

Decision No. 84

Maysoon Abbass Sukkar,  
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 Suffian, Judges, has been seized of an application, received February 15, 1989, by Maysoon Abbass Sukkar, against the International Bank for Reconstruction and Development. The Tribunal rejected the Applicant's request for production of certain documents. The usual exchange of pleadings took place. The case was listed on August 11, 1989.

The relevant facts:

(a) The Reorganization

2. The general facts relating to the 1987 Reorganization are as stated in paragraphs 5 to 40 of Decision No. 40.

(b) The particular facts of the case

3. The Applicant joined the Bank on November 10, 1969 as a Clerk Typist and until September 30, 1987, the date of the termination of her employment, she served the Respondent in several departments successively as Secretary, Administrative Secretary, Administrative Assistant and ultimately as Operations Assistant in the East Asia and Pacific Country Programs Department.

4. On the occasion of her Anniversary Evaluation Report (AER) for 1979/80, the Applicant expressed her interest in formal training supported by the Bank. This idea was endorsed by her supervisors in the then Programs Division D of the East Asia and Pacific Region. With the endorsement of her Department Director, upon the Applicant's request, the Applicant's appointment with the Respondent was converted to part-time status from September 1, 1982 to December 31, 1983. The Bank authorized the Applicant to complete a Bachelor of Science Degree in Economics at American University, on the basis that her studies would be beneficial both to the Bank and her, and the Bank committed itself to reimburse the Applicant three-fourths of her tuition and to authorize an interest-free salary advance of up to three months' net pay.

5. On September 23, 1983 the Applicant in her 1982-83 AER expressed the desire to further pursue her studies at the graduate level. Her supervisors endorsed her request and on November 12, 1984 in a memorandum to her Division Chief the Applicant wrote a detailed proposal for an external training program to pursue a Master's degree full-time with financial support from the Bank, stating that her ultimate goal was to qualify for a position of Project Economist or Operations Officer. On September 23, 1985 the Chief, Staff Training Division of the Personnel Management Department (PMD), confirmed to the Applicant the approval of a long-term study program to undertake full-time studies toward a Master of Arts degree at the School of Advanced International Studies (SAIS) at Johns Hopkins University.

6. On September 25, 1985 the Applicant accepted a proposed agreement which set out the obligations of the parties. The Applicant's study program was to be pursued from September 1, 1985 through May 31, 1986 and during that period the Applicant would continue to work for the Bank 12 hours per week while the Bank would

pay her 80% of her salary as well as for all tuition, fees and books. The Applicant's obligations under the agreement were that she would bear all costs other than those assumed by the Respondent in connection with the study program and that she would serve the Bank for at least three years upon completion of her studies; should she leave the Bank within three years for any reason, the Applicant would be required to repay the Respondent a pro-rated portion of the cost incurred by the Respondent in support of her study program.

7. During the processing of the Applicant's request for the study program her supervisors as well as the involved Training Specialists in the PMD clearly stated that the proposed training was aimed at qualifying the Applicant to perform better the work of an Operations Assistant which she currently was. Furthermore, they stated that there was no implicit commitment to or encouragement of the Applicant's promotion on their part, and that she was to benefit from further training in economics and finance in order to increase her capacities in the operational area and make a greater contribution to her work unit within the context of her Operations Assistant position.

8. In May 1986 the Applicant obtained her master's degree in International Public Policy. In August 1986 the Applicant enrolled at her own expense for a Master of Arts degree in Economics at American University. The Bank paid the tuition expenses for specific courses that were relevant to the Applicant's work. In the fall of 1986 the Applicant returned to full time work status with the Bank.

9. During the 1987 Reorganization the Applicant was considered for positions in the Bank. Like all the staff in the Asia Region, the Applicant was invited to express her preferences for assignment. She indicated her preference for a position in a Sector Division, either in a Country Department or a Technical Department.

10. During Round 1 there were 41 Research and Operations Assistants in the Asia Region, whilst the Staffing Tables provided for a total of only 36 Research and Operations Assistant positions at levels 18-21 to be filled in the post-reorganization Asia Region. In the Country Operations Division skills requirements for positions at levels 18-21 emphasized, inter alia, administrative capacity, quantitative and analytical skills and experience, as well as ability to work in a team environment. The Bank found that the Applicant's skills did not compare favorably with the profile of the type of economic Research Assistant, which emphasized an econometric or statistical background needed by the Country Operations Division; that her traditional processing skills did not converge with basic as well as "upstream" skills requirements for that Division; and that she had certain shortcomings in the areas of interpersonal skills. The Applicant was not selected during Round 1 on the grounds that there were other candidates available whose skills, experience and suitability more closely matched the staffing needs of the Region. Round 1 came to an end on July 15, 1987, the same date the Applicant left on home leave.

11. On July 24, 1987 the Applicant was informed by Personnel that she had not been selected in Round 1 and that her name had been included in the roster of candidates for selection in Round 2. On August 28, 1987 the Applicant returned from home leave and on September 23, 1987 informed her Personnel Officer that because of the uncertainty surrounding her job prospects she felt compelled to enroll on a full-time basis for the completion of her Masters Degree program in Development Banking at American University, and that, therefore, she was requesting his assistance in postponing any new job commencement until January 1988, the date at which she expected to complete her studies. In spite of efforts made by herself and the Personnel Department, the Applicant was not selected during Round 2, and on October 28, 1987 she agreed to separation from the Bank with an Enhanced Separation Package (Package B). Because the Applicant elected to take her severance payment of 35 months' net pay in the form of salary continuation, she was placed on Special Leave beginning November 1, 1987 through September 30, 1990.

12. On October 29, 1987 the Applicant wrote to the President of the Bank to let him know of what she considered the unfair and unreasonable results of the Reorganization for staff members at the assistant level 18-21 like herself, who wanted to stay in the Bank and had strong credentials and strong records, but who had not been offered positions. She also complained that, in spite of the many efforts made by Personnel and Regional staff and even by two Executive Directors, she had found no position in the reorganized Bank.

13. In response to the Applicant's letter to the President, the Vice President (VP), Personnel, requested all personnel staff to make once more concerted efforts to explore possibilities in almost all complexes of the Bank for identifying a suitable position for the Applicant. Such efforts included contacts formally through the Vacancy Information System (VIS) and informally through consultation with line managers. However, despite all efforts no suitable position was identified for the Applicant.

14. On January 13, 1988 the Applicant requested an administrative review of the decision concerning her separation from Bank employment. After review, the VP, Personnel, concluded that he was not able to reverse his decision concerning her separation.

15. On March 10, 1988 the Applicant filed an appeal with the Appeals Committee, and on October 21, 1988 the Committee reached the following conclusions:

The Bank was under an obligation to provide Appellant, after her external training program, with a reasonable opportunity to demonstrate the new capabilities acquired.

That there was no undertaking on the part of the Bank either to promote or reassign Appellant upon her return to full-time work status.

That because of the short period of time between her return and the reorganization Appellant was not afforded an adequate opportunity to demonstrate her newly-acquired skills.

The Committee, therefore, recommended that the Bank make a bona fide effort to provide the Applicant an opportunity to use her newly acquired skills in an Operations Assistant position to give her the opportunity denied her by the Reorganization and that during this period the Applicant's Package B benefits be suspended.

16. On November 14, 1988 the Senior Vice President (SVP), External Affairs and Administration, informed the Applicant that he could not agree with the Committee's opinion that the Bank's support of the Applicant's training in and of itself constituted an obligation on the Bank's part to extend her service despite the intervention of the Reorganization, and that his decision was that:

(a) you may apply for suitable openings through the Bank's VIS System and will be given consideration similar to staff on active duty for as long as you remain on Special Leave (salary continuation); and

(b) in the event you are offered and accept a position in the Bank prior to September 30, 1990, your entitlement to the enhanced separation benefits under Rule 5.09 would be cancelled and appropriate restitution would be made for the benefits received.

17. On December 5, 1988 the Applicant's Counsel urged the SVP, External Affairs and Administration, to reconsider his decision, but the latter declined to do so stating, inter alia, that, had the Bank given preference during the Reorganization to those staff members who had benefit of Bank-supported training over others who did not, the Respondent would have been accused of favoritism and unfairness.

#### The Applicant's main contentions:

18. The Respondent breached the Applicant's contract of employment by not providing her with a reasonable opportunity to demonstrate the new capabilities acquired as a result of the external training program she had received. In particular the Respondent failed to fulfill its duty to promote or reassign the Applicant upon her return to full-time work status.

19. The Respondent's obligation to provide the Applicant with an opportunity to use her newly acquired capabilities could not be satisfied by inviting the Applicant to find a position by using the Vacancy Information Service (VIS), because that procedure seemed to be honoured more in the breach than the observance and statistically the Applicant had no real chance to find a position through that procedure.

20. Moreover, had the Applicant been successful in finding a position through the dubious "privilege" of the VIS

prior to September 30, 1990, as a penalty, she would have had to work for 35 months or more without pay. Such a treatment would have constituted involuntary servitude, being a form of coercion, and an abuse of power.

21. The Respondent's obligation toward the Applicant arose from the Respondent's training policy which was antecedent to the Reorganization and which the Reorganization did not abrogate. Such obligation could not be discharged by treating the Applicant like everyone else during the Reorganization. By failing to take into consideration the provisions of its training policy, in the planning of or during the Reorganization, the Respondent violated the Applicant's right to due process during the selection process of Round 1.

22. The Respondent had breached the quasi-contract that existed between itself and the Applicant. The Respondent induced the Applicant to enter on a prolonged training program recommended by her supervisors, prescribed and supervised by the Respondent's training division and paid for in part by the Applicant and in part by the Respondent, in order to equip the former better to serve the latter's objectives. As a result, the Applicant certainly nurtured a reasonable expectation that the Respondent would execute its implied obligation to provide the Applicant with a reasonable opportunity to demonstrate her newly acquired skills and that the Bank would protect rights created by her performance during her training. The Applicant had, thus, sustained injury, being harmed financially and professionally, because she was not afforded an adequate opportunity to demonstrate her newly acquired skills on account of the short period of time between her return to full-time work schedule at the end of her training and the commencing of the reorganization process.

23. The Respondent's treatment of the Applicant was irregular and inconsistent and has caused her intangible injury. By failing to inform her of the existence of the June 24 and July 2, 1987 Staffing Lists the Respondent deprived her of a chance for selection in Round 1. By failing to plan and schedule training programs for the Applicant, while it did so for others affected by the Reorganization, the Respondent showed inconsistent behavior considering the expenses incurred to finance the Applicant's extensive training prior to the Reorganization.

24. The Applicant requested the following relief:

- (a) Rescission of the decision rejecting the Appeals Committee report;
- (b) Rescission of various decisions since the 1987 Reorganization contravening the Respondent's stated policy regarding the VIS;
- (c) Rescission of the decision of the SVP, External Affairs and Administration, that the Applicant must make restitution for separation benefits if she is offered and accepts a position with the Bank;
- (d) An order that the Respondent carry out (i) its stated training policy in accordance with Staff Principle 5(d) as implemented in Personnel Manual Statement 4.03 and (ii) the VIS in accordance with stated policy.

In the alternative the Applicant requested:

- (a) Reimbursement in the amount of \$80,769.97 for training expenses incurred;
- (b) Compensation in the amount of two years' salary and benefits;
- (c) Damages in the amount of \$60,000 for *detournement de pouvoir*;
- (d) Four months' salary for moral and intangible injuries.

With either alternative the Applicant requested reimbursement of costs in the amount of \$225.00 as well as counsel fees.

The Respondent's main contentions:

25. The Respondent's training policy does not impose an absolute obligation to continue in its service a staff member whose training the Respondent has helped to finance. The Respondent's training policy provides only for an investment in staff training for the purpose of staff development. Training is not available as a staff benefit or entitlement of employment.

26. Under the September 1985 agreement which defines the extent of the Respondent's and Applicant's obligations pertaining to the latter's long-term study program, the Applicant was contractually obliged to remain in the Respondent's service at least three years upon completion of the full-time portion of her study program, but the Respondent was not obligated to retain her in its service.

27. At the time the September 1985 agreement was made, while it was the expectation of both parties that the skills the Applicant would acquire under the study program would be employed for some time for the benefit of the Respondent, the Respondent did not waive or contract away its managerial prerogative of retrenchment or reorganization such as might make the Applicant's position redundant at any time. The intervention of the Reorganization shortly after the Applicant had returned to full-time work status understandably disappointed her expectations. However, disappointment of an expectation is not the equivalent of and does not constitute a breach of contract.

28. Staff Rule 5.09 pertaining to the Reorganization explicitly provided that provisions of certain Rules and any other Personnel or Field Office Manual Statement or Circular shall be deemed modified and displaced as necessary to give effect to that Staff Rule. Consequently, even if the Applicant earlier had an entitlement to preference or priority in selection, Staff Rule 5.09 would have cancelled it.

29. Despite the efforts made which were acknowledged by the Applicant herself, it was not possible to identify a position suitable for her, because the staff selection process was highly competitive during the Reorganization and the number of Operations Assistant positions was less than the candidates available. The Applicant competed with other qualified candidates in the staff selection process during the Reorganization and was not treated unfairly or in a discriminatory manner.

30. The Applicant was not entitled to intra-departmental preference during Round 1 for positions regardless of the grade for which she was qualified. Moreover, while incumbency was an underlying factor for Round 1 selection, it was not to be given precedence over needed skills as a selection criterion.

31. The Applicant was considered for level 18-21 positions in the Country Operations and Sector Operations Divisions. In the Asia Region senior regional management reviewed all selection decisions in a series of meetings in the period July 2-15 and staff who had not been selected by July 1 were considered by regional management, on an individual case-by-case basis, for possible selection for positions still vacant or even in place of selections tentatively made but not yet effective. The Applicant was one of those so considered.

32. The fact that the Applicant had not been selected under the VIS does not by itself demonstrate irregularity nor does the fact that many VIS announcements indicated that a suitable candidate had been identified.

33. The SVP, External Affairs and Administration, had not abused his power when he stated that in the event that the Applicant accepted a position before September 30, 1990, her entitlement to the enhanced separation benefits under Staff Rule 5.09 would be cancelled and appropriate restitution would be made for the benefits received. The formula of "appropriate restitution" is designed to cover all possible situations where in the absence of some restitution there would be unjust enrichment.

34. The Applicant's request for specific performance or reimbursement, compensation and damages should be denied, because the Applicant has suffered no compensable injury.

35. Even if the Tribunal should determine that the Applicant has been injured, she must show, in accordance with Harrison, Decision No. 53 [1987], that her injury had exceeded \$58,158, which is the difference between



what she has received and will receive under Package B and what she would have received under the normal redundancy provisions of Staff Rule 7.01. The Applicant has been generously compensated with Package B, she has taken full advantage of the various types of assistance available under that package, she still has the opportunity to apply for a position through the VIS System, notwithstanding her non-active work status, and she cannot deny that the degrees acquired through the Respondent's training program are an asset that she can take with her. Therefore, the Applicant's requests for relief, costs and attorneys' fees should be denied.

#### Considerations:

36. The Applicant states in her pleadings that the present application is not an appeal against non-selection in the course of the 1987 Reorganization and that she is not contesting her redundancy, nor seeking compensation for loss of employment. The Applicant asserts that she is seeking compensation for an alleged breach of the contract of employment, because the Bank failed to meet its obligations flowing from its Training Policy.

37. The Applicant thus bases her case entirely on the contention that the Respondent assumed an obligation under its Training Policy to provide her with the opportunity to demonstrate and employ the newly acquired skills which she obtained through the studies undertaken, which were selected by her supervisors, monitored by them and partly financed by the Respondent. The failure to provide such an opportunity would constitute, in the Applicant's view, a breach of the contract of employment justifying her pleas for compensation.

38. In support of her contentions the Applicant invokes Principle 5(d) of the Principles of Staff Employment, which provides that the Respondent shall "establish programs and arrangements for staff training and development for the purpose of updating and improving staff skills to meet the needs of the Organization". The Applicant further invokes in support of her claims Personnel Manual Statement (PMS) 4.03, Section 1 which reads as follows:

The World Bank's long-term effectiveness in providing assistance to its member countries is largely dependent upon the professional excellence of its staff.

Professional excellence, however, cannot be assumed to be self-sustaining in a context where standards of performance, the state of knowledge and the range of Bank Group activities are steadily evolving. It must be systematically maintained and renewed through suitable training programs.

These statements merely describe the Bank's policy to encourage and support staff members to develop further their own education and skills through a partially subsidized program. But neither Principle 5(d) nor PMS 4.03 creates for the Respondent the legal obligations claimed by the Applicant (see de Merode, Decision No. 1 [1981], para. 22).

39. The Applicant asserts that an implied obligation on the part of the Respondent results from the fact that she had assumed, on her part, the obligation to stay with the Bank for a specified period of time. This, in the Applicant's contention, created a bilateral contract establishing mutual obligations regarding service to the Bank. This argument refers to the fact that the Bank, in subsidizing full-time external training, requires from the staff member the undertaking to remain in the service of the Bank for at least three years upon completion of the full-time study program. If the beneficiary leaves the Bank within three years for any reason, he is required to repay the Bank a prorated portion of the costs it incurred. Such a commitment was obtained from the Applicant, although she continued working in the Bank on a part time basis. However, this "bonding", as it is called, does not signify the existence of a corresponding, mutual obligation on the part of the Bank to retain for a period of time the services of the beneficiary of a full time external program. There is no indication that the Bank has given up its power of declaring a position redundant. This is confirmed by the letter of September 23, 1985 approving the Applicant's study program, where reference is made to the possibility of a termination grant and of resettlement upon termination. In any event, the "mutuality" sought by the Applicant in her bilateral contract was already amply provided when the Bank paid a substantial portion of her educational expenses.

40. The Applicant further contends that by inducing her to enter on a prolonged training program, partially paid for by the Respondent and supervised by its Training Division, the Bank assumed an implied obligation, resulting from the reasonable expectations of the parties, to the effect that she would be entitled to return to full time work to use and demonstrate her newly acquired skills. However, the record of the case shows that there was no exact correspondence between the expectations of the parties. While the Applicant intended to pursue a Master's degree in the School of Advanced International Studies at Johns Hopkins University, so as to qualify for a post as Project Economist/Operations Officer, her supervisors insisted that the acceptance of her educational program did not imply any commitment or encouragement for promotion or reassignment, and made clear that she would be returning to work at her previous level as Operations Assistant.

41. As a matter of fact, when the Applicant returned to full-time work at the Bank, in June 1986, she occupied her former position as Operations Assistant and in that position she was not able to use or demonstrate her newly acquired skills. She had only a mere expectation of upward mobility if there was an opening for a promotion to a higher position, such as that of sector economist.

42. At that time the 1987 Reorganization Program became operative, interfering drastically with the Applicant's plans and expectations. The opportunities for professional posts became scarcer and, in pursuing her graduate studies, she had not acquired or developed certain skills, such as computer, language and statistical skills, which had become relevant for the competitive selection among a reduced number of Operations Assistants or Research Assistants.

43. The Applicant was not selected in Round 1 of the Reorganization Program. She complains that she was entitled to "intra-departmental" preference for positions and that Respondent failed to protect that priority during Round 1. However the "Guide to Staffing Policies" of May 1987 provides that, while incumbency would be an underlying factor for Round 1 selection, incumbency alone would not be given precedence over needed skills as a selection criterion. The Appeals Committee found that in the selection process in Round 1 "there does not seem to have been an effort to inform the Appellant of" the conversion of a position of Research Assistant to Operations Assistant (for which she was one of the top candidates) and that she was not interviewed for that position. The Tribunal, however, cannot go into this question, because, among other reasons, the Applicant has declared repeatedly that this application is not an appeal against non-selection during the 1987 Reorganization.

44. The Applicant's name was then included in the Roster for Round 2 and the record shows that special efforts were then made by Personnel and other sections of the Bank to locate a suitable position for her. She has recognized in a letter to the President of the Bank, dated October 29, 1987, that "the Personnel people have tried hard to get me jobs and interviews" and she enumerates seven persons "among the other senior people who have gone out of their way to try to help". All these efforts however, proved unsuccessful and the Applicant agreed to separation with enhanced compensation under Package B.

45. In the light of the foregoing considerations the unavoidable conclusion is that there is no legal or contractual basis which supports the claims advanced in the present application and, consequently, it must be dismissed.

46. On the other hand, the Tribunal notes that the commitment assumed by the Respondent in its letter of November 14, 1988, to the effect that the Applicant "may apply for suitable openings through the Bank's VIS system and will be given consideration similar to staff on active duty", is in force and will continue to be in force until September 30, 1990. While deliberating on the case, the Tribunal was informed by the Respondent that the Senior Operations Advisor, Latin America and the Caribbean Regional office, had selected the Applicant for a position as Operations Assistant, Level 20. The Respondent further advised the Tribunal that before the Applicant's reemployment can be finalized the question of appropriate restitution for the benefits received under Package B will need to be settled. The Respondent pointed out that this is its first occasion to determine the extent of the restitution appropriate in a case where an offer of a position is made to a former staff member who had previously accepted a separation package, adding that, while the conclusion will be tailored to the particular circumstances, guidelines have not yet been adopted. The Tribunal takes notice of this development which ensures that the time and effort spent by the Applicant on an education selected by the Staff Training

Division with a Bank career in mind, and the money invested by the Respondent in subsidizing that education, would not be completely lost.

47. While the Respondent suggested that the Tribunal may wish to consider deferring consideration of the case until its next session in view of this recent development, the Applicant has expressed the view that there is no reason to postpone consideration of the case. The Tribunal is of the view that to pronounce on this application will define and clarify the obligations between the parties and thus assist them in settling the question of restitution. The present proceedings have enabled the Tribunal to dispel a misinterpretation of the Applicant regarding the meaning of the proviso at the end of the letter of November 14, 1988, where it is stated that in the event of the Applicant being offered and accepting a position in the Bank, her "entitlement to the enhanced separation benefits under Rule 5.09 would be cancelled and appropriate restitution would be made for the benefits received". This proviso does not signify that the Applicant must work without pay, if she accepts a new position and, consequently, it does not constitute a penalty, nor a misuse or abuse of power. The Respondent made it clear, in the course of the proceedings that the term "appropriate restitution" is designed to cover all possible situations where, in the absence of some restitution there would be unjust enrichment, such as resettlement benefits when the occasion for resettlement was obviated by reappointment.

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 London, England, September 22, 1989