

Decision No. 31

Helia Esther Rossini,
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 M. Suffian, Judges, has been seized of an application, received May 27, 1986, by Helia Esther Rossini against the International Bank for Reconstruction and Development. The Tribunal decided that oral proceedings requested were unnecessary and should not be ordered. After the usual exchange of pleadings, the case was listed on February 27, 1987.

The relevant facts:

2. By letter dated July 29, 1984, the Applicant was offered a regular appointment on a probationary basis as a Secretary, Level D, in the Southern Agriculture Division (SAD) of the Eastern and Southern Africa Projects Department (ESAPD). She commenced her employment on August 13, 1984 and promptly entered upon a specific orientation and training program.

3. The Applicant met with her Division Chief on September 10, 1984, in order to review her progress in fitting in to her position in SAD. Performance difficulties were discussed and, as reflected in a memorandum to files dated September 18, 1984 from her Division Chief, it was agreed that the Applicant would (i) discuss her recent concerns with both the Administrative Secretary and the two Project Officers; (ii) routinely discuss and plan her work priorities with her immediate supervisors, to assure that expectations were clearly understood; and (iii) review with her immediate supervisors and the Division Chief within approximately one month how her work was progressing, whether her expectations and those of her supervisors were being reasonably satisfied, and whether this was proving to be "a job fit" satisfactory to her and the Division. Soon after this meeting specific terms of reference for the Applicant's position were communicated to her.

4. In January 1985 the Applicant met with her Personnel Assistant to discuss general matters of concern. By memorandum dated March 27, 1985, the Applicant's Division Chief sent to her Personnel Officer an Interim Evaluation (IPE). Performance defects were cited, specifically regarding speed of typing and proof-reading, seeking and accepting guidance, follow through and organization of work and the Applicant's working as part of a team. The Applicant was warned that "her performance thus far has not been satisfactory to meet the standard to confirm her appointment" and that a final assessment would be made at the end of April.

5. On March 29, 1985 and April 2, 1985, the Applicant met with her Personnel Assistant to discuss the IPE. The Division Chief had a follow-up discussion with the Applicant on April 3, 1985, and reviewed specific performance deficiencies. At this discussion the Applicant stated that the problems cited in the IPE were isolated events or mere allegations. The Division Chief agreed to extend the date for the Applicant's final evaluation to mid-May 1985.

6. By memorandum dated May 23, 1985 the Applicant's Division Chief advised her that she had not "demonstrated satisfactorily your suitability for a secretarial position" in SAD and that she was not being recommended for confirmation in the division. At the same time he recommended to PMD that the Applicant's employment with the division be terminated as of July 31, 1985.

7. Subsequently the Applicant requested reassignment to another unit but by memorandum dated June 7, 1985, she was informed by her Personnel Officer that it was the judgment of the Personnel Management Department (PMD) that she lacked the technical skills generally required of a Bank secretary and that her appointment would be terminated effective June 30, 1985. This date was extended to August 30, 1985. Requests by the Applicant for further extensions were refused.

8. On September 13, 1985, the Applicant filed an appeal with the Appeals Committee. The Appeals Committee concluded that the Applicant's performance had been unsatisfactory and failed to show improvement during her probationary period so that the decision to terminate her appointment was properly taken. However, the Appeals Committee also concluded that:

[H]aving regard to (a) the conduct of PMD in not giving the Appellant the needed counselling and support and (b) the inadequate MICOM [word-processing] training provided Appellant for her assignment, the Committee feels that this is an appropriate case where the Bank should award the Appellant a certain amount of compensation.

It was recommended that the Applicant be paid a sum equivalent to six months salary.

9. The Acting Vice President, Personnel and Administration (PA), informed the Applicant by letter dated February 21, 1986, that he accepted the recommendations of the Appeals Committee.

The Applicant's main contentions:

10. The Respondent failed to provide the Applicant with a fair opportunity to demonstrate her abilities.

11. The Applicant was not provided with the same guidance and training provided to other probationary employees, because (i) she was not given the proper training in word processing skills, (ii) she was not provided with formal orientation by the Respondent, (iii) she was not provided with a copy of the Secretary's Guide and Personnel Manual until six months after she had entered employment, and (iv) her in-office orientation was inadequate.

12. The Respondent failed to provide adequate performance feedback as required by Personnel Manual Statement (PMS) 4.02.

13. The Applicant's failure in performance was the result of her being assigned to excessively difficult and demanding supervisors.

14. The Respondent's discretionary power not to confirm the Applicant's probationary appointment was abused because of its failure to carry out its obligations.

15. The Applicant sought more than the six months' salary paid her as compensation by the Respondent, namely

(i) expunging from the files of PMD statements referring to her unsatisfactory performance or appending to her records an official statement from the Tribunal that she had been unfairly evaluated and that her records did not accurately reflect her performance;

(ii) payment of salary from the date after her services were terminated to the date of the Tribunal's decision;

(iii) reinstatement in another division; and

(iv) reasonable attorney's fees for the preparation of her case before the Tribunal.

The Respondent's main contentions:

16. The Applicant was provided with adequate training and guidance as a probationary employee with secretarial experience. She had failed to benefit from the guidance and training given her, especially because she was not amenable to correction and instruction.

17. The Respondent did not fail to provide adequate performance feedback and, therefore, did not violate the provisions of PMS 4.02.

18. The Respondent did not abuse its discretionary power in not confirming the Applicant's appointment.

Considerations:

19. The issue before the Tribunal in this case is whether the Respondent failed to observe the provisions of the contract of employment or the terms of appointment of the Applicant by refusing to confirm her at the end of her probation and by terminating her employment as of June 30, 1985.

20. According to the Applicant, such non-observance occurred as a result of the Respondent's failure to provide her with:

- (i) the training and guidance required by the PMD's and the Bank's practice;
- (ii) adequate feedback on her performance; and
- (iii) reassignment to another post within the Bank.

21. There is ample evidence in the record of this case that the Applicant's performance was never judged as satisfactory by her various supervisors and that several areas of difficulties were identified early in her short career with the Respondent. Moreover, the Applicant in this case does not contest that the termination of her service was indeed based on unsatisfactory service. She only contends that it was caused by the unsatisfactory training and feedback provided to her by the Respondent.

22. It is the established principle followed by the Tribunal that it respects the discretionary power of the management in judging the performance of employees and that it does not substitute its own judgment in this respect for that of the Respondent. In the particular case of probationary employment the Tribunal held in Salle (Decision No. 10, 1982) that:

It is of the essence of probation that the organization be vested with the power both to define its own needs, requirements and interests, and to decide whether, judging by the staff member's performance during the probationary period, he does or does not qualify for permanent Bank employment. These determinations necessarily lie within the responsibility and discretion of the Respondent, as the Tribunal has found in the Buranavanichkit case (Decision No. 7).

The Tribunal, therefore, will not review the merits of the Respondent's decision to terminate the Applicant's employment for unsatisfactory performance unless there is an allegation of abuse of discretion.

23. To dispose of the Applicant's contentions the Tribunal must answer the following two questions:

- (a) Did the Respondent meet the requirements of providing the Applicant with adequate training and guidance, on the one hand, and adequate feedback on the other?
- (b) Did the Respondent violate any of the conditions of employment of the Applicant by refusing to reassign her to a different post within the Bank?

24. The record reveals certain inadequacies in the Respondent's discharge of its obligation to provide the Applicant with training, guidance and feedback regarding her performance. The controlling PMS in this respect is PMS 4.02 which states in paragraph 5 that:

During the staff member's period of probation, supervisors are expected to evaluate the staff member's performance every six months in accordance with the procedures outlined in Personnel Manual Statement No. 4.01, Staff Evaluation, Annex B. These formal evaluations are in addition to the special supervision and ongoing coaching given by supervisors to staff members on probation.

Paragraph 11 of the same Statement states that:

Immediate supervisors are responsible for helping a new staff member to adapt to the environment of the Bank and to undertake successfully work assignments that will enable both the staff member and the Bank to judge during the probationary period whether the employment and placement have been appropriate.

As was stated in Salle:

The observance of the probationer's conditions of employment is all the more imperative since the period of probation is a difficult one for the staff member in terms both of adjustment to the Bank's needs and policies and because of the inherent insecurity of the situation. (Salle, Decision No. 10, 1982).

25. One of the basic rights of an employee on probation is the right to receive adequate guidance and training. The record of this case shows that much of the criticism regarding the Applicant's performance was related to her skills in using a certain type of word processor, namely the MICOM equipment. However, all the training with which the Respondent provided the Applicant was a two day introductory course on the MICOM 2002 word processing system which the Applicant attended in her own time. Even after the Applicant's deficiency in using that system became apparent, the Respondent provided her with a refresher course of only two more days in May, 1985, too late to remedy the Applicant's weakness in this respect. The Respondent's contention that at the time of her candidacy for employment the Applicant represented that she was proficient with the MICOM equipment is outweighed by the fact that the Applicant's lack of familiarity with the MICOM equipment was identified by her supervisors at an early stage of her employment and that no adequate training was provided to the Applicant except for the two-day refresher course.

26. The inadequacy of the training and guidance provided to the Applicant before evaluating her performance extended to areas other than the ability to use the MICOM system. The Applicant's complaints about her problems of fitting into the division were simply registered and recognized but the record does not reveal any specific measures taken by the Respondent to help the Applicant overcome those problems. The record shows that there was some lack of communication within the Bank on the Applicant's problem. One example of such lack of communication is the fact that after his first meeting with the Applicant, which took place at her request on September 10, 1984 to review her progress, the Division Chief did not meet with her till April 3, 1985, only two months before the termination of her service.

27. The Tribunal finds the above shortcomings in providing the Applicant with adequate training and guidance to be violative of her rights as an employee on probation, a violation for which she is entitled to compensation. They are not, however, of a gravity to warrant the vitiation of the Respondent's decision to terminate the employment of the Applicant. This is more so in view of the fact that the termination of service was based on several deficiencies and lack of skills other than those related to her ability to use the MICOM system.

28. The Applicant's second main complaint is that she did not get adequate feedback on her performance and that at one point she was even given confusing signals by the Respondent. She contends that she was never made aware of the gravity of her problems prior to the IPE of March 27, 1985, i.e., three months before her termination, and that at a meeting with her Personnel Assistant the latter gave her a misleading signal about her performance by talking about her future in the Bank. The Tribunal recognizes the importance of feedback and the right of a probationary employee to be warned about his shortcomings so that he has an opportunity to

correct them.

29. The record of the case, however, does not substantiate either contention of the Applicant. As early as September 10, 1984, the Applicant met with her Division Chief, and the problems she was having in adjusting to the work atmosphere within the Division were discussed at length. What took place at that meeting was a mixture of orientation, coaching and feedback. It was too early at the stage to provide the Applicant with formal feedback on her performance. Moreover, the Applicant got continual though not formal feedback from her supervisors and particularly from the administrative secretary of the division. In January 1985 the Applicant met with her Personnel Assistant and her problems were again discussed at length. There was mention of the Applicant's technical difficulties, and the impossibility of reassigning her outside the division while she was on probation. The signal by the Personnel Assistant, described as confusing by the Applicant, was apparently given within a different context. When the Applicant spoke at length about her previous employment and how she had been successful there, the Personnel Assistant assured her that if she remained motivated, focused on improving her technical skills and quality of work output, there was no reason why she could not have a successful career with the Bank. The Tribunal can hardly read that statement as a wrong signal obscuring the fact that the Applicant was encountering serious difficulties with her performance.

30. The Tribunal notes, however, that the first formal feedback on the Applicant's performance, namely the IPE, was made and conveyed to the Applicant seven and a half months after her appointment, whereas PMS 4.02, paragraph 1, stipulates that "during the staff member's period of probation, supervisors are expected to evaluate the staff member's performance every six months in accordance with the procedures outlined in Personnel Manual Statement No. 4.01." The delay in effecting the IPE left the Applicant a short period to try to improve her performance and remedy the weaknesses identified in the IPE. However, this slight delay is not enough ground to substantiate the Applicant's contention that she did not get adequate feedback on her performance as required by PMS 4.02.

31. The Respondent's rejection of the Applicant's request for reassignment to a new position within the Bank does not violate a right of the Applicant under her contract of employment or terms of appointment. An employee under probation does not have a legal right to be reassigned. The decision to reassign an employee during his probationary period rests with the administrative divisions. In the present case it was the Respondent's judgment that the Applicant's deficiencies were of a kind which rendered her unqualified generally for secretarial work at the Bank. The judgment, after a year's experience, cannot be contested on the basis of the PMD Recruiter Report or of the previous successful performance by the Applicant under different circumstances and in the service of a different employer.

32. The Tribunal concludes that aside from the inadequacy of the training on the MICOM system provided for the Applicant and the delay in providing her with timely formal feedback, the Applicant was treated in a fair manner and in conformity with the requirements of due process. However, since the shortcomings referred to in paragraphs 25 to 27 above may have contributed to the unsatisfactory performance of the Applicant, the Applicant should be compensated for that damage. Because the Respondent, in light of the Appeals Committee's recommendations, has granted the Applicant compensation equal to six months net salary, and because the Tribunal concludes that this compensation is adequate, no further order is required.

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, May 21, 1987