

Decision No. 239

Jane Sweeney,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on July 21, 2000, by Jane Sweeney against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Robert A. Gorman (President of the Tribunal) as President, Elizabeth Evatt and Jan Paulsson, Judges. The usual exchange of pleadings took place, in the course of which the Respondent was called upon by the Tribunal to produce certain documents on which both Parties were given an opportunity to comment. The case was listed on March 6, 2001.

2. The Applicant joined the Bank on a temporary secretarial appointment in 1983, and took up a regular appointment one year later. In June 1985, she became a Staff Assistant in the Office of the Vice President for Economics and Research, where she was later promoted to Administrative Assistant and where she made her career at the Bank until her resignation on June 21, 2000. Broadly, her work consisted of providing administrative support to the Managing Editor of the World Bank Economic Review (WBER). This professional journal fell within the scope of work of a unit that came to be known as the Development Economics Research Advisory Staff (DECRA). The Applicant was rated highly by successive Editors. Her last Editor gave her positive evaluations for four consecutive years, the last one in April 1998. In the immediately subsequent months, however, their relationship deteriorated precipitately.

3. In her letter of resignation, the Applicant stated that she had intended to serve a full career to age 62, but was leaving five years earlier due to the Bank's failure to take timely action to prevent "escalating and overt harassment in the work place which was then compounded by abuses of authority, and level and gender bias." To understand these accusations and their relation to the relief she requests, it is necessary to consider the factual circumstances in some detail.

The controversial leave

4. This case has grown out of the manner in which the Applicant's request for a two-day leave in June 1998 was handled by her managers.

5. That month was apparently the busiest of the year for the WBER, due not only to the annual Board meeting and various follow-up work that had to be concluded before July, but also because of a workshop to be held at the Bank during the second week of July. There was no extra capacity in the office, and indeed a full-time temporary employee was hired in June to help out.

6. On April 27, the Applicant had requested approval from the Editor for four days of annual leave starting on Tuesday, June 16. She had also requested a one-day leave for "community service" on the preceding Monday (June 15). The requests were approved by the Editor. She was thus going to be absent for the entire week. The stated reason for her four-day leave was that she wanted to mind one of her grandchildren while one of her daughters was taking medical board exams.

7. On May 26, the Applicant also requested leave for Wednesday and Thursday, June 24-25, to assist another

daughter in connection with the expected birth of another grandchild. Under the Bank's Alternative Work Schedule, she was already due to be absent on Friday, June 26. She states that she explained to the Editor that the work program would not suffer, because she would be in on Monday and Tuesday, June 22-23, and would be willing to work overtime on those days if needed.

8. This request was made orally and in writing to the Editor. His version of the conversation was that he denied the request, and that since he accordingly did not sign the leave request form he considered the matter to be closed.

9. The Applicant, to the contrary, maintains that the Editor failed to act on the request and uncourteously rebuffed her without responding when she raised the matter on three separate occasions.

10. On June 11, the Applicant met with the Editor's next-in-line manager (the Administrator of DECRA) to complain about the Editor's hostile attitude and to request that he intervene to grant the request. According to the DECRA Administrator, he expressed surprise and pointed out that the Editor had been a strong advocate for the Applicant in the annual salary review. Rather than deciding on the request, he asked the Applicant to seek to resolve the matter directly with the Editor.

11. On June 17, during the Applicant's leave from June 15-19, the grandchild was born. During the birth, the Applicant's daughter suffered serious complications which rendered her vulnerable to infection. The son-in-law was scheduled to leave on a business trip on June 24. Therefore, the Applicant states, when she returned to work on June 22 she asked the Editor once more to be given leave on the 24th to be with her daughter. The Editor maintains that she did not make such a request.

12. The Applicant thereafter approached the DECRA Administrator again. Once again, the DECRA Administrator suggested that the Applicant seek to resolve the question directly with the Editor taking into account the work program. The Editor testified before the Appeals Committee that the Applicant did not, in fact, make another request to him.

13. At any rate, the Applicant came to work on the 24th. She says that she then had a disagreeable conversation with the Editor, who criticized her for having gone over his head. She felt distressed and went to the Bank's health clinic complaining of severe abdominal cramping. She stayed there one hour. She then went to see the DECRA Administrator again. He suggested that she might not report for work the following day (Thursday June 25th) if she was not feeling well.

14. Meanwhile, it transpired that the Applicant's daughter had developed a fever on Wednesday, June 24. Her husband being absent, she had to drive herself to the hospital with her infant. The next morning the Applicant rang the DECRA Administrator to request emergency leave, which he granted. The following day was her scheduled away day. The following Monday (June 29th) she rang the DECRA Administrator again, and was granted another day of emergency leave.

15. The tone and content of the Applicant's communications with the Editor are sharply contested, and cannot be reconstituted. What is uncontestable is that the Applicant felt that she had been mistreated, although it is also a fact that she ultimately was given two days of emergency leave from the Bank. The Bank considers that the circumstances did not, technically speaking, justify emergency leave as defined by Staff Rule 6.06, section 8. The Bank does not, however, argue that the Administrator should have *refused* to grant the emergency leave; this point is therefore relevant only to the extent that it might suggest sympathetic treatment rather than harassment.

Other factual circumstances

16. In July 1998, the Applicant complained to her Human Resources Manager responsible for DECRA, Ms. X, about the Editor's "harassing behavior" toward her. Later that month, the Applicant submitted a memorandum to that Officer entitled "Leave [H]arassment," requesting, among other things, apologies from her managers for

the handling of the leave issue, recognition of the failure by management to act appropriately in this case, and protection from rude and angry behavior in the future. The Applicant's managers denied any inappropriate behavior.

17. Ms. X felt that it might be useful for the Applicant to consult with a staff psychologist in light of the distress caused by what the Applicant felt to be the Editor's harassing behavior. Ms. X, therefore, contacted a psychologist in the Health Services Department (HSD) to inform him that the Applicant might be calling him for an appointment. The Applicant, who did not see the psychologist, considers this initiative to have been a violation of her "rights to privacy" and a "failure to protect me from managerial abuse and harassment." Nearly a year and a half later, on November 29, 1999 – without any apparent further difficulty or even interaction between herself and Ms. X – the Applicant filed a request with the Office of Professional Ethics for an investigation into Ms. X's initiative. Her criticism was that Ms. X had violated "proper procedure" in that Ms. X should have contacted the psychologist only if the Applicant had positively expressed a wish for counseling. She concluded her request in these terms:

By her actions she destroyed any trust I could have in her impartiality and her role as a Human Resources Officer.

I believe this case presents important issues for staff and the management of the personnel function.

18. To revert to the more immediate aftermath of the controversial leave, in August 1998 the DECRA Administrator informed the Applicant that he would be implementing changes in working arrangements in order to reduce direct contact between the Applicant and the Editor. Administrative support duties were thereafter assigned to another staff member in the unit. The Applicant states that the result was to deprive her of 80 percent of her previous functions.

19. In the course of the same month, the DECRA Administrator attempted to arrange a mediation session between the Applicant and her immediate supervisor (i.e., the Editor) with the assistance of the Office of Professional Ethics. Before the Ethics Office had acted on the mediation request, the Editor filed a formal harassment complaint of his own against the Applicant. In light of this formal complaint, the Ethics Office stated that it could no longer assist in the mediation process. Two previous attempts at mediation had also failed: in one, the proposed mediator withdrew from the process due to a misunderstanding with the Applicant; in the other, the Applicant withdrew, primarily, it seems, as a result of the Editor's insistence that work arrangements not be a matter for mediation. Subsequent to the decision of the Ethics Office that it could not assist in the mediation process, unsuccessful efforts were made by the Ombudsman to reach a mediated solution.

20. On August 10, 1998, the Applicant requested administrative review of what she described as "[l]eave harassment and failure of managers to respond appropriately." The Applicant challenged, among other things, the failure of both her managers to act appropriately on her June 24-25 leave request, Ms. X's contacting the staff psychologist without her permission, and the restructuring of her position.

21. In response to this request for administrative review, the Senior Vice President and Chief Economist (DECVP) asked two Directors to conduct an inquiry. They concluded in November 1998 that there was no evidence of leave harassment, breach of confidentiality, or improper reassignment. With regard to the Applicant's change of work program, it was decided to identify responsibilities for the Applicant at a "level of interest and degree of challenge comparable to her original ones." To that end, a small group was constituted to work with the Applicant and other managers within DEC. The Editor's term was due to end in August 1999, and it was thought that the Applicant would in due course work with the new Editor if there was "a good fit." With that in mind, the DECVP offered two options for the Applicant. The first option was a six-month study leave (during which time the Applicant would be assigned to DECVP); the second was a six-month assignment in the DECVP front office. The Applicant initially accepted the study leave option, subject to re-entry assurances. By early January, she had been accepted at Georgetown University as a Special Student for the Spring 1999 semester.

22. She did not enroll, and now states that one reason for her not pursuing the study leave was that she never

received a Memorandum of Agreement guaranteeing her re-entry at the Bank after the end of her study leave.

23. Ultimately, the group responsible for finding the Applicant a job found a position for her in the Development Research Group (DECRG), another division of DEC, and she was assigned there.

24. At the end of August 1999, as anticipated, the Editor left the service of the Bank. Before his departure, it was decided that the editorship of the WBER would be separated from that of the World Bank Research Observer (WBRO), and that the new Editor of the WBER would henceforth operate out of Paris.

25. Meanwhile, the Applicant's visit to the Bank's health clinic on June 24, 1998 (see para. 13) had led to a sequence of different difficulties.

26. The Applicant had visited the clinic on that morning, complaining of abdominal cramping brought on by a stressful meeting with the Editor earlier that morning. The Applicant described her work situation to the attending physician, as well as her concern about her daughter's condition following childbirth. The following month (July), the Applicant visited the clinic again to inquire about the dosage of medication for an E-Coli infection. She was then seen by a different physician, to whom she described what she perceived as a stressful working environment due to problems with her supervisor.

27. Sometime before December 1998, the Applicant requested and received a print-out of her medical records. She discovered that under the heading "Phys. Diag. Category List" both doctors she had seen had entered the term "Psychiatric Disorders." One of the doctors had also written that the Applicant was having problems at work and at home. The other doctor had recorded her impression that the Applicant would take legal action in the future. The Applicant objected to the reference "Psychiatric Disorders" and to the other comments of the doctors. She requested that the medical records be corrected, and that she be provided with a copy as well as written assurances that the records had not been divulged to anyone outside the Medical Department.

28. On December 15, 1998, the Applicant met with the Chief Medical Officer of the Health Services Department, Health Services Staff (HSDHS), to discuss her grievances. She was told that the "Psychiatric Disorders" notation was not a diagnosis, but a sorting category. It could not be altered, but might be explained by an addendum. This state of affairs appears to have been the consequence of an attempt at achieving electronic streamlining of record-keeping. When a manual record turns out to be incorrect or misleading, it is changed in such a way as to show the date and nature of the correction. Apparently the electronic record does not accommodate such an approach. Since an alteration to the electronic record would give the false impression that the corrected notation was there from the beginning, deletions or alterations are, as a matter of good practice, avoided; the preferred solution is a dated *addition*.

29. Accordingly, later the same day (December 15, 1998), the Chief Medical Officer noted as follows in the Applicant's electronic medical record, referring to the two previous (June 24 and July 9) notations of "Psychiatric Disorders":

The reader should note that in neither instance was this applicable in terms of the true meaning of the words. At the time of those notes, the electronic medical record system ... mandated election of a diag category list and [t]he title 'psychiatric disease' was the only term that could be selected for all diagnoses involving mental stress (work related and personal)

In the addendum, the Chief Medical Officer further added clarifications to the complained-of comments, and stated that he was unaware that the Applicant's medical records had been divulged to anyone outside the Medical Department.

30. The Applicant did not believe that the Chief Medical Officer, HSDHS, had adequately addressed her claim; therefore, she sought administrative review by the Director, HSD.

31. In his response, the Director, HSD, stated that the "Psychiatric Disorders" entry had been used as a "sorting category" in the past, but that following the Applicant's administrative review request, it had been

suppressed in all staff medical records. As a result, the Applicant's sorting category fields were now supposed to be blank. The physician's reference to legal action was expunged from the record; other comments were clarified and amplified in the form of an addendum. The response also addressed the confidentiality of medical records in HSD, explaining that access to medical records was protected by both a password and workstation restrictions; the only persons having full access to the records being physicians, nurses, the medical secretary who worked with the relevant physicians, the records assistant, and the supervisor of the records unit. The Director, HSD, stated that, as a result of his inquiries, he was satisfied that no information from the Applicant's medical records had been divulged outside HSD.

Proceedings before the Appeals Committee

32. On January 13, 1999, the Applicant filed Appeal No. 525 with the Appeals Committee against the following administrative decisions:

- (a) the decision of her managers to deny or fail to act on an annual leave request for June 24 and 25, 1998;
- (b) the decision to deprive the Applicant of her Administrative Assistant functions on the WBER;
- (c) the decision, in retaliation, to remove the Applicant from her job as Administrative Assistant on the WBER;
- (d) the decision to deny the Applicant her position on the WBER and to place her on study leave; and
- (e) the decision to refuse the Applicant's request that her medical records relating to two visits to HSD be corrected to reflect a correct diagnosis and to excise unprofessional comments by the medical doctors contained in them.

Subsequent to the filing of Appeal No. 525, the Respondent raised a jurisdictional challenge to the medical issue claim (i.e., claim (e)), arguing that the Applicant had not sought an administrative review. In a Decision on the Question of Jurisdiction, the Appeals Committee dismissed the disputed claim, but on the understanding that an administrative review could still take place. As discussed earlier (at paras. 30-31), such a review did in fact take place. Thereafter, on April 30, 1999, the Applicant filed Appeal No. 532 against the following decisions by the Bank:

- (a) the refusal of the Applicant's request that her medical records relating to two visits to HSD be corrected to reflect a correct diagnosis and to excise from them unprofessional comments by the medical doctors; and
- (b) the refusal to provide assurances concerning confidentiality of the Applicant's medical records.

33. Oral hearings concerning the two Appeals took place on September 16, 1999 and October 6, 1999. During the hearings, the Applicant submitted a print-out of her medical records showing that certain of the agreed-upon corrections had not been made, and she raised additional concerns. Each party had an expert testify as to the security controls in place in HSD.

34. In its Report of April 4, 2000, the Committee found that the contested administrative decisions in Appeal No. 525 were taken in abuse of discretion and recommended: (i) that the Applicant be reinstated to a position in DECRA that provided administrative support to the Editor of WBER if such a position existed; (ii) that if such a position did not exist, the Applicant be assigned to another position in the Bank with a comparable level of responsibility; (iii) that the Applicant be granted one month of Administrative Leave, with pay, after which she would return to service in her new position; (iv) that the Applicant's merit salary increase of July 1999 be adjusted to reflect at least a "3-medium" rating; (v) that the Applicant be awarded one month's salary as additional compensation to redress managerial errors; and (vi) that the Applicant be reimbursed for legal fees connected with this appeal. Regarding the issues raised in Appeal No. 532, the Appeals Committee recommended: (i) that the Applicant's medical records be changed to remove inappropriate entries and

comments, and to correct misstatements of fact; and (ii) that the Applicant be reimbursed for all demonstrated legal fees and witness fees related to this aspect of her appeal.

35. The Vice President, Human Resources, accepted the Committee's recommendations.

36. For her part, the Applicant informed the Vice President, Human Resources, that in her view the Appeals Committee's recommendations were inadequate. She rejected her ensuing reassignment, and resigned from the Bank on June 21, 2000. On July 21, 2000, the Applicant filed an application with the Tribunal contesting the same administrative decisions that she had challenged before the Appeals Committee. While she no longer directly challenges the Bank's refusal to provide assurances as to the confidentiality of her medical records, she requests such assurances in her pleas.

37. The Applicant now says that, notwithstanding the Respondent's acceptance of the entirety of the Committee's recommendations, she "was not offered to be reinstated on her position on the WBER and ... felt constrained to decline the position offered." She adds that the recommendations of the Committee fell short in the following ways:

The Committee should have offered the option of redundancy as an alternative if the WBER position was not available. Respondent admitted that it had subsequently abolished Applicant's position by transferring the main editorial work to Paris;

The Committee should have recommended monetary damages for the retaliation, abuses of discretion and the loss of a career position in an amount not less than for redundancy;

The Committee should have recommended a salary award at least at the level of Applicant's previous salary awards, i.e. category '4'; and

The Committee failed to assess fully the seriousness of the medical issue, the necessary corrective remedies, and the damages to Applicant and to award appropriate compensation.

The Tribunal's evaluation

38. The Applicant was by all accounts a loyal long-term staff member whose career appears to have been unmarked by difficulty. Within the space of a few weeks, it appears, her perception of insensitivity on the part of her managers, coupled with their unwillingness to express their regrets or accept that they had erred, transformed the Applicant from a contented staff member into someone with an acute sense of grievance. As a result, matters with respect to which she might otherwise have accepted the explanations given to her, e.g., regarding the initiative of the Human Resources Manager in discussing her case with a staff psychologist and the treatment of her medical records, appeared to her as confirmations of managerial insensitivity and manipulation. And so what should have been a relatively minor incident of poor communication escalated deplorably, with the ultimate result that the Applicant is dissatisfied with remedial action by the Bank.

39. The Tribunal notes that the Applicant's primary interlocutor, the now-retired Editor, was contacted by telephone and testified over a loudspeaker before the Appeals Committee. In the course of his testimony, the Applicant was given the opportunity of questioning the Editor directly.

Q: Were you able to take leave in July of '98?

A: None of your damn business. Next.

Q: M., did you have a grandchild born last year?

A: Not relevant. Next.

Q: [Were you concerned that all WBER] issues in '98 were very, very late?

A: Not something that I would care to discuss with you, since you obviously don't understand the

editorial process. Any more questions?

40. Such impatience, verging on antipathy, on the part of the Editor, expressed in testimony on the record before the Appeals Committee, suggests that he may well have been dismissive in private exchanges, and at any rate that his interaction with the Applicant as a manager was poor, and a likely cause of the escalation of a misunderstanding into a many-faceted conflict.

41. Nevertheless, the Editor and the Applicant appear to have worked together in a satisfactory manner for a period of years. Her grievance relates to the way her two-day leave in June 1998 was handled, and to the reactions to her complaint about the event. The likelihood that a manager has been rude to a subordinate staff member is not sufficient to make the Bank liable for a violation of the latter's terms of employment. The record must reveal conduct that rises to the level of abuse of discretion attributable to the Bank. As this Tribunal put it in *Caronjot* (Decision No. 178 [1997], para. 22):

The fact that there might have been some personality conflict and problems between the Applicant and her Section Chief, the supervisor responsible for many of the negative remarks in the Applicant's PPRs, is not enough to substantiate the Applicant's allegation of abuse of discretion and personal bias on the part of the [Bank].

42. Although the application to this Tribunal is expressed in very broad terms, it boils down to the proposition that beyond the relief recommended by the Appeals Committee and granted by the Bank, the Applicant should be granted monetary damages for:

- "the medical issue;"
- retaliation;
- abuses of discretion; and
- "loss of career."

43. These grievances are examined in sequence, bearing in mind that the Bank is not bound by the *findings* of the Appeals Committee even when it accepts the Committee's *recommendations*. There may be good reasons for seeking to end a dispute even if the Bank has doubts about the grounds for the recommendations. Moreover, it is in the interest of staff members that the Bank feels able to make concessions in order to satisfy complainants immediately – in whole or in part – without conceding points of principle that might prejudice its position in the event of further proceedings before this Tribunal. The Bank is therefore entitled to question any of the grievances articulated by the Applicant, whether or not they were accepted as well founded by the Committee.

"The medical issue"

44. It is difficult not to be perplexed by a system of medical record-keeping where words do not mean what they say, where the notation of an ostensible *diagnosis* is nothing but a coded and misleading reference to the patient's *complaint*, and where physicians are straitjacketed into "sorting" categories where any patient's concern about stress must be reflected as a mental disorder.

45. Nevertheless, the Tribunal is satisfied that: (a) the system has now been changed with the effect that all medical records relating to all personnel have been altered to suppress the "Psychiatric Disorders" sorting category over the entire 4-year period when that category was in use; (b) with respect to the Applicant's medical records, the category has been completely deleted; (c) the method did not single out the Applicant; and (d) there was no demonstrated prejudice to the Applicant. Indeed, it appears that the general change of approach resulted directly from the Applicant's well-founded complaint. There is no reason for her not to derive satisfaction from this positive result of her initiative.

46. As for the notation to the effect that the Applicant seemed likely to take legal action, while it seems

displaced in a physician's notes from a professional consultation, there was, again, no prejudice caused to the Applicant. The notation was expunged as a result of administrative review, and does not properly form part of the Applicant's case as it comes to the Tribunal. The changes made by HSD to the Applicant's medical records were reasonable, as were the assurances of confidentiality.

47. Nor does the Applicant's complaint about the Human Resources Manager's unauthorized contact with the psychologist (see para. 17) justify any action by the Tribunal. There is no evidence of prejudice to the Applicant. There is no evidence that the psychologist, who of course is bound by the principle of confidentiality, acted on the anodyne information given to him – namely that the Applicant might be calling him – in any other way than to indicate his preparedness to deal with her on an appropriate and professional basis. The Applicant's characterization of this event appears to be wholly excessive. If she was indeed motivated by her belief (see para. 17) that "this case presents important issues for staff and the management," it should be understood that applications to the Tribunal, in order to succeed, require the demonstration of an individual grievance, not of a desire to reform management practices.

Retaliation

48. The Applicant considers that she was mistreated in her work assignments in retaliation for her complaints about the handling of her leave request.

49. The record amply supports the finding that the "restructuring" of the Applicant's tasks was not carried out with the intention of retaliating against her for having complained. Considerable friction had developed between the Editor and the Applicant. Given that he was to retire in a year, it appeared sensible to find a solution for that limited period during which their contacts would be minimized. As there was no intent to retaliate, but rather pursuit of proper functioning of a work unit, there was no abuse of discretion on this account. As the Tribunal held in *Einthoven* (Decision No. 23 [1985], para. 47), when "Bank interests dictate reassignment elsewhere, those interests will prevail." This does not, of course, mean that a reassignment may not constitute abuse of discretion on other grounds. It is in this light that the "restructuring" of the Applicant's tasks must be examined.

Abuse of discretion

50. Prior to the incident that ultimately gave rise to this case, the Applicant was never denied a leave request during her tenure at the Bank. (It appears that in the two preceding years, she took 34 and 39 days of leave, respectively.) For her to complain incessantly about "leave harassment" in this context seems to be excessive indeed.

51. As the Chairman of the Staff Association correctly stated before the Appeals Committee: "It is not a violation of a Bank rule to deny leave per se." With respect to the sequence of events that led to the present controversy, the Tribunal notes that the discussions between the two principal protagonists are a matter of insoluble divergence. Moreover, the Applicant's own version of events is not free from doubt. The DECRA Administrator has testified that he was originally under the impression that the Applicant had sought leave in order to attend the birth of her grandchild, and he was therefore at first relieved to find out that the birth had indeed occurred while the Applicant was on her previously scheduled leave. The fact of the matter is that the child was due to be born before June 19, and the Applicant's daughter's physicians had determined that, if necessary, birth would be *induced* by that date. So there was no hypothesis under which June 24-25 could have been the time of birth. Yet when the Chairman of the Staff Association wrote to the Appeals Committee to explain why the Association had strongly supported the Applicant's case for 15 months, he expressed himself in extremely critical language, pointing to family as one of the Bank's core values and stating:

The undeniable fact of this case is that it all came about because a manager failed to approve a staff member's request to take leave to attend the birth of a grandchild.

As seen, not only is this *deniable* – it is *not a fact at all*. The letter went on to state that "very few events in a life of a family ... are more significant than the birth of a grandchild" and that the Editor had "demeaned" the Applicant's desire to participate in an extremely important family event. The Applicant now says that the DECRA Administrator and the Chairman of the Staff Association had simply been mistaken. Yet it is disturbing

that she allowed these comments to the Appeals Committee to be made on her behalf without correction, and troubling to note that this letter from the Staff Association did not figure among the numerous documents she produced with her application. The post-natal complications were obviously not known before the delivery. One cannot help having the impression that the Applicant was content to allow a falsehood to stand in order to dramatize the impact of the alleged original rejection of the leave request. Indeed, in a written note to her Human Resources Manager on July 27, 1998, the Applicant explicitly affirmed that: "My initial request was for a once-in-a-lifetime family experience – the birth of my grandchild." Apart from the obvious hyperbole (the Applicant has four daughters and other grandchildren), this statement strongly suggests that the Applicant was continuing to represent the circumstances inaccurately. And when the Chairman of the Staff Association appeared before the Appeals Committee, he repeated verbatim the above-quoted passages from his letter in the presence of the Applicant with no reaction on her part.

52. The Editor might in hindsight be criticized for not having issued a written rejection of the Applicant's initial request, and thus saved her from the anguish she says she suffered as a result of not knowing whether she would be able to assist her daughter or not. But, equally, if the Applicant knew that a written approval or rejection was the ordinary practice, and she was in doubt as to whether the Editor in their communications had indeed refused the request (as he contends), she could have sought to clarify the matter. She knew that the Editor had limited experience with the Bank, and was not necessarily familiar with these procedures.

53. As for the DECRA Administrator, it is easy to say in hindsight that he would have been better advised on two occasions to summon the Editor in the presence of the Applicant to resolve the matter of her request, rather than to send her back with a vague suggestion that she work things out with him. This was all the more true as she stated to the DECRA Administrator that the Editor was acting in a manner she found disturbing.

54. But imperfect management in and of itself does not rise to the level of abuse of discretion. Managers make decisions every day, and many of them turn out to have been imperfect. Indeed, the fact that a manager's decision causes distress does not per se make it a case of abuse of discretion. The DECRA Administrator had plausible reasons to suggest that the matter was best left to be worked out directly between the Applicant and the Editor. The Applicant was an experienced and mature staff member. There had been no previous evidence of a poor working relationship between them. Last but not least, the DECRA Administrator appears to have had little involvement with the production of the WBER, and it was sensible for those who were directly involved to seek to accommodate their schedules with operational contingencies which they knew best.

55. The situation would be quite different if there was evidence of harassment or discrimination. The Applicant has alleged both, but provided evidence of neither. Her mere contention that gender bias is prevalent at the Bank is no proof that it was extant in her case. The Tribunal has carefully reviewed the record and found no trace of it.

56. This brings us to the "restructuring" of the Applicant's tasks.

57. By the end of August, the Editor had filed a formal charge of harassment against the Applicant, referring to what he viewed as her unsubstantiated allegations against him. As of that moment, the next-in-line managers were in a difficult position. They could not force the Editor to participate in mediation efforts against his will. Nor could they censure him for his increasing unwillingness to work with the Applicant without appearing to prejudge *his own complaint*.

58. True enough, the Appeals Committee concluded that the Editor had "sabotaged" the mediation efforts. This finding implies very strong criticism of the Editor. For a manager to declare that he is unwilling to envisage further collaboration with a staff member in good standing would be wholly unprofessional. The Bank should not accept that managers deprive such a staff member of his or her assignment by declaring that they are not prepared to work with that person. The Tribunal, however, does not find evidence of such obstreperousness on the part of the Editor. To the contrary, there is no evidence that contradicts the testimony of the Editor before the Appeals Committee, where he said:

I never said in a document, not to ... the Ombudsman and not later on to [the Vice President of Human Resources] or to [the Chairman of the Staff Association], that I would never – that I do not agree to work any more with Jane, that I will never work with Jane again. What I said is that the issue of ... the work arrangement is not something that I'm prepared to have on the table when we contemplate mediation. ... I'm willing to sit down on mediation, but I'm not willing to have the work arrangement be an issue on the table.

59. Mediation is consensual. The Bank could not instruct the Editor to participate in mediation on a precondition which he found unacceptable. What the Editor's next-in-line manager could have done was to instruct the Editor to work with the Applicant. This did not happen; and the Editor insists that he never stated that he would refuse to resume the working relationship. What he testified was that he did not believe that the issue of work assignment should be a matter for negotiation between himself and the Applicant. This is not *prima facie* unreasonable. Work assignments are a matter for the employer, who in this case was faced with a breakdown in the relationship between two people who had previously worked together in a satisfactory manner. At any rate, no one should be taken to task for "sabotaging" a mediation, since that would tend to subvert a concept central to that process: its voluntary nature. For its part, the Bank, acting through the person of the DECRA Administrator, determined that it was in its interest to reduce the level of interaction between the Applicant and the Editor. As long as this was done without discrimination, arbitrariness, retaliation, or other forms of abuse of discretion, the Tribunal does not consider that there was a breach of the Applicant's terms of employment.

60. An administrative review concluded that the breakdown in the working relationship between the Editor and the Applicant was such as to necessitate some "restructuring." A committee was formed to consider suitable options for a "challenging and fulfilling" assignment for the Applicant. This committee included her Staff Association grievance counselor. The committee *unanimously* concluded that she could not remain in her work unit because of the breakdown of the working relationship. The committee recommended two options, which were indeed offered to the Applicant: to join a project in the DECVP front office or to take a study leave at full salary and with paid tuition. The Applicant at first took steps to enroll as a Special Student at Georgetown University for the spring semester of 1999, but ultimately rejected both options. She was then assigned to DECRG, where, as she herself declared before the Appeals Committee: "[M]y experience ... has been very good." Indeed, her resignation letter of June 21, 2000 acknowledges "sincere gratitude" to the staff which were willing "to take me in on such short notice. They have made this past year-and-a-half a unique and productive challenge by undertaking ... an important publication project."

61. As the Tribunal has held in the past (*Einthoven*, Decision No. 23 [1985], para. 47):

The failure to reassign a staff member to a fully satisfying post cannot by virtue of that fact alone be interpreted as a covert form of censure or reprisal.

Staff members may occasionally be required to accept reassignments which they do not find congenial. Their terms of employment entitle them to security of *employment*, not to a particular *position*. In this case, the Applicant herself has recognized that her reassignment was a positive experience, which makes her complaint all the less tenable.

"Loss of career"

62. It should be clear from the discussion above that the Tribunal does not accept that the Appeals Committee's findings had a satisfactory evidentiary basis. This issue is, however, academic since the Bank accepted the recommendations.

63. The question then becomes whether there was an abuse of discretion on the part of the Bank in the manner in which it implemented the recommendations.

64. The Tribunal considers that, whether or not the Bank ultimately might have been held liable to give the redress which it accepted to give voluntarily, once it committed itself to acceptance of the Appeals Committee's recommendations it was under a duty to do so – in this as in any other respect of its relations with a staff member – without abuse of discretion.

65. The Applicant argues that notwithstanding the Bank's stated willingness to implement the Appeals Committee's recommendation with respect to reassignment,

[g]iven the ill defined nature of the position and the unavailability of other suitable positions, ... her only course of action was to tender her resignation.

The Tribunal therefore needs to examine the Bank's actions in this respect.

66. The Committee's recommendations were communicated on April 4, 2000. Exactly ten days thereafter, the Bank's Vice President, Human Resources, wrote the Applicant to inform her that he accepted the recommendations. More particularly, with respect to reassignment, he informed her:

[Y]our previous full-time job in DECRA no longer exists. When [the] Acting DECVP and Chief Economist returns next week, I will ask him to ensure that you are reassigned to a position with a comparable level of responsibility. Please contact your HR Team ... as soon as possible to follow up on the implementation of the transfer to this position. In carrying out this transfer, it is expected that you will co-operate fully with the management of DECRA to ensure a smooth and timely transition.

67. The Applicant responded, inter alia, as follows in a letter of May 23, 2000:

'Re-structuring' me out of a position was condoned by a Director. This left me with a deep sense of personal loss, and daily humiliation in the workplace and a loss of job satisfaction. I experienced a profound sense of degradation and 'public reprimand.' The committee's recommendations did not properly compensate for the humiliation, embarrassments and prolonged and heightened emotional impact caused over the 22 month period that I was in a sort of administrative limbo. I was vulnerable to this escalating and abusive harassment and discriminatory behavior on the part of my managers. The token monetary award and 1-month administrative leave is out-of-line with the disruption to my career 5-years before mandatory retirement. The remedy is not proportional to the injustices suffered.

There was no justification for ending my career and violating the *Principles of Staff Employment*. Only the managers were protected and they could and did walk away. Indeed, the *Appeals Committee Report* found that the director put the blame on me and my immediate manager sabotaged mediation efforts. I paid the price, and my career was irreparably damaged.

68. But was the Applicant's career in fact "irreparably damaged?" A number of Human Resources personnel, in liaison with the staff of the relevant publications, had several communications with the Applicant seeking to implement the Committee's recommendations. On May 8, 2000, the following Terms of Reference for a position of "Editorial Assistant (Research Project Coordinator)" were communicated to her:

Terms of Reference: Editorial Assistant (Research Project Coordinator)

1. World Bank Research Observer

- A. Manage correspondence among Editorial Board members, Editor, Managing Editor and authors.
- B. Maintain database of articles from submission to final decision.
- C. Organize semi-annual Editorial Board meetings including:
 - 1. Circulating Board members' comments on papers to Board prior to meeting.
 - 2. Making logistical arrangements.
- D. If journal is published by an outside publisher, manage correspondence with outside publisher.

2. World Bank Economic Review

- A. Manage correspondence and logging-in of papers submitted to Washington office.

B. Liaison with Editorial Office in Paris.

3. Research Project Coordinator: CDF evaluation

A. Manage budget aspects of an 18-month research project involving multiple donors (including trust funds).

B. Handle coordination of multiple consultants including appointments, travel, fees and follow up.

C. Organize two (or more) workshops related to the project, one at project's initiation, and one near project completion.

D. Act as a focal point for the different Bank units involved in the project (organize internal meetings, etc.).

69. The Applicant responded in several communications by raising numerous questions. To take one example, on June 15, 2000 she wrote (in part):

Thank you for your assistance in seeking clarification of the job content in the attached T.O.R. and discussing how to proceed with Human Resources. As of today I have had no reply from HR designate to my questions and requests of 5/24/00 e-mail. The Human Resource designate has not been responsive or in compliance with [the] instructions [of the Vice President of Human Resources] nor the *Appeals Committee's Report*, April 4, 2000.

The journals are unique in the World Bank, and therefore the administrative support which they require is unique. Responsibilities as detailed in this T.O.R. put together a completely new position 'designating a GC grade level' without audit or benefit of central Personnel expertise – in effect, backing-into-this-grade. There are several things that need to be addressed. Your suggestion that central Personnel lend a hand in determining which level is accurate for the proposed new job is encouraging. The T.O.R. mentions ... manage, maintain, administer, liaison, organize ... which suggests a degree of autonomy in functioning. The WBRO support functions are presently performed by a higher level GD staff (formerly level 17) – and have been since 1991 – 9 years. Either the placement level of these functions was wrong then or is now. This new position at a GC level, as suggested, would definitely require clarifications by HR from the out-set. A grade level of GD, GE, or GF might be more appropriate. The T.O.R., as presently written, appear to be for two jobs: Editorial Assistant for the WBRO and WBER, and Research Project Coordinator for the *Comprehensive Development Framework (CDF) Secretariat* (see announcement in Kiosk & Live Bulletin Archives attached). What percentage of time will be allocated to each segment?

There is definite uncertainty as to proper level of functioning. It appears that this T.O.R., as written, could be adding a higher level both in content and managerial responsibility then [sic] at level GC (formerly 16 level). So far, there has been no grading of this new position.

70. On the very same day, however, she also wrote the Vice President, Human Resources, inter alia, in these terms:

My career was terminated 5-years short of the mandatory retirement age of 62 by the treatment I received.... I now know that the only alternative is to proceed to the International Tribunal seeking a review and a just outcome.

71. In her reply, the Applicant states that "[p]ride and self-esteem demanded that I leave the Bank and seek redress with the Tribunal" (para. 1), and "I resigned in protest because of the mistreatment I received, and the failure, following the Appeals Committee Report, to institute appropriate career redress" (para. 3). She writes that "I was driven from an outstanding career by mismanagement" (para. 66), and that she "had no honorable recourse other than to resign" (para. 74). But the concept of "resigning in protest" has no place in the relationship between a staff member and the Bank. A resignation is a resignation: its legal consequences are unaffected by declarations of disagreement with the employer's conduct. The protest may give satisfaction in some moral or psychological sense, but it cannot validate an otherwise unfounded legal contention.

72. The case of the Applicant therefore falls to be examined in terms of her rights and obligations at the time of her resignation, a *fait accompli* for which she must bear the responsibility.

73. On June 21, 2000, in addition to her letter of resignation, the Applicant sent a short e-mail to the Vice President, Human Resources, stating:

It is with deep regret and on advice of my counsel that I am unable to accept this offer [i.e., the reassignment] as presented.

74. The Applicant complains that the “offer” as she perceived it on the date of her resignation “did not constitute a position commensurate with my previous responsibilities.” There is no foundation for this stance. Absent discrimination or other abuse of discretion, the Bank is entitled to reassign staff members in accordance with its needs. A staff member is in no position to declare that his or her “career was cut short” by such a reassignment; nor are staff members in a position to enter into detailed critiques of work programs as though they have a power of veto.

75. The Tribunal is satisfied that the Bank was taking reasonable steps to fulfill its agreement to accept the Appeals Committee’s recommendations, and that the Applicant frustrated this effort by the *fait accompli* of her resignation. In consequence, she is in no position to claim that the Bank would not have assigned her appropriately; she took it upon herself to abort the exercise.

76. Moreover, the Bank had a right, for reasons unrelated to the Applicant, to relocate the WBER to Paris. The Bank did not have an obligation to maintain a *position* which had suited her. It was the Applicant herself who ended her career at the Bank, at a time when a number of its personnel were engaged in efforts to structure a suitable reassignment for her.

77. The Applicant was never deprived of her income, and has indeed been given some further compensation by the Bank in the hope that it would end the dispute. If she is adversely affected by an ill-advised resignation, that is not a matter which the Bank has any obligation to redress.

Decision

For the above reasons, the Tribunal unanimously decides to dismiss the application.

/S/ Robert A. Gorman

Robert A. Gorman
President

/S/ Nassib G. Ziadé

Nassib G. Ziadé
Executive Secretary

At Washington, D.C., April 26, 2001