Decision No. 199

Ifeyinwa V. Tagbo-Ogbuagu,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on October 14, 1997, by Ifeyinwa V. Tagbo-Ogbuagu 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 Francisco Orrego Vicuña (a Vice President of the Tribunal) as President, Thio Su Mien (a Vice President of the Tribunal) and Prosper Weil, Judges. The usual exchange of pleadings took place. The case was listed on September 21, 1998.

2. The Applicant claims that the decision of the Bank to terminate her employment was an abuse of discretion in that it was tainted with bias and discrimination arising out of unfair assessments of her in the 1993-1994 and 1994 Performance Review Records ("PRRs").

3. The Applicant joined the Bank in May 1973 on a temporary appointment and received a regular appointment in October 1973. During the review period of July 1990 to June 1991, the Applicant occupied the position of Administrative Secretary in the Infrastructure Development Division of Country Department V of the Asia Region (AS5IN), both in an acting capacity and as a developmental assignment. In the PRR for this period, it was agreed that in the event the Applicant was not suitable for the position of Administrative Secretary, she would continue as a Staff Assistant in the Division or seek reassignment. At the end of 1991, the Applicant's Division Chief informed her that, based on his assessment of her performance, he was unable to recommend that she be hired as an Administrative Secretary. However, on January 1, 1992, on the appointment of a new Division Chief (Division Chief X), the Applicant was asked to remain in her position as Acting Administrative Secretary until March 1992, when a new Administrative Secretary was expected to be appointed.

4. For the period from 1990 to 1994, the Applicant was consistently criticized for needing improvement in areas such as time management, accuracy, punctuality and accessibility. These specific criticisms were mentioned by Division Chief X in the Applicant's PRR for 1991-1992 and, in order to improve the Applicant's performance, regular quarterly reviews were prescribed at that time. In the Applicant's PRR for 1992-1993, monitoring indicators were further established to address persistent performance weaknesses.

5. In the PRR for the 1993-1994 review period, it was indicated that the Applicant's performance "continued to be less than fully satisfactory." The Applicant was criticized for, among other things, "providing inconsistent support" and "inadequate work load planning and prioritizing." She was further found to be "generally ineffective" in areas concerning communications and resourcefulness and in arriving at work on time. The Management Review Group recognized that the Applicant was having difficulties "in sustaining her performance at a satisfactory level" and stated that she would continue to be evaluated against the established monitoring indicators. Subsequent to this Management Review, the Applicant and her supervisors agreed on a position description, occupational standards and specific performance criteria against which the Applicant would be evaluated on a monthly basis.

6. In the Applicant's PRR for the period of March 1994 to December 1994 (the "1994 PRR"), the overall quality of her work was assessed as "variable" on the basis that when feedback was not provided on a continuous basis, standards had a tendency to slip. In the light of the Applicant's performance history and a belief that the

Applicant needed "substantial managerial oversight … to achieve consistent performance meeting her level's minimum standards," the Management Review Group recommended that the Applicant be put on a Performance Improvement Plan. The Applicant was thereafter placed on such a Plan and was warned by Division Chief X that if she did not reach a "sustained satisfactory level" of performance by the end of six months, she could be terminated under Staff Rule 7.01, paragraph 11.02.

7. During the six months of the Performance Improvement Plan, monthly performance reviews were held involving Division Chief X, the supervisors and the Administrative Secretary. The evaluations of the Applicant were generally negative and at the end of the six-month period, the Bank decided to terminate her employment for unsatisfactory performance.

8. In a request for administrative review of the decision to terminate her employment, the Applicant alleged that her PRRs were inconsistent, that Division Chief X was prejudiced against her and that she should have been given an opportunity to seek a reassignment within the Bank or offered severance payments. Her case was reviewed, but the conclusion of management was that there was no reason to alter the termination decision. The Applicant appealed to the Appeals Committee. The Appeals Committee recommended that her requests for relief be denied. This recommendation was accepted by the Bank.

9. The Applicant then filed her application to the Tribunal. She contends that the 1993-1994 and 1994 PRRs were unfair and biased, that Division Chief X discriminated against her and that this discrimination may be seen in the following situations:

(i) In the 1993-1994 PRR, the Applicant's supervisor had in the supervisor's assessment section commented: "Similar to last year, [the Applicant's] performance was mixed but showed a promise for sustained improvement." This statement was amended by Division Chief X to read: "performance continued to be less than fully satisfactory." The Applicant alleges that Division Chief X was unfair and prejudiced against her.

(ii) Division Chief X had unduly and improperly influenced one of the Applicant's supervisors to amend her 1994 PRR. The Applicant's performance in 1994 was initially graded as satisfactory, but was altered subsequently as less than satisfactory. This PRR, she argues, was the basis for placing her on the Performance Improvement Plan which ultimately became the grounds for her termination.

(iii) Before the appointment of Division Chief X in January 1992, the Applicant's performance was evaluated as fully satisfactory. However, after the appointment of Division Chief X, the Applicant's performance became unsatisfactory. She maintains that the "collapse" of her performance under the direction of Division Chief X was due to bias and prejudice.

(iv) Division Chief X was prejudiced against the Applicant as may be seen in his attempts to humiliate her by requiring her to sign in and out of the office.

10. For the above reasons, the Applicant requests the following remedies:

(i) rescission of (a) the decision to terminate her employment, and (b) the decision refusing her severance pay;

(ii) reinstatement to a level 15 position in the Bank;

(iii) payment of three years' net salary as compensation; and

(iv) payment of attorney's fees and costs.

11. The Tribunal has on many occasions recognized the discretionary nature of the evaluation of staff performance by the management of the Respondent. The Tribunal will review such an evaluation only to determine whether there has been an abuse of discretion in that the decision is arbitrary, discriminatory,

improperly motivated or carried out in violation of a fair and reasonable procedure. The issue before the Tribunal in the present case is whether the decision to terminate the Applicant's employment for unsatisfactory performance constituted an abuse of discretion.

12. The Tribunal finds that the amendment made to the Applicant's 1993-1994 PRR did not convert a positive assessment to a negative one as alleged by the Applicant. In both the draft and the final versions of this PRR, the Applicant was criticized for the same performance deficiencies, including "providing inconsistent support" and "inadequate work load planning and prioritizing." In both versions it was stated that it was in recognition of these tendencies that monitoring indicators had been developed for the Applicant the previous year. Further, in both versions the Applicant was found to be "generally ineffective" in the key areas of communications and resourcefulness. It was on the basis of the Applicant's overall performance problems that performance priorities for the following year were listed as: (i) reduce oversight; (ii) more timely output; (iii) better time management; (iv) increased reliability; (v) make priorities known; and (vi) display more commitment. Thus, in the context of the entire record, the amendment to this PRR is not inconsistent and does not provide evidence of bias or discrimination.

13. With respect to the 1994 PRR, the Applicant claims that her work was initially evaluated as satisfactory but later amended by one of her supervisors negatively. She claims that this supervisor had been influenced by Division Chief X. The Tribunal, having examined the record, finds that the position is not as alleged by the Applicant. In the draft 1994 PRR, it was stated that "[w]hen standards have slipped, she has responded well to candid feedback on her performance." To this was added in the final PRR: "However, when feedback is not provided on a continuous basis, standards have a tendency to slip, so that the overall quality of Ms. Ify's work is variable." This complained of amendment does not negate the assessment but, rather, merely completes the evaluation.

14. The Applicant also alleges that she was constantly harassed and belittled by Division Chief X, as she was required to sign in and out every time she left the office. This allegation ignores the problem of absenteeism during working hours and the lack of punctuality on the Applicant's part. In this light, the oversight was not unreasonable.

15. The Applicant also alleges harassment involving the close monitoring of her performance. This close monitoring was due to the program of feedback and supervision of the Applicant to ensure that she followed the indicators set to improve her performance. This is a matter of managerial discretion and does not amount to an abuse of discretion. Furthermore, the frequent and close monitoring of the Applicant's progress showed that there was no basis for the Applicant's allegation that she was not given appropriate feedback on her performance and that there was a lack of due process.

16. The Applicant also alleges that Division Chief X was hostile towards her because in the 1991-1992 PRR he prescribed quarterly performance reviews rather than the annual or semi-annual reviews. The Tribunal notes in this respect that Division Chief X gave the Applicant a favorable assessment but also highlighted the need for the Applicant to improve in the areas of time management, accuracy, punctuality and accessibility, all of which were proper grounds for prescribing quarterly reviews.

17. The Tribunal also notes that the previous Division Chief, who had given the Applicant a favorable report at the commencement of her acting as Administrative Secretary, had pointed out to her areas of performance which needed to be improved. Eventually, this same Division Chief was unable to recommend the Applicant for the position of Administrative Secretary because her performance fell short of that expected for that position.

18. The Tribunal is satisfied on the evidence that the Applicant's allegations of discrimination, bias and harassment are not borne out by the record. There is no evidence that Division Chief X discriminated against her on ethnic grounds as alleged. The evaluation of the Applicant's performance was not conducted by Division Chief X alone but included assessments by the Applicant's supervisors. Their conclusions were substantially the same, namely, that there were various areas in the Applicant's performance that needed improvement. Indeed, there was a history of weak performance by the Applicant in certain areas of her work and there is no

basis for the allegation that negative evaluations of her performance constituted evidence of hostility and discrimination against her on ethnic grounds.

19. The Tribunal further finds that there was no breach of due process in the administrative steps taken to monitor the performance of the Applicant leading to her dismissal on the ground of unsatisfactory performance as the procedures for such termination were complied with.

20. The Tribunal also finds that since the Applicant's employment was terminated for unsatisfactory performance pursuant to Staff Rule 7.01, paragraph 11.02, she was not entitled to severance payments.

DECISION

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

Francisco Orrego Vicuña

/S/ Francisco Orrego Vicuña
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At Washington, D.C., October 19, 1998