

Decision No. 22

Martial M.M. van Gent (No. 7),  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, A.K. Abul-Magd and P. Weil, Vice Presidents, and R.A. Gorman, N. Kumarayya and C.D. Onyeama, Members, have been seized of a complaint, received June 29, 1984, by Martial M.M. van Gent against the International Bank for Reconstruction and Development. The Tribunal decided that oral proceedings and the appearance of witnesses, as requested by the Applicant, were unnecessary and should not be ordered. After the usual exchange of pleadings, the case was listed on November 15, 1984.

The relevant facts:

2. The Tribunal has decided six cases previously submitted to it by the Applicant (Decision No. 11 of October 8, 1982, WBAT Reports 1983, Part I, Decision No. 13 of September 6, 1983, WBAT Reports 1983, Part II, and Decisions Nos. 18, 19, 20 and 21 of March 22, 1985). The facts relating to the history of the Applicant's employment with the Respondent and the circumstances surrounding his original complaints have been detailed in the first of these cases.

3. Effective May 1, 1983, as a result of the annual salary review, the applicant was given a salary increase of 5.7%, the uniform adjustment to the salary structure being 6.4%. On August 10, 1983, the Director of the Applicant's Department, the Latin America and the Caribbean Projects Department (LCPD), in reply to an inquiry made by the Applicant as to why he had been given a salary increase below the uniform adjustment, stated as follows:

"In determining the increase, we were guided by the Bank's general guidelines with respect to staff occupying positions graded lower than their personal level, which state in part, 'Such staff may be granted an increase less than the structure even if their performance is fully satisfactory for the position level but their salary is out of line with the salaries of their peers. Such staff must receive at least one-half the structure increase'."

4. On October 24, 1983 the Applicant filed an appeal (Appeal No. 59) with the Appeals Committee in which he contested the decision not to give him the uniform structural increase in salary and requesting, among other things, the rescission of that decision and the readjustment of his salary to at least the 6.4% structural increase. On November 30, 1983 the Applicant filed an addition to Appeal No. 59 in which he contested the decision of his Department not to reassign him to a vacant Division Chief position in LCPD for which his name had been proposed in October 1983. The Appeals Committee found that the Respondent had acted properly on both counts and recommended no relief. The Vice President, PA, informed the Applicant on June 21, 1984 that he accepted both the findings and recommendations of the Appeals Committee.

5. In the present Application, filed on June 29, 1984, the Applicant requests a rescission of the decision of the Vice President, PA. The Applicant's challenge to the decision not to reassign him to a vacant Division Chief position has been already dealt with in Decision No. 21 of this Tribunal. The present decision will concern only the Applicant's claims relating to his May 1, 1983 salary increase.

6. In this case the Tribunal allowed the presentation of a brief by the Staff Association as “amicus curiae” opposing the Respondent’s request for an order of costs against the Applicant and also allowed the filing of an answer by the Respondent to the Staff Association’s brief as well as comments by the Applicant.

The Applicant’s main contentions:

7. The Respondent made statements in its Answer in Decision No. 11 to the effect that the Applicant retained his “N” level grade and salary on a personal basis which implied that his salary should not be compared with that of his “peers” at the “M” level.

8. The references to “current salary” and “no reduction in salary” in the Memorandum of February 14, 1978, regarding the phasing out of the Tourism Projects Department were meant to refer to the same level in the Bank’s published salaries for all subsequent years, including structural increases but excluding merit increases. If this interpretation were not accepted it would mean that the assurances given to Tourism staff members were meant to refer to a one-time commitment, such that salaries could rapidly have been eroded to unreasonably low levels.

9. Since staff on leave-without-pay and on sabbatical would have to be given an increase equal to the structural increase, it was unreasonable to treat the Applicant, who had performed well at the “N” level and had been temporarily placed in an “M” level position, worse than those categories of staff members.

10. Other “N” level staff of the former Tourism Projects Department who were in the same position as the Applicant did not have their salaries reduced below parity level in 1983, which indicates that there was discrimination against the Applicant.

11. The reduction in salary was a reprisal for the Applicant’s having filed an appeal (Appeal No. 50) with the Appeals Committee against the managers in his Department. Even if the Assistant Director of the Applicant’s Department was unaware of the filing of the appeal at the time the decision relating to the salary increase was taken, the Director was aware of it when he confirmed that decision. Further evidence of unfair treatment and reprisals is to be found in the facts that (i) the President before Decision No. 11 rejected without any explanation one recommendation of the Appeals Committee in favour of the Applicant and accepted two recommendations which were to his detriment, and (ii) the Vice President, PA, accepted the recommendation adverse to the Applicant in Appeal No. 59 when he knew that it was in contradiction to what had been stated in the 1978 Memorandum.

12. It was also obvious from the Respondent’s past practices (i.e. from the circulars issued each year and the published salary tables) that, when viewed over a period of years, “salary” means the salary at a given time plus the annual structural increases for that salary.

13. The fundamental basis for the claim regarding salary in this case had not been previously considered by the Tribunal.

14. As for the Respondent’s contention that the Applicant’s claims are frivolous and an abuse of the appeals process, for which the Applicant should pay costs, the number of cases filed by the Applicant followed from the number of violations of his conditions of employment; none concerned issues already adjudicated by the Tribunal; the Applicant’s early retirement does not prove that his claims have been brought in bad faith; the Appeals Committee made no mention of any abuses by the Applicant; and the Respondent has not shown under which article of the Tribunal’s Statute there is an authorization to award costs against the Applicant. It is in any event the Respondent which has abused the appeals process, as evidenced by several erroneous statements, delays and omissions on the part of the Respondent’s officials and the Appeals Committee. There were also examples of harassment of the Applicant, such as the unsubstantiated request by the Respondent for an extension of time to file its Answer.

15. The Applicant requests (i) a full rehabilitation of his professional integrity, for example, by a retroactive

promotion to the "O" level; (ii) a retroactive salary increase, from May 1, 1983 onwards, by an amount equal to the maximum increase given to the "N" level staff in his salary zone; (iii) compensation for breach of his conditions of employment and hardship, in an amount of one year's salary for each year he was forced to work in a lower level position in LCPD; and (iv) US \$2,200 for legal fees and preparation costs of this application. If the Respondent chooses to pay compensation instead of performing (i) and (ii) above, the Applicant requests an amount of three times his annual salary.

#### The Respondent's main contentions:

16. After the Applicant's reassignment to LCPD in 1980, he was regularly given the full amount of the structural increase in salary till May 1983, when he was given a 5.7% increase instead of 6.4% which was the structural increase. In 1983 a new system of salary adjustments was introduced, taking into account inter alia salary as compared to peers in the case of persons whose personal level was higher than that of the position they occupied. At that time the Applicant's salary was substantially above the range of salaries received by other deputy division chiefs in his department, and was also high by comparison to the salary range of "N" level division chiefs. According to the guidelines issued, staff who occupied positions graded lower than their personal level could be granted an increase below the uniform structural adjustment, which in 1983 was 6.4%, if their salary was out of line with those of their peers, even if the staff member's performance was fully satisfactory. The Applicant's salary was very high in relation to his peers and, therefore, his manager, acting within the guidelines, gave him an increase which was 0.7% less than the structural increase and 2.5% more than the minimum to which he was entitled.

17. The Applicant's salary was not reduced on reassignment in 1980 and his salary continued to be within the "N" level range. The Applicant was never promised a personal formula for determining his salary adjustments. It was understood that, except for his "N" level grade and salary, his appointment was to be considered like any other staff member's appointment. This is consistent with the Tribunal's Decision No. 11 which held that special provisions respecting reassignments could neither last indefinitely nor afford permanent preferential treatment to the staff of the former Tourism Projects Department.

18. This is the seventh case the Applicant has filed with the Tribunal. Each case arises out of the same circumstances respecting his reassignment and involves the same alleged violations of the Applicant's alleged right to preferential treatment. The Applicant is attempting to obtain another reexamination of his case. Taking into account the number of appeals submitted by the Applicant, the fact that the Tribunal has twice before adjudicated upon the substance of his complaints, the comprehensive nature of the Tribunal's decisions, the repetitiveness of his complaints and the fact that he voluntarily retired effective June 30, 1984, the Respondent concludes that the Applicant has not filed this Application in good faith. Although the written law of the Bank is silent on the matter, and the Respondent has not requested it before, under a general principle of law costs in the amount of at least \$1500 should be awarded against the Applicant in order to protect the Tribunal against such abuses of its process.

#### Considerations:

19. In this seventh presentation before the Tribunal the Applicant complains against the decision to grant him a salary increase which was 0.7% less than the 6.4% uniform adjustment to the salary structure. He invokes in support of his claim the Memorandum of February 14, 1978, which promised reassigned Tourism staff members that "on reassignment, there would be no reduction in current salary". While assigned to an "M" position, the Applicant was, in accordance with this provision, allowed to retain his "N" level salary and grade on a personal basis.

20. The issue before the Tribunal arises from the fact that on April 8, 1983, guidelines for the 1983 Salary Review were sent to Bank Managers, providing, under the title "Treatment of different categories of staff", and in respect to "staff occupying positions graded lower than personal level", as follows:

"... (ii) such staff may be granted an increase less than the structure even if their performance is fully

satisfactory for the position level but their salary is out of line with the salary of their peers. Such staff must receive at least one-half the structure increase.”

21. In accordance with those general guidelines, the Applicant’s net salary for 1983 was increased 5.7%, and he was awarded an annual salary of net \$72,680, a figure well above the new maximum for the “M” level and substantially above the mid-point for the “N” level. Thus the Applicant’s salary was and has continued to be within the “N” level range. There has been no infringement of the assurance given to the Applicant in the Memorandum of 1978 and in the Respondent’s Answer before the Tribunal of April 28, 1982. There has been “no reduction in current salary” and the Applicant has been, as the Respondent stated, “allowed to retain his “N” level salary and grade on a personal basis until he was selected for another assignment”. The resulting salary is clearly an “N” grade salary and not an “M” grade salary.

22. The Applicant complains that the decision to grant him less than the structural increase constituted a reprisal for appealing against the decisions of his superiors. The Tribunal notes, however, that the supervisor who initially proposed a percentage increase below 6.4% did not know at the time that the Applicant had filed an appeal. Furthermore, the action of his supervisors was in full conformity with guidelines of a general character, which were applied equally to other staff members occupying positions graded lower than personal level. In determining salary increases, it is reasonable to make a comparison with salaries of staff members discharging the same responsibilities and functions.

23. In the present case the Tribunal does not find it would be justified to award costs against any of the parties.

Decision:

For these reasons the Tribunal unanimously decides to dismiss the pleas in the Application and to deny the Respondent’s request concerning costs.

E. Jimenez de Arechaga

/S/ Eduardo Jiménez de Aréchaga  
President

C.F. Amerasinghe

/S/ C.F. Amerasinghe  
Executive Secretary

At Washington, D.C., March 22, 1985