

Decision No. 184

Gilbert J. Marrou,
Applicant

v.

International Finance Corporation,
Respondent

1. The World Bank Administrative Tribunal composed of E. Lauterpacht, President, R.A. Gorman and F. Orrego Vicuña, Vice Presidents and P. Weil, A.K. Abul-Magd, Thio Su Mien and Bola A. Ajibola, Judges, has been seized of an application, received on April 15, 1997, by Gilbert J. Marrou against the International Finance Corporation. The usual exchange of pleadings took place. The case was listed on September 30, 1997.

2. The Applicant, a Principal Engineer on regular employment with the Respondent at Grade Level 25, requests the Tribunal to declare that the Respondent's decision to decrease his hardship allowance from 15% to 10% be rescinded. The Applicant was assigned to New Delhi by a memorandum dated September 28, 1994. It was there stated that the Applicant would be entitled to his normal salary and a post allowance composed of: (i) assignment allowance of \$5,000; (ii) hardship allowance then calculated at 15% of his monthly net salary; and (iii) cost of living allowance. With regard to the hardship allowance, which is the subject of this application, the Respondent undertook to pay the Applicant a hardship allowance currently calculated at 15% of his monthly net salary for his duty station. The memorandum further specified that:

Any increase in this factor during your assignment will be implemented from the first of the month following your receiving at least two weeks notice of the change. The Bank Group may establish, change or delete the allowance for a duty station based on U.S. State Department assessments of items described in Rule 6.17 paragraph 3.01.

3. The Bank's hardship allowance is an additional remuneration payable to all members of the staff posted to out-stations and is linked to the conditions of living in that station which are assessed by the U.S. State Department by reference to some 130 items. The principal ones are referred to in Staff Rule 6.17, paragraph 3.01. This provides:

A hardship allowance is payable to staff members serving in the duty stations where the general living conditions are significantly different than at headquarters. The Bank Group may establish, change or delete the allowance for a duty station based on U.S. State Department assessments of items including, but not limited to, political violence, isolation, sanitation and disease, weather, altitude, medical care, recreation and cultural resources, education, food and housing. The assessments, which are made at least once a year, can result in an increase or decrease in the underlying index and thus in the allowance. The amount of the allowance is the percentage applicable for that duty station as specified in a list maintained by PSC on the All-in-One system. The percentage is applied to the monthly net salary. The allowance is not payable to nationals of the duty station country.

4. In January 1995, the State Department carried out a regrouping and adjustment of these rates. The Secretary of State's circular explained that the existing system was "inequitable, particularly at the 25 per cent level where, because of the wide point spread posts with extremely difficult living conditions are grouped with other posts which have noticeably lesser hardships." The circular also stated: "it [is] imperative for the Department to act now without further delay. The certainty of heightened Congressional scrutiny by new overseers is further reason why the Department cannot delay further and why we should act in a manner which convincingly demonstrates our willingness to undertake serious reform, voluntarily, of our own system."

5. In March 1995, the Director of Personnel Services and Compensation Department (PSC) alerted the Bank

Directors with responsibilities for field offices and the IFC Director of Personnel and Administration to impending changes in the Bank's hardship allowance index. He stated that the changes had become necessary "in recognition of significant differences in living conditions between headquarters and the specific duty station." He explained that:

The Bank Group follows the hardship allowance rates that are established by the U.S. State Department, even though the Bank retains the right to make marginal changes if there are sound operational reasons for doing so.

He also stated that more than 130 elements are taken into consideration in assessing the hardship condition of a duty station, some of which have been mentioned above. After explaining the process and rationale behind the State Department's re-evaluation of the hardship rating, which resulted in "a revised calibration of the allowances and in a better differentiation between various duty stations" and which led to a decrease in the hardship allowance of many duty stations, he pointed out that:

duty stations were not reevaluated for hardship conditions so the reduction in the index (and the resulting allowance) *is not driven by any change in living conditions at the duty station* (emphasis added).

This change in hardship allowance, he explained further, did not involve a policy change and would still conform with Staff Rule 6.17, paragraph 3.01, i.e., by basing the hardship allowance on U.S. State Department data.

6. By another memorandum in April 1995, the Director, PSC, again reiterated in substance most of the explanations earlier given, but explained in more detail the procedures of the plan adopted by the U.S. State Department. The Director, PSC, once more confirmed that the duty stations were not being re-evaluated for hardship conditions and that actual living conditions were not being taken into consideration in the exercise.

7. The Applicant, together with nine other staff members adversely affected by this change in hardship allowance, protested in May 1995, complaining that no cogent reasons had been given for the re-evaluation of the U.S. State Department hardship index and pointing out that even the Director, PSC's, memoranda supported this stand.

8. In reply the Director, PSC, on May 19, 1995 emphasized again that the Respondent's policy required that the Department of State's indexes for calculation of the hardship allowances be followed. But he repeated that:

The measurements accorded to these various elements as measured through the most recent survey in India have not been changed at this time, so there is no intent to indicate that living conditions themselves have changed.

9. On June 5, 1995 the Applicant received from the Bank notice that his hardship allowance had been reduced from 15% to 10% starting from June 1, 1995. On August 25, 1995 the Applicant requested administrative review of this decision. Other staff members from various duty stations who were equally affected by the reduction in their hardship allowances also requested administrative review. The requests for consolidation by the Applicant and other affected staff members were granted in accordance with Staff Rule 9.01 and the then Director, Operations Policy Department (OPR), was asked to carry out the review.

10. The result of this review was set out in a memorandum of September 27, 1995. In effect this rejected the claim of the Applicant as well as of 30 other staff members. At the same time, the Director, OPR, conceded that the notification process had not been in accordance with requirements of the Staff Rule which stipulate a minimum of two weeks advance notice to be given. She concluded that "for staff who received notice on June 5, 1995, the change should have come into effect on July 1, 1995" and for staff receiving notice on July 17, 1995 the effective date should have been August 1, 1995. This decision has been implemented by the Respondent.

11. The Applicant appealed to the Appeals Committee. The Appeals Committee recommended that the Applicant's request for relief be denied. It concluded that:

the general review carried out by the U.S. State Department was a reasonable reassessment on which a

change in hardship allowance could be based in accordance with the Staff Rule.

12. The Applicant now requests the Tribunal to: (i) rescind the Respondent's decision to decrease his hardship allowance; (ii) compensate him up to 5% of his salary starting from July 1, 1995; (iii) direct the Respondent to maintain his hardship allowance at 15% of his net salary until his last day of assignment in New Delhi or until a proper assessment of items, as set out in Staff Rule 6.17 paragraph 3.01, is concluded for the New Delhi post; and (iv) direct the Respondent to provide him with additional relief as the Tribunal deems fit. Although the Applicant's claim was consolidated at the administrative review and Appeals Committee levels with the claims of other staff members similarly affected at different duty stations, the application now before the Tribunal is limited to the claim of the Applicant.

13. The Applicant's principal argument is that any change can only be based on an assessment of items such as those listed in the Staff Rules and relating to living conditions at the duty station. He referred to the 1995 memorandum of the then Director, PSC, which stated that the actual hardship conditions have not been "reevaluated." He contended that general review and re-ranking of posts could not be considered as "items" for the purpose of assessment. He argued that this view was accepted by the Appeals Committee which suggested some modifications in Staff Rule 6.17, paragraph 3.01, so that the word "ranking" should in the future be expressly mentioned as part of the review process. He concluded by asserting that hardship conditions in New Delhi were increasing rather than decreasing, especially in respect of health and poor supply of all utilities.

14. The Respondent invoked the U.S. State Department's identification of disparities existing within the categories of assessment of hardship allowance in various duty posts. This was manifested in various degrees of post differential percentages resulting in inflated scores, use of inadequate evaluation factors and disparities between the lowest and the highest scores. The Respondent claimed that the effort of the U.S. State Department was to correct all these inequities and anomalies.

15. The Respondent's legal arguments are presented under five headings: (i) that the decision of the Respondent to reduce the hardship allowance rate of the Applicant's duty station based on the U.S. State Department's re-evaluation is consistent with the applicable Staff Rule 6.17, paragraph 3.01; (ii) that the Respondent's decision in this case is not inconsistent with the Bank Group's past practice as it is based on sound operational reasons; (iii) that the Applicant's claim that the hardship allowance constitutes an essential term of employment is without merit; (iv) that reducing the Applicant's hardship allowance rate does not amount to an abuse of discretion; and finally, (v) that the revised decision on administrative review regarding advanced notice had settled the issue of retroactive application of the Respondent's decision.

16. The central legal question in this case is whether the decision of the Respondent to reduce the hardship allowance rate of the Applicant from 15% to 10% at his duty station in New Delhi, based on the U.S. State Department re-evaluation, is consistent with the applicable Staff Rule 6.17, paragraph 3.01, and with the memorandum of September 28, 1994 whereby the Respondent undertook to the Applicant that:

Any increase in this factor during your assignment will be implemented from the first of the month following your receiving at least two weeks notice of the change. The Bank Group may establish, change or delete the allowance for a duty station based on U.S. State Department assessments of items described in Rule 6.17 paragraph 3.01.

17. The Applicant contends that the Respondent undertook, first, only to increase the rate of his allowance during his assignment at the duty station and not to decrease it. The Tribunal considers that this argument lacks merit because, according to Staff Rule 6.17, paragraph 3.01, the Bank Group reserved for itself the right to establish, *change or delete* such duty station allowance; and this was reiterated in the memorandum of appointment sent to the Applicant.

18. The Applicant next argues that, pursuant to Staff Rule 6.17, paragraph 3.01, a change in hardship allowance must be made based on an assessment by the U.S. State Department of specific items that all relate to the living conditions of a particular duty station. He asserts that "[g]eneral review and/or re-rankings" cannot be considered as "items" to be included in an assessment. The Respondent for its part contends that

the language of paragraph 3.01 clearly means that “rate changes may result not only from actual changes in hardship conditions but also from the U.S. State Department’s reassessments of existing hardship conditions.”

19. The Tribunal is of the view that the Respondent misconstrues paragraph 3.01. According to the first sentence of paragraph 3.01, the purpose of a hardship allowance is to compensate staff members serving in duty stations where the “general living conditions are significantly different than at headquarters.” The second sentence of paragraph 3.01 empowers the Bank to change the hardship allowance for a duty station on the basis of U.S. State Department assessments of items of which the principal ones are enumerated in paragraph 3.01. There is no provision in Staff Rule 6.17, paragraph 3.01, for assessments based on re-ranking, calibration or adjustment of duty station differential rates.

20. It should be recalled that it is the function of the Staff Rules to convey to the staff of the Bank in as clear and unmistakable language as possible the content of their rights no less than of their duties. While it would have been possible for the Bank to have reserved the power to amend the hardship allowances by reference to factors other than actual living conditions, it did not do so expressly or, indeed, by necessary implication. It offered as illustrations of the relevant factors items which gave no indication that considerations unrelated to actual living conditions such as a general desire to cure anomalies or irregularities between duty stations, motivated possibly by extraneous political factors, could be taken into account. The source from which the Rules emanate is the Bank and it is up to it to make their content quite clear. It is this which, in the present context, the Bank has failed to do.

21. The Tribunal therefore concludes that the Respondent’s decision to change the Applicant’s hardship allowance was not properly justified. The change in the Applicant’s hardship allowance was the result of a political decision to regroup and adjust (mostly downward) the allowance rates. It was not based, and it is not contended otherwise, on a re-assessment of the living conditions at the Applicant’s duty station as required by Staff Rule 6.17, paragraph 3.01. The Director, PSC, in fact acknowledged in his three memoranda of March, April and May 1995 that the Applicant’s duty station had not been reevaluated because of a change in hardship conditions. As the decision to change the Applicant’s hardship allowance was not properly justified, it must be rescinded.

DECISION

For the above reasons, the Tribunal unanimously decides that:

- (i) the reduction from 15% to 10% in the hardship allowance payable to the Applicant in respect of his service in New Delhi is rescinded; and
- (ii) compensation shall be paid to the Applicant in such sum as would restore him to the position that he would have been in had the allowance not been reduced.

Elihu Lauterpacht

/S/ Elihu Lauterpacht
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At Washington, D.C., November 18, 1997