

Decision No. 107

Lydia C. Maningas,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of P. Weil, President, A.K. Abul-Magd and E. Lauterpacht, Vice Presidents, and R.A. Gorman, E. Jimenez de Arechaga and Tun Suffian, Judges, has been seized of an application, received October 31, 1990, by Lydia C. Maningas, against the International Bank for Reconstruction and Development. Thirty four other associated applications were filed at about the same time. The President made certain procedural decisions, the last of which required that the above application be treated and decided individually. The usual exchange of pleadings took place. The Tribunal decided to refuse the request of the Applicant for certain preliminary measures relating to the provision of information. The Staff Association made a request and was permitted by the President to file briefs as an amicus curiae in the thirty five cases. The case was listed on February 26, 1992.

The relevant facts:

2. The Applicant joined the Bank on February 10, 1964.

3. At the time of the 1987 Bank-wide Reorganization the Applicant was holding the position of Administrative Secretary level 16. Because she was not selected for a position, she became eligible for the Enhanced Separation Package (Package B). However, the Applicant elected to remain in the Bank and be assigned to a lower level position at grade 15, as a Staff Assistant effective July 1, 1987. She was also granted a two-year salary protection. Consequently, at the time of the 1988 and 1989 salary review the Applicant's salary was administered within the range of her prior higher grade 16.

4. After the Tribunal's judgment in Pinto, Decision No. 56 [1988], the Respondent, after consultation with the Staff Association, submitted to the Executive Directors new proposals regarding the "grandfathering" of salaries of those staff members whose positions had been downgraded as a result of the Job Grading Program. Thereafter, the Applicant received a general notice, dated December 9, 1988, from the Vice President, Personnel (VPP) and circulated to all staff which stated that those staff members whose positions had been downgraded as a result of the Job Grading Program would be treated for compensation and review purposes "in the same manner as staff members in the former grade of the position even after the two-year salary grandfathering period has expired". The memorandum also stated that the applicability of this decision to staff who had accepted positions at lower grade levels as a result of the Reorganization was to be reviewed at a later stage.

5. In a circular dated August 21, 1989 the Director, Personnel Policy (PPO), announced to the staff that as a result of the implementation of the Revised Compensation System on May 1, 1989, the Executive Directors had taken some important decisions concerning the protection of salaries of staff downgraded either because of a job reevaluation or the Reorganization. He stated that, in particular, downgraded staff would for two years have their salaries administered within the salary range of their former grade; if, after two years, their salaries were within the range of their lower grade, their salaries would be administered within that range; if, at the end of the two-year period or thereafter, their salaries exceeded the maximum of their new and lower grade range, and if, they were fully satisfactory performers, they would receive the minimum increase as established under the Revised Compensation System. The Director also stated that Staff Rule 5.06 would be amended to reflect

these decisions.

6. At the time of the May 1990 salary review, the Applicant's salary was just below the maximum of the range of her lower grade 15 and a salary increase could not be fully administered within that range. The Applicant received the minimum increase of 4.2% for fully satisfactory performance.

7. On August 2, 1990 the Applicant requested an administrative review of the decision to administer her salary within the range of level 15. However, by memorandum, dated August 17, 1990 from the Acting Director, Personnel Policy (PPO) her request was denied.

The Applicant's main contentions:

8. The policy of "grandfathering" the Applicant's salary at her former grade level during the years 1987 through 1989 which was confirmed by the Board of the Bank and a memorandum from the VPP made continued "grandfathering" of her salary an essential condition of employment for the Applicant, which could not be unilaterally changed by the Respondent.

9. Limitation of "grandfathering" of salaries to two years is a violation of the essential conditions of employment entitling staff members to periodic salary increases in which various relevant factors had to be taken into account. This was particularly so because the salary of the Applicant could reach a level where it would be frozen. The fact that the "minimum increase" was given to the Applicant whose salary was near the top of her range and might otherwise have been frozen does not change the situation.

10. The Bank acted in an arbitrary and discriminatory manner against the Applicant because it decided a priori and regardless of the Applicant's individual merit and performance that the "minimum increase" was appropriate for her at the time of the 1990 salary review.

11. The limitation of the "grandfathering" of the Applicant's salary was retroactively enforced.

12. There was discrimination between the Applicant and those staff members who earlier had been in the same grade as the Applicant but had not been downgraded. The difference in their positions was based on pure chance and was unjustifiable.

13. The failure to continue to "grandfather" the Applicant's salary violates the Principles of Staff Employment which require that the Respondent establish programs to reward staff performance because, though the Applicant's performance continued to be satisfactory her grade had been lowered and she was subjected to a mechanistic system of compensation adjustment which did not promote performance at a high level by a downgraded staff member.

14. The Applicant requested the following relief:

(a) specific performance by the Respondent of its contractual commitments to the Applicant to administer the Applicant's salary within the range of the Applicant's former grade level prior to the Respondent's downgrading of the Applicant's position in 1987 for the convenience of the Respondent;

(b) specific performance by the Respondent of its obligation and duty to periodically review the Applicant's salary taking into account relevant factors;

(c) specific performance by the Respondent of its obligation to recognize and reward the performance of the Applicant;

(d) in the event it is determined that compensation to the Applicant is appropriate under the circumstances, payment of compensation in an amount equal to the adjustment by which the Applicant's salary could have been increased in 1990 if her salary had been administered within the grade range of her position prior to downgrading, plus the related adjustments in pension and other benefits;

- (e) reasonable interest on the amounts withheld from the Applicant plus cost and attorneys' fees incurred by the Applicant and the World Bank Group Staff Association, which has played a crucial role in the support of this application in terms of providing guidance and legal support to the Applicant as well as in preparing an amicus curiae memorandum for the benefit of the Tribunal;
- (f) continued administration of the Applicant's salary within the adjusted range of her former grade;
- (g) enunciation by the Tribunal of the extent to which the basis for its decisions in the Applicant's case is generally applicable to downgraded staff;
- (h) a requirement that the Respondent inform the Applicant and any other affected staff on a timely basis of their rights related to the downgrading of their positions; and
- (i) a requirement that the Respondent modify the Staff Rules in accordance with the Tribunal's decision following consultations with and agreement of the World Bank Group Staff Association.

The Respondent's main contentions:

15. The Respondent fulfilled its obligations toward the Applicant under the Principles of Staff Employment and Tribunal decisions by providing her with generous protective measures which alleviated the adverse effects of accepting a lower level position at the time of the Reorganization. The Applicant enjoyed two years of full salary protection at her former level 16, and payment of the minimum salary increase at the time of the salary review for the year 1990. Moreover, the Applicant will be entitled to the "minimum increase", performance warranting, as long as her salary cannot be administered fully within the lower range of her current grade.

16. No essential condition of employment had been established that staff members who had accepted lower level positions during the Reorganization should have their salaries administered permanently within the range of the former grades of their positions.

17. The memorandum of December 9, 1988 from the VPP applied only to staff downgraded as a result of a job evaluation and not to the Applicant whose downgrading was the result of the Reorganization and whose "grandfathering" arrangements were determined by Staff Rule 5.09.

18. While the implementation of the new Revised Compensation System did alter a non-fundamental element of the Applicant's contract of employment, it did not constitute an abuse of power, because it was not retroactive, it did not discriminate in an unjustifiable manner, it was carefully studied and provided for measures to avoid excessive or unnecessary harm to all downgraded staff while at the same time preserving levels of compensation that are equitable internally.

19. No declaratory effect should be given to the decision of the Tribunal in the event that it is favorable to the Applicant, because it is not the function of the Tribunal to give advisory opinions or to do other than render a decision in the case before it, which is binding between and only applicable to the parties.

20. No attorneys' fees or costs should be awarded. The Applicant did not incur any nor has a statement of expenses been filed.

Considerations:

21. The Applicant, who held a position graded at the equivalent of level 16 prior to the 1987 Bank-wide Reorganization, accepted thereafter assignment to a position graded at level 15 rather than leaving the Bank with the Enhanced Separation Package. Pursuant to Staff Rule 5.09, the Applicant's salary increases effective May 1988 and May 1989 were "grandfathered" so as to be calculated within the level 16 salary range. The Respondent, through a desk-to-desk circular (FYI/89/88) dated August 21, 1989 – and again through a revised Staff Rule 5.06, § 3.01, promulgated on April 16, 1990 – confirmed that such salary grandfathering would end after two years, and that thereafter staff members holding downgraded positions by virtue of the 1987

Reorganization would have their salary administered within their new lower grade level. The Applicant's 1990 increase was therefore calculated under this revised compensation system, and her salary increase was less than she would have received had it been administered within her former higher grade level.

22. The facts of the Applicant's case, and the claims put forward in her pleadings, are in all pertinent respects, save one, identical to those in Gabriel, Decision No. 106 [1992], where the Applicant was downgraded in salary range from level 19 to level 17. In Gabriel, the Tribunal rejected the claim that the termination of salary grandfathering after two years, and the administration thereafter of the Applicant's salary within her new lower grade level, were violations of the terms of her contract and the conditions of her employment. The singular factual difference of pertinence that must be assessed here is that the 1989-90 salary of the Applicant in this case was just below the maximum of her new level 15 salary range, so that her salary increase could not be fully administered within that range. Accordingly, pursuant to the terms of Staff Rule 5.06, § 3.01, her 1990 salary increase was set by the Respondent at 4.2%, the minimum salary increase for a staff member performing satisfactorily. The Respondent had no discretion to award a salary increase greater than 4.2% (although it could have awarded less, had the Applicant's performance been less than satisfactory), unlike the Applicant in Gabriel whose 1990 salary increase could be administered fully within her lower grade level such that the percentage increase could have been, and was, in excess of 4.2%.

23. As the Tribunal has already held in Gabriel, the termination of salary grandfathering beginning in 1990 did not violate any express provision in the Applicant's contract of employment, for the Respondent cannot reasonably have been found to have given an assurance, expressly or impliedly, that salary grandfathering for all staff members downgraded in the 1987 Reorganization was to continue indefinitely.

24. The Tribunal also rejected the contention of the Applicant in Gabriel that the Respondent's termination of salary grandfathering constituted in effect a unilateral modification of the essential condition of the Applicant's employment that staff members be given "periodic salary increases reflecting changes in the cost of living and other factors." This essential employment condition was deduced by the Tribunal, in de Merode, Decision No. 1 [1981], from the Respondent's consistent practices and declarations.

25. Even though in Gabriel the Applicant's 1990 salary increase exceeded 4.2%, while the salary increase of the Applicant here was set at that percentage and could not exceed it, the Tribunal concludes here as well that the Respondent did not improperly modify any essential condition of the Applicant's employment.

26. The Tribunal, as it did in Gabriel, once again invokes its decision in Klaus Berg (No. 2), Decision No. 99 [1990], also involving a staff member downgraded in the course of the 1987 Reorganization. In Berg, the Tribunal stated:

Under de Merode . . . and Pinto . . . the staff member is entitled to periodic adjustments of his salary. He is not guaranteed a certain percentage of increase in salary.

Although Mr. Berg's 1990 salary increase was administered fully within his new lower grade range, the Tribunal commented as well on the situation of staff members such as the Applicant here:

[E]ven when a staff member's salary at the end of the grandfathering period is above the range of the grade of his position, he will, nevertheless, be eligible for the minimum increase available to fully satisfactory staff members. His salary will not be frozen in violation of the right to periodic adjustments.

27. The Applicant claims, however, that by limiting her 1990 salary increase to no more than 4.2%, the minimum increase for staff members performing satisfactorily, the Respondent has improperly relinquished the ability to make discretionary judgments about salary increases that take into account a number of pertinent factors, including particularly the level of excellence in a staff member's performance. The Tribunal rejects this contention. The Applicant was awarded a 4.2% increase only after the Respondent had determined that her performance was satisfactory; had it been less than satisfactory, her salary increase would have been less. Although it is true that, had she remained at her higher level position, the Applicant might have received a

higher percentage increase that took into account better than barely satisfactory performance, it cannot be said that the award to her of a 4.2% salary increase in 1990 effectively eliminated consideration of the quality of her performance or was otherwise arbitrary or discriminatory.

28. It cannot be disputed that the overall efforts of the Respondent at a Bank-wide Reorganization, with its restructuring of positions and the resulting assignment of some staff members to lower level positions, was a reasonable exercise of the Bank's discretion in the interest of efficiency of operations. To require the Bank to maintain the higher salary level for staff members downgraded in the Reorganization for the balance of their career with the Bank would defeat a principal purpose underlying the Reorganization. In Klaus Berg (No. 2), the Tribunal concluded that it was within the discretion of the Bank to make adjustments in salaries that would attempt to accommodate the Bank's interest in bringing salaries into line internally while alleviating the adverse impact on downgraded employees. As the Tribunal in effect concluded there, it was not an abuse of discretion for the Respondent to do so by implementing a policy of salary grandfathering limited in time, followed by a period in which some employees performing satisfactorily or better would be rewarded with a significant minimum increase, as a transition toward greater salary parity with persons doing similar work at the lower grade level.

29. In sum, when the Applicant in 1990 received a 4.2% salary increase – which left her with a salary that was above the maximum of the salary range of her then-current, lower-graded, position at level 15 – the Respondent satisfied its obligation, as an essential condition of the Applicant's employment, to provide "periodic salary increases reflecting changes in the cost of living and other factors."

30. For these reasons, as well as those set forth in Gabriel, the Respondent's decision regarding the Applicant's 1990 salary increase did not violate the Principles of Staff Employment which, among other things, require that the Respondent alleviate the effects of downgrading, reward staff members according to their performance, and achieve salary levels that are equitable internally. Although there might have been other ways in which the Respondent could have satisfied these mandates, they were reasonably satisfied here, by providing for a salary increase that reflected the Applicant's satisfactory performance, that allowed her salary to remain above the maximum figure pertinent to her current grade level, and that began a process of gradually narrowing the salary gap between her and her fellow staff members performing work at that grade level.

31. The Staff Association, presenting pleadings as amicus curiae, requested that the Tribunal direct the Respondent to extend to all staff members similarly situated any affirmative relief granted to the Applicant. In view of the Tribunal's disposition of the merits of this case, it is unnecessary to give further consideration to the Staff Association's request.

Decision:

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

Prosper Weil

President

C.F. Amerasinghe

Executive Secretary

At London, May 8, 1992