

Decision No. 56

Lyra Pinto,
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 December 4, 1986, by Lyra Pinto against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The Applicant filed an additional statement which the Tribunal made part of the record. The case was listed on August 3, 1987.

The relevant facts:

(a) The Job Grading Program

2. Prior to 1980, the Respondent did not have a systematic procedure for grading staff positions. The major compensation review undertaken in that year confirmed the existence of a number of grading anomalies, among them that some occupational groups appeared to be undergraded and others overgraded, when compared to other organizations. Accordingly, the Executive Directors of the Bank recommended that the Bank review its salary and grade structures, and this recommendation led to the Job Grading Program (the Program), which was instituted in 1982.

3. The Program had three objectives:

- (i) to ensure equal pay for work of equal value, and fair salary differences between jobs of different values;
- (ii) to strengthen institutional effectiveness and efficiency through better design of individual jobs, and a better fit between jobs and work programs; and
- (iii) to improve staffing and career development decisions by developing explicit selection and promotion criteria based on detailed position descriptions.

4. After reviewing several alternatives, the Bank chose the Hay Associates methodology which was widely used internationally in both the public and private sectors. The Hay methodology enabled widely different jobs in different occupations to be measured by a common yardstick. Jobs were evaluated solely on the basis of job content and no account was taken of current salaries, grades, titles, personal qualifications, or individual performance. Job content was measured according to three factors common to all jobs:

- (a) know-how: the sum of all knowledge or skills needed to perform the position;
- (b) problem solving: the degree and intensity of original thinking needed to identify, define, and resolve problems; and
- (c) accountability: the degree of freedom the incumbent has to take action and its impact on the organization's objectives or results.

Points were assigned for each factor and then added to produce a total, which showed the relationship of one job to another. The criteria for assigning points were provided by Hay Associates and adapted by a group of staff and managers to suit the Bank's needs.

5. The Program consisted of three main phases. During Phase One, completed in 1983, 500 “benchmark” positions were evaluated by interdepartmental committees of staff and managers. The benchmarks were carefully selected as being typical of all major occupational groups at all levels. This established a framework for the internal relative values of positions. From the benchmarks, generic criteria were developed to help distinguish between positions at different grade levels, but within the same occupational group. The generic criteria did not attempt to capture the details of each job, but only the significant differences between jobs as performed at different levels.
6. During Phase Two, managers looked at each position to determine the best way to have it evaluated:
 - (a) by ‘matching’ it to a benchmark position description. Approximately 18% of positions were matched in this way;
 - (b) by ‘matching’ it to one of the sets of generic criteria derived from the benchmarks. Approximately 51% of positions were matched in this way;
 - (c) by considering it a ‘loose fit’ with either a benchmark or generic criteria with a brief statement about how the job is different. Approximately 8% of positions were “loose fits”;
 - (d) by evaluating it individually based on a complete position description. Approximately 23% of positions were individually evaluated by committees drawn from across the Bank and the International Finance Corporation (IFC).

The “matched” positions were reviewed for consistency by a committee of managers within each vice presidency. ‘Loose fits’ were reviewed by the Job Grading staff. If the latter agreed with the ‘fit’ it was graded the same as its benchmark position. If there was a significant difference, the staff member was asked for additional documentation or a position description, which was then evaluated in the same way as an ‘individual’ position. ‘Individual’ positions were evaluated by an Evaluation Committee, using the same three criteria for evaluating job content as for the original benchmarks--know-how, problem solving, and accountability.

7. During Phase Three, the Job Grading staff reviewed the preliminary results reported by each vice presidency for overall consistency with the results from other parts of the Bank and IFC. Recommended changes went back to each vice presidential unit for review. Results challenged by vice presidencies were further reviewed by bank-wide committees before a final roster of almost all positions was produced in early September 1985.

8. After the evaluation data had been collected, a new grade structure was developed. Positions with similar point totals were grouped into grades. The new grade structure had 20 grades, one fewer than the former version. Grades ranged between 11 and 30. Although the new grade structure was similar to the old, there were some important changes. One integrated grade structure for all levels of staff was created. A new grade, 25, was added to recognize the value of senior level professional expertise. Some highly experienced staff members were allowed to progress to levels 26 or 27 without taking on managerial responsibility. Former grades G and 5 became grade 16 because the evaluation results showed them to be of equal value; for like reasons, former grades H and 4 became grade 17.

9. The new grade structure and an interim salary structure, both approved by the Executive Directors, became effective on October 1, 1985, and positions were assigned to the new grade/salary structure. While most positions were assigned grades equivalent to or higher than those to which they were allocated in the former grade structure, approximately 11% of positions were assigned to lower grades, with concomitantly lower salary ranges. In anticipation of this outcome, the Program incorporated a provision for salary protection or “grandfathering”, for a limited period, when the maximum of the salary range for a position at its new lower grade was less than the maximum of the former salary range for the position. Under Staff Rule 5.06, para. 3.01, for a period of two years from October 1, 1985, the staff member who had been downgraded continued to be eligible for salary review increases within the range for the position’s former grade; the range and individual salary would move in line with any adjustments to the salary structure as might be approved. After September

30, 1987, the staff member's salary would be administered within the salary range for the new grade of the position. If the staff member's salary exceeded the maximum of the new salary, "the salary will remain unchanged until the maximum of the range exceeds that amount."

10. The Program afforded certain remedies to staff members who felt that their position had been improperly graded. The Respondent established a separate specialized mechanism for appeals against such decisions, excluding the competence of the Appeals Committee. Staff Rule 9.04 on "Job Grading Appeals" provides for a two-stage process. The first is an administrative review of the job grading decision. If the administrative review does not result in a change in grade level that is satisfactory to the staff member, he or she may file a formal appeal with the Job Grading Appeals Board. Pursuant to Staff Rule 9.04, para. 3.01: "a staff member may appeal to the Job Grading Appeals Board (JGAB) a decision to allocate a grade to his position on the grounds that:

- (a) the allocation of the grade was based on insufficient or inaccurate information about the functions the staff member carries out in the position and that additional facts will result in a higher grade being assigned to the position;
- (b) the allocation of the grade was based on an erroneous or faulty application of the grading methodology which was improper to the extent that the exercise of discretion was arbitrary or discriminatory; or
- (c) the allocation of the grade was otherwise based on arbitrary, irrelevant or discriminatory factors which resulted in the allocation of a grade lower than would have been allocated had these factors not influenced the decision."

The same Staff Rule, para. 4.02, provides: "the Board shall have competence to hear appeals based on one or more of the grounds for appeal set out in para. 3.01". Recommendations of the JGAB are to be forwarded to the Vice-President, Personnel and Administration (PA), for a decision. A member of the staff not satisfied with the outcome is entitled to file an application to this Tribunal.

(b) The particular facts of the case

11. On September 26, 1985 the Applicant, employed in the Bank since 1973, and a Staff Assistant in the Europe, Middle East and North Africa (EMENA) Projects Department since July 1985, was notified that her position was re-graded. The Matching Committee for the EMENA Vice-Presidency had matched the Applicant's position to the generic criteria for Staff Assistant grade 15; level 15 is approximately the equivalent of grade "E" under the former grade structure. Prior to the grading exercise the Applicant's position was at grade "G", which was considered to be of equal value to grade 16 in the new grade structure. Because the salary range for grade 15 was lower than the salary range for her former grade "G", the Applicant was entitled to salary protection for two years starting October 1, 1985. At the date of the filing of the Application, the Applicant's salary was already about \$1,000 above the maximum in grade 15. Hence the Applicant could not share in merit or structural adjustment increases after September 30, 1987.

12. On December 23, 1985 the Applicant filed a request for administrative review of the job grading decision and on January 31, 1986, she addressed a memorandum to the Chairman of the Job Grading Committee in which she stated inter alia:

I wish to mention again that I cannot accept the notion of 'objectivity' of the job grading exercise in evaluating the level of my grade or position. My promotion to G level was much a subjective determination of experience and extra duties over and above the E level staff assistant grade. The efforts demanded of me in order to receive a promotion were indeed 'unique' but the only thing 'rare' about the specialized staff assistant position, the only position similar to the previous G level, is the manner in which it is written - a transparent attempt to deny access to promotions, negate the value of experience, skills, career development and renege on previous standards. The decision to abolish certain grade levels and collapse all staff assistant grades into one E level grade was entirely arbitrary and political. The G-H levels were for years maintained as properly determinable grades. To decide now that they were not implies that the

previous grading system was not based on professional classification. If this is the case, it follows that all compensation decisions emanating from such system were also improper.

13. On February 20, 1986 the Chief, Job Evaluation Unit (JEU), notified the Applicant that her position was appropriately graded at level 15. He stated:

After careful consideration and review of your request for Administrative Review, together with the criteria for Staff Assistant and Specialized Staff Assistant, the Regional Matching Committee confirmed that your position is appropriately matched to Criteria S.A. level 15.

The Regional Matching Committee had earlier stated that as in the cases of other G level staff which came before it, it

had great difficulty in applying the criteria for Staff Assistant (Grade 15) and for Specialized Staff Assistant (Grade 16). In the Committee's view, these do not provide the basis for an equitable classification of jobs in the Operations complex.

14. On March 5, 1986 the Applicant filed a statement of appeal before the JGAB, challenging the job grading decision on the grounds enumerated in paragraph 3.01 of Staff Rule 9.04, and requesting that the Board "recommend that her position be graded at its previous level, or that it be grandfathered permanently into grade 16, or that she be appointed, without the necessity of competition, to another Grade 16 position."

15. The JGAB found that it was outside its competence to recommend that the Appellant's position be grandfathered into grade 16 or that she be appointed without competition to another grade 16 position. Furthermore, it found that:

"the Appellant questioned the abolition of certain grade levels and the collapse of all former G and E level Staff Assistants into one grade 15. The Appellant's grievance was addressed to this feature of the new grade structure, rather than the application of the new grading system with regard to her position. The Board is not competent to judge the adequacy or otherwise of the new grading system and methodology, but only their application to specific cases."

Finally, the Board stated that:

"Because job grading criteria for Staff Assistant cover both positions formerly at level "E" and positions formerly at level "G", the Regional Matching Committee encountered difficulties in its efforts to distinguish, under the criteria for Staff Assistant, between positions which in its view would warrant different classifications. But given the criteria as written for Staff Assistant and Specialized Staff Assistant at the time, the Panel agrees that the Committee had no options but to grade Appellant's position at level 15, Staff Assistant."

Consequently, the JGAB recommended that the decisions of the EMENA Vice Presidential Unit Matching Committee and the administrative review, to assign grade 15 to the Appellant's position, be confirmed.

16. On September 18, 1986 the Vice President, PA, informed the Applicant of the JGAB recommendations and confirmed that her position had been graded at level 15.

The Applicant's main contentions:

17. The Respondent cannot avail itself of the flaws of its own grading system or its inadequacy in distinguishing various classifications to grade the Applicant at the lowest possible level.

18. The decision to abolish certain grade levels and collapse all staff assistant grades into one E level grade, approximately equivalent to grade 15 in the new grade structure, was entirely arbitrary and political.

19. In 1981, under the previous grading system, the Applicant was promoted to level G on the basis of her professional capability and experience. The Respondent thereby changed the terms of employment of the Applicant and promised her a certain salary which it is obliged to retain for her. By freezing the Applicant's salary at its September 1987 level the Respondent has denied the Applicant the essential right embodied in de Merode, Decision No. 1 [1981], to benefit from "periodic [salary] adjustments reflecting changes in the cost of living and other factors". This right cannot be taken away on a change of grading structure.

20. Even if the Tribunal were to determine that the grading exercise has affected a non-essential right of the Applicant, the change introduced by the Respondent did not meet the standard of care required to change nonessential conditions of employment as embodied in de Merode.

21. The Applicant has, in accordance with Staff Principle 5.1(f), a right to be grandfathered without a time limit for structural salary adjustment increases at her previous grade. The Respondent's decision to limit the grandfathering period to two years only was arbitrary. It was also contrary to the Respondent's practice of granting unlimited grandfathering in cases which also involved critical changes to staff rights and raised issues of equity vis-à-vis other staff.

22. The Personnel Management Department (PMD) did not make demonstrable efforts to help the Applicant in her search for a grade 16 position, contrary to the promises made to her.

23. The Applicant requests the following:

(a) rescission of the Vice President (VPA) decision of September 18, 1986 to confirm the JGAB recommendation;

(b) that the Respondent (i) make demonstrable efforts to place Applicant in a grade 16 position before September 30, 1987 and (ii) grade the Applicant at grade 16 until such time as new criteria for Staff Assistants/Specialized Staff Assistants shall have been issued; and

(c) that the Respondent pay the Applicant after September 30, 1987, if no position can be found for the Applicant at a level higher than grade 15, salary increases equal to the structural salary adjustments and minimum merit increases for grade 15 regardless of whether the Applicant's salary is equal to, or higher than the maximum of the new range, and not to freeze the Applicant's salary until the maximum salary for grade 15 overtakes Applicant's salary at September 30, 1987.

The Respondent's main contentions:

24. The classification of positions is an exercise of discretionary authority. Unless the discretion has been abused, as was said in de Merode, the Tribunal should not substitute its own judgment for that of the competent organs of the Bank. Abuse of discretion has not been demonstrated in this case.

25. The Applicant's request to be graded at grade 16 until new criteria for Staff Assistant/Specialized Staff Assistant have been issued amounts to a request to be graded on a personal basis. Granting such a request would have been inconsistent with the underlying concept of the Job Grading Program that positions rather than individuals be graded on the basis of their job content.

26. The Applicant has no right to be grandfathered indefinitely for salary increases, since there was no explicit commitment to such a benefit for incumbents of downgraded positions in the Applicant's individual contract of employment or in any of the Bank's rules and regulations in effect when the Applicant joined the Bank in September 1973.

27. There has been no notorious and consistent practice followed in the conviction that it reflects a legal obligation which can be deemed to have given rise to an implied automatic right to indefinite grandfathering as a condition of employment.

28. While the Bank was under no obligation to offer grandfathering at all, it did so to ease the impact of a change which it was fully empowered to make. The salary protection policy was neither hastily adopted nor was it improperly motivated, having been adopted after careful deliberation by the management and the Executive Directors of the Bank.

29. The two-year limitation on grandfathering is not arbitrary. To have extended to the Applicant indefinitely the benefit she seeks would be contrary to a well-established and basic principle of international administrative law, namely, that compensation should be related to the grade of a position.

30. The two-year grandfathering is applicable equally to all staff whose positions were downgraded. It was not discriminatory to distinguish between staff whose positions were downgraded and those whose positions were not.

31. The Respondent complied with the provisions of Staff Rule 5.06 in taking steps to assist the Applicant to secure a position graded 16.

32. The Applicant's contract of employment or terms of appointment have not been violated in any way by an abuse of discretion or otherwise.

Considerations:

33. In her Application, as well as before the Job Grading Appeals Board, the Applicant complained of the manner in which the specialized Staff Assistant position was described, which she considered to be a transparent attempt to deny access to promotions, to negate the value of experience, skills and career development, and to renege on previous standards. She added that the decision to abolish certain grade levels and collapse all Staff Assistant grades into one E level grade was entirely arbitrary. On these grounds, the Applicant contended that the Respondent "cannot avail itself of the flaws in its own grading system or its inadequacy in distinguishing various classifications to grade Applicant at the lowest possible level."

34. The Respondent pointed out that these grievances were addressed to the design of the new grading and salary structure itself, rather than specifically to the correctness of the grading decision with respect to the Applicant's position. On these grounds, the Job Grading Appeals Board concluded that it was not competent to judge the adequacy or otherwise of the new grading system and methodology, but only their application to specific cases. The grounds for appeal enumerated in para. 3.01 of Staff Rule 9.04 obviously do not apply to this Tribunal, whose competence is governed by its Statute, which confers jurisdiction with respect to "any application by which a member of the staff of the Bank group alleges nonobservance of the contract of employment or terms of appointment of such staff member."

35. According to the Respondent, the actions taken in this case were an integral part of the Bank-wide Job Grading Program and constituted a reasonable and non-discriminatory exercise of its discretionary authority. The Respondent claims that, in such cases, "is not for this Tribunal to substitute its own judgment for that of the competent organs of the Bank." (de Merode, Decision No. 1 [1981], para. 45).

36. The Tribunal agrees that the Job Grading Program -- involving decisions regarding criteria for evaluating staff positions, the assignment of various tasks to particular positions and the ultimate determination of grade levels -- constitutes an exercise of discretionary authority by the Respondent and, as such, is not subject to review by this Tribunal, unless it is shown that there has been an abuse of discretion, by reason of the action taken in a concrete case "being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure" (Saberi, Decision No. 5 [1982], para. 24). No such abuse of discretion has been shown.

37. The Tribunal does not deem it necessary to pronounce in the present case on the question whether and, if so, under what conditions, the Respondent has the power to deprive a staff member of a grade previously held

by him. In particular, with respect to the Job Grading exercise, there can be no certainty that in all cases an exact correspondence exists between the former grades and the present ones, so as to consider a grade under the previous system the indisputable source of a right to maintain the grade previously held or to be assigned a new grade of a similar value. Moreover, the Applicant herself has not invoked the existence of a right indefinitely to maintain her former grade. Her contentions and arguments have been essentially concerned with the repercussions of the impugned decision with respect to her entitlement to continued salary increases.

38. As to the effects of the program upon the Applicant, she complains of arbitrariness and discrimination. However, the grading of the staff position occupied by her was not addressed to her personally nor did it take into account her performance. A considerable number of the staff have been similarly affected by the downgrading of their positions and the same treatment has been accorded to them all. The Applicant has also complained of defective placement efforts in her respect, but the record shows that the Respondent complied with the requirements demanded by para. 3.01 of Staff Rule 5.06.

39. The Applicant's principal contention is that her salary review increases after the effective date of her job regrading should not be limited by the two-year grandfathering provision in Staff Rule 5.06, para. 3.01. That section provides:

"A staff member whose position is graded at a lower level as a result of a formal job evaluation assumes the lower grade upon the effective date of the evaluation. However, for a period of 24 months thereafter, he will be eligible for increases as if the salary range formerly applicable to the position, adjusted for any increases in the salary structure, had remained in effect.If after 24 months the staff member has not been selected for a position at his previous or a higher level, future increases in his salary will be administered within the range of his new grade. If at this time the staff member's salary exceeds the maximum of the salary range of the position occupied, the salary will remain unchanged until the maximum of the range exceeds that amount."

In her reply, the Applicant invokes, in support of her claim, Para. 5(1)f of the Principles of Staff Employment, which states that the Respondent shall:

"establish procedures and conditions under which staff members may be assigned to positions graded at various levels, while providing reasonable measures to alleviate adverse effects on staff members assigned to positions graded or regraded at a lower level."

The Applicant contends, on the basis of the above Principle, that she should be "grand-fathered" in her previous salary level. She also contends that by freezing her salary the Bank would deny her a "fundamental element in Applicant's conditions of employment which the Bank does not have the right to change unilaterally," namely, the right as embodied in de Merode (Decision No. 1 [1981], para. 112) to benefit from "periodic adjustments reflecting changes in the cost of living and other factors."

40. In de Merode (Decision No. 1 [1981], paras. 111 and 112) the Tribunal found "that a consistent practice of periodic adjustment has been established, and that the Bank makes these adjustments out of the conviction that it is legally obliged to do so". The Tribunal concluded:

"...in consequence....the Bank is obliged to carry out periodic reviews of salaries, taking into account various relevant factors. the established practice, and statements confirming that practice, have created a legal obligation to make periodic adjustments reflecting changes in the cost of living and other factors. In the opinion of the Tribunal such an obligation is a fundamental element in the Applicant's conditions of employment which the Bank does not have the right to change unilaterally."

The Tribunal concludes that the freezing of the Applicant's salary, from September 30, 1987, would deprive her, without justifiable cause, of the right to benefit from periodic adjustments reflecting changes in the cost of living and other factors, which the Tribunal has found to be a fundamental element in the Applicant's conditions of employment which the Bank does not have the right to change unilaterally. This is not to suggest that a staff

member may under no circumstances have his or her grade reduced or salary frozen, for example, when this is done for cause as for disciplinary action. In the present case, however, the downgrading of the Applicant and her position was done not because of her misconduct but because of the organizational needs of the Bank; in such circumstance, the staff member is reasonably entitled to more equitable treatment, as appears to be contemplated by Staff Principle 5(1)f.

Decision:

For the above reasons the Tribunal unanimously decides that the decision of the Vice President, PA, of September 18, 1986 is rescinded so far as it does not provide for the payment to the Applicant, as from September 30, 1987 of the periodic salary review increases approved by the Respondent for staff members in grade 16.

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