

Decision No. 30

Yvonne M. Thompson,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, A.K. Abul-Magd and P. Weil, Vice-Presidents, and R.A. Gorman, E. Lauterpacht, C.D. Onyeama and Tun M. Suffian, Judges, have been seized of a complaint, received November 4, 1985, by Yvonne M. Thompson against the International Bank for Reconstruction and Development. After the usual exchange of pleadings, the case was listed on June 11, 1986.

The relevant facts:

2. By letter dated May 25, 1983, the Applicant was offered by the Respondent a regular appointment as a Secretary, Level D, in the East Asia and Pacific Country Programs Department (AEP), which offer was accepted by the Applicant by letter dated June 13, 1983. The appointment took effect from the latter date and was probationary for one year.

3. In July 1983 performance problems with the Applicant's work began to surface and these were informally discussed with her by her primary supervisor, together with the Administrative Secretary of the division in which she worked (AEPIN) and her Personnel Officer. In September 1983, the Applicant was advised that her work output was not up to standard and she was given in writing a list of objectives which were to be met in the next three to six months and upon which her evaluations would be based. Communications sent in October 1983 by the Administrative Secretary to the Applicant's Personnel Officer, which were apparently not communicated to the Applicant, complained about the Applicant's lack of initiative particularly in using the word processing machine. In November 1983 the Applicant met with her Personnel Officer who advised her to try to learn more quickly the Bank's policies and procedures relevant to her work.

4. Upon completion of the first six months of the Applicant's assignment, an Interim Evaluation Report (IER), dated January 16, 1984, was prepared in the Applicant's division and communicated by the Division Chief to her Personnel Officer and herself. It was discussed with the Applicant in draft. The IER noted that, while the Applicant was a pleasant person to work with, had an excellent attendance record and carried out one of her assignments well, and while "she possesses basic secretarial skills, a good deal of progress will be necessary before she is a fully functioning self-sufficient member of the Division." The IER identified a number of areas where the Applicant's performance was unsatisfactory. (a) With regard to knowledge and skills in relation to job requirements, it was stated that the Applicant "needs to use initiative in learning operational policies and procedures; improve on quality and accuracy of work; and complete tasks assigned to her in a timely fashion. She has familiarized herself with the Division's word processing equipment but her proficiency on the equipment is not fully satisfactory and constant practice on the machine will be required to build and improve on her skills in this area." (b) With regard to supervision required, it was stated that the Applicant "[has] not grasped as quickly as one might expect from an experienced secretary, the standard procedures and systems governing our work; as a result, a good deal of extra time and supervision is required in carrying out her duties. While some progress has been noted in this area recently, there is still much room for improvement." (c) With regard to work priorities, it was stated that "it [is] also important for [the Applicant] to establish and maintain a close working relationship with her supervisors and the Administrative Secretary, and work with them in devising plans that will better enable her to determine job priorities." The IER mentioned the various training

opportunities which had been provided to the Applicant in the first six months of her assignment and the training opportunities that would be provided to the Applicant in the next six months. It was pointed out that she had taken basic and advanced word processing training, the Bank Operations Seminar and the Telephone Skills Seminar and that she was attending the basic grammar course and would attend the listening and comprehension course. The IER stated that “a specific plan of action” (the Action Plan) would be worked out with the Applicant and that she would continue to be provided “with feedback through periodic reviews of her performance in the next six months with a view to assisting her to more fully meet the requirements of her position.” The IER concluded by stating about the Applicant that “on her part, a considerable amount of effort and application will be required if [her] performance is to improve to a level we would find satisfactory for a Divisional secretary.”

5. The Action Plan was prepared and communicated to the Applicant about the same time as the IER. It required the Applicant, by the end of her evaluation year, inter alia, (a) to master Bank policy and procedures, as well as the division procedures; (b) to complete assigned tasks in a timely fashion; (c) to read for understanding the typed material so as to be able to decipher words; (d) to proofread the finished product; (e) to follow instructions more carefully and ask questions if unclear; and (f) to use more initiative in learning standard operating procedures.

6. On March 15, 1984, the Administrative Secretary met with the Applicant in order to inform her – as recorded in the minutes of that meeting dated March 19, 1984, which were later communicated to the Applicant – that “[the Applicant’s] performance is still not up to the division’s standard and if it continues, we cannot, in all honesty, confirm her.” According to a memorandum dated May 10, 1984 communicated to the Applicant, her Personnel Officer recorded that she had discussed performance questions with the Applicant on March 30, 1984 and that the Applicant was again advised of the areas where her supervisors found her performance lacking, particularly as these “related to her slow progress and the need to further improve on accuracy of output, quality of work produced, word processing skills and ability to absorb and retain information and instructions.”

7. In a memorandum to the Applicant dated May 10, 1984, the Applicant’s Division Chief undertook a further evaluation of her performance, based on prior discussions with her. The Division Chief stated that “we have found your performance below acceptable standards in a number of areas most particularly in terms of quality and timeliness of work performed: ability to understand, retain and follow instructions and standard operational policies and procedures; degree of mastery of word processing equipment and degree of supervision required.” The memorandum elaborated on this by giving examples of the “slow progress” and the “substantial problems” in these areas: “For instance, drafts and final copy presented to your supervisors contain more than an acceptable number of errors in typing and format, document distribution lists are inaccurate, and timeliness remains a problem.” It pointed out that these problems were skills-related and had not been overcome despite “a considerable investment in training” and “a genuine effort on your part.” The memorandum concluded that these problems might not be amenable to solution in the short run and served notice on the Applicant that “in the absence of substantial improvement by the end of June 1984 we will not be able to confirm you and will recommend that your employment in this Division be terminated as of June 30, 1984.”

8. Beginning in late May, with the agreement of the Applicant, PMD attempted to find an alternative assignment in the Bank for her but without success, because managers were unwilling to consider her candidacy in view of her weak performance record. By memorandum dated June 20, 1984, the Applicant’s Division Chief sent to the Applicant’s Personnel Officer a final evaluation which was communicated to the Applicant. This memorandum stated that, despite substantial training and extra supervision, the Applicant’s performance had not met the division’s requirements for her position, that the division would neither confirm her nor continue to employ her, and that she should be removed from the division by June 30, 1984.

9. In a memorandum dated June 22, 1984, the Personnel Management Department (PMD), after meeting with the Applicant, advised her that her appointment would be terminated effective June 29, 1984 and that she would receive a payment of one month’s salary in lieu of notice.

10. By memorandum of June 27, 1984 to her Personnel Officer the Applicant requested a month's notice in lieu of the lump sum payment in order to seek employment within the Bank. By memorandum dated June 29, 1984, the Personnel Officer denied this request stating that, because the Respondent had concluded that the Applicant's skills had not met acceptable Bank standards, it would have been misleading for PMD to encourage efforts by her to seek another Bank assignment. The Applicant was, however, granted an additional month's salary to assist in the transition to employment outside the Bank. During this period, as a result of consultations between the Applicant and the Ombudsman about her situation, PMD had one of its secretarial staffing specialists review typing samples of work submitted by the Applicant. The judgment of this specialist was that the Applicant's typing skills were not up to standard.

11. In response to the Applicant's request to have the decision terminating her services reviewed, the Director, AEP, wrote to her by letter dated July 27, 1984, that, having reviewed her record, he confirmed the decision that the AEP could no longer retain her services but that he was redirecting the Applicant's request to PMD. By letter of August 27, 1984 the Acting Director, PMD, informed the Applicant that after reviewing the matter both within PMD and with her managers in AEP, he was reconfirming the decision to terminate the Applicant's employment with the Bank.

12. On August 27, 1984 the Applicant filed an appeal with the Appeals Committee. Having reviewed the evidence and the arguments presented by the parties, the Appeals Committee concluded:

(a) that during her probation, Appellant was required to submit herself to a test of her abilities for the specific assignment for which she had been hired; (b) that in order to facilitate her taking this test, Appellant was provided with all the coaching, information, training, guidance and performance feedback that would normally be required or could reasonably be expected; (c) that in spite of these facilities and her own efforts, Appellant failed to show that she had the necessary skills and qualifications for the position for which she was hired; (d) that this was the sole ground for Respondent's decision not to confirm Appellant in her assignment to test her abilities further; (f) that the decision to terminate Appellant's services was in substance and in all important respects in accordance with the Bank's procedures; and (g) that, therefore, Respondent did not err in terminating the Appellant's services at the end of her probation.

The committee recommended that the Respondent's decision to terminate the Applicant's employment be upheld.

13. By letter dated July 31, 1985, the Vice President, Personnel and Administration (PA), notified the Applicant that he concurred with the recommendation of the Appeals Committee.

The Applicant's main contentions:

14. The Respondent failed, prior to the termination of the Applicant's employment, to consult with all her superiors in assessing her performance and as a consequence the interim evaluation was biased and loaded with inconsistencies.

15. The Respondent failed to give the Applicant the appropriate training and feedback as required by the Personnel Manual, because the Administrative Secretary of the division for which the Applicant worked was relatively new to the division and was consistently absent from work.

16. The Respondent violated the provisions of Personnel Manual Statement (PMS) 4.01, because no proper Anniversary Evaluation Report (AER) was prepared at the end of her period of probation.

17. The Applicant's pleas are that:

- (i) she be confirmed as a regular staff member retrospectively as from the end of her first year of service and reinstated in her secretarial position;
- (ii) she be given all back pay and benefits; and

(iii) she be paid \$50,000 as compensation.

The Respondent's main contentions:

18. All the Applicant's supervisors were consulted and her performance was constantly discussed with her.

19. The failure to use Form 714, as required by PMS 4.01, in preparing the Applicant's anniversary evaluation was a harmless error and required no redress. The memoranda used for the evaluation were based on prior discussions with her supervisors and were discussed fully with her.

20. Adequate training feedback were given to the Applicant during her probationary period, both by her supervisors and from courses offered by the Respondent's Training Unit. The contention that the Administrative Secretary of the division was consistently absent from work is contradicted by the evidence of the Administrative Secretary's leave record. In any case there were others in the division who gave the Applicant the appropriate training and direction.

21. The Applicant has failed to support with specific examples her general contention that her interim evaluation was biased and loaded with inconsistencies. The evaluation objectively pointed out her strong and weak points and set out a specific plan for improvement.

Considerations:

22. The Applicant contests the decision to terminate her employment at the end of her probationary period on three grounds:

- (i) The Bank's failure to consult all her supervisors prior to termination, which resulted in the evaluation of her performance being biased;
- (ii) The Bank's failure to provide ongoing coaching and feedback during the probationary period, as required by PMS 4.02; and
- (iii) The Bank's failure to prepare Anniversary Evaluation Reports, in violation of PMS 4.01, which is applicable to probationary officers in accordance with PMS 4.02.

23. As to the first objection, the decision not to confirm the Applicant's appointment but to terminate her employment as a Secretary, Level D, was taken on the ground of her "unsatisfactory performance", in accordance with paragraph 7 (b) of PMS 4.02. The conclusion that the Applicant's performance was unsatisfactory, and that she was lacking basic secretarial skills, was based on the views of her immediate supervisor, the Senior Loan Officer in AEP, Indonesia Division (AEPIN), for whom the Applicant performed the principal part of her duties, the Operations Assistant in the same division, and the Administrative Secretary responsible for administrative supervision of the Applicant. The same conclusion was reached by the Personnel Officers in PMD and endorsed by the Division Chief of AEPIN, who made the interim evaluation of January 16, 1984. The below-standard nature of the Applicant's typing was confirmed by an expert appointed by the Ombudsman. In light of such a general opinion as to the deficiencies in the Applicant's secretarial work, her complaint that another officer, for whom she did a small proportion of her work and who was relatively new to the Bank, should have been asked to take part in the evaluation of her performance, cannot by itself support the contention that such evaluation was biased.

24. The Applicant has furnished to the Tribunal some examples of her typing in an attempt to contest the evaluation of her secretarial services as unsatisfactory. In this respect the Tribunal recalls its previous pronouncements to the effect that:

It is an established rule of judicial review by this and other similar tribunals that the reviewing tribunal may not substitute its own judgment for that of the management as to what constitutes satisfactory performance. (Polak, Decision No. 17 [1984], para. 43.)

In another case the Tribunal stated:

The administration's appraisal in that respect is final, unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure. (Suntharalingam, Decision No. 6 [1981], para. 27.)

In the present case there is nothing to suggest that the Bank abused its discretion in reaching the conclusion that the Applicant's performance as Secretary, Level D, was unsatisfactory.

25. The second ground of complaint concerns the alleged failure of the Bank to provide ongoing coaching and feedback during the probationary period, as required by PMS 4.02. The Tribunal has stated in a previous case that it is its

[D]uty to make sure that this obligation has been complied with in a reasonable manner and that the decision not to confirm the Applicant's employment has not been based on a performance which has manifestly not benefited from adequate supervision and guidance. (Salle, Decision No. 10 [1983], para. 32.)

The record in the present case substantiates the Respondent's contention that the Applicant received adequate supervision and guidance from her supervisors and from PMD, both before and after the Interim Evaluation Report. This report was accompanied by a detailed Plan of Action which the Division Chief prepared in consultation with PMD and which listed the improvements which the Applicant was expected to make by the end of her evaluation year. After the IER was communicated to her in January 1984 there was a series of meetings between the Applicant and her supervisors and PMD staff at which the Applicant continued to receive advice and warnings about the deficiencies in her work. In particular, the Applicant received feedback and coaching from the Operations Assistant and from the Administrative Secretary of her division. The Applicant's complaint to the effect that the latter did not provide sufficient coaching because she was consistently absent from work has proven to be groundless in the light of the records of attendance of the Administrative Secretary presented by the Respondent. As to the training and orientation programs which are offered to probationary officers in accordance with PMS 4.02, the record shows that the Applicant received basic and advanced word processing training, and attended seminars on Bank Operations and Telephone Skills and courses on basic grammar and listening and comprehension. There is no merit, therefore, in this second ground of complaint raised by the Applicant.

26. The final contention of the Applicant is that the Bank did not follow the formal requirement of PMS 4.01 concerning the Anniversary Evaluation Reports, which is made applicable to probationary officers by PMS 4.02, para. 6. This paragraph provides that:

During the staff member's period of probation, supervisors are expected to evaluate the staff member's performance every six months, in accordance with the procedures outlined in Personnel Manual Statement No. 4.01, Staff Evaluation, Annex B. These formal evaluations are in addition to the special supervision and ongoing coaching given by supervisors to staff members on probation.

PMS 4.01, Annex B, in para. 4(a) requires the use of Form No. 714, Anniversary Evaluation Report, which includes input from the staff member and assessments in written form by the immediate and next-in-line supervisors over their signature.

27. In the present case the evaluation of the Applicant's performance was made both at the end of the six months period and at the end of her probation, in memoranda and not on AER forms, as required by PMS 4.01. In Broemser the Tribunal observed that:

[T]he Bank is bound to adhere to established procedures and in the present case the procedure followed by the Bank represents not only a clear deviation from the Staff Evaluation Procedure in PMS 4.01 but is also a form of practice which has not been embodied in any staff rule or otherwise made a matter of public

record. (Decision No. 27 [1985], para. 39.)

The Tribunal found in that case that the formal deviation which had occurred did not lead to an erroneous assessment of the Applicant's performance and consequently did not have the effect of vitiating the Respondent's decision to terminate the Applicant's employment. However, taking into account the procedural irregularity in the treatment of the staff member, the Tribunal ordered the Respondent to pay the Applicant a certain amount.

28. In the present case the Tribunal finds that the procedures followed, while not adhering to those established in PMS 4.01 and 4.02, cannot be considered as having done the Applicant any material injustice, having regard to her record of performance read as a whole, nor as having deprived her of the guarantees of due process. The Applicant was at all times advised of the shortcomings found by her supervisors and fully informed of the evaluations made with respect to her work. These shortcomings were discussed with her and remedial action was suggested. As these evaluations were based on prior discussions with the Applicant and the relevant memoranda were communicated to her, she was afforded a sufficient opportunity to make her comments, to exercise the right of rebuttal and to ask for supplementary performance assessments from other supervisors, as provided for by PMS 4.01. Consequently, the Tribunal will do no more than award the Applicant a nominal sum out of consideration for the importance of emphasizing the need for the Respondent to adhere to established procedures and because the Applicant has suffered no material injury.

Decision:

For these reasons the Tribunal unanimously decides:

- (1) that the Respondent shall pay the Applicant \$500; and
- (2) that the application is otherwise rejected.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington, D.C., October 31, 1986