

Decision No. 63

Antoinette Papinchak,
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 November 19, 1986, by Antoinette Papinchak against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The Applicant filed two additional statements which the President made part of the record. The case was listed on July 22, 1987.

The relevant facts:

(a) The Job Grading Program

2. The general facts relating to the Job Grading Program are as stated in paragraphs 2 to 10 of Decision No. 56.

(b) The Particular facts of the case

3. In July 1984 during Phase Two of the Job Grading Program a document entitled "Procedures Guide for Managers" (the "Blue Book") was distributed to managers to enable them to carry out their responsibilities for the classification and evaluation of the positions under their supervision. The "Blue Book" contained criteria for several occupational streams. Under the section "Secretarial and Related Positions" there were announced criteria for the positions of Administrative Secretaries II and Office Managers which were allocated respectively to level 16 and 17 of the new grade structure.

4. During the implementation of Phase Two, the need arose to reexamine some of the original evaluation criteria contained in the "Blue Book". Consequently, in mid-1985 a package of "Revised Evaluation Criteria" for the secretarial occupational stream was distributed to managers with instructions to use these criteria to review their matching recommendations. The positions of Administrative Secretary II and Office Manager both contained revised criteria, which were different from the original criteria contained in the "Blue Book". The revised criteria for these two positions were almost identical.

5. In the light of the revised criteria the Applicant's position as well as nine other similar positions in the Europe, Middle East and North Africa (EMENA) Regional Office were matched by the EMENA Vice Presidential Matching Committee to the revised generic criteria of Administrative Secretary II position. On September 26, 1985 the Applicant, who was the Administrative Secretary of her Division, was notified that her position was placed at level 16 of the new grade structure. Level 16 is the equivalent of grade G which was the Applicant's grade under the former grade structure.

6. On December 20, 1985 the Chairman of the Job Grading Regional Matching Committee in the EMENA Region, in a memorandum to the Chief of the Job Evaluation Unit (JEU), pointed out that the only clear difference between the revised criteria for the positions of Administrative Secretary II and Office Manager was the number of staff in the concerned unit. He added that unless the criteria were revised in respect of the duties of the position many current Administrative Secretary II positions would meet the criteria of Office Manager

position and justify the grading at level 17.

7. On December 23, 1985 the Applicant filed a request for Administrative Review of the job grading decision on the ground that the job content of her position met the 1985 "revised evaluation criteria" for the Office Manager position and therefore that her position should be upgraded to level 17.

8. On January 7, 1986 the Chief of JEU responded that he shared the Chairman's concerns about the revised criteria for the Office Manager position, and that JEU intended fully to review both the title and qualification criteria for this position by mid-February 1986. He added that, meanwhile, the position of Office Manager had been removed from the "Secretarial and Related Positions" occupational stream.

9. On February 28, 1986 the Chairman of the Job Grading Regional Matching Committee of the EMENA Region in his memorandum to the Chief of JEU, reiterated the Committee's and his own great uneasiness with the revised generic criteria for the position of Office Manager. In particular he noted that these criteria were so imprecise and underdeveloped that any decision the Committee had to consider on requests for job re-evaluation became extremely subjective and raised serious problems of fairness and equity. He added that the Committee was also concerned about "the legal implications of changing criteria in the course of the administrative review-appeals process, both for those who have appealed, and for those who did not."

10. On March 6, 1986 the Acting Chairman of the Vice Presidential Unit (VPU) Matching Committee of the EMENA region, considering the Applicant's request for Administrative Review, stated that the Committee found, on the basis of the revised criteria provided for that position and after consideration of the Applicant's arguments and discussion with her supervisor, that the Applicant's position reasonably fit the Office Manager position description. Consequently, the EMENA Matching Committee recommended that the Region's ten Administrative Secretaries (including the Applicant) be matched to the criteria of Office Manager, level 17.

11. On May 2, 1986 the Chief, JEU, considering further the Applicant's request for Administrative Review, recommended that the Applicant's position be retained at Level 16 stating that:

Different and inconsistent versions of the OMG criteria have been issued that do not sufficiently differentiate between Office Manager and Administrative Secretary functions. Managers have found them difficult to use in an objective and fair way and they have led to inconsistent and inequitable results. We recommend that the present criteria be cancelled and JEU conduct a comprehensive review of the criteria in both streams. Staff should be notified that their positions are appropriately graded at level-16 at present, but that their manager may request a review of the grade following approval and publication of any revised criteria.

12. On the same day the Vice President, EMENA region, recommended that the Applicant's position as well as eight other Administrative Secretary positions in the EMENA Regional Office be retained at level 16. He stated in particular that:

Having regard for the recommendations of the VPU Matching Committee and the JEU, and considering the current lack of criteria for differentiating between Office Managers and Administrative Secretaries, nine of the ten above positions should be retained at Level 16 and reviewed, if the manager so wishes, following approval and publication of any revised criteria that may result from a JEU review of Office Manager, Administrative Secretary and other secretarial positions. This would be without prejudice to the timing of the right of appeal and other safeguards associated with the job grading program.

13. On May 5, 1986 the Director of Compensation, after reviewing the facts and considering the recommendations of the VPU Matching Committee, the Regional Vice President and the JEU, decided that the Applicant's position as well as eight other Administrative Secretary positions in the EMENA Regional Office for which Administrative Review had been sought should be retained at level 16, with the option of review at the manager's request. He also decided that one Administrative Secretary position in the EMENA Regional Office should be upgraded to level 17.

14. On the same day the Chief, JEU, notified the Applicant that her position was at present appropriately graded at level 16. However, he added that:

You should be aware that the Job Evaluation Unit is planning a comprehensive review of the current criteria for Office Manager and Administrative Secretary positions and recommends to your manager that your grade be reviewed again following publication and approval of any revised criteria which may emerge from this review. This would be without prejudice to the timing of the right of appeal and other safeguards associated with the job grading program.

15. On May 14, 1986 the Applicant and the eight other Administrative Secretaries of the EMENA Regional Office whose positions were graded level 16 wrote to their Vice President, stating that during the course of the Job Grading exercise the criteria for support positions changed at least twice and that this was unethical and unfair. They also asked for guidance as to the action they should take concerning the grading of their positions.

16. On June 3, 1986 the Applicant filed a Statement of Appeal before the Job Grading Appeals Board (JGAB). The Board found, inter alia that:

(c) The Appellant clearly performs the functions and meets the criteria as defined in the version of the criteria for the position of Office Manager used in the EMENA region at the time of the grading decision. This would suggest that upgrading of the Appellant's position to grade 17 is appropriate.

(d) However, the Appellant's position also matches the criteria for Administrative Secretary II, which are difficult to distinguish from those criteria for Office Manager, and does not meet other versions of the criteria for Office Manager issued earlier and apparently used in most Departments of the Bank. This would suggest that the decision on administrative review to allocate Grade 16 to the Appellant's position is appropriate.

(e) There is no evidence suggesting that the Appellant's position significantly differs from the many other positions in the Bank that have been matched against the current Administrative Secretary II generic criteria and graded at level 16.

17. The JGAB concluded that it was "unable to recommend a change in the grade of 16 assigned to the Appellant's position" and recommended that as a matter of urgency, and no later than March 1, 1987, (a) criteria be formulated and promulgated that effectively distinguish the characteristics of Administrative Secretary II and Administrative Secretary III/Office Manager positions and (b) existing Office Manager positions and Administrative Secretary II positions be matched against those criteria to ensure Bank-wide equity in relative grading of those positions.

18. On October 17, 1986 the Vice President, Personnel and Administration (PA) informed the Applicant that he accepted the JGAB's recommendation and that he instructed the JEU "to refine the evaluation criteria for Administrative Secretary/Office Manager positions and to review the grading of all such positions against the revised criteria by March 1987."

19. On November 10, 1986 the Manager, Human Resources Audit Unit, in his Note to the Regional Personnel Officers concerning the Grading of Office Managers/ Administrative Secretaries, stated that during the administrative review process the published criteria for those streams contained some inconsistencies and did not clearly differentiate among functions and requirements at different grade levels. Consequently, the JEU was reviewing these criteria and its review was expected to be completed by March 1987. The Manager, also stated that, for the present, certain steps were being taken to avoid any exacerbation of the situation, and in particular, the published criteria for Office Manager grade 17, which were virtually identical to those for Administrative Secretary Grade 16, as well as the Office Manager title, had been cancelled.

20. On November 19, 1986 the Applicant filed an application with the Tribunal.

21. On March 25, 1987 the Vice President, PA, informed the Applicant of the outcome of the comprehensive

review conducted by the JEU concerning the evaluation of criteria for Administrative Secretary/Office Manager positions. In particular, he noted that the review had concluded that development of generic criteria for Administrative Secretary/Office Manager grade 17 was not practicable because it was not possible to identify for that position standard functions that differ sufficiently from those of Administrative Secretary, grade 16, in order to justify a difference in grade. Therefore, the Vice President suggested that the Applicant's position be individually evaluated on the basis of a position description and accordingly he asked the Director, Compensation, to make the necessary arrangements for such an evaluation under the procedures of Staff Rule 6.05, Job Evaluation and Grading.

The Applicant's main contentions:

22. By refusing to grade the Applicant's position at grade 17, the Respondent violated her contract of employment. The Respondent's actions constitute an abuse of discretion, being arbitrary, discriminatory, improperly motivated and carried out in violation of a fair and reasonable procedure.

23. The Applicant's position should be matched against grade 17, as was initially recommended by the VPU Matching Committee, and in accordance with the JGAB's later statement that the Applicant "clearly performs the functions and meets the criteria" for the Office Manager position as used in the EMENA Regional Office when the grading decision was made.

24. The Respondent's JEU has admitted that different and inconsistent versions of Office Manager criteria had been used for grading purposes, and that these did not effectively distinguish an Administrative Secretary from an Office Manager. Managers undertook grading lacking complete or correct information, and based their decisions on an erroneous application of the grading methodology. The Respondent cannot rely upon its own mistakes to keep at a lower level staff who qualified to be graded Office Managers under the circulated grading criteria for that position.

25. The revised criteria on which the Applicant relied were not, as the Respondent contends, invalid or "unofficial." They were circulated to the Vice Presidents in mid-1985 with a statement that they were to be used in reviewing matching recommendations.

26. The Respondent's decision to cancel those criteria was made only after the Applicant had already entered the administrative appeal process, thus violating the prohibition against giving retroactive effect to measures.

27. The Respondent's decision to grade all Administrative Secretaries in the EMENA Regional Office, except one, at level 16, was completely arbitrary, without basis in fact or methodology, and without respect for established procedures and due process.

28. The Applicant should be graded at level 17 effective October 1985 until such time as new criteria shall have been adopted by the Respondent. The Respondent's suggestion that the grading decision be merely remanded is not a fair or effective remedy.

29. The Respondent, in addition, should pay the Applicant one month of compensation for the time spent pursuing a remedy frivolously denied, and one month of compensation for being denied the use of funds which would otherwise have been obtained had she been graded at level 17 as of October 1985.

30. After the application was filed and at about the time the answer was filed, the Respondent furnished the Applicant's Division Chief with a copy of the confidential report of the JGAB and the decision of the Vice President, PA. This was a violation of her privacy and an attempt to intimidate her.

The Respondent's main contentions:

31. The act of classification of positions is a discretionary decision, and in the present case there was no abuse of discretion. The Respondent's actions were reasonable, fair, appropriate and orderly.

32. Nothing in the Principles of Staff Employment confers upon a staff member an entitlement to hold a position at a particular grade.

33. The distribution of unsatisfactory and confusing criteria was unintentional and could not have been foreseen. The Respondent took timely action to freeze the situation arising therefrom and to remedy it.

34. Under the terms of Staff Rule 9.04, the Respondent had made no "decision" to allocate grade 17 to the Applicant's position, so that the Applicant was not entitled to such a grade at the time the Respondent decided properly to cancel the "unofficial" criteria for the Office Manager position and to retain the Applicant's position at level 16 pending formulation of new criteria. The recommendation made by the Matching Committee of the EMENA region in the course of Administrative Review that the Applicant be graded at grade 17 was merely a recommendation that could not confer a right upon her or supersede the subsequent joint decision of the Applicant's Vice President and the Director of Compensation. The JGAB found that the Applicant's position met both the Office Manager, grade 17, criteria and the Administrative Secretary II, grade 16, criteria, and it decided not to recommend a change in the grade 16 assigned to the Applicant's position.

35. Even if the Tribunal were to conclude that there had been an abuse of discretion or a violation of the Applicant's procedural rights in the classification decision, the Tribunal should not substitute its judgment for that of the Respondent's management by directing that the Applicant's position be graded at level 17. At most, the case might be remanded for classification according to the new criteria to be promulgated.

36. There is no justification for the award of two months' compensation, because the Applicant was not deprived of a right and has not suffered any immediate financial prejudice.

37. The Respondent has not violated the principle of confidentiality by transmitting to the Applicant's current manager a copy of the Report of the JGAB and of the decision of the Vice President, PA. There were good reasons for the action taken, neither document is confidential, and the charge of intent to intimidate the Applicant is absurd.

Considerations:

38. The Applicant claims that her position in the service of the Respondent has been improperly graded at level 16, as Administrative Secretary II, rather than at level 17, as Office Manager. This claim, and the contentions put forward in its support, are identical in all pertinent respects to those presented by the Applicant in Apkarian, Decision No. 58 [1988], decided this day. The Tribunal in that case gave full consideration to such claim and contentions, and concluded that they were in part meritorious and that the granting of relief for intangible injury, in an amount equivalent to one month of the Applicant's net base salary, was proper.

Decision:

1. For these reasons, the Tribunal orders the Respondent to pay the Applicant an amount equivalent to one month of her net base salary.

2. All other pleas are hereby dismissed.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington, D.C., May 26, 1988