

Decision No. 112

Bruno Vollmer,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of P. Weil, President, A.K. Abul-Magd and E. Lauterpacht, Vice Presidents, and R. A. Gorman, E. Jiménez de Aréchaga and Tun Suffian, Judges, has been seized of an application, received December 10, 1990 by Bruno Vollmer, against the International Bank for Reconstruction and Development. The Tribunal rejected the Applicant's request for certain preliminary measures, including the production of documents. The usual exchange of pleadings took place. The case was listed on February 26, 1992.

The relevant facts:

2. The Applicant joined the Bank in May 1969 as a Programmer in the Data Processing Department. At the end of 1974 he transferred to the Controller's Department. Within a year he became a System Advisor and was promoted to level M, which is equivalent to current level 24/25. In January 1978 he became Division Chief, Administrative Expense Division, and was promoted to level N, which is equivalent to current level 26. In July 1981, he was appointed Manager of the Expense Division, Accounting, and in 1983 Senior Management Systems Advisor. Both positions were at level 26.

3. In 1985 as a result of the Bank-wide Job Grading Program the Applicant's position was downgraded to level 24 and he was granted a two-year salary protection.

4. In 1987 as a result of the Bank-wide Reorganization his position was abolished. During the Reorganization the Applicant accepted the position of Principal Information Analyst in the Information Resources Division which was also a level 24 position. Three months later he was seconded to the office of the Vice President and Controller to assist him with staff and budgetary matters.

5. In April 1989 the Applicant was officially assigned to his secondment position, which was reclassified to level 25, and was given the title of Program Coordinator.

6. Throughout his career with the Bank the Applicant had a strong performance record, and, subsequent to 1983 he was recommended several times for managerial positions.

7. In a memorandum dated December 12, 1988, addressed to Vice Presidents and Directors, the Vice President, Personnel (VPP) announced a decision taken by the Executive Directors in connection with the 1988 salary review concerning downgraded staff. In particular, he stated that staff members whose positions were downgraded as a result of a job evaluation were to be treated, for salary review purposes, as though their positions had not be downgraded, even after the two-year salary "grandfathering" period had expired. The Vice President also stated that a salary review should be conducted for staff who had not participated in the 1988 salary review or had participated in the 1988 salary review but whose salaries were not above the ceiling of their new grade.

8. As a result of this decision the Applicant, who had not participated in the 1988 salary review, received a salary increase within the range of level 26 effective May 1, 1988.

9. During the May 1989 salary review the salary protection arrangements of 1988 concerning downgraded staff remained in place and the Applicant again received a salary increase within the range of level 26.

10. In a memorandum, dated July 3, 1989, the Director, Personnel Operations (PEROP), informed the Applicant that under the Revised Compensation System adopted that year by the Executive Directors, it became necessary to convert A-Q/5-1 grandfathered grades to grades in the revised salary structure, and that his new salary protection grade was level 26.

11. In a circular dated August 21, 1989 the Director, Personnel Policy (PPO), announced to the staff that as a result of the implementation of the Revised Compensation System on May 1, 1989 the Executive Directors had taken some important decisions concerning the protection of salaries of downgraded staff. He stated that, in particular, downgraded staff would for two years have their salaries administered within the salary range of their former grade; if, after two years, their salaries were within the range of their lower grade, their salaries would be administered within that range; if, at the end of the two-year period or thereafter, their salaries exceeded the maximum of their new and lower grade range, and if they were fully satisfactory performers, they would receive the minimum increase as established under the Revised Compensation System.

12. At the time of the May 1990 salary review the Applicant received the minimum salary increase under the Revised Compensation System. Being dissatisfied with that decision, he requested, on August 29, 1990, an Administrative Review of that decision. However, his request was denied and the Applicant was advised that he could take his case to the Appeals Committee or proceed directly to the Administrative Tribunal with his appeal. The Applicant opted for the latter.

The Applicant's main contentions:

13. The Applicant is entitled to continuation of salary protection at level 26 as long as he is assigned to a lower-level position.

14. The Respondent's sudden decision in 1990 to terminate the Applicant's salary protection at level 26 violated the Applicant's essential terms and conditions of employment, which the Respondent itself had created through its continued practice since 1985.

15. The Applicant received clear and unambiguous statements from the Respondent confirming that practice and his right to continued salary protection at level 26 upon which he did rely.

16. The Bank acted in an arbitrary and discriminatory manner against the Applicant because it decided a priori and regardless of the Applicant's individual merit and performance that the "minimum increase" was appropriate for him at the time of the 1990 salary review.

17. The Respondent abused its discretion when it introduced the new salary administration system, which disregarded the Applicant's acquired rights and legitimate expectation that his salary would be administered at level 26.

18. The Respondent has benefitted from the Applicant's long experience in the institutional and his undisputed technical excellence. However, the new salary administration system is grossly unfair to the Applicant since his compensation is presently administered at a lower grade than in 1978. Moreover, this change, occurring toward the end of the Applicant's career, would have a deleterious impact on this retirement compensation.

19. The Applicant requests that the Respondent:

- (i) rescind its decision not permanently to "grandfather" the Applicant's salary at level 26;
- (ii) administer the Applicant's salary at level 26;

- (iii) actively consider the Applicant for a managerial position at level 26 or higher;
- (iv) pay the Applicant 7% of his salary plus interest from May 1, 1990 to the date of payment;
- (v) pay the Applicant compensation in the amount equal to three years' net pay; and
- (vi) pay the Applicant costs and fees incurred by himself and by the World Bank Staff Association.

The Respondent's main contentions:

20. The Respondent fulfilled its obligations toward the Applicant under the Principles of Staff Employment and Tribunal decisions by providing him with generous protective measures which alleviated the adverse effects of the downgrading of the position he occupied in 1985. The Applicant enjoyed four years of full salary protection at his former level 26, payment of the minimum increase at the time of the salary review for the year 1990, and a salary increase well above the minimum increase in 1991.

21. The Respondent did not undertake to grandfather the Applicant permanently when it extended his salary protection at the time of the salary review for the years 1988 and 1989. None of the Respondent's communications to the Applicant intended to provide him with permanent salary protection. Had the Respondent so decided, the very purpose of the Job Grading Program would have been defeated and unjustifiable inequalities of compensation among staff would have been perpetuated.

22. While the implementation of the new salary administration system did alter a non-fundamental element of the Applicant's contract of employment, it did not constitute an abuse of power, because it was not retroactive, it did not discriminate in an unjustifiable manner, it was carefully studied and provided for a minimum increase as long as the salary of the Applicant exceeded the salary range of the grade he occupied.

23. Only at the 1990 salary review did the Applicant receive the minimum salary increase because his salary exceeded the maximum of the range of the position he occupied. At the 1991 salary review the Applicant had already received a salary increase well above the minimum increase for 1991. Moreover, in the future he will be eligible for salary increases, performance warranting, exceeding the minimum increase, because it is anticipated that at each salary review the structural salary adjustment will be larger than the minimum increase for that given year.

24. The request for costs and attorneys' fees should be denied, not only because such expenses are awarded only exceptionally, but also because he did not submit an itemized statement of costs.

Considerations:

25. The Applicant's first submission is that the Respondent's sudden reversal in 1990 of its policy of grandfathering the Applicant's salary at level 26 notwithstanding the level of positions he had occupied since 1985 violated the terms and conditions of the Applicant's employment contract. He refers, in particular, to the Bank's continued practice since 1985 and to two Bank memoranda to him from the VPP in 1988 and the Director, PEROP, in 1989. The Tribunal will consider each of these items in turn.

26. As to the elements in the Bank's practice since 1985, it would appear that the first relevant feature was the undertaking given to the Applicant in 1985 at the time that his level 26 position was downgraded to level 24. That, however, was limited to a two-year grandfathering and evidently cannot be construed as being of longer duration. As the Tribunal has observed in Alleyne, Decision No. 109 [1992], para. 27,

.... [T]he Respondent cannot reasonably have been found to have given an assurance, expressly or impliedly, that salary grandfathering for all staff members downgraded in the 1985 Job Grading Exercise was to continue indefinitely.

When in September 1986 the Applicant became a Systems Advisor in the Office of the Vice President and

Controller, again at level 24, he was assured that the grandfathering that he had enjoyed in his previous post would be maintained for two years. In neither of these developments can the Tribunal find a commitment on the part of the Respondent to indefinite grandfathering.

27. The question then remains whether either of the 1988 or 1989 memoranda amounted to such a commitment. The first of these is dated December 12, 1988 and informed the Applicant that the Executive Directors had decided that

staff members whose positions were downgraded as a result of a job evaluation are to be treated, for salary review purposes, as though their positions had not been downgraded, even after the two-year salary grandfathering period has expired.

These words are identical with certain passages in the Respondent's desk-to-desk circular FYI/88/114, dated December 9, 1988, which was circulated to all affected personnel and the receipt of which the Applicant, though not affirming or admitting, has not denied. The two documents must be read together and, though the remainder of the December 12 memorandum is not identical with FYI/88/114, it is not so dissimilar that the interpretation placed upon the latter by the Tribunal in Abdi et al., Decision No. 108 [1992], cannot equally be applied to the former. There the Tribunal said (in paragraphs 40-42):

40. ...The principal declaration in FYI/88/114 was thus that the salary of downgraded staff members would be administered at the former grade 'even after the two-year salary grandfathering period had expired'.

41. The Applicants contend that this constituted an assurance of indefinite future grandfathering, and that this was reinforced by the Respondent's failure to incorporate express language that either limited the extension of grandfathering to one year only or that reserved the power to terminate grandfathering at any future time.

42. Although it is true that such language of limitation or reservation was not expressly incorporated in the December 9, 1988 FYI, it nevertheless follows from other language contained in that document that the extension of salary grandfathering was for the purpose of calculating 1988 salaries and could not reasonably be understood to constitute an announcement or indefinite grandfathering. For example, among the passages in the FYI was this (emphasis added):

Concurrently with this FYI, relevant managers and Personnel Teams are being instructed to initiate a supplementary salary review to cover those staff affected by the decision of the Executive Directors. The review should be completed before the year-end so that salary adjustments, retroactive to May 1, 1988, can be reflected in the February [1989] payroll.

28. The Applicant also refers to the 1989 memorandum dated July 3 from the Director, PEROP, and addressed to the Applicant personally. This memorandum did no more than inform the Applicant of the necessity to change the A-Q/5-1 system of grandfathered grades to grades in a revised salary structure and of the change in his specific case from Grade N to Grade 26. The memorandum does not add anything to the situation. If, previously, as a matter of law the Applicant had been entitled to indefinite grandfathering, the 1989 memorandum could have been read as confirming this situation. But if, as the Tribunal has found, the pre-existing situation was not one of indefinite grandfathering, the 1989 memorandum does not change it.

29. The Applicant also contends that the Respondent's salary action in 1990 is an impermissible abuse of discretion. The alleged abuse is expressed in terms particular to the circumstances of the Applicant's case and starts from the premise that the Applicant was deprived of rights "which had been secured prior to the adoption of the new salary administration arrangements" or of rights which were the subject of "specific promises". The Tribunal is unable to identify the specific promises which the Applicant thus invokes. As already stated in paragraph 26 above, the undertakings given to him in 1985 and 1986 were expressly stated to be limited to two years; and the memoranda of 1988 and 1989 cannot be interpreted in the way which the Applicant asserts.

30. The Applicant refers to the high quality of his performance over the years. This has not been questioned, but it is not possible to construct out of that fact, or from the circumstances in which the Applicant accepted

changes of assignment in 1985, 1986 and 1987, a commitment on the part of the Respondent to grandfather the Applicant for more than two years. Nor is it relevant that the Applicant accepted changes of assignment and the 1985 downgrading from level 26 to level 24 because he believed that his salary was protected under the policy of grandfathering. His positive attitude to his work cannot alter the fact that on each occasion he was promised grandfathering for not more than two years.

31. Insofar as the Applicant complains that he has not been given a position that matches his quality, he advances no ground to suggest that he has suffered a legal wrong. He does not contend that in that respect he has been treated in an arbitrary or discriminatory manner. His only complaint is about the discontinuance of his grandfathering. Nothing in the way in which the Applicant has been treated can bring him within the ambit of the de Merode case, Decision No. 1 [1981]; there was no pattern of behavior on the part of the Respondent sufficient to invest the Applicant's limited entitlement to grandfathering with the quality of being an essential or unchangeable term or condition of the employment relationship. (See Gabriel, Decision No. 106 [1992], para. 31).

32. The only context in which the Applicant advances the argument that he has been treated in an arbitrary or discriminatory manner is in his allegation of "the mechanistic approach to salary adjustment which the Bank's new policy envisions." He suggests, in particular, that the new policy does not allow factors such as the contribution to the Bank or performance on the job to be considered in making salary adjustments. He points to the fact that though there is room in the Bank's system of minimum increases for penalizing an employee for unsatisfactory performance, the system does not permit an increase in compensation for superior performances.

33. This argument was advanced and considered by the Tribunal first in Klaus Berg (No. 2), Decision No. 99 [1990] and again in Maningas, Decision No. 107 [1992]. In the latter case, after quoting the relevant passage from Klaus Berg (No. 2), the Tribunal said:

28. It cannot be disputed that the overall efforts of the Respondent at a Bank-wide reorganization, with its restructuring of positions and the resulting assignment of some staff members to lower level positions, was a reasonable exercise of the Bank's discretion in the interest of efficiency of operations. To require the Bank to maintain the higher salary level for staff members downgraded in the reorganization for the balance of their career with the Bank would defeat a principal purpose underlying the reorganization. In Klaus Berg (No. 2), the Tribunal concluded that it was within the discretion of the Bank to make adjustments in salaries that would attempt to accommodate the Bank's interest in bringing salaries into line internally while alleviating the adverse impact on downgraded employees. As the Tribunal in effect concluded there, it was not an abuse of discretion for the Respondent to do so by implementing a policy of salary grandfathering limited in time, followed by a period in which some employees performing satisfactorily or better would be rewarded with a significant minimum increase, as a transition toward greater salary parity with persons doing similar work at the lower grade level.

29. In sum, when the Applicant in 1990 received a 4.2% salary increase – which left her with a salary that was above the maximum of the salary range of her then-current, lower-graded, position at level 15 – the Respondent satisfied its obligation, as an essential condition of the Applicant's employment to provide "periodic salary increases reflecting changes in the cost of living and other factors."

30. For these reasons, as well as those set forth in Gabriel, the Respondent's decision regarding the Applicant's 1990 salary increase did not violate the Principles of Staff Employment which, among other things, require that the Respondent alleviate the effects of downgrading, reward staff members according to their performance, and achieve salary levels that are equitable internally. Although there might have been other ways in which the Respondent could have satisfied these mandates, they were reasonably satisfied here, by providing for a salary increase that reflected the Applicant's satisfactory performance, that allowed her salary to remain above the maximum figure pertinent to her current grade level, and that began a process of gradually narrowing the salary gap between her and her fellow staff members performing work at that grade level.

Decision:

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

Prosper Weil

/S/ Prosper Weil
President

C. F. Amerasinghe

/S/ C.F. Amerasinghe
Executive Secretary

At London, May 8, 1992