

Decision No. 12

Soad Hanna Matta,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, A.K. Abul-Magd and P. Weil, Vice-Presidents, R. Gorman, N. Kumarayya, E. Lauterpacht and C.D. Onyeama, Members, has been seized of a complaint, received December 11, 1981, by Soad Hanna Matta against the International Bank for Reconstruction and Development. The Respondent filed a request, which was granted, to separate jurisdictional issues from the merits, and to file an Answer limited to the jurisdictional issues. Thereafter, the Respondent filed such an Answer, the Applicant submitted Observations on the Answer, and the Respondent and Applicant both – with leave granted by the President – submitted additional written statements. The Tribunal subsequently ordered without prejudice to the issue of jurisdiction that the Respondent file an Answer on the merits. The Respondent filed an Answer on the merits and the Applicant submitted Observations on the Answer. The President ordered disclosure of some of the documents requested by the Applicant. The case was listed on October 1, 1982. The Tribunal decided that the record at its disposal was sufficient to decide the case and that consequently disclosure of further documentation or the hearing of witnesses was unnecessary.

The relevant facts:

1. By letter of appointment dated December 28, 1972 the Applicant was offered a regular appointment to the Respondent's staff as a secretary under the usual terms and conditions. She took up her duties on March 12, 1973, and worked in the East Asia Country Programs II Department.
2. Within three months during her probationary period her department informed the Personnel Department that the Applicant was having difficulties mastering her job, mainly because, though willing, she consistently failed to listen to instructions. Her department requested that she be transferred to another department where there might be less pressure. She was not transferred but a performance report submitted to the Personnel Department some months thereafter noted that while there had been some improvement in typing, her French language abilities were poor, she was unable to carry her share of the workload, she did not get along with her colleagues, and she often got matters confused but then refused to acknowledge error. The report concluded that, though the Applicant's six months' report was due in September (at that time probationary periods extended for six months rather than a year) her department could not recommend confirmation unless she was found a place elsewhere. The Applicant's probation was thereupon extended for an indefinite time.
3. On October 24, 1973, the Director of the East Asia Country Programs II Department requested that the Applicant be transferred from his Department effective October 26, 1973. The Applicant was thereupon temporarily placed in the Western Africa Projects Department. After several short-term assignments, the Applicant was placed in the South Asia Projects Department in mid-January 1974. She was confirmed in her appointment in March 1974 on the recommendation of one of her supervisors, who felt that she had become more efficient. However, her later supervisors had problems with her and recommended her transfer.
4. From July through December 1974, the Applicant was transferred to the Personnel Department's "floater secretaries" budget and was temporarily assigned to the Bank's Economic Development Institute, while further attempts, all unsuccessful, were made to place her. In mid-August 1974 she was informed by the Personnel Department that any assignment identified would be offered as a six-month trial, and that unsatisfactory

performance in such assignment would result in termination of her employment with the Bank. In December 1974 the Applicant was finally found a place in the Transportation and Urban Projects Department. Her Anniversary Evaluation Review (AER) for 1974 was completed by the Personnel Department. She was given a rating of unsatisfactory, receiving no merit increase. The Applicant felt the evaluation unjust and asked for reconsideration.

5. In March 1975 the Applicant's new supervisors informed the Personnel Department that her division was generally pleased with her work. In June 1975 her supervisors again expressed their general satisfaction with her work, noting that she was making efforts to improve her skills and also to correct certain negative traits, such as failure to listen without interruption. It was recommended that her assignment be confirmed. The Applicant's 1975 AER was prepared by her division, her supervisors noting performance improvement. In January 1976 the Urban Projects Division was split, and the Applicant was assigned to Division IIB. She received a satisfactory performance evaluation on her 1976 AER. She received a generally satisfactory AER for 1977, her supervisors noting her hard work and improvement, but also pointing out a "communication problem" and a need for close supervision.

6. In a memorandum of July 26, 1978, the Urban Operations Adviser who had managerial responsibility for the three Urban Projects Divisions expressed dissatisfaction with the Applicant's 1978 (March 1977-February 1978) AER. He stated that preparation of the Applicant's AERs had always been difficult, because she was so oversensitive to criticism that rational discussion of performance with her had often been tried but found impossible; as a result evaluating staff were reluctant to put negative comments in writing, so that nothing of the true state of affairs appeared in her AERS. He concluded that her continued presence in the department was detrimental, and that the Personnel Department should be notified and asked to handle such a difficult personality. By memorandum of July 26, 1978, the Department Director stated that he would not sign the Applicant's 1978 AER because his comments, essentially the same as those of the Urban Operations Adviser, were not in agreement with preceding sections of the AER and because this discrepancy would necessitate further confrontation with the Applicant. For the next six months her AER remained unsigned.

7. The Applicant requested reassignment to another Department. Her 1978 AER was finally completed in January 1979, and soon after, her Division Chief recommended her immediate transfer. By late January 1979 the decision to transfer was confirmed. At that time, the Applicant was apprised of the fact that if a new position were not found within a reasonable length of time, a determination would have to be made concerning her future in the Bank. From January 1979, while the Personnel Department attempted to place her in another budgeted position, the Applicant had a series of temporary assignments.

8. Though the Applicant had left the Urban Projects Department at the end of January 1979, the Department retained responsibility for her 1979 AER. In June 1979, her AER for 1979 (March 1978-February 1979) was discussed with her by the Urban Operations Adviser, a member of the Personnel Department being present, and she was informed that there was no longer a place for her in the Department for reasons of unsatisfactory work relationships.

9. In June 1979 the Applicant was advised by the Personnel Department that she could not "float" indefinitely on an Urban Projects Department budget, that it was felt that her chances of finding a permanent assignment were slim, and that she should be aware of the possibility that her employment might be terminated.

10. Throughout the summer and fall of 1979 the Applicant continued on a series of temporary assignments, again with mixed reports. As of October 1979 termination of her employment for unsatisfactory services was under consideration by the Personnel Department. At the same time the possibility of application for disability retirement was also being explored.

11. In the hope that a position where the Applicant could work by herself might be a solution, the Personnel Department arranged for her to be interviewed in early December 1979 for a word processor position. She failed the test for such a position.

12. On January 22, 1980 the Director of the Personnel Department informed the Applicant that the Personnel Department would make one last effort to locate a suitable permanent position and that the search would continue until March 31, 1980 at which time, if no assignment had been identified, termination of employment would be considered.

13. On March 24, 1980, the Applicant's Personnel Officer and a staff member of the Staff Relations Division met with her to discuss options available to her, i.e., resignation, termination of employment with special leave or termination of employment with a lump sum payment. In a letter dated March 31, 1980, the Director of the Personnel Department detailed the specifics of options available to her on that date. By follow-up letter of April 18, 1980 to the Applicant, he reiterated that the Respondent could offer no further work effective March 31, 1980, and requested that she choose among the options that had been presented to her in the earlier letter, and this no later than April 25, 1980. The Applicant informed him by letter of May 29, 1980 that she considered the March 31, 1980 notice of termination invalid for the reason that she did not receive such notice until after this date. By letter of June 16, 1980 the Applicant was informed that, in the absence of other indications and in view of the fact that she was now, after earlier rejection, expressing interest in applying for a disability pension, it would be presumed that she had chosen the option of termination with special leave until October 31, 1980.

14. In the absence of any indication from the Applicant of initiative to plan for her financial future, including failure to apply for a disability pension, the Respondent filed an application for a disability pension on her behalf in November 1980. The Applicant was notified by letter of December 4, 1980 that this application had been filed and that from November 1, 1980 and while the application was being processed, she would be kept on the payroll at the amount she would receive if drawing a disability pension. This was subsequently readjusted to full salary. In order that she might remain eligible for disability retirement on medical grounds under the terms of the Pension Plan, which require current employment, her special leave was periodically extended for the duration of the processing period, i.e., through August 1981.

15. During this period the Applicant appealed the decision to terminate her employment for unsatisfactory performance to the Appeals Committee of the World Bank, which recommended that this decision be upheld. On May 28, 1981 the Vice President, Administration, Organization and Personnel Management (AOP), confirmed in writing to the Applicant that he accepted the recommendation of the Appeals Committee. Nevertheless the Applicant remained on special leave until the late summer of 1981. After reconsideration, on the Applicant's request, the Vice President, AOP, reaffirmed his prior notice to her by letter of August 25, 1981.

16. The application for disability retirement was approved by the Pension Benefits Administration Committee on August 28, 1981 on the basis of written medical opinion. Her retirement became effective September 1, 1981. She was notified of this by letter of September 8, 1981 from the Acting Director of the Personnel Management Department (PMD) which reached her on September 11, 1981. The Applicant indicated in early October that she did not accept the Pension Benefits Administration Committee's decision and intended to appeal it to the Tribunal. The Applicant was subsequently advised that she had until December 11, 1981 to appeal the Pension Benefits Administration Committee's decision. The Applicant filed her application with the Tribunal on December 11, 1981.

The Applicant's main contentions on the jurisdictional issue:

17. The application was filed within 90 days of the exhaustion of internal remedies by the Applicant and was, therefore, receivable by the Tribunal. The relevant date for this purpose was September 11, 1981.

18. In the alternative, particularly because of the confused nature of the case, there were exceptional circumstances which were provided for under Article II (2) of the Statute and which would enable the Tribunal to assume jurisdiction.

19. The Respondent failed to provide the Applicant with notice of her right to appeal to the Tribunal and therefore violated her right to due process of law.

The Respondent's main contentions on the Jurisdictional issue:

20. The Applicant has incorrectly stated the date of the decision to which she refers. The letter of the Vice President, AOP, informing the Applicant of her termination, was dated May 28, 1981. His letter of August 25, 1981, necessitated solely by the Applicant's importuning throughout the summer for reconsideration of her case, merely reconfirms that decision.

21. Because the application challenges the decision of May 28, 1981 of the Vice President, AOP, it is time-barred by virtue of Article II, Section 2 (ii) of the Statute. In order to be timely, the Applicant would have had to have filed her appeal no later than August 28, 1981, whereas she did not, in fact, file her Application until December 11, 1981.

22. Ultimately, however, Applicant's employment was terminated not on performance grounds, but by disability retirement. Therefore the decision upon which appeal to the Tribunal should properly have been brought was the decision of the Pension Benefits Administration Committee to grant the application for disability retirement. The Applicant was aware of this and also of the time limitations for appeal, viz. ninety days from her receipt on September 11, 1981 of notice of termination by reason of disability retirement. She did not in her application appeal this decision. Accordingly, under Article II, Section 2 (ii), the Applicant is now time-barred from appealing her termination from Bank employment pursuant to the decision of the Pension Benefits Administration Committee.

23. The Applicant has attempted to remedy the defect in her original application by allegedly "amending" her pleas so as to contest the final determination by the Respondent of an adverse personnel action against her dated September 11, 1981. She exceeds the proper scope of amendment by filing, in effect, before the Tribunal a new and separate cause of action from that set out in her original application. This new filing bears the filing date of April 8, 1982, nearly seven months after the decision the Applicant is attempting to contest. The Applicant may not accomplish indirectly what she cannot accomplish directly, i.e. she cannot introduce by way of an alleged "amendment" to her original application a new cause of action which she is time-barred under the Statute of the Tribunal from filing directly.

24. The Applicant was fully aware of her right to appeal to the Tribunal and the rules pertaining thereto.

The Applicant's main contentions on the merits:

25. The Applicant's performance during 1977-78 was satisfactory and the unsatisfactory AER for that period was unjustified. The process by which the AER was completed was a violation of the provisions of Personnel Manual Statement (PMS) No. 4.01. Particularly, the actions of the Urban Operations Adviser in connection with this AER were contrary to these provisions.

26. The Applicant's evaluation for her short assignments in 1975 and 1979 were fully satisfactory. Thus, the reason for her problems was the Respondent's failure to provide her with a stable work environment.

27. The Applicant had the necessary skills for her job. If she did not, it was the Respondent's fault for not training her. She was not poor in interpersonal skills and she could carry a full workload. There was no evidence for the Respondent's claims to the contrary.

28. The Respondent had failed to follow its own established reassignment provisions. The Applicant's request for a transfer in November 1978 was refused because of her age. This was discriminatory.

29. In general, the Applicant was discriminated against because of her age.

30. The Applicant contests the adverse determinations of the Vice President, AOP, dated August 25, 1981, against her and requests rescission of the decision terminating her employment. She seeks reinstatement and an order that she be provided with a work environment free from discrimination. In the event she is not

reinstated without loss of time or pay she seeks compensation in the amount of five years salary before her discharge. She also requests a clean record, the removal of the stigma placed on her as being disabled and reasonable attorney's fees and costs.

The Respondent's main contentions on the merits:

31. The yearly "trauma" of all associated with the preparation of the Applicant's AERs and the resulting minimizing of negative commentary in these documents, rendered them less than completely reflective of the Applicant's actual performance. In 1978 the Urban Projects Adviser came to the conclusion that the problem could not be permitted to continue and acted accordingly. There was no violation of PMS No. 4.01.

32. The Respondent for nearly the whole of 1979 attempted to find suitable permanent placement for the Applicant.

33. It was only out of consideration for such factors as the Applicant's age, family situation, and mental well-being that the Respondent went to unusually great lengths to try to locate suitable positions for her and to arrange for extended or exceptional leave as needed for health or other reasons and even recommended a generous termination indemnity. Only after exhausting all reasonable alternatives, when the cumulative effect of the Applicant's consistently poor record made it virtually impossible to find her a place even at no expense to the receiving department, did the Respondent make the termination decision. There was no discrimination as to age.

34. The decision to terminate the Applicant's employment on grounds of unsatisfactory performance was made on the basis of substantial evidence that she was unable to function productively in her work environment. This evidence supported the findings by her supervisors of

- (i) consistent denial of or inability to work constructively with critical evaluation, resulting in continual breakdown in supervisor-subordinate relationships;
- (ii) recurring problems with technical skills, including poor typing, inability to listen to and follow up on instructions, and language comprehension problems;
- (iii) poor interpersonal skills which resulted in complaints of rudeness and inappropriate telephone manner; and
- (iv) inability to carry a full workload, particularly under pressure.

In spite of counselling, the Applicant could not modify her behaviour, and there were no signs of consistent or sustained improvement. There was, in fact, resistance from her to some of the initiatives made by the Respondent. For example, she refused to seek medical advice and refused without adequate reasons to consider certain reassignment possibilities. In the final six months prior to the notice of termination dated May 31, 1980, PMD experienced serious difficulties in placing the Applicant and finally was unable to find her places even in temporary assignments which involved no cost for the receiving department. The decision was therefore appropriately made to terminate her employment.

35. The decision to terminate the Applicant's services for unsatisfactory performance was subsequently superseded by the Pension Benefits Administration Committee's acceptance of the application made on her behalf for disability retirement. The decision to grant the Applicant a disability retirement pension was taken upon expert medical evaluation and opinion and after a full review by the Pension Benefits Administration Committee. Accordingly, the appeal by the Applicant against her termination on performance grounds has become moot.

CONSIDERATIONS

On the Jurisdiction

36. This case involves two successive decisions by the Respondent concerning the termination of the Applicant's employment:

- a) A decision to terminate the Applicant's employment on the basis of unsatisfactory performance. This decision was appealed by the Applicant, upheld by the Appeals Committee, and confirmed in writing to the Applicant on May 28, 1981 by the Vice President, AOP.
- b) A decision by the Benefits Administration Committee, made on August 28, 1981, to approve an application initiated by the Respondent for the Applicant's disability retirement based on written medical opinion. The Applicant was notified of this decision by a letter from the Acting Director of PMD which reached her on September 11, 1981.

37. The first decision was not implemented by the Respondent and the Applicant remained on special leave until the disability retirement took effect. Thus, the first decision was in effect superseded by the second one.

38. The Respondent asserts that the present application is time-barred because:

- 1) The time for filing an application challenging termination based on unsatisfactory performance expired as of August 28, 1981, i.e. ninety days from the Vice President, AOP's, letter of May 28, 1981 confirming the Appeals Committee's recommendation;
- 2) The application filed with the Tribunal on December 11, 1981 should have been directed against the decision granting disability retirement. But since this was not the decision the Applicant challenged in her filing, she was time-barred in this respect also.

39. The Tribunal notes that the two decisions are closely related. In essence, they are the culmination of two different courses of action in what was in fact a single process leading to the severance of the Applicant's employment by the Respondent.

40. To dispose properly of the case the Tribunal will have to examine those measures and procedures used by the Respondent leading to the first non-implemented decision inasmuch as they relate to the decision on disability retirement. The different measures taken by the Respondent that eventually culminated in the decision of termination based on unsatisfactory service may have affected the Applicant's rights and interests notwithstanding the fact that the decision itself was superseded. Moreover, certain aspects of the Applicant's performance had in fact led to the initiation by the Respondent of the disability retirement arrangement.

41. What the Applicant is contesting is the Respondent's decision to sever her employment relationship with the Respondent, regardless of the legal grounds upon which that decision was finally based or the form it took. That decision was carried into effect and finally communicated to the Applicant on September 11, 1981 and, therefore, the application submitted on December 11, 1981 was filed in good time.

42. On the basis of the above the Tribunal concludes that it has jurisdiction to entertain the present application.

On the merits

43. The Applicant is alleging non-observance by the Respondent of her contract of employment and terms of appointment. The Applicant seeks reinstatement in her job with the Respondent or a lump sum award in the amount of five years' compensation. She also requests a clear record and the removal of the "stigma" placed against her as being disabled. In a later submission made after the Pension Benefits Administration Committee's report became available to her she sought punitive damages in the amount of \$500,000 for the pain and suffering caused by the Respondent's treatment of her.

44. Examination of the evidence released by the Respondent, on the order of the Tribunal, supporting the decision to terminate the Applicant's employment through recourse to the system of disability retirement, leads

the Tribunal to the conclusion that the decision of the Pension Benefits Administration Committee of August 28, 1981 was based on sufficient evidence. The evidence shows that the Applicant's technical skills were not the primary source of complaint by her supervisors and that it was the personality condition confirmed by the medical report that interfered with the Applicant's overall performance, seriously impairing her ability to establish healthy and positive work relationships with colleagues and supervisors. Under these circumstances reinstatement of the Applicant would be inappropriate.

45. The Applicant alleges also that the negative parts of her AERs were the result of disparate treatment from her supervisors because of her age. The Tribunal finds nothing in the record to substantiate that allegation. The only instance where the record reveals a special treatment for the Applicant based on her age was one of favorable special treatment. The Applicant refers to a memorandum dated July 20, 1979 as evidence of such discrimination. The memorandum, however, suggested that the Applicant receive a generous termination indemnity in consideration – among other factors – of her age. Such favorable consideration of the Applicant's age cannot be regarded as impermissible discrimination violating her rights.

46. In addition to the specific allegation of discrimination the Applicant reads many of the Respondent's actions towards her as motivated by a personal vendetta and as forming part of a plot to terminate her employment. In the Tribunal's judgment the record does not justify that reading. The same holds true for the Applicant's subsequent accusations that the Respondent had fabricated certain documents to substantiate a premeditated desire to get rid of her, a desire born of hatred and malice, and that documents of a negative nature were intentionally accumulated and placed in her file after July 26, 1978.

47. In examining the many reports and documents pertaining to the Applicant's performance, the Tribunal has taken notice of the fact that evaluation of an employee's performance may refer not only to the technical competence of the employee but also to his or her character, personality and conduct generally, insofar as they bear on ability to work harmoniously and to good effect with supervisors and other staff members (the Buranavanichkit Case – Decision No. 7).

48. The record of the case contains ample evidence that the Applicant had a personality problem significantly diminishing her ability to get along with colleagues and supervisors years before the decision to terminate her employment was made – as may be seen from a series of reports prepared between August 1973 and May 1979.

49. Evaluation reviews of an employee are naturally expected to cover both positive and negative aspects of his or her performance, skills and personality. To oppose the inclusion of any negative statement as impairing the interests of the employee or damaging his or her image would hamper the discharge by superiors and supervisors of their duty to provide candid and objective evaluations of staff members.

50. In light of the above the Tribunal concludes that the inclusion in the Applicant's record of reference to the negative aspects of her performance and to her personality problems was a proper fulfillment of the Respondent's obligation periodically to evaluate her performance. Her request for “a clean record and the removal of the stigma placed against me” is not well founded and is therefore rejected.

51. The Applicant also alleged that the Respondent's reassignment provisions were not followed with regard to the Applicant. The Applicant first requested reassignment to another department by memorandum to her personnel officer dated November 20, 1978. Beginning in January 1979 the Respondent made sound efforts to find her another permanent position within the Bank. Because of the lack of such permanent position, the Applicant was moved from one temporary assignment to another. None of the divisions for which she worked was willing to retain her permanently. The Applicant invokes PMS No. 4.04 on Staff Reassignment issued in June 1976 and alleges denial of opportunity to move to other work units in violation of the terms and conditions of her employment contract. The purpose of PMS No. 4.04 is to “promote increased effectiveness in a job” by fostering “cross-fertilization of experience”. One of the essential criteria for reassignment under PMS No. 4.04 is that the staff member be “qualified for the position for which he wishes to be considered” and that “the transfer is in accord with the interest of the Bank”. The Tribunal stated in the Saberi Case (Decision No. 5) “that

PMS No. 4.04 does not concern itself with staff members on the verge of being terminated for unsatisfactory performance, nor does it make a staff member's request for reassignment, or suggestions to that effect by his superiors, binding upon the Administration. That is particularly true when, as in this case, these supervisors' suggestions are based upon their conviction that the staff member's continued work in his department is inadequate and is not serving the interests of the Bank." Notwithstanding the above, the record shows that the Respondent tried to reassign the Applicant to other positions, sometimes even on a temporary basis, but without success. The Tribunal concludes, therefore, that the non-reassignment of the Applicant did not amount to a violation of the Respondent's obligations under the reassignment provisions.

52. The Applicant further contends that the Respondent failed to provide her with notice of her right to appeal to the Tribunal and therefore violated her right to due process. The Tribunal cannot subscribe to the contention that the Respondent is under a legal obligation to remind each and every employee who may possibly be affected by a decision of the Respondent that he has a right of appeal to the Tribunal.

53. The Tribunal has also thought it appropriate to consider whether the Respondent has violated any of its obligations under the Applicant's contract and terms of appointment by first following the course of terminating the Applicant's employment for unsatisfactory performance, and then initiating a procedure to secure her disability retirement. The record reveals that the change was motivated by a desire to help the Applicant financially and to provide her with a more beneficial arrangement, thus causing her no harm.

DECISION

For these reasons, the Tribunal unanimously decides that:

- (1) it has jurisdiction to entertain the application; and
- (2) on the merits, the pleas and requests of the Applicant are dismissed.

E. Jiménez de Aréchaga

/S/ Eduardo. Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington, D. C., October 8, 1982