

Decision No. 57

Iona Sebastian (No. 2),
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 November 18, 1986, by Iona Sebastian against the International Bank for Reconstruction and Development. The Tribunal rejected the Applicant's request for discovery of certain documents and for the hearing of witnesses. The usual exchange of pleadings took place. The Applicant filed an additional statement which the President made part of the record. The case was listed on July 20, 1987.

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 facts of the case

3. For several years the Applicant served the Respondent as Sector Economist/Project Officer at level L, first in one of the two Transportation Divisions in the Projects Department of the Europe, Middle East and North Africa (EMENA) Region and, since the merger of the two divisions, in the combined division. During the four years preceding the evaluation of her position in the Job Grading Program, the Applicant had, among other things, participated in several appraisal missions and project identification missions, written project briefs, sometimes led project identification, preparation, preappraisal and appraisal missions, participated in loan negotiations, held sector policy and strategy discussions in Morocco, given lectures at the request of the Ministry of Public Works in Morocco and been consulted personally for professional advice by the Minister of Public Works in Morocco.

4. The Applicant's position was evaluated by matching it to generic criteria for the positions of Project Officers. The outcome of the job-grading exercise was that the Applicant's position was evaluated as PRJ-D with a grade 23 assigned to it. The criteria for the position of Project Officer at this grade required that:

Incumbent regularly leads missions of significant difficulty, OR participates in missions as technical expert in a specialized area.

Discusses and negotiates project related policy and procedural issues with member country officials.

When leading missions, works independently on assigned projects and proposes solutions to difficult problems. On problems of unusual difficulty, seeks advice or second opinion from more senior staff or Division Chief.

When participating as a technical specialist, receives general guidance from Division Chief and Mission leader, except in area of specialization where incumbent provides expert technical advice.

5. The Applicant, pursuant to Staff Rule 9.04, filed for administrative review of the grading decision. In the course of this review the Applicant's job was considered in relation to the generic evaluation criteria for PRJ-C with a grade 24. These criteria were:

Incumbent regularly leads the complex appraisal missions, OR regularly leads complex sector missions.

Incumbent serves as a technical authority in his discipline.

Provides guidance and coaching to less experienced colleagues.

Understands and meets needs of an interdisciplinary project team.

Discusses and negotiates sensitive and delicate policy issues with member country officials.

Incumbent works under general guidance on the most complex projects; devises/recommends solutions to significantly difficult problems.

The reviewing committee concluded that several of the criteria for PRJ-C (grade 24) were not fully met in the case of the Applicant. It stated that:

a) she does not lead regularly the complex appraisal or sector missions, and it is indeed questionable whether the one appraisal mission she led (Morocco Port) can be classified as "complex";

b) she does not serve as a technical authority among her peers in the Bank, although she has given lectures and professional advice in the field, and provides comments within her discipline on papers originating from within and outside her division and on CPPs –which is expected of a grade 23 staff;

c) she provides guidance and coaching only when leading missions, which is expected of a mission leader at grade 23;

d) she does not work on the most complex projects under only general guidance, and does not devise/recommend solutions to significantly difficult problems, except possibly in the case of the Morocco PERL.

Consequently the committee recommended that the original decision be confirmed. The Job Evaluation Unit (JEU) endorsed the conclusion of the committee. Acting on the recommendation of the JEU, the Director, Compensation Department (COM), and the Applicant's Vice President recorded their joint decision that the allocated grade be retained.

6. On March 28, 1986, the Applicant, arguing that the evaluation of her position and work content was based on arbitrary and discriminatory factors, filed an appeal with the Job Grading Appeals Board (JGAB), requesting that grade level 24 be assigned to her position. On August 27, 1986, the Board found that:

(a) The mere perception by the Appellant that persons whose positions were graded at levels higher than her own were no more deserving of such higher grades could not, in the Panel's view, be a relevant consideration in determining whether or not the Appellant's position was appropriately evaluated and graded.

(b) The evaluation of the Appellant's position was not based on arbitrary and discriminatory factors.

(c) The evaluation criteria for PRJ-C (Grade 24) had not been met with respect to the Appellant's position contrary to the Appellant's perception of the situation.

Accordingly, the Board recommended the confirmation of the evaluation of the Applicant's position at grade 23.

7. On September 22, 1986, the Vice President, Personnel and Administration (PA), informed the Applicant that he had accepted the Board's recommendation.

The Applicant's main contentions:

8. The Applicant was discriminated against because, while her position was graded level 23, some of her male colleagues who performed similar functions had their positions graded at level 24.
9. The Applicant was discriminated against, because her immediate supervisor had poor judgment and did not evaluate her responsibilities and functions in an objective way.
10. The grading criteria for PRJ-C with a grade level 24 had many vague concepts, leaving room for the exercise of a wide discretion and judgment. This was a violation of Staff Principle 6.2(b). Further, the concepts used were unacceptable, because they left it largely to the manager, by defining and assigning functions, to permit or not staff members to meet the criteria. The result was that the assignment of grade level 23 to the Applicant's position was arbitrary.
11. The review process expanded and finessed requirements, so that requirements not inherent in the original definition of functions and responsibilities for grade level 24 were subsequently included.
12. The statistics showed that the Respondent discriminated against women in employment. The Applicant's treatment was a result of this general discrimination whether based on personal revenge or on a negative attitude to women in general. Consequently, the Respondent should prove that the assignment of grade level 23 to the Applicant's position was not motivated by discriminatory factors.
13. The Applicant's pleas were that:
 - (a) the recommendation of the JGAB, assigning grade level 23 to her position, as confirmed by the Vice President (PA), be rescinded;
 - (b) all Anniversary Evaluation Reports (AERs) and ambiguities in her personnel file for the period 1981 to 1985 directly relating to or arising out of the tenure of her Division Chief at the time be expurgated.

The Respondent's main contentions:

14. The classification of Bank positions called for the exercise of judgment and, therefore, should be characterized as the exercise of administrative discretion. Hence, a job grading decision should be annulled by the Tribunal only if it constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.
15. There was no discriminatory treatment in the evaluation of the Applicant's position. The grade of the Applicant's position resulted from the evaluation of its content by a number of supervisors as well as other persons and entities. The evaluation was reviewed administratively and by the JGAB and there is nothing in the record to support the contention that the evaluation was based on anything but the job content or that the methodology was improperly applied.
16. The generic criteria were adequate to meet the standard of Staff Principle 6.2 (b). Inherent in the nature of the Program was the requirement of judgment on the part of those responsible for evaluating positions. The generic criteria for the major occupational streams were constructed in as objective and detailed a manner as possible so as to contain the scope of the necessary judgments to be made between different levels of difficulty and responsibility.
17. The concepts used were not too vague, so that managers did not generally act arbitrarily in allowing or not staff members to meet the criteria for a given level. Nor did they withhold assignments so as deliberately to restrain advancement of staff members.
18. During both the original evaluation and at the time of administrative review the generic criteria were

properly and consistently applied. In the course of the administrative review they were not expanded beyond what was applicable in the original evaluation.

19. It was the established policy of the Respondent to ensure participation of women at all levels, as was conceded by the Applicant, and there was no general pattern in the Bank of "holding back women," as the Applicant's own job history demonstrates. The statistics did not show that the Respondent discriminated against women in employment. The burden of proving the absence of discrimination was not upon the Respondent, since it was for the Tribunal to decide in the light of the evidence made available to it whether the Applicant's conditions of employment had, or had not, been observed. On the evidence the contentions of the Applicant have not been sustained.

Considerations:

20. The Applicant contends that the Respondent's grading mechanism as applied to her case resulted in non-observance of her contract of appointment and conditions of employment. Said non-observance, according to the Applicant, resulted from the facts that:

- (a) the generic criteria for the PRJ-C with a grade level 24 as applied to the Applicant did not meet the requirements of Staff Principle 6.2(b);
- (b) the review process of the grading decision expanded the requirements for grade level 24, by adding to them some new ones not originally enumerated in the criteria;
- (c) the Applicant was discriminated against by her immediate supervisors in a way that eventually reflected negatively on the grading of her position.

The Tribunal will examine each of the three above-mentioned contentions.

21. Staff Principle 6.2(b) directs the Respondent to "institute and maintain programs of systematic job evaluation, the purpose of which is to grade jobs according to their purpose, function, and level of responsibility so as to provide a sound and equitable basis for the remuneration of staff members". The Applicant contends that the generic evaluation criteria for PRJ-C (grade 24) do not meet the standard of objectivity and fairness required by Staff Principle 6.2(b). According to her each element of the criteria leaves wide room for discretion and judgment, and hence for abuse by managers. In particular, she contends that the inclusion of terms and expressions like 'regular', 'technical authority', 'sensitive' and 'general guidance' etc. introduces such vague criteria for evaluating jobs that the standard of Staff Principle 6.2(b) is not satisfied.

22. The Tribunal does not agree with the Applicant's criticism of the generic criteria for grade 24. The discretion given to the grading individuals and committees under the mechanism established and applied by the Respondent does not differ in nature or scope from the discretion possessed by management in other areas relating to the conditions of employment. In all cases of discretion, unless otherwise proven, it is assumed that the administrative authority will exercise its discretion in an objective and non-discriminatory manner. The very fact of allowing the grading and reviewing bodies a wide range of discretion does not by itself invalidate the scheme. It is the exercise of discretion by individuals and committees in particular cases that may be challenged and criticized. Such an exercise can be invalidated only if it is shown that there has been an abuse of discretion, 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).

23. Nor does the Tribunal agree with the Applicant's contention that the grading mechanism does not meet the requirements of Staff Principle 6.2(b) because it leaves a certain degree of discretion in applying the requirements of that Staff Principle. All that Staff Principle 6.2(b) requires is the establishment and maintenance of programs of systematic job evaluation, and that such programs should provide a sound and equitable basis for remuneration of staff members. Staff Principle 6.2(b) does not tie the hands of management in selecting the mechanism of grading, nor does it require such mechanism to set out mechanical rules and criteria for evaluation. Any process of evaluation necessarily involves a degree of discretion on the part of the individuals

in charge of the evaluation.

24. The Applicant contends that, by virtue of certain elements of the criteria, managers may influence the determination of whether the staff member meets the criteria or not, by assigning to or withholding from the staff member those tasks required for a promotion to a higher grade. The Tribunal notes that this possibility is inherent in any system of hierarchy and supervision within the employment unit. For the staff member the safeguard lies in the possibility of administrative and judicial review to determine whether there has been an abuse of discretion.

25. The Tribunal observes that in the particular case of the Applicant no such withholding of assignment took place. The Applicant admits that since 1978 she was continuously assigned the leadership function of “complex, new type projects in sectors or operations that were never before tried in the Bank”.

26. The Tribunal, therefore, concludes that the generic evaluation criteria for PRJ-C (grade 24) did not fall short of meeting the standard required by Staff Principle 6.2(b).

27. The Tribunal turns next to the Applicant’s second criticism of the grading process, namely, that the reviewing managers took liberty to “finesse” and expand some of the elements of the criteria, thus applying to the Applicant amended and sometimes distorted criteria. The Tribunal agrees with the general principle that managers implementing the mechanism of grading should limit themselves to applying the general criteria to the particular concrete cases. They have no power to amend and expand them when applying them to individual cases. However, the requirements for a certain level or position within the Respondent’s hierarchy cannot – by necessity – be completely different from those required for a job of the same nature but of a higher level or grade. The difference may simply be one of degree. In applying the criteria both the grading bodies and those who review the grading may need to interpret certain elements common to two different levels in a somewhat different manner that would be more demanding when applied to the higher grade or level.

28. It appears from a careful reading of the document entitled “Generic Functions of Project Officers (Project Economist, Financial Analyst and Technical Specialist)” that the framers were aware of the impossibility of laying down completely different criteria for jobs of the same nature, though of different levels. The opening statement of that document declares that:

“[T]he majority of Project Officers perform these functions within their area of assigned responsibility and expertise. Positions, however, will vary in the extent to which these responsibilities are carried out.”

29. Moreover, the examples given by the Applicant of such “finessing” of the criteria in the reviewing process do not substantiate the contention that the reviewing bodies were in fact amending or expanding the requirements. They were rather applying them within the reasonable limits of interpretation and with a view to establishing a higher level of fulfillment of certain elements of the criteria for a higher level position.

30. The Applicant finally alleges discrimination in the process of grading her position. She alleges discrimination based on sex, and lack of fairness in evaluating her performance, on the part of her first Division Chief where evaluation of her performance and the tasks she was carrying out constituted the point of departure for subsequent evaluations by the various grading and grading reviewing bodies.

31. In grading the position of the Applicant, and subsequently in reviewing that grading, the Respondent did not confine itself to the assessment of the Division Chief whose attitude and evaluation of the Applicant’s performance were the subject of the Applicant’s complaint. In the course of the administrative review the Matching Committee conferred with the Applicant herself as well as with her present and former supervisors.

32. Moreover, the disagreement between the Applicant and her previous Division Chief related mainly to the evaluation of the Applicant’s performance and her work attitudes. The grading committees did not concern themselves with the actual performance of the Applicant. They concerned themselves exclusively with finding out whether the assignments and tasks carried out by the Applicant in her position met the criteria for grading

her position as 24 or 23.

33. In the judgment of the grading and reviewing committees, as well as in the judgment of the JGAB, the Applicant did not meet all the components of the criteria for a grade 24. The record does not substantiate the Applicant's contention that in grading her position as a 23 grade position anything other than the officially established criteria had been taken into account.

34. Discrimination against the Applicant cannot be proven by the mere presentation of general statistics purporting to show that as a class the women employees of the Bank are not treated as well as male employees. The issue before the Tribunal is whether the Applicant in this case has been subjected to discrimination or arbitrary and unfair treatment, a contention that the Applicant could not substantiate.

35. In the judgment of all the grading and reviewing individuals and committees the Applicant did not meet the criteria required for grading her position at level 24. There being no proven abuse of discretion on the part of the Respondent its decision to grade the Applicant's position at level 23 should stand.

Decision:

For the above 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 Washington, D.C., May 26, 1988