

Decision No. 77

Gerald L.E. Spier,
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, R. A. Gorman, E. Lauterpacht, C. D. Onyeama and Tun Suffian, Judges, has been seized of an application, received January 18, 1987 by Gerald Leslie Eugen Spier against the International Bank for Reconstruction and Development. After the Respondent filed its answer the Applicant requested that he be permitted to withdraw the application but later asked that he be permitted to proceed with the case on the basis of amended pleadings. The Tribunal ordered that the case proceed. After the exchange of further pleadings the case was listed on March 2, 1989.

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. The Applicant held the position of Procurement Adviser (Services) in the Bank. As a result of the Job Grading exercise, his position was graded at level 24 by matching to generic criteria; Grade 24 was the equivalent of the grade accorded his position prior to the exercise. After the Applicant unsuccessfully sought administrative review of his grade, he lodged an appeal on March 28, 1986 with the Job Grading Appeals Board (JGAB), asserting that the allocation of grade was based on insufficient and inaccurate information, and requesting that the position be allocated Grade 25. After the Respondent submitted its Answer to the JGAB, the Applicant on August 15, 1986 submitted comments to that Answer which were, apparently by inadvertence, not transmitted to the Respondent. On September 4, the JGAB delivered to the Vice President, Personnel and Administration (PA), its report, which referred to the Applicant's comments, and recommended that his position be graded at level 25.

4. By memorandum dated January 16, 1987, the Vice President, PA, drew the attention of the JGAB to the fact that the Respondent's representative before the Board had no opportunity to respond to the Applicant's comments and requested that the JGAB make them available and reopen the proceedings in order to consider any response that the Respondent might make.

5. By memorandum dated March 12, 1987, the Respondent's representative commented to the JGAB on the Applicant's comments of the previous August 15. The Applicant received a copy of the Respondent's comments, and submitted responsive comments of his own on March 26. By memorandum dated April 13, 1987, the JGAB responded to the Vice President, PA. The Board noted that it had given further consideration to the Applicant's appeal and had consulted an outside expert on the grading methodology, and it stated its conclusion that there was some question whether the grading methodology had been correctly applied to the Applicant's position, but that there was as yet no basis for a recommendation concerning the appropriate grade. The JGAB recommended that the Respondent conduct a full job audit.

6. The Vice President, by letter of April 20, 1987, informed the Applicant that he accepted this recommendation, and requested the Applicant to prepare a full job description for ultimate review by the JGAB, adding that the staff of the Job Evaluation Unit (JEU) would soon be contacting the Applicant. Although the JEU thereafter provided the Applicant with the documentation necessary to initiate such a job audit, the Applicant did not submit the requested job description.

7. Instead, the Applicant filed an application with the Tribunal, charging defects in procedure and violations of due process in the conduct of the JGAB proceedings. The Applicant asked the Tribunal to reinstate the initial recommendation of the JGAB that his position be graded at level 25 and he requested that he be given a level-25 position or comparable separation benefits.

8. Subsequently, the Applicant voluntarily separated from the Bank in the context of the Bank reorganization, and accepted an Enhanced Separation Package (Package A). Pursuant to a release provision in his separation agreement, the Applicant withdrew his application to the Tribunal, without objection from the Respondent. After the decision of the Tribunal in Harrison (Decision No. 53 [1987]), and before the Tribunal had taken a decision on his request for withdrawal, the Applicant on January 29, 1988, requested that his case be allowed to proceed upon amended pleadings in light of the Tribunal's ruling in Harrison that the release of claims required of staff members leaving the Bank with Package A or B was invalid. The Tribunal decided the instant case should be allowed to proceed to a decision and ordered the exchange of further pleadings.

The Applicant's main contentions:

9. The original recommendation of the JGAB – that the Applicant's position be graded at level 25 – was correct. There was no serious irregularity of procedure in the failure of the Board to communicate the Applicant's comments to the Respondent, because, even if those comments had been communicated, the JGAB need not have asked the Respondent to reply. In any event, there is good reason to believe that the recommendation would have been identical to the one at first actually made.

10. There was a denial of due process in that the Vice President, PA, improperly sent the case back to the JGAB with a request to receive a reply from the Respondent to the Applicant's comments, and in that the JGAB reopened the case. There is no provision for such procedure in the Staff Rules, and Staff Rule 9.04, para. 19, in fact denies the JGAB the power to reopen its proceedings after the filing of its report.

11. The second recommendation was tainted for other reasons as well: the use by the JGAB of a Hay expert to assist in its decision, the fact that the recommendation was not impartial, and the unreasonable delay which would have prejudiced the Applicant had he acceded to the recommendation to cooperate in a job audit in a late stage of the reorganization.

12. The Tribunal's ruling in Harrison – providing a setoff against any compensatory remedy by virtue of the acceptance of separation package A – is not applicable here. Unlike that case, the Applicant here complains of an injury that did not originate in the reorganization but had preexisted it by virtue of improper grading of his previous position.

13. As a result of his position not being properly graded at level 25, the Applicant's salary at separation from the Bank was lower than it should have been. Consequently, the sum he received under Package A was considerably less than it should have been. That sum might have been higher yet, because had he held a level 25 position and been forced out of the Bank's service he would have been entitled to the more generous Package B.

14. By virtue of his separation from the Bank, the Applicant has amended his pleas to request the following remedy: that he be compensated with the difference between the sum he would have received had he taken Package B, calculated as if at the time of separation he had been serving in a position appropriately graded at level 25 under the first recommendation of the JGAB, and the sum that he actually received.

The Respondent's main contentions:

15. There has been no violation of the Applicant's contract of employment or terms of appointment. The request by the Vice President, PA, to the JGAB to reopen its proceedings on account of the failure to furnish the Respondent with the Applicant's comments upon the answer, was reasonable. The determination of the JGAB to reopen the proceeding to receive comments by the Respondent and further comments by the Applicant was equitable and within the powers of the JGAB.

16. There was no injury caused the Applicant by the recommendation of the JGAB that the Applicant provide a position description with a view toward a completely new job audit. This was in accord with proper procedures, was reasonable and was not biased.

17. Even if there has been a violation of the Applicant's contract of employment or terms of appointment, the Applicant has failed to demonstrate that he is entitled to compensation under the ruling in Harrison, which applies to this case. That ruling provides that compensation is properly awarded only if the Applicant's entitlement to compensation is demonstrably in excess of the contractual increment received by him upon separation beyond the pay and benefits ordinarily payable under Staff Rule 7.01. The Applicant has failed to make such a demonstration. His claim is based on the unwarranted hypotheses that he would have been in Grade 25 and receiving a much higher salary at the time of severance, and that he would have been entitled to Package B by virtue of having been forced out of the Bank's service.

Considerations:

18. The Applicant contends that the position he held at the Bank at the time of the Job Grading Exercise, Procurement Adviser (Services), was improperly graded at level 24 rather than level 25. He rests his claim on the initial recommendation of the JGAB to the Vice President, PA, and on the fact that the second JGAB recommendation – that the Applicant submit to a complete job audit – was based on a defective procedure. The alleged defect is the reopening of the proceeding by the JGAB pursuant to a request by the Vice President, PA, who learned that the Respondent had not been furnished with a copy of the Applicant's earlier comments upon the Respondent's answer.

19. The Tribunal does not believe that the reopening by the JGAB was in excess of its powers or that it deprived the Applicant of due process. It was reasonable for the Vice President, PA, to request a reopening and an opportunity to respond to the Applicant's earlier comments. Staff Rule 9.04 announces rules for appeals to the Job Grading Appeals Board. Paragraph 2(a) of that Rule provides: "The Secretary [to the Board] shall be responsible for transmitting copies of documents related to an appeal to the Appellant and the Respondent (the parties) and to members of the Board designated by the Chairman to act as the panel for an appeal (the Panel) and shall keep a record of documents so transmitted." Paragraph 12 provides: "In the event that the Panel accepts jurisdiction to entertain the appeal, the Secretary shall ... ensure that the parties have received copies of all documents and evidence considered by the Panel to be of possible relevance to the appeal..." Apparently by oversight, the Secretary neglected to send to the Respondent the Applicant's comments upon the answer. This obviously disadvantaged the Respondent, which learned of the untransmitted comments only upon examination of the initial report of the JGAB.

20. The Vice President was reasonable in concluding that the failure to transmit the Applicant's comments – in contravention of Staff Rule 9.04 – placed it at a disadvantage and may have affected the recommendation of the JGAB that the Applicant's position should be graded at level 25 rather than level 24. The Board was equally reasonable in exercising its discretion to reopen the proceeding in order to receive further comments from the Respondent.

21. Staff Rule 9.04, para. 4, provides: "At any stage of the proceedings, the Panel may... (d) suspend, terminate or otherwise dispose of the appeal as it considers appropriate in the circumstances; ... (f) on its own initiative or, on the request of a party, call upon any person to file within a specified time limit any document

related to the appeal.” These provisions appear to contemplate flexibility and discretion on the part of the JGAB in conducting the appeal, as is consistent with its function in rendering informed recommendations to the Vice President, PA. It is true that Staff Rule 9.04 contains an express provision dealing with reopening, and that this provision, in para. 19, expressly authorizes reopening of proceedings “prior to submitting a Report ... in exceptional circumstances.” But the Tribunal does not read this paragraph to negate the inherent power of the JGAB to reopen a proceeding in order to correct a potentially serious miscarriage of justice, in this case the receipt by the JGAB of comments from the Applicant in what was, albeit inadvertently, essentially an ex parte manner.

22. In any event, the Tribunal concludes that the reopening of the proceeding by the JGAB caused no injury to the Applicant. When the Respondent on March 12, 1987 filed its comments in response to those filed earlier by the Applicant, the Board forwarded a copy of the Respondent’s comments to the Applicant and afforded the Applicant an opportunity to respond to them. He in fact did respond, on March 26, by filing additional comments that were directed to the merits of his job grading claim and interposed no challenge to the propriety of the Board’s reopening. This put the Applicant in the position he would have been in had the proceedings of the JGAB been initially conducted in conformity with those of its rules that provided for the timely forwarding of the Applicant’s pleadings to the Respondent. Furthermore, certain of the Respondent’s comments filed on March 12, 1987 and received by the JGAB were ruled by the Board to be irrelevant and inconsistent with other evidence in the JGAB record.

23. The Applicant contends that the Vice President, PA, rather than requesting that the JGAB reopen its proceedings, could have simply decided to ignore the Board’s initial recommendation and to confirm the grading of the Applicant’s position at level 24. This, however, would have been a far more injurious disposition of the Applicant’s case than that which actually resulted from the challenged reopening – i.e., a decision by the Vice President to authorize a new job audit, which might possibly have resulted in the allocation of Grade 25 to the Applicant’s position. The Applicant’s suggested alternative to reopening of the JGAB proceedings would have forced the Vice President, PA, to make a decision adverse to the Applicant in circumstances in which the Vice President genuinely wished to have greater pertinent information to illuminate his judgment on the grading question. It would also no doubt have induced the Applicant to challenge this adverse decision before the Tribunal on a record that even the JGAB acknowledged was inadequate for an informed determination on the question of job grading, and protracted even further the resolution of the Applicant’s claim.

24. The Tribunal does not intend to suggest that the proper recourse for the Vice President, PA, in dealing with JGAB recommendations with which he does not agree, is to request or induce the Board to reopen its proceedings. It is the function of the JGAB to investigate, report and recommend, and it is the function of the Vice President, PA, to make effective job grading decisions, subject to the possibility of judicial review by the Tribunal. Under the circumstances of this case, however, the conduct of the JGAB and of the Vice President, PA, was reasonable, within their powers, and caused no injury to the Applicant and was therefore not a violation of the Applicant’s contract of employment or terms of appointment.

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 Washington, D.C., May 5, 1989