

Decision No. 34

Martial M.M. van Gent (No. 9),
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 M. Suffian, Judges, has been seized of a complaint, received October 8, 1986, by Martial M.M. van Gent against the International Bank for Reconstruction and Development. The Applicant's request for hearing of witnesses and production of documents was refused by the Tribunal. The usual exchange of pleadings took place. The Tribunal decided to accept the Respondent's corrigendum to its Answer filed on December 17, 1986. The case was listed on April 10, 1987.

The relevant facts:

2. The Tribunal has decided eight 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; Decisions 18, 19, 20, 21 and 22 of March 22, 1985, WBAT Reports 1985; and Decision No. 33 of May 21, 1987). The facts relating to the Applicant's employment with the Respondent and the circumstances surrounding his original complaints have been detailed in the first of these cases.

3. In the present application, the Applicant requests the Tribunal to rescind the decision of the Vice President, Personnel and Administration (PA), to grant him a less-than-structural salary increase for the year 1984.

4. Effective May 1, 1984, as a result of the annual salary review, the Applicant was given a salary increase of 2.0%, the structural increase being 4.0%. This salary increase was determined in accordance with the 1984 salary guidelines contained in a Memorandum, dated May 4, 1984, and entitled "1984 Salary Review", sent to Vice Presidents and Directors by the Director, Compensation Department (COM), and the Director, Personnel Management Department (PMD). These guidelines included provisions regarding salary increases for staff members occupying positions regarding salary increases for staff members occupying positions graded lower than their personal levels. Specifically, it was provided that "(ii) Such staff, when their salary is out of line with the salaries of their peers may be granted an increase less than the structure even if their performance is fully satisfactory for the position level. Such staff must receive at least one-half the structure increase." The Applicant was occupying an "M" level position and his personal level was "N" level. His increased annual salary was \$74,133. Effective May 1, 1984 the salary range for the "N" level was between \$56,000 and \$78,420. The Applicant protested against the decision to award him a salary increase less than the structural increase and on February 13, 1985 filed an appeal with the Appeals Committee.

5. The Appeals Committee in its recommendation made on July 23, 1986 concluded: "In making a decision to award Appellant a less-than-structure salary increase in 1984, the Bank did not breach Appellant's conditions of employment, nor is there evidence that the Bank, in the exercise of managerial discretion, based its decision on arbitrary, capricious or irrelevant grounds; nor was there any evidence that this decision constituted a reprisal against Appellant. Accordingly, the Committee recommends that Applicant's request for relief be denied."

6. On July 30, 1986 the Vice President, PA, informed the Applicant that he accepted the Appeals Committee's

recommendation.

The Applicant's main contentions:

7. The December 7, 1976 memorandum from the Chief, Staff Development Planning Division, Personnel Department (PD), on policy issues regarding promotions and demotions stated "for reassignment due to abolition of position the staff member...would retain his current salary administered within the range applicable to his original level for a period of not exceeding 12 months..." and "penalizing staff may be neither equitable nor ethical especially since...staff most likely to be involved in painful reassignments are fairly senior.... Thus freezing or reducing real income is unfair". The Vice Presidents and Directors who had drafted and approved the memorandum of February 14, 1978 to staff of the Tourism Department, stating that "on reassignment there would be no reduction in current salary", knew of the December 7, 1976 memorandum and the reactions of managers thereon, and it is only reasonable to assume that they meant by their assurance to protect the "real income" or, in other words, the salary as from time adjusted by the structure increases.

8. The Appeals Committee's view that there is no rule or practice in the Bank that a staff member reassigned to a lower level position keeps his current salary with increases at least equal to the structure increases is in contradiction with the November 5, 1985 memorandum from PMD to the Secretary of the Appeals Committee which stated that Staff Rule No. 5.06 on Assignment to Lower Level Positions is the codification of past and existing Bank practice with regard to the protection of salaries of staff members placed in lower level positions.

9. From 1978 to May 1983 the Bank adhered to the principle of salary protection for staff members reassigned to lower level positions. Only the salary guidelines of 1983 and 1984 caused the Bank to deviate in the Applicant's case from the established practice.

10. The memorandum of June 6, 1983, of the Applicant's Personnel officer, together with the memorandum of November 22, 1982 of the Director, PMD, indicated clearly that a special provision and a grandfathering arrangement had been given to the Applicant. It is contrary to any assurances regarding protection of salary, given for a well defined period and confirmed by a grandfathering clause, to apply a new guideline which permits a reduction in salary.

11. Reprisals cannot be easily proven. However, when arbitrary, capricious, irrelevant or unfair decisions by a manager follow after an appeal has been filed against earlier decisions of that manager, the later decisions can be interpreted as reprisals. The Applicant's Director, in the years before the Applicant had filed Appeal No. 50 against him, had given the Applicant higher than structural salary increases. Immediately after he filed Appeal No. 50 his Director granted the Applicant less than the structural increase, based on a non-binding salary review guideline. Moreover, the same Director was well aware of the fact that the Applicant had been given assurances of no reduction in current salary and protection of salary, as well as of the memorandum of December 7, 1976 on policy issues regarding promotion and demotion.

12. The Respondent's request to order the Applicant to pay costs for his frivolous appeal and for the abuse of the appeals process constitutes an act of reprisal against the Applicant for making an appeal.

13. The Applicant requests (i) a retroactive salary increase, from May 1, 1984 onwards, by an amount equal to the maximum increase given to the "N" level staff in his salary zone, (ii) compensation for breach of his conditions of employment, for unfair treatment and for reprisals, in an amount of six times his annual salary; (iii) \$3,200 for legal fees and preparation costs of his application; (iv) a penalty against the Respondent consisting, for example, of the same percentage of the Bank's annual net income as Respondent's request for costs is of the Applicant's net pension; and (v) that he be cleared of the false accusations that he filed a frivolous appeal and abused the appeals process.

The Respondent's main contentions:

14. The Applicant's contention that the less-than-structural increase awarded to him in 1984 constitutes a

reduction in salary which is contrary to assurances given to him as to salary level in connection with the abolition of the Tourism Department is similar to the one rejected by the Tribunal on a like set of facts in his application against his 1983 salary increase. The Tribunal concluded in the earlier case that the Applicant's 1983 salary was well above the new maximum for the "M" level and substantially above the mid-point for the "N" level and that there had been "no reduction in the current salary."

15. The Applicant's contention that the decision to award him less than the structural salary increase in 1984 was in fact a reprisal against him on the part of his former Department Director and the Vice-President, PA, for filing other appeals against their various decisions is similar to the one rejected by the Tribunal in the Applicant's application to the Tribunal against his 1983 salary increase. The Tribunal found the actions of his managers in the earlier case to be in conformity with guidelines, equally applicable to other staff members holding personal grades, which stated that in determining salary increases it is reasonable to make comparisons with salaries of staff members discharging the same responsibilities and functions.

16. The Applicant's 1984 salary increase was determined in accordance with assurances made to him as to personal grade and salary as well as with the 1984 salary guidelines.

17. The Tribunal is not an appellate body and the proceeding before it is de novo. Therefore the Applicant's request for review of the reasoning of the Appeals Committee should be dismissed.

18. The Tribunal has already in Decision No. 22 adjudicated upon the substance of the Applicant's complaint in this application.

19. The Applicant's request for payment of legal fees should be denied since he is representing himself, because he has filed a frivolous action, and because he has raised no new issues.

Considerations:

20. In this case, the Applicant's ninth presentation to the Tribunal, he complains against the decision to grant him as a result of the 1984 salary review a salary increase which was 2.0% less than the 4.0% uniform salary adjustment to the salary structure. This application is substantially similar to that filed by the Applicant in Decision No. 22 concerning his 1983 salary increase, insofar as it questions the failure to grant the Applicant in 1984 a salary increase equivalent to the uniform adjustment to the salary structure.

21. The issue before the Tribunal is governed by the guidelines for the 1984 Salary Review, which were sent to Bank managers on May 4, 1984, 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.

In accordance with those general guidelines, the Applicant's net salary for 1984 was increased 2.0%, and he was awarded an annual salary of net \$74,133, 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 continued to be within the "N" level range.

22. The Applicant, as in the application in Decision No. 22, invokes in support of his claim the Memorandum of February 14, 1978, but also cites by way of interpretation of this memorandum a memorandum, dated December 7, 1976, from the Chief, Staff Development Planning Division, PD, to Vice Presidents and Department Directors. As held by the Tribunal in Decision No. 22, the decision of the Respondent to give the Applicant a salary increase which was less than the uniform adjustment to the salary structure does not violate the assurances given to the Applicant in the Memorandum of 1978 which only ensured the Applicant stability in his "current salary". Nor is this conclusion changed by invoking the memorandum of 1976. In the first place, this

memorandum only made some suggestions to managers and did not lay down binding injunctions. In the second place, what was suggested in this memorandum is that:

for reassignment due to abolition of post the staff member would retain his current salary administered within the range applicable to his original level for a period not exceeding 12 months.

This document does not advocate the maintenance of the real income of the staff member affected indefinitely beyond this 12-month period. In the case of the Applicant the impugned salary increase took place well after 12 months had elapsed after his post had been abolished and he had been reassigned. Hence, the memorandum of 1976 does not lend any support to the Applicant's contention that the Respondent should have maintained his real income during the salary review of 1984.

23. The Applicant also refers to a memorandum from PMD to the Secretary of the Appeals Committee stating that Staff Rule 5.06 was the codification of past and existing practice with regard to the protection of salaries of staff members placed in lower level positions. He alleges that this statement of the Respondent must be taken to reflect the Bank's past and existing practice in this regard. However, Staff Rule 5.06 merely states that a staff member who is assigned to a lower level position "for a period of 24 months thereafter, ... will be eligible for increases as if the salary range formerly applicable to the position, adjusted for any increase in the salary structure, had remained in effect." This does not apply to the case of the Applicant. The assignment of the Applicant to a lower level position had taken place well more than 24 months before the salary review of 1984. There is nothing in this Staff Rule or in the practice of the Bank to warrant the conclusion that the real income of staff members assigned to lower level positions was protected indefinitely.

24. A memorandum of June 6, 1983 from the Applicant's Personnel Officer read together with the memorandum of November 22, 1982 from the Director, PMD, both of which are cited by the Applicant, does not more than assert that the Applicant would retain his former grade on a personal basis and that his salary would be administered "outside the range for the position for which you are assigned." There was no assurance given that such administration of salary outside the range of his substantive position would involve the indefinite maintenance of his real income.

25. The Applicant reiterates, as he did in his application in Decision No. 22, that his manager took reprisals against him for having filed an appeal. In this case the salary action taken came after the Applicant's Director became aware that he had filed an appeal before the Appeals Committee relating to the salary increase given him in 1983. However, the mere knowledge of the Applicant's Director that the Applicant had filed such an appeal is not by itself evidence of prejudice on the part of the Director or that he was acting by way of reprisal. There was justification in the Applicant's case to repeat the salary action taken in 1983 based on the guidelines, because the Applicant's salary was in fact well above the maximum of the "M" level, substantially above the mid-point of the "N" level and fairly close to the maximum of the "N" level. These facts support the conclusion that the decision impugned was taken in good faith, with good reason, pursuant to the salary guidelines for 1984 and without any intention of taking reprisals against the Applicant.

Decision:

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

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At London, May 21, 1987