

Decision No. 132

Donneve S. Rae (No. 2),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of A.K. Abul-Magd, President, E. Lauterpacht and R.A. Gorman, Vice Presidents, and F.K. Apaloo, F. Orrego Vicuña, Tun M. Suffian and P. Weil, Judges, has been seized of an application, received June 29, 1992, by Donneve S. Rae, against the International Bank for Reconstruction and Development. The Tribunal ordered the production of certain documents as preliminary measures. The usual exchange of pleadings took place. The case was listed on September 23, 1993.

The relevant facts:

2. On June 21, 1985, the Applicant was released from her duties as Editorial Assistant in the Education Division of the Latin America and Caribbean Projects Department (LAC) to serve for a two-year period as Chairperson of the World Bank Staff Association. She was given a reentry commitment to her Editorial Assistant position effective mid-1987. Because, by mid-1987, the Applicant's position in LAC had been abolished in the course of the Bank-wide Reorganization, she provisionally filled in at that time in the External Affairs Department (EXT) and in the fall of 1987 she became a candidate in round 2 of the Reorganization selection process.

3. On October 5, 1987, the Applicant signed a Selection Decision form accepting a position as Space Planning Assistant in the Facilities Projects Division of the Information Technology and Facilities Department (ITF). The position description attached to her Selection Decision form indicated that the Applicant would be engaged in space planning, office and industrial space design, the use of computer-assisted design, ergonomics and basic drafting.

4. Shortly before, the applicant's position was referred to the Job Evaluation Unit (JEU) for a grading decision. In the grading process, there were references to different grade levels as being appropriate, but finally by memorandum, dated October 5, 1987, the JEU advised the Applicant's Personnel Officer that level 17 was appropriate, and later the Grading Committee certified this decision as correct. By Personnel Action form, dated November 11, 1987, the Applicant was appointed to that position at level 17, in an appointment designated "regular".

5. In her performance reviews (PPRs) covering the period October 1987 into early 1990, the Applicant's supervisors gave her positive evaluations and commented upon the desirability of increased job responsibilities and training.

6. In the meantime, by memorandum, dated January 24, 1989, to the Vice President, Personnel, (VPP) the Applicant inquired whether her position in ITF was within the Temporary Assignment Program (TAP) – devised at the time of the Reorganization as a means of providing temporary appointments to secretarial-level positions – and was thus in fact not a regular position as her reentry commitment specified. By memorandum, dated August 3, 1990, the Director, ITF, informed the Applicant that "as of 1 July 1990 you are no longer in TAP status" and that the ITF had succeeded in placing her in a regular position.

7. By memorandum, dated November 1, 1990, to the VPP the Applicant once again expressed concerns about

her position. In his memorandum, dated December 20, 1990, to the Applicant the VPP stated that the status of the position held by her related to a budgeting issue and had no bearing on her employment status, and that she would continue to have "the security of employment associated with your Regular appointment". He also assured her that she would get the training she needed to succeed in her current position, and he suggested that she meet with the Chief Personnel Officer in early 1991.

8. On February 25, 1991, the Applicant filed an appeal with the Appeals Committee, in which she challenged the validity of the TAP status in which she had held her ITF since October 1987, as well as the alleged lack of promised training. After a hearing in January 1992, the Appeals Committee, in a decision filed on February 24, 1992, concluded that the TAP position was in fact regular in all respects other than in its funding arrangement, which had no consequence for the Applicant's treatment as a staff member. It also concluded that the on-the-job training given her by the Bank satisfied the Bank's obligations. The Committee therefore recommended that the Applicant's request for relief be denied, and this recommendation was accepted by the Vice President, East Asia and Pacific Region, on behalf of the Respondent.

9. During the pendency of her appeal to the Appeals Committee, the Applicant, by memorandum dated July 5, 1991, to the Director, ITF, gave notice of her resignation from the Bank effective August 5, 1991.

The Applicant's main contentions:

10. The Applicant was not treated within the Reorganization process in a manner which would have enabled her to elect to take either separation Package A or enhanced separation Package B, because she was purposely offered and selected to a position in the secretarial TAP without her knowledge, with the result that she was treated in a discriminatory manner.

11. The Respondent withheld from the Applicant knowledge of the true status of her employment for 33 months and even after she had inquired about such status, thus violating Principle of Staff Employment 2.1.

12. The Respondent did not, as it was obligated to do under the guidelines for the Reorganization, use the Applicant's skills as a technical writer for a position which was offered to a long-term consultant but chose instead to create for her a position of Space Planning Assistant for which she had absolutely no experience or qualifications.

13. In offering the Applicant a newly created position in ITF the Respondent violated Staff Rule 5.09 relating to the grading of positions. Her managers and the staff of the JEU showed bad faith in grading her position at level 17.

14. The Respondent failed to give the Applicant proper training for the position for which she was selected, although she was not formally qualified for the job.

15. The Applicant was subjected to unethical and abusive treatment in ITF until she left the service of the Bank or in order to lay the foundation for terminating her services for incompetence or improper conduct. The Respondent's conduct, precipitated by the Applicant's conduct as Chairperson of the Staff Association in connection with a strike in 1986, was arbitrary, frivolous and discriminatory, and showed a systematic abuse of authority and discretion.

16. The Respondent failed properly to implement the earlier remanded decision of the Tribunal with respect to the regrading of her position in LAC, and had no grounds to believe that the Applicant would not cooperate in such regrading.

17. The report of the Appeals Committee was erroneous and should be rescinded.

18. The Applicant makes the following pleas:

- (i) award of Package B pursuant to Staff Rule 5.09;
- (ii) payment of 33 months net salary as damages for the injury resulting from the following:
 - (a) the status of the Applicant's employment being clouded by the actions of the Respondent;
 - (b) the obtaining of the Applicant's services fraudulently;
 - (c) the investment of the Applicant's time wastefully in learning skills for a position that did not exist; and
 - (d) the subjection of the Applicant to an adverse and stressful work environment where she was not intended to succeed;
- (iii) 6 months salary in lieu of training referred to in the Applicant's Reorganization selection form but never provided;
- (iv) 6 months salary as compensation for the intangible injury caused by the Respondent's arbitrary, frivolous and discriminatory conduct resulting from the action taken by the Applicant as Chairperson of the Staff Association; and
- (v) grading, for the purposes of the record, of the Applicant's positions held before she left the service of the Bank at level 18, as a penalty for the Respondent's failure to implement the Tribunal's decision in Rae, Decision No. 74 [1988].

The Respondent's main contentions:

19. Although the Applicant had exhausted internal remedies relating to the denial of Package B resulting from her appointment to a Purchased TAP position, and the lack of training, she failed to exhaust such remedies concerning the grading of her position in ITF pursuant to Staff Rule 5.09, concerning the alleged pattern of abuse, and concerning the remand of her complaint about the grading of her job pursuant to the Tribunal's decision in Rae, Decision No. 74 [1988].

20. Because the Applicant was selected for a regular position as Space Planning Assistant in ITF in round 2 of the Reorganization process, she was ineligible for Package A or B under Staff Rule 5.09.

21. The Respondent made a good faith effort to place the Applicant in a position in which her skills could be utilized and to assist her in adjusting to that position. Either training was not necessary or the appropriate training was given. There was no legal obligation for the Respondent to do more.

22. There was no attempt to abolish the Applicant's position in ITF or to remove her from it. The Respondent thoroughly explored with the Applicant her concerns and offered her a range of viable options. There was no obligation to offer the Applicant Package B or other monetary compensation among those options.

Considerations:

23. The Applicant's principal contention is that the Respondent placed her in a position within the Temporary Assignment Program (TAP) in the course of Round 2 of the Bankwide Reorganization that was in fact provisional and impermanent, rather than regular and indefinite. This action by the Respondent, she claims, was taken without her knowledge, was intentionally concealed from her, created a cloud upon her employment status, and was purposely taken by the Respondent so as to deprive the Applicant of the economic benefits that would otherwise have accrued to her under the Enhanced Separation Package (Package B) available to staff members rendered redundant in the Reorganization.

24. After serving for a two-year term as Chairperson of the Staff Association, and then provisionally in the External Affairs Department, the Applicant in mid-1987 became a candidate in the Reorganization selection process. Round 2 of that selection process, in which the Applicant participated, was governed by Staff Rule 5.09, which provided in para. 7.06:

When Round 2 is concluded, staff who have not been offered a position at their current or a higher grade, and senior staff assistants, administrative secretaries, staff assistants and secretaries who have not been selected for a position at their current or a higher grade or have not been selected to join the TAP will be offered separation from the Bank on grounds of redundancy under the terms of the Enhanced Separation Package.

Thus, a staff member selected during Round 2 for a position at his or her current grade or a higher grade became ineligible for Package B. So too did secretarial staff who applied for and were selected into the TAP; these persons performed secretarial services for the Bank on temporary assignment for a maximum of 24 months, while remaining eligible to seek a permanent position.

25. In late August 1987, it became clear to the Respondent that most of the openings intended to be funded by the Bank for temporary secretarial TAP positions would not be filled. In a memorandum dated August 27, 1987 from the Vice President, Personnel, (VPPER) addressed to the Senior Vice Presidential Units (SVPUs), the VPPER referred to and adopted a recommendation contained in an earlier memorandum which stated:

Since it is unlikely that many of the 142 TAP positions will be filled, we recommend that 70 positions be made available by the VPPER to SVPU's for support level positions, including both secretarial and non-secretarial. The allocation would be made on the condition that the position would be filled by someone from the Round 2 roster. The position authorization would bring with it the 25% of the salary budget which had been allocated to TAP. The remainder would be funded from existing VPU budgets, which already included an allowance for TAP use.

This program became known as the "Purchased-TAP" or PTAP program and was an integral part of the Round 2 selection process.

26. The purpose of the PTAP program was to encourage Vice-Presidential Units (VPU) to retain skilled staff members within the Bank. Unlike TAP positions, which were for a maximum duration of 24 months, PTAP positions were not stated to be temporary. PTAP funding – 25% of total salary and benefits from centralized funds of the Bank, and 75% from the appropriate VPU – was used to support staff members in regular appointments of indefinite duration. So long as the staff member selected in Round 2 held the PTAP position, the shared funding arrangement would obtain; once the incumbent gave up the position or transferred elsewhere, the PTAP position and its shared funding were to disappear.

27. The Applicant was selected in Round 2 for a level 17 position as Space Planning Assistant in ITF in early October 1987. She was not informed that hers was a position funded through the PTAP program.

28. On February 24, 1989, after consulting with the Ombudsman, the Applicant wrote to the VPPER:

Recently, I learned that the position I was offered and accepted during the Reorganization (in lieu of the regular position specified in the re-entry commitment, which the Bank could not then make available) is not, in fact, a regular position. It apparently belongs to the Temporary Assignment Program. Having not been informed of this at the time I accepted the position, I now seek your confirmation that this information is correct.

If this is the case, the terms of the re-entry commitment have not been fulfilled and the job offer made at the time of the Reorganization was not bona fide.

Although the VPPER never responded directly to the Applicant's memorandum, the Applicant acknowledges that the VPPER "sent the ITF Personnel Officer to assure [the Applicant] that the 'position' was in all respects regular." The Head of ITF Facilities conveyed similar assurances.

29. In September 1990, acting pursuant to a recently announced Bank policy, ITF exercised its right to "buy out" the Applicant's position and to assume full responsibility for funding its salary and benefits, thus

discontinuing the Bank's 25% subsidy thereof; the position could thereafter be kept within the department and was no longer contingent on the Applicant remaining there. This departmental "purchase" precipitated a two-sentence memorandum to the Applicant, dated August 3, 1990, from the ITF Director (ITFDR):

I am pleased to inform you that as of 1 July 1990 you are no longer in TAP status. The ITF Department has succeeded in making arrangements to place you in a regular position.

Because no other explanation was given, the Applicant construed the August 3 memorandum to mean that she had not previously been in a Regular position but rather in a position, like those within the secretarial TAP, that was of limited duration.

30. The Applicant promptly arranged to meet with the Vice President, Personnel and Administration (VPPAA), who assured her that her position was and had been in every respect Regular, and that the reference in the August 3 memorandum of the ITFDR concerned simply the mechanics of funding her compensation. He reiterated that position in a memorandum to the Applicant, dated December 20, 1990:

I appreciate your coming to see me about the concerns you have regarding your employment status. I understand that these were brought to the fore by the notice that you received last August to the effect that you were no longer in TAP status. I would like to repeat the assurance that I gave you when we met that this notice related only to a position budgeting issue, which applied to a number of positions in PAA after the reorganization. It has no bearing on your employment status, and you have had, and continue to have, the security of employment associated with your Regular appointment. I believe the August notice was intended to reassure you that a budgetary uncertainty had been removed, but I understand how it might have had the opposite effect from your perspective. Also, being an internal budgetary matter, this notice was unnecessary. However, if you wish to pursue this more formally, you are free to do so using this memorandum as the effective date.

The VPPAA also assured the Applicant of his intention to assist her either in getting further training for her present position or in returning to her work as an editor inside or outside the Bank.

31. At the suggestion of the VPPAA, the Applicant met with the Chief Personnel Officer, who reiterated that the Applicant's position in ITF had always been Regular and that the memorandum of August 3, 1990 merely provided information about the budgetary aspects of her position. The Chief Personnel Officer also explored with the Applicant the possibility of transferring elsewhere within the Bank in order to increase her job satisfaction. The Applicant, however, asserted that she was entitled to Package B, and soon after she so asserted in her appeal to the Appeals Committee. The Applicant resigned from the Bank effective August 5, 1991.

32. In her appeal to the Appeals Committee and in her pleadings before the Tribunal, the Applicant claims that her position as a Space Planning Assistant, held by her from October 1987, was not regular and indefinite but was rather – like secretarial TAP positions – temporary and provisional. She asserts that her job status was thus "clouded" and was in effect probationary only. She also asserts that the Respondent's purpose in assigning her to such an impermanent position in Round 2 of the Reorganization was surreptitiously to deprive her of the right she otherwise would have had – had she been given no position and been thus rendered redundant – to substantial benefits in the form of the Enhanced Separation Package, or Package B. She claims that the same discriminatory purpose motivated the Respondent in artificially grading her Space Planning Assistant position at level 17, for had it been graded any lower, she would have been entitled to decline it and to leave the Bank with Package B.

33. In the Tribunal's view these allegations are unsupported in the record.

34. There is no evidence that the Applicant's PTAP status as a Space Planning Assistant in ITF in any way affected her salary, her benefits, her term of service, her eligibility for promotion, or any other matter directly affecting her conditions of employment. Although the Applicant claims that her appointment was only

temporary, the Tribunal finds that her employment status beginning in October 1987 was indeed that of a staff member on a Regular appointment.

35. In the Applicant's Personnel Action Forms prepared by the Respondent in November 1987, again in May 1988, and subsequently as well, her type of appointment was listed as Regular. Staff Rule 4. 01, para. 2. 01 (a), defines a Regular appointment as "a full-time appointment of indefinite duration." For all that the Applicant could determine from her working conditions, she indeed held a Regular appointment. Indeed, this was the impression held by her supervisors and fellow staff members in ITF. There is therefore no basis for the Applicant's contention that her employment status was "clouded."

36. It was in fact only two documents – a computerized report from the Personnel Management Information System, which the Applicant "came across" in late 1988, and the August 3, 1990 letter from the ITF Director – that gave rise to the Applicant's concern about the apparent impermanence of her position. On both occasions, the Applicant was given unequivocal assurances by her supervisors that her position was on all accounts Regular and permanent. Indeed the Vice President, PAA, explicitly and at length gave such an assurance; he stated that her earlier PTAP status "has no bearing on your employment status," that "you have had, and continue to have, the security of employment associated with your Regular appointment," and that the August 3 notice, because relating to "an internal budgetary matter," was "unnecessary." Given the repetition of these assurances from authoritative sources within the Bank between 1989 and 1991, the Tribunal concludes that it was unreasonable for the Applicant to have doubted them.

37. Further weighty proof of the regularity and permanence of the Applicant's appointment as Space Planning Assistant is the fact that, had her position been assimilated to those in the secretarial TAP program, it would have been for a maximum duration of 24 months; it would thus have expired in October 1989. Yet the Applicant was kept in that position, and given the usual evaluations and salary increase for another ten months when, in August 1990, she was informed by the ITF Director that she was no longer in TAP status. The fact that the passing of the 24-month period of service did not result in her termination or in any irregular employment treatment confirms that the Applicant's position was Regular and that the reference to the TAP was meant to relate only to the shared funding, internal to the Bank, of her salary and benefits.

38. Indeed, in an important respect, the circumstances of the PTAP program gave the Applicant as a practical matter more assurance of continuity of employment than she would otherwise have had. A position that was financed pursuant to the PTAP program lasted only so long as the designated staff member remained with his or her VPU; transfer, resignation or retirement would cause the VPU to lose that job slot. The Applicant herself has acknowledged that, had she known of her PTAP status, she would have had "leverage" over her VPU that an ordinary staff member would not have had.

39. The Applicant appears to claim that the manner in which the various constituent departments of the Bank contributed to her salary and benefits was of importance to her and should have been told to her. The Tribunal finds that, so long as the Applicant was paid regularly and was entitled to such, it is not a "condition of employment" that her Vice Presidential Unit paid 75% (and a centralized Bank fund paid the other 25%) rather than 100%.

40. The Applicant raises several other claims relating to the positions held by her both before and after the Bank-wide Reorganization of 1987. She asserts that her position as Editorial Assistant – held by her before the Reorganization and at the time she assumed her position as Chairperson of the Staff Association – should not have been eliminated in the course of the Reorganization and that in any event she could have been selected to a similar position in Round 2. As to the former contention, the Applicant requested as a preliminary measure that the Respondent produce certain documents, but the Tribunal refused so to order. This claim arose in 1987 and cannot be presented to the Tribunal at this time, both because of the long delay in its assertion and because of the Applicant's failure to seek timely administrative review and to exhaust administrative remedies at the time, as required by Article II, para. 2 of the Statute of the Tribunal. That provision states:

No....application shall be admissible, except under exceptional circumstances as decided by the Tribunal,

unless: (i) the Applicant has exhausted all other remedies available within the Bank Group.... ; and (ii) the application is filed within ninety days after the latest of the following: (a) the occurrence of the event giving rise to the application [or] (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted....

41. Also inadmissible, for the same reasons, are the Applicant's claims that the position of Space Planning Assistant, to which she was selected in October 1987 in Round 2 of the Reorganization, was improperly graded at level 17. At times, she claims that the position was fabricated for her and graded as high as 17, as a means of keeping her within the Bank so as to avoid payment to her of the Enhanced Separation Package, although the position was devoid of content. This is belied, however, by the tenor of her periodic performance reviews and by her continuing requests for additional training to enhance her qualifications for the job. At other times, the Applicant claims that her position after the Reorganization was demanding enough to have been graded at level 20; she asserts that her grade was illicitly reduced so that her position could be retained within the secretarial TAP and she would thus be ineligible for the Enhanced Separation Package. These contentions are obviously directly inconsistent with one another, and neither appears to be sustained by the record.

42. More to the point, the Bank has made available to all staff members who sought to challenge the soundness of their job grading a procedure for administrative review that would have brought their case to the Job Grading Appeals Board. The Applicant failed to invoke such administrative review in a timely manner after October 1987, and she is therefore barred by Article II, para. 2, of the Statute of the Administrative Tribunal from presenting this issue to the Tribunal many years later. The wisdom of requiring exhaustion of such internal administrative remedies is evidenced in this very case, where the Applicant seeks to have the Tribunal assess ab initio the fairness of the level 17 grade of the Applicant's position as Staff Planning Assistant, without the benefit of the kind of full evidentiary record, and prior informed review, that would have been assured had the case been presented in good time to the Job Grading Appeals Board.

43. The Applicant also challenges other conduct of the Respondent toward her, including what she claims to be abusive treatment having its point of origin in a 1986 work stoppage while she was Chairperson of the Staff Association, and the Respondent's alleged failure to comply with the Tribunal's decision in an earlier case involving the grading of her pre-Reorganization position in LAC. Here too, these claims are not properly before the Tribunal.

44. The Respondent's alleged wrongdoing, beginning in 1986, was not challenged in a timely manner through administrative review culminating in a proceeding before the Appeals Committee.

45. As regards any challenge to the Respondent's alleged failure to comply with the Tribunal's decision in Decision No. 74 [1988], this must also satisfy the requirements of Article II, paragraph 2 of the Statute before it may be brought before the Tribunal. A decision of the Tribunal, properly viewed, becomes a term of the affected staff member's employment, and a claim of noncompliance, absent exceptional circumstances, can be presented to the Tribunal only if internal administrative remedies have been exhausted and a timely application filed. Because the Applicant's claim of noncompliance with Decision No. 74 [1988] rests on an exchange of communications between her and the Respondent in early 1990, and because no exceptional circumstances exist here that would relieve the Applicant of the need to file a timely application after exhausting administrative remedies – and neither has been done – her contentions regarding Decision No. 74 [1988], raised in her application here in June 1992, are inadmissible.

46. The only other contention of the Applicant that is properly before the Tribunal relates to the Respondent's alleged failure to provide her with promised training for her position as Space Planning Assistant. In the Applicant's selection decision form of October 1987, and in each of her PPRs from early 1988 through early 1990, her supervisors acknowledged the importance of such training and stated that it should be forthcoming. In fact, very little such training was provided, at least through formal programs apart from on-the-job training.

47. The Appeals Committee found no breach of the Respondent's obligations, concluding that those obligations

were satisfied by the Applicant's on-the-job opportunities and experiences. But the PPRs clearly contemplate more than that. The Respondent contends that such training was difficult to provide. But there was a unit within the Bank specifically devoted to arranging for such training, and the Respondent had some three years in which to make such arrangements. There is no evidence in the record that it did so.

48. There has, however, been a comparable lack of proof that the Applicant exercised initiative to identify such training opportunities herself, or that she was in any event tangibly injured by the Bank's failure. Her performance evaluations were positive; moreover, she was eager initially to transfer to another position involving greater use of her editorial skills, and thereafter to leave the Bank's employ altogether to undertake other professional pursuits (preferably with the Enhanced Separation Package). However, the Applicant sustained at least some intangible injury on account of the Respondent's failure to provide promised training. The Tribunal therefore concludes that, under the circumstances, appropriate recompense for that injury is the Respondent's payment to the Applicant of \$10,000.

Decision:

For these reasons, the Tribunal unanimously decides that:

- (i) the Respondent shall pay the Applicant compensation in the amount of \$10,000; and
- (ii) all other pleas are dismissed.

A. K. Abul-Magd

/S/ A. K. Abul-Magd
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington, D.C., December 10, 1993