d) and 8.03; (ii) failed to assist her in finding employment subsequent to the decision of redundancy; and (iii) improperly reviewed her request for administrative review.

3. The Applicant joined the Bank in August of 1977 on a temporary assignment as a Research Assistant. After holding a series of temporary appointments at the Bank, receiving a two-year fixed-term appointment, conversion of her appointment to regular and two promotions, the Applicant's title was changed to that of Research Analyst in April 1991. The Applicant's most recent position was as a Research Analyst in the Macroeconomics Division, Africa Technical Families, of the East Africa Department (AFTM2) at level 20. The Applicant was assigned to this position after the July 1996 reorganization of the Africa Region, during which time a number of technical units, including the Applicant's Division, were created. As a result, technical work that had been previously performed within the country departments was thereafter provided to Country Directors on a contractual, demand-driven basis by the staff in technical units.

4. In November of 1997 a new manager became Sector Manager of AFTM2 and the Applicant's new supervisor. Within one or two months of his arrival at AFTM2, managers in the Africa Region were directed to increase the number of staff in the field, to use more consultants, to expect a stagnation or reduction in budget resources, and to hire people with skills in high demand. Senior management asked the Africa Region managers to show progress in responding to these directives by June 1998.

5. At that time, AFTM2 included three active Research Analyst positions at levels 19-21, including the Applicant. An additional Research Analyst was on external service without pay. The tasks assigned to Research Analysts at such levels consisted of three functions: function 1, constructing and maintaining data bases, mostly covering macroeconomic variables for one or more countries (national accounts, international trade, balance of payments, etc.); function 2, using these data to estimate a consistency framework, which was then used for projections and simulations for a variety of Bank needs; and function 3, helping higher level staff (level 22 and up) in economic and policy analysis and design.

6. In a memorandum to the Sector Director of the Africa Technical Families (AFT) dated February 8, 1998, the Sector Manager of AFTM2 presented his proposal for the reorganization of his unit. The Sector Manager of AFTM2 explained that while the needs for the second and third functions had been increasing, the skill requirements had been increasing too. He stated that the second and third functions needed a Ph.D.-level type of training to be done efficiently and at a professionally competent standard; yet, they were routine enough that

using regular-line economists would not be an efficient way of deploying resources.

7. The Sector Manager of AFTM2 proposed that of the four existing Research Analyst positions in AFTM2, two should be cut. According to his proposal, the work of the remaining two positions would be focused on function 1 (data compilation) and the more standard parts of function 2 (modelling/simulation), while function 3 and the more complex parts of function 2 would be done by long-term consultants. The Sector Manager of AFTM2 justified his proposal by stating that it would increase the overall quality of the work, provide greater flexibility for responding to changing skill requirements, and give more budgetary headroom in redeploying resources to respond to changing needs.

8. The Sector Manager of AFTM2 further proposed that of the then-existing three regular staff (and one Ph.D.-level long-term consultant) who performed these functions – with the one other regular staff on leave without pay and with a re-entry guarantee for April 1999 – one position be eliminated at this stage, leaving the decision regarding the other staff member to be taken about a year later. In the opinion of the Sector Manager of AFTM2, the Applicant had the weakest professional qualifications of the Research Analysts in the unit, as she had not earned a degree in Economics as the two others had. The Sector Manager of AFTM2 also believed that the Applicant was the weakest performer and the least useful to the unit because there was a lack of demand for her services. Therefore, he proposed that she be the person whose employment be made redundant. The Sector Manager of AFTM2 further explained that he would then re-assign the tasks of function 1 and part of function 2 to the remaining two regular staff and that he would hire another Ph.D.-level short-term consultant or long-term consultant when the need arose to carry out the more complex tasks. He requested the AFT Sector Director's feedback and clearance for his proposals.

9. On or about February 9, 1998, the Applicant was informed that her position would be declared redundant.

10. On May 28, 1998, the Applicant's managers (i.e., the Sector Manager of AFTM2, the Sector Director of the Africa Region, and one of the two Vice Presidents of the Africa Region) submitted to the Severance Review Group (SRG) a Request for Approval of Severance Payment regarding the redundancy of the Applicant's position. The SRG approved the request.

11. On June 29, 1998, the Applicant was given notice that her employment had become redundant with effect on July 1, 1998. She was informed that this decision had been taken in accordance with Staff Rule 7.01, paragraphs 8.02(d) and 8.03. The Applicant was placed on administrative leave during her six-month job-search period which started on July 1, 1998, but she subsequently volunteered her time during this period to work on an assignment in the Development Economics Department's Development Data Group.

12. On September 29, 1998, the Applicant submitted a request for administrative review of the redundancy of her position in AFTM2 to the Managing Director and Corporate Secretary. In this request, the Applicant alleged that the redundancy process was not based on the Bank's objectives but on the bias of the manager who, among other things, brought to the Division two consultants who were carrying out the Applicant's previous duties. The Applicant then described her previous bad working relationship with her manager (the Sector Manager of AFTM2), alleging that the declaration of redundancy was the third occasion on which she had had difficulties with him. The Applicant added that she had never had any trouble in her twenty-year career in the Bank except when the Sector Manager of AFTM2 was involved, and she requested to be redeployed under a different manager.

13. On October 7, 1998, after a telephone conversation with the Applicant that had taken place on October 2, 1998, the Assistant to the Managing Director advised the Applicant by memorandum that, in accordance with Staff Rule 9.01, she should submit her administrative review request to the manager of the person who had made the decision in her Vice Presidential Unit (VPU); the Managing Director would not consider her case until an administrative review had been undertaken in the Applicant's VPU. The Applicant denies having ever received this memorandum, which was sent to her by inter-office mail while she was on administrative leave. The Respondent states that the Managing Director's office also left two voicemail messages for the Applicant in October and December 1998 to inform her that under the terms of the governing Staff Rule, she should direct

her administrative review request to her VPU. The Applicant also denies having received these voicemail messages.

14. On December 15, 1998, the Manager of the Human Resources Service Center gave the Applicant sixty-days' notice of termination commencing January 1, 1999 and ending on March 1, 1999.

15. On February 8, 1999, as the Applicant had not received a response to her request for administrative review, she sent an email to the Managing Director's Assistant. They discussed the matter the following day.

16. On February 26, 1999, the Applicant sent an email to the Managing Director requesting an extension of her administrative leave. In this email, the Applicant described her conversation of February 9, 1999 with his Assistant and stated that she had requested on September 30, 1998 an administrative review of her impending redundancy, but had received no answer within the required thirty days under Staff Rule 9.01 "Administrative Review." The Applicant asserted that the Managing Director's failure to respond to her request for administrative review meant that she had no findings on which to base an appeal. She pointed out that there was insufficient time for her to file an appeal as her termination would take effect on March 2, 1999, and she requested an extension of her administrative leave by four months on that basis.

17. Also on February 26, 1999, the Managing Director responded to the Applicant's request for administrative review, stating that he saw no basis for amending or reversing the decision regarding her redundancy. The Applicant's employment with the Bank terminated on March 1, 1999. The Applicant elected to begin her retirement on that date, receiving an unreduced pension under the Rule of 50 of the Staff Retirement Plan.

18. On March 9, 1999, the Applicant sent another letter to the Managing Director regarding her request for an extension of her administrative leave. On March 12, 1999, the Managing Director responded to the Applicant's letters of February 26 and March 9, 1999, stating that Staff Rule 9.01 specifically provided that she could have sought an administrative review from her Vice Presidents in the Africa Region or proceeded directly to the Appeals Committee without first seeking administrative review. The Managing Director further stated that it was only on the basis of the Applicant's discussion of February 9, 1999 with his Assistant – to the effect that the Applicant had already submitted a request for administrative review to the appropriate manager in her Vice Presidential unit – that the Managing Director decided to review the Applicant's case and had subsequently sent her his conclusion on February 26, 1999. The Managing Director denied the Applicant's request for an extension of her administrative leave and suggested that the Applicant direct her request to the VPU.

19. The Applicant filed an appeal with the Appeals Committee on April 29, 1999, challenging the decision to declare her employment redundant, pursuant to Staff Rule 7.01, paragraphs 8.02(d) and 8.03. In its Report dated July 5, 2000, the Committee concluded, among other things, that the Applicant's selection for redundancy was based on a business rationale, that the proper procedures regarding the redundancy decision had been followed, and that the Applicant had been provided adequate assistance in her job search for an alternative assignment in the Bank. The Committee concluded, however, that the Applicant was denied due process in connection with her request for administrative review of the redundancy decision, as the administrative review decision of February 26, 1999 appeared to have been hastily considered and as the Managing Director refused to explain the reasons regarding the administrative review. For this denial of due process, the Committee recommended that the Applicant be awarded one month's net salary. The Vice President, Human Resources, accepted the Committee's recommendations and the Bank issued the Applicant a check for \$4,745.

20. The Applicant filed an application with the Tribunal on October 11, 2000. In it, she contests the decision to declare her employment redundant and the decision to give her notice of termination. She requests compensation in the amount of three years' net salary and legal costs.

Considerations

21. The Applicant in this case contends that the Bank's decision to terminate her employment for redundancy

under Staff Rule 7.01, paragraphs 8.02(d) and 8.03 was an abuse of discretion, being improperly motivated, discriminatory and lacking in transparency. She also contends that the Bank failed to give her request for administrative review appropriate consideration and equally failed to assist her in finding employment within the Bank subsequent to the decision of redundancy.

22. Recognizing that it was unlikely that the Bank would return her to service, the Applicant is claiming compensation in an amount equal to three years' net salary.

23. In order to dispose of the application, the Tribunal will examine each of the three main contentions made by the Applicant.

A) Was the Bank's Decision to Declare the Applicant's Employment Redundant an Abuse of Discretion?

24. The Applicant challenges on several grounds the Bank's decision declaring her employment redundant: First, she maintains that her redundancy should have been classified under Staff Rule 7.01, paragraph 8.02(c) (skills-mix), rather than paragraph 8.02(d) (reduction in number of positions).

25. The Tribunal does not find this argument to be persuasive. The provisions referred to in the challenged decision are paragraphs 8.02(d) and 8.03 of Staff Rule 7.01. Paragraph 8.02(d) provides that "[e]mployment may become redundant when the Bank Group determines in the interests of efficient administration that ... [s]pecific types or levels of positions must be reduced in number." This was precisely what happened in the Applicant's case. The reference to the Applicant's skills in some of the Bank's memoranda was made in the context of comparing her capabilities and skills to those of other Research Analysts within the department in order to decide who among them would be declared redundant. As stated in *Garcia-Mujica* (Decision No. 192 [1998], paras. 16 and 17), the mere fact that skills were part of the Respondent's consideration does not mean that the redundancy is based on a mis-match between the Applicant's skills and the skills required for a redesigned position under paragraph 8.02(c).

26. Moreover, the Tribunal finds that the four possible bases under paragraph 8.02 for deciding that a staff member's employment has become redundant, are not completely separated or detached from one another. Organizational changes and restructuring of different units within the Bank may possibly lead to a revision of a certain position's relevance and usefulness to the changing needs of the Bank, and such revision may, in turn, lead to a reduction in the number of such positions within the department. Managerial necessities must allow for more than mathematical and literal interpretation of the Staff Rules.

27. In the case of the Applicant, major structural changes began to be introduced into the Sector when, in November 1997, a new manager became Sector Manager of AFTM2. He, along with other managers in the Africa Region, were asked to introduce four kinds of changes: (i) increase the field vs. headquarters' staffing ratio; (ii) improve flexibility by increasing the number of staff on consulting contracts to those on regular appointments; (iii) plan that the budget would stagnate or decline over the following year or two; and (iv) prepare for changing skills-mix needs by being careful in committing to "old Bank" skills while maximizing flexibility in hiring persons with skills in high demand. Implementation of these four guidelines had, naturally enough, led to less demand for staff members like the Applicant and led eventually to a decrease in the number of positions like the one she occupied.

28. The Applicant also contends that termination of her employment with the Bank was based on personal bias by the Sector Manager, AFTM2, who targeted her for redundancy. Explaining the difficulties she had with the new Sector Manager, the Applicant mentions three events in an effort to corroborate her allegation of bias:

- i) The first event, according to the Applicant, goes back to the time when she was working in the International Trade and Capital Flow Division. In 1982, a group of staff complained to the Director about the incumbent Division Chief. According to the Applicant, she and her immediate supervisor were invited to join the group, but both of them declined the invitation. According to the Applicant, the new Sector Manager, AFTM2, was part of the complaint group. Shortly after this incident, he was promoted to Chief

of the Division and immediately started showing his negative attitude toward the Applicant. He told her that she looked like a “sour green apple” and that she did not appear to be happy working with her immediate supervisor. Rather than addressing the situation himself as the responsible Division Chief, he suggested that she write to the Director about the working relationship with her supervisor. The Applicant maintains that this incident was the sole reason why she decided to leave the Division.

ii) The second incident happened when the new Sector Manager, AFTM2, joined the East Africa Department, in November 1990, as the Lead Economist. The Applicant alleges that he influenced her manager to evaluate the Applicant’s performance negatively, rating it as unsatisfactory. On the suggestion of her manager, the Applicant had a discussion with the Sector Manager, AFTM2, on May 9, 1991 about the performance evaluation. During the discussions, the Sector Manager, AFTM2, told her that she had not changed, that people in the Division did not like her, that he would not let her work on Uganda, that he would not promote her and that she would be all right if she moved out of the department. The Applicant maintains that the Sector Manager, AFTM2, influenced her manager against her and that, as a result, her manager rated her performance as unsatisfactory in 1994. Following an administrative review, the evaluation was reversed to satisfactory and the salary increase was adjusted.

iii) The third difficult encounter took place when the Sector Manager, AFTM2, notified her of her redundancy. The Applicant finds the Sector Manager’s role in declaring her position redundant to be suspect as he had been in his position only about three months when he notified her of her redundancy. Moreover, it is indicated in the Redundancy Rationale Form that he proposed to reduce one staff in FY 99 and another in FY 2000. Nevertheless, he brought in two consultants with him in 1998.

29. The Tribunal does not find the Applicant’s allegation of bias on the part of her Sector Manager to be sufficiently supported. The three incidents on which she bases this allegation fall short of substantiating her claim of abuse of discretion. The Tribunal notes, however, that these incidents evidence a strained and unfriendly relationship between the Applicant and her Sector Manager. The record does not show that the Bank has taken this strained relationship into account while dealing with the termination of the Applicant’s long-standing appointment. Nor does the record show any action taken by the Bank to promote harmonious relations between the Applicant and her supervisors, a duty imposed on the Bank by Principle 2.1 of the Bank’s Principles of Staff Employment.

30. The Tribunal, however, finds that the redundancy decision was based on business and managerial considerations. The decision to reduce the number of Research Analysts in AFTM2, which eventually led to the redundancy decision, was part and parcel of an effort by management to implement certain policy directives. The argument put forward by the Respondent to justify its decision is that the reduction was necessary to increase efficiency and to lower costs, particularly as the more complex simulations, analysis and design were increasingly beyond the skills of the Research Analysts in AFTM2 and would have to be performed by higher-level staff.

31. Even if the wisdom of such a strategy were to be questioned, it remains within the discretionary power of management to choose a managerial strategy aimed at improving the quality of work, and to limit the cost of such work. This Tribunal has consistently refrained from substituting its own judgment on policy and managerial decisions for that of the Respondent. It reviews decisions involving managerial discretion only to ensure that they do not constitute an abuse of discretion, being arbitrary, discriminatory, improperly motivated, or carried out in violation of a fair and reasonable procedure. (*Saberi*, Decision No. 5 [1981], para. 24; *Ezatkah*, Decision No. 185 [1998], para. 11.)

32. In support of her allegation of bias as the real reason behind the redundancy decision, the Applicant maintains that the redundancy was an arbitrary act of her manager, acting alone, without the involvement of his supervisors or the Respondent’s Human Resources Staff. The record, however, does not support such a description of the facts. It is true that it was the Applicant’s manager, the Sector Manager, AFTM2, who proposed reducing the number of Research Analysts in AFTM2, but the record shows that the actual decision to declare the Applicant’s employment redundant was made five months later by the Regional Vice Presidents. Moreover, justification for the redundancy decision was presented to the Respondent’s Severance Review

Group and approved by both the Human Resources Team for Africa and the Human Resources Program Director. The Applicant's complaint in this respect is therefore not supported by the facts.

33. The Applicant also contests the Bank's decision to select her for redundancy rather than one of the other Research Analysts. She bases her contention on Staff Rule 7.01, paragraph 8.03, which requires that

[w]here positions are reduced in number, the selection of staff members whose employment is redundant shall be made on the basis of managerial judgment about the skills needed by the Bank Group to carry out its work effectively, taking into account the following factors:

- a) The performance of the staff members;
- b) Whether the abilities and experience of staff members can be used elsewhere in the Bank Group; and
- c) The existence of volunteers for termination who are willing to accept severance payments pursuant to paragraph 8.08.

34. The Applicant contends that the Respondent failed to satisfy the requirements of paragraph 8.03. According to that paragraph, she states, "a transparent process of evaluating all staff at the same level performing the same or similar functions" must take place before selecting a certain staff member for terminating his or her employment. This should be done at least within the relevant unit, but also on a departmental or regional basis to assure a reasonable degree of equity among staff.

35. The Applicant contends that neither this comparative evaluation of staff members at the same level nor the other requirements specified in paragraph 8.03 have been complied with.

36. In order to substantiate her contention, the Applicant invokes the admission of the Sector Manager, AFTM2, and the Human Resources Officer during the hearing before the Appeals Committee that neither of them had anything in writing to prove that the procedures had been followed.

37. The Tribunal finds that the Sector Manager, AFTM2, and the Human Resources Officer should have kept records of their discussions with the Task Team Leaders (TTLs), who had worked with the three Research Analysts, in order to decide which of the three would be chosen for redundancy. Moreover, the Sector Manager, AFTM2, neither kept nor presented any record showing the results of the comparison of the credentials of the incumbent Research Analysts. Nor did the Human Resources Officer keep a record of any conversations with potential volunteers for redundancy. The above irregularities, though falling short of substantiating the Applicant's allegation of abuse of discretion, represent procedural flaws that cannot be forgiven in the process leading to the eventual termination of the employment of a staff member who served the Bank for almost twenty years. These flaws entitle the Applicant to compensation.

38. The Tribunal finds, however, that regardless of the procedural flaws explained above, the record supports the Bank's claim that the selection of the Applicant for redundancy was based on an effort to identify the weakest performer among the Research Analysts vulnerable to termination for redundancy. The record shows that the Applicant was the least academically qualified of the Research Analysts with whom she was compared. Her academic qualifications did not include a graduate degree, whereas the other Research Analysts held one or more such degrees. Moreover, the Applicant has not presented any solid evidence substantiating her claim that her performance was superior to the Research Analysts not selected for redundancy. Rather, the record shows that her work needed continuous supervision. This was noted, for example, in the Applicant's performance review for 1995, a comment that was endorsed by the Management Review Group.

39. The Applicant also argues that she was declared redundant due to her age. The Tribunal could not find any evidence supporting this allegation. Moreover, such an argument in and of itself is not evidence of abuse of discretion on the part of the Bank. It only emphasizes the need for the Respondent to apply a higher standard of care with respect to a decision terminating the employment of a staff member who has been in the service of the Respondent for a long period of time, and who, on account of his or her age, is less likely to find employment elsewhere.

B. Did the Bank Fail to Consider Properly the Applicant's Request for Administrative Review?

40. The Applicant's second main complaint is that once she was notified on June 29, 1998 of the Bank's decision to declare her employment redundant, she wrote to the Managing Director and Corporate Secretary, requesting administrative review of the redundancy decision. The Applicant contends that her request for administrative review was mishandled by the Bank, that her complaint was not seriously examined, and finally that a hasty decision was taken confirming the decision under review.

41. To the above accusations the Bank responds by referring to a memorandum sent to the Applicant by the Managing Director's office on October 7, 1998 explaining that the request for administrative review should have been submitted to the Vice Presidents of the Africa Region pursuant to the prevailing version of Staff Rule 9.01, paragraph 2.02. The Bank adds that it was only on February 9, 1999 – over four months after she submitted her request for administrative review – that the Applicant again contacted the Managing Director's office inquiring about her request for administrative review. When the Managing Director became aware that the Applicant had not directed her request to the competent Regional Vice President, he conducted a review from his office and concluded that there was no basis for reversing the decision to declare the Applicant redundant.

42. The facts surrounding the submission by the Applicant of the request for administrative review on September 29, 1998, and the Managing Director's decision to confirm the redundancy decision notified to the Applicant on February 26, 1999 are somewhat uncertain and confused. The Bank insists that on October 7, 1998 the Managing Director's Office responded to the Applicant's request for administrative review by explaining that the Managing Director was not the correct official to conduct such a review. The Applicant, on the other hand, insists that she never received the October 7, 1998 memorandum. Such denial was recorded in two letters addressed to the Managing Director dated February 26 and March 14, 1999, respectively. The Applicant, who was on administrative leave as of July 1, 1998, also denies ever receiving the two messages which the Managing Director's Assistant maintains to have left on the Applicant's voicemail system in October and December 1998.

43. The Tribunal notes the very short time during which the Bank considered on the merits the Applicant's request for administrative review. It also notes the unusual brevity of the letter dated February 26, 1999 addressed to the Applicant to inform her that her request for review had been denied. When the Applicant requested access to the evidence provided to the Managing Director by the African VPU justifying her redundancy, he declined the request and refused to give the Applicant an extension of her administrative leave in which to file an appeal with the Appeals Committee. In the light of the above, the Tribunal finds that the Applicant's request for administrative review was not properly handled by the Bank, and that the Bank's categorical and unexplained refusal to explain to the Applicant the reasons justifying its decision not to reverse the redundancy decision or to grant her an extension of her administrative leave are manifestations of unsympathetic and arbitrary treatment for which the Applicant is entitled to compensation.

C. Did the Bank Fail to Assist the Applicant in Finding Employment Subsequent to the Redundancy Decision?

44. The Applicant's third main complaint is that the Bank failed to assist her in finding a new assignment subsequent to the termination of her employment for redundancy. The record does not substantiate this allegation. Rather it shows that on February 9, 1998 the Sector Manager, AFTM2, sent an email to the Applicant referring to their agreement that the Applicant's next step would be to explore her options with her personnel officer and to get back to him by March 1, 1998 with some idea as to her future course of action. Moreover, the Applicant was matched to over thirty job postings and she submitted several applications, some of which were for jobs in her grade range. The fact that neither the efforts of the Applicant nor those of the Bank were successful does not mean that the Bank failed in assisting the Applicant in finding a new assignment. As stated by the Tribunal in *Arellano* (Decision No. 161 [1997], para. 42), the Bank's obligation in this respect is "to make an effort; ... not ... to ensure the success of such effort." On the basis of the above, the Tribunal cannot conclude that the Bank failed to assist the Applicant in searching for a new assignment.

D. Remedies

45. On the basis of the above, the Tribunal concludes that the Bank's decision to terminate the Applicant's employment for redundancy under Staff Rule 7.01 was not an abuse of discretion and that the Applicant's request for relief on this ground should be denied.

46. However, the Tribunal concludes that the manner in which the Applicant was treated by the Respondent and in which her complaints were handled, during the critical time immediately preceding and following the decision of terminating her employment, are not consistent with the right to fair treatment.

Decision

For the above reasons, the Tribunal unanimously decides that:

- (i) the Respondent shall pay the Applicant compensation in the amount of eighteen months' net salary;
- (ii) the Respondent shall pay the Applicant costs in the amount of \$7,297.22; and
- (iii) all other pleas are dismissed.

/S/ Francisco Orrego Vicuña

Francisco Orrego Vicuña

President

/S/ Nassib G. Ziadé

Nassib G. Ziadé

Executive Secretary

At Washington, D.C., April 26, 2001