

Decision No. 82

Carmelita M. Montesa,
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 Suffian, Judges, has been seized of an application, received October 17, 1988, by Carmelita M. Montesa, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on August 11, 1989.

The relevant facts:

(a) The Reorganization

2. The general facts relating to the 1987 Reorganization are as stated in paragraphs 5 to 40 of Decision No. 40.

(b) The particular facts of the case

3. The Applicant joined the Bank in April 1971 as a Secretary in the Executive Office of the International Finance Corporation. She occupied several secretarial positions until August 1979, when she was assigned to the Office of the Executive Directors as a Staff Assistant, level G (which is approximately equivalent to level 16 in the present grade structure).

4. On January 1, 1982 she voluntarily joined the Temporary Assignment Program (TAP) at her then current level G. Personnel Manual Statement (PMS) Circular 11/81 described the TAP as a transitional arrangement for secretarial staff awaiting permanent assignment, and as having two purposes: one was to provide secretaries with Bank experience to meet on short notice unexpected work needs throughout the Bank, and the second was to provide work to those secretaries who had been found without permanent assignments through no fault of their own. While in the TAP the staff retained their salary and level and were expected, together with the Personnel Management Department (PMD), to make every effort to find permanent assignments.

5. On October 1, 1984 the Applicant was transferred out of the TAP and assigned on a temporary basis to the Job Grading team in the Division Program Support Unit of PMD. At the time of the job grading exercise her position was graded at level 15 and she was accordingly informed that, because her new grade carried a salary range lower than her current grade, she was entitled to salary protection for two years starting October 1, 1985. The Applicant did not appeal the grading decision concerning the position she occupied.

6. As of January 1, 1986, the Applicant was transferred back to the TAP at her new level 15 where she remained until September 30, 1987, the date of the termination of her employment with the Bank.

7. Meanwhile, effective September 1, 1985 PMS Circular 11/81 had been amended to establish a maximum of 24 months participation in the TAP. On February 10, 1986 the Assistant Director, PMD, in a memorandum addressed to a senior personnel officer intended to clarify the future administrative arrangements for TAP participants as regards job grading stated, inter alia, that TAP positions were essentially ungraded but were categorized into three broad levels (secretary at grades 13-14, staff assistant at grade 15, and executive assistant at grades 16-17); that the actual grade of the position depended on the types of assignments

regularly undertaken by a TAP incumbent; and that staff members joining TAP “will carry the grade of their previous regular assignment on a personal basis for up to two years and will be given assignments appropriate to their grade to the extent possible.”

8. The Applicant spent almost six years in the TAP where she had assignments to positions of Secretary, Staff Assistant, and Administrative Secretary. From October 1984 through the end of her employment with the Bank the Applicant’s Personnel Action forms, Annual Performance Reviews, and other Bank documents stated that her title was that of an Administrative Secretary, at level G sometimes, and sometimes at level 15. While in the TAP the Applicant applied for several permanent positions but she was not selected for a permanent position in spite of her consistent good performance.

9. In the course of the reorganization the Applicant was eligible to participate in the selection process. On June 29, 1987 the Personnel officer assigned to the TAP staff informed the participants that they were subject to the Bank-wide selection process and that, had they not been selected for a position at their current or at a higher grade or for participation in the TAP program, they would be eligible for the Enhanced Separation Package B. From June 18, 1987 through August 15, 1987 the Applicant was on home leave, and there is no record that she applied for any of the positions available during the staff selection process.

10. In a letter to the Vice President, Personnel, dated September 14, 1987, the Applicant – apparently referring to the job grading exercise and her failure to be graded at level 16 – expressed her disappointment and demoralization for being “demoted slowly” in spite of her good performance, and requested that she be granted the Enhanced Separation Package (Package B).

11. The next day she was interviewed by the Team Leader in the Latin America Technical Department, Human Resources Division, for a position of Staff Assistant, level 15, and on September 17, 1987 she received a Job offer and Selection Decision Form from the Selecting Manager of that Division stating that she was selected for the position for which she had been interviewed. However, the Applicant did not accept that offer since she felt that her acceptance of a Staff Assistant position, level 15, would have constituted acceptance of both a lower grade and a lower salary, thus making her ineligible for any increases in the future.

12. On September 29, 1987 the Applicant was informed by the Vice President, Personnel, that she was not eligible for the Enhanced Separation Package, because she had been offered, but had not accepted, a position at her current level 15. The following day the Applicant met with the Chief Personnel Officer who pointed out possible courses of action available to her at that time, namely, to reconsider the offer for the Staff Assistant position, level 15, that she had declined; to join the TAP; to continue efforts to find a position elsewhere at her current level; or to be terminated under Rule 7.01, i.e. with eight-months salary as a severance payment.

13. After further correspondence with the Respondent, the Applicant on October 14, 1987 signed a Separation Agreement, which provided for eight months net salary as a severance payment, and for release of all claims against the Bank.

14. On November 23, 1987, upon learning that the Tribunal had declared the release-of-claims clause inoperative, the Applicant filed a request for an administrative review of the decision not to grant her the Enhanced Separation Package. The Vice President, Personnel, denied her request on the grounds that she had been offered a position at her level 15 which she declined to accept and that she did not reapply to the TAP as she had said she would but chose to leave the Bank under mutually agreed terms.

15. On January 7, 1988 the Applicant filed an Appeal with the Appeals Committee. In its report dated June 30, 1988, the Appeals Committee concluded that, because the Applicant had been offered a position at her level and had refused it, she was not eligible for Package B and that from the clearly spelled out options available to her she had chosen to leave the Bank under the terms of a mutually agreed separation. Consequently, the Committee recommended that the relief requested by the Applicant be denied. On July 15, 1988 the Senior Vice President, External Affairs and Administration, informed the Applicant that he had accepted the Committee’s recommendation.

The Applicant's main contentions:

16. The Bank violated the Applicant's terms of employment by not offering her separation under the terms of the Enhanced Separation Package in spite of her meeting all the conditions of eligibility as set forth in Staff Rule 5.09. The Applicant was eligible for the Enhanced Separation Package because she was not offered a position at the same level as the positions she occupied at the time of the reorganization.

17. There is no basis for the Respondent's conclusion that, because the Applicant's position in 1985 was graded at level 15, her position in the TAP at the time of the reorganization in 1987 was also necessarily graded at level 15. On the contrary, the Applicant's position in the TAP should have been properly graded at level 16 on the basis of her skills and experience and the functions she performed during her assignments in the TAP.

18. Because the Respondent failed to grade the TAP positions which the Applicant occupied, it should be estopped from using in its defence the ambiguity concerning the exact grade of such positions. Furthermore, the Respondent's failure to carry out a grade evaluation of the Applicant's assignments constituted a violation of due process.

19. The Staff Assistant position for which the Applicant was selected during the reorganization was at a lower level than the Administrative Secretary positions, level 16, which she regularly occupied as a participant in the TAP. Consequently, by obliging her to accept a Staff Assistant position at level 15, the Bank violated Staff Rule 5.09, para. 1.06(c).

20. Furthermore, by obliging the Applicant to accept the Staff Assistant position level 15, the Bank effectively deprived her of value she had earned, in the form of merit increases and an opportunity for promotion to a level 17 position.

21. The provisions of Staff Rule 5.09, to the extent that they are ambiguous or have resulted in undue harm to the Applicant, should not be enforced against the Applicant, because that Staff Rule was adopted without the required consultation with the Staff Association, and its provisions departed significantly from the proposals upon which the Staff Association had been consulted and which had been approved by the Executive Directors.

22. The Applicant requested the following relief:

- (i) Rescission of the decision to oblige the Applicant to accept selection to a position at a level lower than the position she occupied prior to the reorganization;
- (ii) An order that the Respondent offer the Applicant separation under the terms of the Enhanced Separation Package;
- (iii) Compensation in the amount of the difference between the terms of the Enhanced Separation Package and the terms of separation she had actually received, plus interest thereon at the rate of ten percent per annum; and
- (iv) Reimbursement of all expenses incurred by the Applicant in pursuit of relief, attorney's fees and costs.

The Respondent's main contentions:

23. The Applicant was not entitled to the Enhanced Separation Package because she had been offered a position at her current grade 15, which, however, she had chosen not to accept.

24. At no time prior to the reorganization was the Applicant's position graded 16 nor should it have been. At the time of the job grading exercise the position the Applicant occupied was assigned grade 15 and she as so advised. Then, on January 1, 1986 she joined the TAP at level 15 which she retained during the remainder of

her employment with the Bank and which she did not contest. Consequently, the Applicant failed to appeal the grade of her position on both occasions, and her claim now – which is, in effect, a challenge to her earlier job grading – should not be entertained because it is time barred.

25. The Applicant's Personnel Action Forms correctly recorded her grade as 15 and her title as Administrative Secretary, because a staff member can be assigned to an Administrative Secretary position at either level 15 or 16 depending on the content of the particular job. The Applicant occupied a variety of positions while in the TAP which were graded 12, 13, 14, 15, or 16. However, most of the positions occupied by the Applicant were actually Staff Assistant positions at grade 15.

26. The TAP has always been administered on the basis that staff retained their entering grade throughout their stay in the program and that efforts were made to provide the participants with assignments commensurate with their grade level. The grade of the participants in the program was not to change depending on the type of assignments undertaken.

27. During the reorganization selection process the Applicant was offered a position that carried grade 15, which was her then current grade. The Applicant refused to accept a perfectly appropriate job offer and denied other offers of assistance tendered by the Respondent who out of generosity gave her the benefit of a mutually agreed separation. Consequently, the Applicant was treated fairly, compassionately and in accordance with the Staff Rules; under paragraph 7.06 of Staff Rule 5.09, the Applicant was not eligible to receive the Enhanced Separation Package.

28. The consultation process for Staff Rule 5.09 was fair, reasonable in the circumstances and consistent with the provisions of the Staff Rules.

29. Although the Applicant became ineligible for the Enhanced Separation Package, she did not have to leave the Bank. It was entirely her own decision not to choose to avail herself of any of the other alternatives offered to her by the Chief Personnel Officer.

30. The application should be dismissed and the Applicant should not be awarded costs or attorneys' fees, because there are no circumstances in this case that would warrant an exception to the Tribunal's normal policy of leaving the parties to bear their own costs.

Considerations:

31. The Applicant contends that the terms of her separation from the Bank constituted a violation of her conditions of employment, specifically of Staff Rule 5.09, paragraph 7.06. That staff rule, among other things, promulgated procedures to be followed in the course of the 1987 reorganization of the Bank. In pertinent part, that paragraph provides:

When Round 2 is concluded, staff (i) who have not applied for the Standard Separation Package and (ii) who have not... been selected for a position at their current or higher grade level or have not been selected to join the TAP and (iii) who have not been selected for retraining will be offered separation from the Bank on grounds of redundancy under the terms of the Enhanced Separation Package.

The Applicant contends that, although she satisfied all of the listed criteria in this paragraph she was denied the Enhanced Separation Package and she was compelled to separate from the Bank with less favorable financial terms.

32. The issue of interpretation that is before the Tribunal is the meaning of the phrase "selected for a position at their current or higher grade level," as that applies to a staff member who, at the time of the reorganization, was assigned to the Temporary Assignment Program. (TAP) in the Personnel Management Department. Staff members assigned to work in TAP performed in a variety of positions at a variety of grade levels, and this was true of the Applicant, who appears during her years in TAP to have been assigned to positions graded as low

as 12 and as high as 16.

33. Just prior to her reassignment to TAP in January 1986, the Applicant was serving in a position graded at level 15; although this grade, allocated in the job grading exercise of 1985, had constituted a downgrading from the previous G-level of the position, the Applicant had not challenged her level-15 grade through the full administrative appeals process. The grade allocated to her position in TAP was therefore precisely as dictated by the pertinent Bank directives. Pers./11/81, a personnel manual circular dated June 30, 1981, expressly provided in paragraph 14 that "When staff members join the Temporary Assignment Program, they will retain their salary and level."

34. In the later reorganization program, the Applicant apparently applied for no positions and was on home leave during much of the period when the staff selection process was underway. Yet, soon after writing a letter indicating her desire to leave the Bank, the Applicant was formally offered a position at level 15 as Staff Assistant in the Latin America Technical Department, Human Resources Division. The Applicant did not accept the job offer. She characterized the proffered position as a demotion, although she acknowledged that her position prior to coming to TAP had been graded at level 15 and that she had not taken an appeal from that grade. Some weeks later, the Applicant complained to her chief personnel officer that "Level 15 was wrongly assigned to me during the Job Grade exercise as such level is for an entry level Administrative Secretary which is not appropriate to my circumstances or experience."

35. After terminating her employment with the Bank on standard separation terms rather than, as the Applicant sought, the Enhanced Separation Package, the Applicant took an appeal to the Appeals Committee. The Committee concluded that the Applicant had at the time of the reorganization been offered a position at her then current level-15 position in TAP, and it recommended that she be given no additional compensation, a recommendation that was followed by Bank management.

36. It is the conclusion of the Tribunal that the above-quoted language of Rule 5.09, para. 7.06 is not ambiguous as pertains to this case, and by its terms the Applicant is not eligible for the Enhanced Separation Package. During the reorganization, the Staff Assistant position offered to her in the Latin America Technical Department, Human Resources Division, was graded at level 15. We therefore conclude that under para. 7.06 the Applicant had been "selected for a position at [her] current or higher grade level." Having been offered this position, the Applicant was no longer eligible for the Enhanced Separation Package, so that the Respondent's insistence upon standard separation terms did not constitute a violation of the Applicant's contract of employment.

37. The Applicant contends that the above-quoted language from Staff Rule 5.09 is ambiguous, and that it could be construed to require that the Bank should have offered the Applicant a position graded at level 16, on the theory either that was then her salary level (by virtue of the two-year "salary grandfathering" after her previous downgrading from level G to level 15) or that most of her service in TAP was in level-16 positions such as Administrative Secretary. The Tribunal considers that neither of these constructions is reasonable or intended.

38. Staff Rule 5.09, para. 7.06 does not contemplate that the Enhanced Separation Package will be awarded absent selection to a position that offers a salary range equal to or greater than the salary currently being paid to the staff member. The text of the rule makes no reference, express or implied, to salary. It speaks of selection to a position at a current or higher grade level. The Applicant was in fact offered a level-15 position at a time when she was holding a level-15 position.

39. Equally unconvincing is the contention that para. 7.06 requires, before the Applicant would lose her claim to the Enhanced Separation Package, an offer of a position at a level comparable to the level of positions to which she was currently being temporarily assigned in the TAP program. The Applicant contends (although the Respondent takes issue) that almost all of her service in TAP was in level-16 positions and that therefore the Bank's offer of a Staff Assistant position at level 15 did not comport with para. 7.06. The Tribunal gives the pertinent language its obvious meaning: that "a position at [the Applicant's] current ... grade level" means a

level-15 position. The principal document establishing the terms of the TAP program – Pers./11/81, dated June 30, 1981 – reinforces this conclusion in its provision to the effect that “When staff members join the Temporary Assignment Program, they will retain their salary and level.” Level 15 is indisputably the grade level given to the Applicant’s position in TAP (as it was the grade of her previous position), and this is evidenced by the unambiguous reference to Level 15 in all of the Applicant’s pertinent personnel documents.

40. Even apart from its clear language, para 7.06 should be read as the Respondent contends lest the current grade level of a staff member working in TAP constantly vacillate, depending upon the temporary work assignment at any given time. It is not likely that the separation rights of staff members were intended to be left in such an unsettled state, one which could just as easily redound to the serious detriment of a staff member (if temporarily working in a lower graded position) as to his or her benefit.

41. Although the Applicant relies upon some colorably supportive language in a document dated February 10, 1986, from the Assistant Director, PMD, to another supervisor in the department, that is too slender a reed upon which to rest the Applicant’s claim. First, it is not explained how this memorandum could supersede the clear language of Pers./11/81. Nor is there any evidence that the memorandum or the personnel manual circular was applied with respect to any other staff member so as to vary the grade level of TAP positions from time to time. Finally, the memorandum of the Assistant Director, PMD, continued as follows: “In future the following provisions apply: a staff member who joins TAP will carry the grade of their [sic] previous regular assignment on a personal basis for up to two years and will be given assignments appropriate to their grade to the extent possible.” In other words, staff members in TAP were to have their grade level fixed, with temporary assignments to be made consistently therewith – not, as the Applicant contends, the other way around, with grade level being temporarily determined by work assignments.

42. It is pertinent to note that at the time of the reorganization and the offer to her of a position graded at her then-current 15 level, the Applicant’s principal grievance was directed at her downgrading from level C to level 15, a grading decision that was made some two years before and that the Applicant admittedly failed to challenge in a timely way. The core of her case before the Tribunal, in substance, is that her work in TAP and her skills used there warranted a grade higher than level 15 – so that the offer of a grade-15 position in September 1987 was effectively a demotion. The Tribunal cannot countenance at this time what is in effect an untimely challenge to the Applicant’s grading decision of years before. Her application must be dismissed.

Decision:

For these reasons, the Tribunal unanimously decides to dismiss the application.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At London, England, September 22, 1989