

Decision No. 5

Mohammad Saberi,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, T. O. Elias, P. Weil, Vice-Presidents, A. K. Abul-Magd, R. Gorman, N. Kumarayya and E. Lauterpacht, Members, has been seized of a complaint, received on January 22, 1981 by Mr. Mohammad Saberi against the International Bank for Reconstruction and Development. The Respondent requested, and was granted, an extension of time to file its Answer, and did file its Answer on March 5, 1981. The Applicant requested, and was granted, an extension of time to submit his Observations on the Answer of Respondent, and did submit his Observations on May 13, 1981. The case was listed on October 20, 1981.

The relevant facts:

1. The Applicant, an Iranian national, was first employed on a temporary appointment as a Control Clerk in the Controller's Department as of June 9, 1972. On September 12, 1972, the Applicant accepted an offer of a regular appointment to the staff as a Control Clerk in the Controller's Department. Effective July 1, 1973, the Applicant was transferred to the local Accounting Control Unit of the Controller's Department and on January 1, 1974 his title was changed from Control Clerk to Accounting Control Assistant. In May 1974, he received his Bachelor of Business Administration degree from Howard University.

2. During the Applicant's first four years of employment his performance was good. On July 1, 1976, he was promoted to Junior Accountant, level "I", and was transferred from the Control Unit to the Accounting Unit of the Controller's Department. In the Anniversary Evaluation Review (AER) covering the period September 1976 through September 1977, the Applicant's performance was rated as fully satisfactory. However, the Chief of the Accounting Division noted: "Educationally Mr. Saberi is one of our better qualified Junior Accountants and when he joined us one year ago, we expected him to exhibit the same drive in relation to his work as he has exhibited in pursuing his studies. This has not materialized ..."

3. The Applicant requested and was given leave without pay from February through July 1978. Upon his return he was transferred from the Operational Accounting Section to the Finance Section of the Controller's Department. The AER for the period September 1977 through September 1978 indicates that his performance had deteriorated substantially. In January 1978, he received one-half of the norm merit increase in the yearly merit review. The evaluations from his two supervisors during the period indicate that he required an undue amount of supervision and that both the quantity and quality of his work were not satisfactory. The Applicant's next-in-line supervisor rated his performance as poor and significantly below that of others performing similar functions.

4. As a result of the negative performance evaluation of the period ending in August 1978, the Deputy Director of the Department ordered a six months' reevaluation. During this period the Applicant's supervisor gave him special training and supervision. He received a zero merit increase in the yearly merit review on January 1, 1979 and in February 1979 his supervisors reported that his performance remained poor and unacceptable, and they requested his reassignment out of the Department. In June 1979, the Personnel Management Department (PMD) met with the Applicant and his Personnel Officer to discuss his performance problems and his future employment in the Bank. The PMD was of the view that reassignment was unlikely due to the

Applicant's poor performance record. He was advised that he should prove himself in his current position before seeking reassignment.

5. The Applicant's AER for the period September 1978 through August 1979 indicates that his supervisors gave him new duties and exercised closer supervision in order to give him greater opportunity to improve, but he did not. The evaluation for the period shows that the volume and quality of his work continued to be unsatisfactory and that he required continuous supervision.

6. In August 1979, the Director, PMD, met with the Applicant to discuss his performance evaluations and the possible termination of his employment. The Director, PMD, arranged for one last chance and at the end of August, the Applicant was put on a special program of supervision and training. Weekly reviews and evaluation of his performance were made which were reported to his Department, to PMD and to the Applicant himself. This special program continued through December 1979 and the results confirmed that his performance was not satisfactory and that it was unlikely to improve. In January 1980, he again received a zero merit increase in the yearly merit review.

7. On March 18, 1980 the Applicant was formally notified in writing of the termination of his employment and of the conditions and provisions for his leaving the service of the World Bank. He remained in work status through April 30, 1980. He was given an amount equivalent to five months' salary as a termination payment.

8. On April 7, 1980, the Applicant filed an Appeal with the Appeals Committee of the World Bank. After an oral hearing with presentation of evidence and testimony from witnesses, the Appeals Committee issued its report and recommendations on October 20, 1980.

9. The Appeals Committee found that the decision to terminate the Applicant's employment was taken on the basis of his documented performance record from 1977 through 1979, that he had been given several transfers and opportunities to establish himself satisfactorily in different work units, and that his performance weaknesses were of the kind that could easily be corrected. The Appeals Committee also found that his performance weaknesses made him unacceptable at any level anywhere within the World Bank and that the World Bank had no further obligation to continue to employ the Applicant, whose performance was persistently below acceptable standards as evidenced by reasoned assessments of his supervisors over a period of years. The Appeals Committee unanimously recommended that the decision to terminate his employment be upheld. This decision was confirmed by the Vice-President, Administration, Organization and Personnel (AOP), who, on October 24, 1980, informed the Applicant that his employment was to be considered terminated as of that date.

The Applicant's main contentions:

10. The decision to terminate his employment was improper.

11. The Respondent failed to observe the Applicant's contract of employment or terms of appointment by failing to take account of the problems faced by the Applicant in coping with his responsibilities subsequent to his promotion to the "I" level. The Applicant's performance prior to his promotion was fully satisfactory. The Respondent should have questioned the wisdom of the promotion and eventually should have proposed a demotion to his former grade or should have transferred him to another Department as was recommended by his supervisors in their evaluation reports.

12. The Respondent failed to observe the Applicant's contract of employment or terms of appointment in the termination procedure by denying him the benefits provided by the Memorandum dated September 22, 1972, which was precipitated by the reorganization of the Bank.

13. The notice of termination failed to give specific reasons for the Respondent's decision and the notice period was too short to enable the Applicant to cope with the numerous problems arising from his expatriate status, from his nationality and from the existing relations between the Iranian and the United States governments.

14. The Respondent failed to retain the Applicant as an employee with full rights until he had exhausted all appeal processes provided by the Bank.

15. Finally, the Applicant was victimized by the lack of a clear termination policy.

16. In view of the foregoing the Applicant seeks to be reinstated in the employment of the World Bank or compensated with 3 years net salary in lieu thereof.

The Respondent's main contentions:

17. The decision to terminate the Applicant's employment for unsatisfactory services was a proper exercise of the Respondent's discretionary authority and none of the decisions or actions complained of by the Applicant constituted in any manner non-observance of the contract of employment or terms of appointment. The termination notice and payments upon termination were more generous than required under the applicable regulations and rules in force at the time. The Applicant has failed to show that the Respondent abused its discretionary authority and, therefore, he is not entitled to any compensation.

18. The Applicant's educational background fully qualified him for the position he was holding. Moreover, he was given extraordinary instruction, counselling, training, and supervision in order to help him with his responsibilities. He was assigned to different duties under different supervisors and was given ample opportunity to improve his performance. However, his performance problems were due to his lack of dependability, indifference to work, poor punctuality, poor attendance and follow through on assignments, and his outside activities. Consequently, given the nature of his shortcomings, he was unacceptable on any level anywhere within the World Bank. The Respondent breached no duty to the Applicant by not assigning him to another Department. The Applicant's employment was terminated for continued unsatisfactory performance for more than two years of service. He failed to show that the Respondent had any duty to provide him with another position and that failure to do so violated his contract of employment or the terms of his appointment.

19. The memorandum dated September 22, 1972 applied only to terminations of employment resulting from the World Bank reorganization which occurred in 1972, and was irrelevant in the present case. The Respondent's current policy with respect to termination for unsatisfactory performance is contained in Administrative Manual Statement (AMS) No. 1.08.

20. The Respondent did not take any action which would force the Applicant to move out of the country while the appeal was pending. The Applicant remained on special leave with full salary until the Vice-President (AOP) notified him that the Appeals Committee's findings and recommendations had been accepted, although Personnel Manual Statement (PMS) No. 7.01, paragraph 19, provides that the filing of an appeal with the Appeals Committee shall not have the effect of suspending the Bank's action.

21. The Applicant was given six weeks' notice, five additional months of special leave with full pay, plus an additional 24 days of special leave with full pay. He thus had a total of seven months from the time he was notified of the termination of his employment until such termination was actually effected, to make alternative arrangements for himself and his family.

Considerations:

22. The central issue before the Tribunal in this case is whether the Respondent has violated the contract of employment or terms of appointment of the Applicant by improperly terminating his employment for unsatisfactory performance and by making arrangements for this termination which in the Applicant's estimation fell short of those to which he was entitled under regulations and practice in force at the time of the termination.

23. The Tribunal cannot find in the record of this case anything that would substantiate the Applicant's contention that the decision to terminate his employment was "improper". Although the memorandum, dated March 18, 1980, conveying to the Applicant the decision to terminate his employment did not specify the

reason for dismissal, it referred to discussions in June 1979 which the Applicant had with two officials of PMD during which he was informed of the likelihood of termination and the reasons therefor. Throughout his seven years of employment, the Applicant was kept on notice of various annual reports evaluating his performance. He was also furnished with seven special weekly reports prepared by two of his supervisors during a "last chance" period given to him from September 10, 1979 to December 7, 1979. It was on the basis of these reports that the decision to terminate the Applicant's employment was taken. These reports are not general statements judging his overall performance. Rather, they contain a specific itemized description and evaluation of his performance.

24. The determination whether a staff member's performance is unsatisfactory is a matter within the Respondent's discretion. The Administration's appraisal in that respect is final, unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

25. In the record of this case the Tribunal finds nothing that amounts to an abuse of discretion. The decision to terminate is based on a heavily documented record of unsatisfactory performance. The evaluation had been made by several people from different work units.

26. The Applicant alleges that the Respondent's failure to take into account the problems he started to encounter as a result of his promotion amounts to a non-observance of the Applicant's contract of employment. The record, however, contains ample evidence that the Applicant was given extraordinary counselling and training to help him cope with the responsibility of his new position. Moreover, the shortcomings of his performance that eventually led to the termination of his employment were not of a type related to the kind of responsibility assigned to him after his promotion. Rather they related to punctuality, attendance and dedication to his duties with the Bank. The Respondent, moreover, is under no obligation to demote a staff member and try him anew at a lower level before terminating his employment.

27. The Applicant alleges that failure on the part of the Respondent to give him an opportunity to serve in another Department in the Bank makes his dismissal improper. He invokes in this respect PMS No. 4.04 on Staff Reassignment issued in June 1976. The main objective of this PMS is to "promote increased effectiveness in the job" by fostering "cross-fertilization of experience". One of the essential criteria for reassignment under PMS No. 4.04 is that the staff member be "qualified for the position for which he wishes to be considered" and that "the transfer is in accord with the interest of the Bank." That PMS does not concern itself with staff members on the verge of being dismissed for unsatisfactory performance. Nor does it make a staff member's request for reassignment, or suggestions to that effect by his supervisors, binding upon the Administration. That is particularly true when, as in this case, these supervisors' suggestions are based upon their conviction that the staff member's continued work in his department is inadequate and is not serving the interests of the Bank.

28. As regards the reference by the Applicant to his entitlement to a continuation of his G IV visa status so as to enable him to remain in the United States until the exhaustion of all appeal procedures provided by the Bank, it is necessary to recall that G IV visa status is a consequence only of employment with the Bank and that there is no entitlement to it once that period of employment has ended. In so far as the presence of the Applicant is required in the United States to enable him to pursue his appeal, this is a matter for which special arrangements can no doubt be made, if the necessity is established.

29. The Applicant alleges that the arrangements for his separation are not in conformity with the Memorandum and Policy Statement of September 22, 1972. That memorandum, he alleges, forms part of the Applicant's terms of employment. The Respondent insists that Administrative Manual Statement (AMS) No. 1.08 "was, at all material times in this case, and remains the applicable and definitive statement of the grounds for termination of staff and the entitlements resulting therefrom", and that the Memorandum of September 22, 1972 related only to termination resulting from the reorganization in 1972. In trying to identify the pertinent regulations and rules in force at the time of the alleged non-observance of the staff member's contract of employment or terms of appointment, the Tribunal observes that in the Respondent's Personnel Manual there is a reference to

Statement No. 6.00 on "Termination of Employment (to be issued)".

30. Notwithstanding the Respondent's assertion that AMS No. 1.08 was and remains the applicable and definitive statement of the grounds for termination, and that the memorandum of 1972 does not apply in this case, the Respondent implicitly recognizes the insufficiency of AMS No. 1.08 and the desirability of issuing new regulations on termination as PMS No. 6.00. Pending the adoption of such new regulations the Respondent has developed "flexible guidelines to assist Personnel Officers in setting termination payments in specific cases". One source of these guidelines has, in fact, been the Statement of September 22, 1972. The Tribunal observes that the method followed by the Respondent by resorting to different and flexible guidelines, including the Statement of September 22, 1972, introduces an element of uncertainty among staff members as to the rules and regulations governing termination. Nothing in the record of this case, however, substantiates an allegation that the Respondent has used its discretion to apply the guidelines complementing AMS No. 1.08 in a manner discriminating against the Applicant. The termination notice to the Applicant and the payments made to him by the Respondent on termination were in fact more generous than those prescribed by AMS No. 1.08.

31. The Tribunal concludes that by terminating the employment of the Applicant for unsatisfactory performance and by arranging for such termination in the manner discussed above the Respondent has not violated the contract of employment or terms of appointment of the Applicant.

Decision

For these reasons, the Tribunal unanimously decides that the Application be rejected.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C.F. Amerasinghe
Executive Secretary

At The Hague, November 27, 1981