

Decision No. 68

Robert Bradley Tucker,  
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 January 8, 1987, by Robert Bradley Tucker, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on July 22, 1987. On March 18, 1988 and March 25, 1988 respectively the Respondent and the Applicant filed additional statements.

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. For several years the Applicant served the Respondent as Documentation Officer in the Customer Services Division of the Information, Technology and Facilities Department, which recently became the Customer Services Center (CSC) of the Information Resource Management Department (IRMD). Prior to the grading exercise the Applicant's position was at level K, equivalent to grade 22 in the new grade structure.

4. On March 28, 1985 Evaluation Committee 3 on the basis of an individual position description written by the Applicant placed this position at grade 17.

5. On June 7, 1985 the Applicant's Assistant Director disagreed with the grade assigned to the Applicant's position, considering the content of the position in terms of know-how and problem-solving as compared with that of other positions in the department which had been graded higher. Noting that this position played a vital role in the editing and production of communication vehicles, the Assistant Director requested a change to grade 21 or grade 22.

6. Thereafter, Evaluation Committee 8 reviewed the Applicant's position based on the backup documentation provided by the Applicant's department and concluded that the position should be placed at grade 19.

7. On October 30, 1985, the Applicant received notice that his position was graded at level 19 and that because the salary range for grade 19 was lower than the salary range for his former grade K, he was entitled to salary protection for two years starting October 1, 1985.

8. On December 30, 1985, the Applicant filed a request for administrative review of the job grading decision, stating that the elements of his position were grossly undervalued or overlooked in formulating the evaluation rationale. He stated that this position was not solely an editing or a writing position, but a combination of product management and communications skills that required a deep and broad technical knowledge of several

disciplines; the grade 19 severely underestimated the required skills and their importance in the Bank's work; and the stated job grading objective of internal equity had not been met in the assessment of point values for know-how, accountability, human relations skills, or problem-solving requirements.

9. On February 24, 1986 review of the Applicant's position was completed by a representative of Committees 3 and 8, who noted in his recommendation that both committees had drawn a parallel between the functions of the Applicant's position and those of the position of Editor, Operations Policy Staff (OPS), which had been allocated to grade 19 and that the Applicant had not cited substantive factors which would change this parallelism. In particular he stated that the fact that the Applicant helped to set many of the precedents and standards was more of a performance measure than a criterion for job grading. Therefore, Committee 8 in the process of administrative review recommended that the grade of the Applicant's position remain unchanged at Grade 19.

10. On February 27, 1986 the Job Evaluation Unit (JEU) endorsed the conclusion of the Committee and on March 6, 1986 both the Applicant's Vice President and the Director, Compensation Department (COM) recorded their joint decision that the allocated grade be retained.

11. On March 12, 1986 the Applicant received written notification of the result of the administrative review of the job grading decision, and on April 8, 1986 he filed an appeal with the JGAB. His appeal was based on all three grounds set forth in Staff Rule 9.04. He requested the Board to recommend that his position be restored to "at least the equivalent of its former grade based on the required know-how and accountability" shown in the position description prepared for the job grading exercise.

12. On September 4, 1986 the JGAB concluded that it was unable to recommend that the decision to allocate grade 19 to the Appellant's position be changed.

13. On October 10, 1986 after the Vice President, Personnel and Administration (PA), had disqualified himself because of prior involvement in the case, the Vice President and Controller, informed the Applicant that he had accepted the Board's recommendation.

14. After the case had been listed, the Respondent filed an additional written statement informing the Tribunal that the Applicant had left the service of the Bank as a result of the reorganization after receiving the Enhanced Separation Package (Package B) of severance pay and benefits. The Applicant opposed the admissibility of the Respondent's statement.

#### The Applicant's main contentions:

15. The decision to downgrade the Applicant's position by three grades was arbitrary, being based on insufficient information and on an improper use of the grading methodology.

16. The grading committee 3 arbitrarily ignored the Applicant's original author role and leading role in the department's documentation work. Consequently, the allocation of grade was based on insufficient information and/or arbitrary omission of relevant information.

17. The allocation of an insufficient number of know-how points was the result of an arbitrary omission of the relevant fact that the position required simultaneous work in the disciplines of writing, editing, data processing and information resources management and not within only a single discipline as was stated in the evaluation rationale.

18. The grading committee failed to use the information available in the position description and arbitrarily assigned the position to the "standardized" rather than the "clearly defined" category. Most of the standardized aspects of the work content were established by the incumbent and were subject to continual review and revision by the incumbent.

19. The accountability of the position clearly is greater than is reflected in the points assigned by the committee, because the incumbent set many of the precedents and standards observed by an incumbent in the position and by others in the department engaged in producing technical documentation. The grading committee failed to use the information available in the position description and arbitrarily assigned it to Level D, "generally regulated".

20. The grading committee's misstatement in the rationale that management edits final articles written by the Applicant shows the committee's arbitrariness and prejudice. In fact department management does not edit the materials that are handled by the Applicant, but only reviews them for adherence to any recent policy or strategy changes that may not yet have reached department staff members.

21. The chairman of the grading committee, who also was at that time the assistant director for the other directorate in IRMD and who reviewed the Applicant's position description, made certain notations on a draft of the Applicant's position description which revealed a clear prejudice on his part in favor of a lesser role than the departmental role defined by the assistant director (Applicant's supervisor) for the directorate in which the Applicant worked. Consequently, the grading committee's gross under-evaluation of the accountability of the Applicant's position appears to have been unduly influenced by the views of the committee chairman.

22. In 1975, through the Respondent's previous grading system, the Applicant was promoted to level K on the basis of his professional capability and experience. By doing so, the Respondent changed the terms of employment of the Applicant and promised him a salary which it was obliged to retain for him. By freezing the Applicant's salary at its September 1987 level after the two-year "grandfathering" period, the Respondent has denied the Applicant the essential right embodied in de Merode 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.

23. 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 in de Merode to change non-essential conditions of employment. 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 his previous grade. The Respondent's decision to limit the grandfathering period to two years only was arbitrary, 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-a-vis other staff.

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

25. The Applicant requested the following relief:

(a) that the decision of the Vice President and Controller, accepting the JGAB recommendation to confirm grade 19 allocated to the Applicant's position, be rescinded; and

(b) that the Respondent make demonstrable efforts to place the Applicant in a grade 22 position before September 30, 1987.

#### The Respondent's main contentions:

26. 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.

27. The grading decision was not arbitrary. The evaluation procedure was scrupulously followed and the conclusion that the position functions merited allocation to grade 19 had the concurrence of all participants in the successive stages of the process, with the possible exception of the Applicant's Assistant Director.

Committee 8 had an objective criterion for its grading recommendation, viz., another position description in the Bank allocated to grade 19 was found to conform closely to the Applicant's position description. The perceived correspondence between the functions of the two positions led Committee 8 to adjust upward the total points that had been allocated to the Applicant's position by Committee 3. The Chairman of Committee 8 who was also the Assistant Director of the other directorate within the Applicant's Department did not unduly influence the other members of the Committee. All members of the committee approached their task objectively and independently, and reached their conclusion not merely by consensus but unanimously.

28. The grading decision was not based on insufficient information or misapplication of the grading methodology. The discrepancy between the Applicant's perception of the value of his position's duties and the perception of the grading committees does not compel the conclusion that the grading decision was based on insufficient information or that the methodology was misapplied.

29. 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 July 1971. Nor has there been a 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.

30. 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.

31. The two-year limitation on grandfathering is not arbitrary. To have extended to the Applicant indefinitely the benefit he 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.

32. 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.

33. The Respondent complied with the provisions of Staff Rule 5.06 in taking steps to assist the Applicant to secure a position graded 22.

34. 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:

35. Despite the lack of precision in the manner in which the Applicant has formulated his pleas and his claim for redress, the Tribunal identifies the following as the three remedies sought by the Applicant:

- (i) the rescission of the Bank's decision to grade the Applicant at Grade 19;
- (ii) the making by the Bank of demonstrable efforts to place the Applicant in a Grade 22 position before September 30, 1987;
- (iii) the replacement of the Bank's decision to limit the 'grandfathering' of the Applicant's salary at the Grade 22 level to the period ending on September 30, 1987 by a decision that the Applicant's salary should be 'grandfathered' at that level until such time as the maximum salary for Grade 19 shall have reached the level of the Applicant's Grade 22 salary on September 30, 1987.

36. The grounds in support of the first of these remedies are set out in paragraphs 15-22 above; those in support of the third of these remedies in paragraph 23. However, in the circumstances that have developed, it is unnecessary for the Tribunal to examine any of these matters.

37. Although the case was listed as ready for hearing on July 22, 1987, the Respondent on March 18, 1988 informed the Tribunal that the Applicant had left the service of the Bank on November 30, 1987, having received the Enhanced Separation Package (Package B) of severance pay and benefits. It follows that, apart from the relevance of any possible increase in the salaries of staff that might have become effective during the two-month period September 30-November 30, 1987, none of the remedies sought by the Applicant remains relevant. As to that two-month period following September 30, 1987, no salary review took place and consequently the Applicant did not incur any financial loss as a result of the expiration of the limited grandfathering period.

38. A copy of the Respondent's letter of March 18, 1988 was sent to counsel for the Respondent who, being unable to make contact with the Applicant, in a letter dated March 25, 1988, contended, by reference to the Rules of the Tribunal, that the letter should not be made part of the record. The Tribunal rejects this contention, bearing in mind particularly that under Article XIII of the Statute of the Tribunal it is the facts as known to the Tribunal at the date of the judgment that are material to its decision. Since the Tribunal is now aware of the fact that the Applicant has left the Bank's service, there is no point in giving effect to a purely formal objection to the admissibility of the Respondent's letter of March 18, 1988. The Tribunal has therefore made both the letters of March 18 and 25, 1988 part of the record.

39. In light of the above, the application has become moot.

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, November 7, 1988