Decision No. 101

Maria Fabara-Núñez,
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 F.K. Apaloo, R.A. Gorman, E. Jiménez de Aréchaga and Tun Suffian, Judges, has been seized of an application, received July 5, 1989, by Maria Fabara-Núñez, against the International Bank for Reconstruction and Development. Consequent upon a request made by the Applicant the Tribunal ordered the Respondent to provide the Applicant with a copy of the "IDA Investigative Panel Report" abridged under the supervision of the Tribunal. The Tribunal decided not to grant the Applicant’s other requests for documents and answers to interrogatories. An application to intervene was filed by a present member of the Bank staff on August 20, 1990. The principal proceedings were suspended and pleadings were exchanged among the Intervenor and the parties. Thereafter the usual exchanges of pleadings between the parties took place. The case was listed on May 9, 1991.

The Relevant Facts:

2. The Applicant joined the Bank in May 1972 as a Clerk/Typist in the Treasurer’s Department. On January 1, 1976, she transferred to the Internal Audit Department (IAD) and in February 1982, she was assigned to the Electronic Data Processing (EDP) Unit of IAD, to assist the Auditor of that Unit in the implementation of the IAD’s Time Reporting and Budgeting System (TIRBS). In March 1984, the Applicant requested to return to financial and administrative audit work, but her supervisor rejected her request in view of the continued need for her data processing services.

3. Until September 1986 the Applicant worked under the same supervisor and received good performance reviews and above average or average salary increases.

4. In September 1986 IAD management decided that the Applicant’s work responsibilities were not commensurate with her grade level 19. Consequently, the Applicant was reassigned effective November 1986 to carry out regular audit work which was commensurate with her grade level and which was the kind of work she had done before her transfer to the EDP in February 1982. The Applicant’s new supervisor was the Principal Auditor, but the Applicant also continued working with her former supervisor in EDP.

5. Sometime in November 1986 there were some discussions concerning the Applicant’s future in IAD and the Personnel Officer of IAD intervened in order to clarify misunderstandings between the Applicant and her supervisor stemming from past perceptions of management and performance evaluations in IAD. Furthermore, the same Personnel Officer recorded that the Applicant decided to remain in IAD and have her performance judged on the basis of a work program agreed by all parties.

6. In the Applicant’s performance review for the period March 1986 to February 1987 – dated May 29, 1987, but apparently prepared in late June and shown to the Applicant in early July 1987 – her new supervisor found that her performance was less than satisfactory in certain respects and that she was not performing at her current grade level. However, because he considered it to be premature to make a final assessment of the Applicant’s capabilities and suitability of her continuing in IAD, he decided to review her performance again at the end of October 1987. He also noted that the Applicant had done, in general, a good job and that her
tendency to spend more time than appropriate on her assignments was attributable to her long absence from audit work.

7. The Applicant replied to her supervisor’s comments by stating that she should have been given substantially more time to catch up on and relearn skills which she had not used because of her transfer to EDP in 1982.

8. On June 3, 1987 the Applicant’s new supervisor was appointed Acting Director of IAD and placed in charge of the selection process for IAD in the Reorganization. By memorandum, dated June 29, 1987, to the Senior Vice President (SVP), Administration, a group of IAD staff members complained about this manager’s inadequacies and requested an inquiry into the charges made against him by them.

9. On July 7, 1987 the IAD Selection Committee met and selected the IAD Staff for the post-Reorganization Bank. The Committee unanimously found that the Applicant had not met or only partially met the following criteria required for the position of a level 19 audit analyst:

   Skills/Abilities:

   ... 

   3. Ability to make qualitative judgments in evaluating the adequacy and effectiveness of systems and controls over diverse Bank activities, and to discuss and present findings and potential recommendations to client management and staff.

   4. Ability to handle routine audit assignments with relative independence....

   5. Ability to develop recommendations and draft segments of reports clearly setting them out, for further consideration by Senior Auditors or Auditors.

   6. Sustained record of good performance, and demonstrated potential for professional growth to higher levels.

   Personal Characteristics:

   ... 

   2. Ability to analyze problems and issues noted, and to make practical application of principles and concepts.

   3. A sense of priorities in the organization and execution of assignments, and in effectively utilizing allotted time.

The Applicant was consequently not selected for any position as audit analyst, graded 18 through 20, and three audit analyst positions were left vacant.

10. The Applicant entered Round 2 of the selection process in the Reorganization. She failed to secure a position and was separated from the Bank with the Enhanced Separation Package (Package B).

11. In October 1987 after the Reorganization had been concluded the Bank convened an investigatory committee to examine the charges that had been made against the management of IAD. The Panel completed its investigation and report (the IAD Investigative Panel Report) in December 1987.

12. In a memorandum dated November 5, 1987, requested by and addressed to the IAD Acting Director, the Applicant’s supervisor for the period 1982-1986 stated that he was writing to document certain very critical evaluations of the Applicant’s skills, as had been discussed at length in June 1987 between the Acting Director...
and the supervisor; among other things, the latter stated that the Applicant's PPRs and merit increases from 1982 to 1986 reflected her performance problems.

13. The Applicant sought administrative review and took her case before the Appeals Committee, which dismissed her appeal. The Respondent's management refused to overturn the selection decision taken.

14. After the application and answer were filed with the Tribunal, the Tribunal, at the request of the Applicant, directed the Respondent to make available to the Applicant portions of the IAD Investigative Panel Report. Because the Bank had retained this report subject to assurances of confidentiality, the Tribunal directed that it be made available to the Applicant in heavily abridged form and under strictures of confidentiality. Subsequently, a staff member discussed in the report filed an application for intervention in this proceeding, claiming that the Bank had violated its assurances of confidentiality and that disclosure of portions of the report in the pleadings or in the Tribunal’s judgment could cause him injury. The Applicant contended that intervention was inappropriate, while the Respondent, although it challenged neither the confidentiality of the IAD Investigative Panel Report nor the right of intervention, contended that there was no need for any additional order by the Tribunal on the matter of confidentiality.

The Applicant's main contentions:

15. The Applicant’s performance was satisfactory in every respect and she also had the qualifications for a level 19 position as audit analyst, the requirements for which had not significantly changed in the Reorganization.

16. The Respondent abused its discretion by not selecting the Applicant for a position of audit analyst which she had held before and three of which remained unfilled after the Reorganization.

17. The Respondent abused its discretion in leaving the selection process for audit analyst positions to be controlled by the manager who by his actions had shown a clear prejudice against the Applicant primarily as a result of a conflict relating to the Applicant’s refusal to modify time sheets pursuant to the improper instructions of the manager who subsequently was found to be a deficient manager by the IAD Investigative Panel.

18. The Applicant’s services were terminated ostensibly on the ground of redundancy but really because of poor performance on the basis of a backdated performance evaluation which was not completely negative and was in fact improperly done so as to influence the Reorganization process.

19. The Applicant’s services were terminated, although her performance was not positively found to be unsatisfactory, because, though an additional four month period was prescribed in order to evaluate her performance, the Reorganization intervened and the Applicant was declared redundant. Insofar as she was not given a period during which to improve her performance before her appointment was terminated there was a violation of Staff Rule 7.01, Section 11.

20. The Applicant’s non-selection for a position of audit analyst grade level 18/19/20 was disproportionate to the alleged defects of her performance and skills and abilities. She could have been offered at least a position at level 18, or an opportunity for additional training.

21. There is an established practice in the Bank that a staff member’s employment may not be terminated without cause except for redundancy. This is an essential element of the contract of employment which cannot be changed without the consent of the staff member. The Respondent violated this term of employment by not appointing the Applicant to a vacant position during the Reorganization, because she was not redundant and there were no good reasons not to retain the Applicant in the Bank.

22. The Applicant actively and adequately took part in the Round 2 selection process when she failed to be selected in Round 1 but did not succeed in finding a position, particularly because she had been put on probation in IAD as a result of the manager’s improper motivation.
23. The Applicant requests that:

(i) the Bank reinstate the Applicant in a regular staff position with an assignment commensurate with her training and professional experience. As the Applicant’s service was terminated more than 36 months ago, the Package B benefits should be treated as liquidated damages not subject to return, since the Applicant has exhausted these funds to meet the daily expenses of sustaining life;

(ii) if the Respondent declines reinstatement, the Respondent pay compensation to the Applicant in the amount of the income she would have received until her normal retirement age of 65 years, had the Bank not violated the terms of her employment, less the amount of Package B benefits she had received;

(iii) the Respondent pay the Applicant as compensation for physical and mental hardship inflicted on her and her family and for expenses in connection with the search for new employment an amount equal to one year’s salary; and

(iv) the Respondent reimburse the Applicant for legal costs and fees as of March 14, 1991 in the amount of $11,662.74.

The Respondent’s main contentions:

24. The Applicant’s non-selection for a position of audit analyst was in accordance with the provisions of Staff Rule 5.09, because her skills, qualifications and work experience were found insufficient for the revised requirements of the position. There was no abuse of discretion on the part of the Respondent.

25. Because the Applicant’s separation from service was not for unsatisfactory performance pursuant to Staff Rule 7.01, there could have been no abuse of discretion in respect of a decision relating to her performance, or breach of any obligation to give the Applicant an opportunity to improve her performance before her appointment was terminated. The Applicant’s separation from the Respondent’s service was not a sanction imposed upon her but was because of redundancy, a ground recognized by Principle of Staff Employment 7.1 (b) (iii).

26. No essential element of the Applicant’s conditions of employment was violated when she was separated from the Respondent’s service, because this was the result of new skills requirements being established for certain positions consequent upon the organizational structure of the Bank being substantially changed.

27. There was no prejudice on the part of the Applicant’s supervisor in his service on the selecting committee. There was clear evidence that the Applicant did not fulfill certain of the criteria required for the newly designed position of audit analyst. Moreover, an objective decision was taken by the selecting committee after consideration of all the circumstances that the Applicant should not be selected for retraining.

28. Even if the Applicant has been injured, she has failed to show that the damages she claims exceed the differential between what she received under Package B and what she would have received under Staff Rule 7.01, Section 8, which is $47,994.56.

29. Costs or attorney’s fees are awarded only exceptionally by the Tribunal, even when an Applicant wins. There are no exceptional circumstances in this case which would warrant the award of costs or such fees.

Considerations:

30. The Applicant’s principal contention is that the failure by the Respondent, during the Bank-wide Reorganization in July 1987, to select her for a position as audit analyst was an abuse of discretion, being discriminatory or at least arbitrary and capricious. She claims that the individual who had effective decision-making power in the Reorganization – the person who at that time was the Acting Director of the Internal Audit Department (IAD) and who had previously for a short time been the Applicant’s supervisor – was biased against the Applicant on account of the Applicant’s criticism of him to Bank officials and her knowledge of
alleged wrongdoing on his part in his management activities in IAD. The Applicant also claims that the Respondent abused its discretion by appointing the Acting Director to membership on the Selection Committee, despite the Respondent’s awareness of severe and widespread criticism of his integrity by departmental staff.

31. As the Tribunal has often stated, a decision by the Bank to select a staff member for a particular position rests within the Bank’s discretion, and may be overturned by the Tribunal only when it concludes that this discretion has been abused. “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. 5 [1981], para. 24. The Tribunal will not set aside a decision of the Bank unless it was “reached in an arbitrary manner, involving, for example, unfairness, failure to allow the Applicant to state his case, or other departures from established procedures, bias, prejudice, the taking into consideration of irrelevant factors or manifest unreasonableness,” de Raet, Decision No. 85 [1989], para. 67. This standard of scrutiny has been applied by the Tribunal in cases arising from the 1987 Reorganization, in which staff members have been displaced from their previous positions on the ground of redundancy as a result of the redefinition of job duties or the reduction in the number of departmental positions.

32. In earlier cases arising from the Reorganization, the Tribunal has been confronted with claims that an applicant was improperly denied selection to a position that the Bank in fact gave to another staff member. This case, along with Jassal, Decision No. 100 [1991], appear to be the only cases before the Tribunal in which an applicant claims to be qualified to serve in a post-Reorganization position that was left vacant. As the Tribunal stated in Jassal, at para. 31:

   In such a case, a finding of redundancy must turn upon a conclusion that the content of the position was so defined as to render its previous occupant no longer qualified to discharge its responsibilities. Unsatisfactory performance by a staff member in his or her position prior to the Reorganization cannot furnish a basis for terminating service with the Bank on the ground of redundancy. To do so would be an improper use of the Reorganization procedures in order to avoid the protections otherwise afforded by the Bank’s governing documents – Staff Rule 7.01 in particular – for the termination of employment, and would therefore constitute détournement de pouvoir, subject to reversal by the Tribunal.

33. At the time of the Reorganization, the Applicant was serving as an audit analyst, at grade level 19. When new job categories were announced at the outset of the Reorganization of the IAD, the position of principal audit analyst was eliminated, but the audit analyst position remained, to be graded in the range of levels 18 through 20; it was contemplated that four such positions would be filled. The Selection Committee considered four staff members as candidates for these positions, but it selected only one of them, and left three of those post-Reorganization positions vacant.

34. It is alleged by the Respondent that the Bank, when it declined to appoint the Applicant to an audit analyst position, concluded that the Applicant’s previous position in the IAD had been significantly redefined in the Reorganization, so as to be more demanding, and that the Applicant lacked the qualifications for the position as redefined. The Applicant contends, however, that the post-Reorganization audit analyst position at level 19 was in fact not materially different from her pre-Reorganization position and that she was fully qualified for selection.

35. The Respondent in its pleadings insists that “the responsibilities of Applicant’s position were changed as a result of the reorganization,” and that “the responsibilities of the position she occupied had changed so that Applicant was not qualified to fill it.” Yet the Respondent fails altogether to go beyond these general assertions to state with any particularity the respects in which the audit-analyst position was changed in the course of the Reorganization. It was surely contemplated that in the Reorganization certain positions would be changed in their job content such that, for example, new technical skills (such as in macroeconomics or computers) would henceforth be required. The Bank might well, in such circumstances, reasonably conclude that the present occupant of that position lacked the requisite skills for the position as redefined, and indeed that such skills could not be acquired after a reasonable period of training. Non-selection by virtue of redundancy might then be appropriate even though that position would remain vacant for lack of any other qualified staff member. But
the Respondent has failed to provide any specific information that would warrant a conclusion that the audit-

36. It is true that a report was prepared in April 1987 by the Support Units Task Force, and that it concluded

that “the quality of IAD staff should be improved to enable the unit to fulfill a strengthened mandate,” that “the

quality of IAD auditors is perceived to be uneven” and that “IAD should be equipped with experienced, first

class auditors.” Such statements from the Task Force report, however, are no more specific than those in the

Respondent’s pleadings. They fail to support the Respondent’s claim that the job description or the job content

of the audit analyst position was changed in the Reorganization.

37. At the time of her non-selection, the Applicant was informed of the reasons therefor, as measured against

the requirements of the post. The Selection Committee concluded that she failed altogether to meet

skills/abilities criteria relating to the ability to make and effectively communicate judgments regarding Bank

procedures, the ability to work independently, the ability to develop recommendations and set them forth in

written reports, and the existence of a sustained record of good performance and demonstrated potential for

promotion. The Selection Committee also stated that the Applicant did not meet the “personal characteristics”
criterion relating to analysis of problems and application of principles, and that she only partially met the
requirement of prioritizing tasks and efficiently utilizing time.

38. It is not for the Tribunal, in assessing the validity of the selection or non-selection of a staff member, to

undertake its own examination of that staff member’s record, or a criterion-by-criterion assessment of his or her

qualifications. That is for the Bank to do in the first instance, subject to review by the Tribunal only for abuse of
discretion. But the Tribunal is charged with determining whether the Bank’s decision was the product of bias,
prejudice, arbitrariness, manifest unreasonableness, or unfair or improper procedure. Thus, if the Bank’s

conclusion regarding the Applicant’s qualifications for selection as audit analyst altogether lacks support in
factual evidence or reasonable inference, or was the product of an improper procedure, that conclusion must
be found to be an abuse of discretion. The Tribunal will now consider whether such is the case here.

39. The Applicant was employed in IAD as an audit analyst for some eleven years prior to the Reorganization.
From 1982 until the fall of 1986, she was assigned to a unit (EDP) in which her principal responsibilities were in
the area of data processing; in 1984, her supervisor stated that her contributions in this area were sufficiently
important that it would be necessary for her to perform them on a full-time basis in order that her unit could
accomplish its objectives within the Bank. From November 1986 until the time of the Reorganization in July
1987, the Applicant was assigned to a different unit under a different supervisor (who was to become the Acting
Director of IAD at the time of the Reorganization) with the purpose of redirecting her efforts more toward
auditing work. Although she continued to work on certain EDP projects, her workload reflected greater activity
in the area of financial audits.

40. Her performance reviews prior to June 1987 were consistently good. Her salary increases for 1984 and
1985 were “above average,” reflecting a determination of superior performance; her 1986 and 1987 salary
increases were in the high range of “average,” again suggesting satisfaction with the quality of her
performance. The Respondent does not take issue with these conclusions in its pleadings. Indeed, it states:

Respondent does not dispute that Applicant’s performance reviews indicate generally that she had
performed adequately prior to the Reorganization... There was no question that Applicant had for the most
part done adequate work in the past (and this is reflected in the PPR’s which she has attached to her
Application).

41. Among other traits and skills, the PPRs mention the Applicant’s communication skills, her need for only
limited supervision, her eagerness to learn and develop new skills, her good analytical judgment, and her talent
for organization. There were, however, some cautionary notes. For example, in the PPR covering May 1984 to
April 1985, the Applicant’s immediate supervisor stated that he was “expecting her to increase her knowledge
and experience in data processing so that her assistance in EDP audits will be more efficient and effective”; he
added, however, that if she took advantage of the opportunity to grow in her capabilities and value, “with
renewed commitment it will allow her to be considered for promotion." In the PPR for May 1985 to February 1986, the same supervisor praised her work; but he also stated, in noting his intention to shift the Applicant away from administrative systems and more toward audit work, "Ms. Fabara-Núñez will need to increase her initiative and efficiency when requested to participate in IRM audits. She should also continue to enhance her knowledge and experience in data processing."

42. The Applicant’s PPR for the period March 1986 to February 1987 reflected her assignment to a new unit and her shift from data processing to audit work. (During this period, the Applicant’s position had been regraded at level 19 as a result of the Bank-wide job grading exercise). Her new supervisor – the Manager, Finance and Institutional Functions Audits – relied on comments of her previous EDP supervisor to conclude that her data processing work was done "diligently" and on an "efficient and timely basis." The Manager went on to explain the reason for the shift in her responsibilities in late 1986: "[I]t was concluded that her work responsibilities were not commensurate with the requirements of her present grade level (Audit Analyst - Level 19), and a decision was taken to reassign her to carry out regular audit work." The Manager complimented the Applicant on the major auditing assignment she had undertaken, noting that her thoroughness and diligence were commendable. Although he mentioned that the Applicant "does have a tendency to spend more time than appropriate on her assigned tasks, and needs to develop her work planning and organizational skills," he concluded "However, I attribute these to her desire to do a thorough job and her long absence from audit work, which tend to make her quite detail-oriented."

43. Although her Manager commented in the 1986-87 PPR upon the fact that the Applicant was “making efforts to develop her capability to handle the responsibilities associated with audit work at her grade level,” he concluded that it was too early to assess her “capability to perform at her current grade level.” He therefore proposed to monitor her audit assignments carefully and to undertake another full evaluation at the end of October 1987 so as to advise her

- both as to whether she is capable of performing at Level 19 and the suitability of her continuing as a staff member in IAD. . . . She will be provided appropriate training in auditing areas where such needs are identified by her direct supervisors and IAD management. Miss Fabara-Núñez will also be counseled with regard to her program generally and on specific aspects of her performance which are identified as needing improvement.

The Manager’s comments on the 1986-87 PPR were dated May 29, 1987, but the circumstances clearly warrant the conclusion that he recorded his comments and showed them to the Applicant on approximately July 1, 1987 – scarcely one week prior to the selection process in the Reorganization.

44. It is therefore indisputable that whatever shortfall there might have been in the Applicant’s performance of the auditing responsibilities of a level 19 audit analyst, they were attributable to the assignments given her by her supervisors in previous years. Moreover, it must be inferred there was inadequate opportunity from the time of her Spring 1987 PPR until the selection round of the Reorganization – no matter how conscientious and motivated the Applicant might have been – for the Bank to provide appropriate assignments, monitoring and counseling so as to permit her to improve her auditing skills. In the judgment of the Tribunal, it was manifestly unreasonable for the Bank to conclude that the Applicant was unfit (as distinguished from being less fit than some other staff member competing for the same job vacancy) for selection into a post-Reorganization audit analyst position that has not been shown by the Bank to be different in any material respect from the position that the Applicant was already holding. If the Applicant’s Manager was prepared to concede that any weaknesses in her work as an audit analyst were the result of supervisory decisions rather than of the Applicant’s own inadequacies, the same attribution of responsibility may fairly be made with respect to the Applicant’s non-selection for any one of the three audit analyst positions left vacant after the Reorganization.

45. It is particularly to be noted that the flaws identified by the Applicant’s Manager in the 1986-87 PPR related to excessive time spent on work and to inadequate planning and organizational skills. The fact that he attributed these to her conscientiousness and her prior absence from audit work clearly indicates that he thought that these could be rectified with time and with counseling. The Respondent, however, asserts in its
answer that the Selection Committee concluded not only that the Applicant fell short of the requirements of a level 19 audit analyst position but also that “in light of Applicant’s past experience and her limited potential for professional growth, neither retraining nor the offer of a position at a lower level constituted suitable alternatives.” Putting aside the question whether the record warrants this assertion as to what the reasons of the Selection Committee actually were, the record requires the Tribunal to conclude that the failure of the Committee to offer the Applicant an audit analyst position at level 18, one level below the grade she presently held, and its failure to offer her the opportunity for further training – comparable to that extended to her by her Manager (and, by then, the Acting Director of IAD) only approximately one week before – were manifestly unreasonable.

46. As the Applicant’s final PPR demonstrates, her Manager was critical of her abilities in audit work, in comparison with the consistent praise given her by her previous supervisor in EDP. It was her current supervisor and Acting IAD Director who participated in the selection process in July 1987, very soon after he had prepared his comments in the PPR. The Bank – partly because of the sharp criticism being contemporaneously leveled by IAD staff members against the Acting Director – made an effort to assure that the selection process would be fair by adding three others, from the Personnel Management Department, to the Selection Committee and by providing for a senior staff member to review selection criteria in advance and selection decisions afterward. Nonetheless, the Tribunal agrees with the Appeals Committee that because the Acting Director was the only remaining manager in the department and because he was the only person on the Selection Committee with technical competence in the field, “he was bound to have a crucial voice in the selection process.” The other three members of the Selection Committee, although no doubt highly competent in the exercise of their personnel function, had no operational experience in the auditing field, had little or no direct knowledge of the work of persons in the department, and had for the most part been assigned to work with the IAD only weeks before. It was, therefore, highly likely that the views of the Acting Director would be given very great weight.

47. The Tribunal does not find substantiated in the record the Applicant’s charge that the Acting Director discriminated against her because of her knowledge of alleged mismanagement on his part and because she was a vocal critic of him within the IAD. But the Tribunal does conclude that it is highly likely that the negative appraisal on the part of the Acting Director was controlling within the Selection Committee, and that neither he nor the Committee gave any weight to the Applicant’s amenability to training or to the Bank’s own responsibility for retarding the professional development of the Applicant.

48. The Tribunal also finds that the selection process was likely tainted by a serious procedural irregularity. The Respondent asserts in its answer that the Acting Director and the other members of the Selection Committee had before them the Applicant’s career file and that the Acting Director supplemented this with highly critical comments that had been previously related to him by the Applicant’s supervisor in EDP; these critical comments were later (on November 5, 1987) put into writing by that supervisor. The Tribunal gives no weight to this memorandum. First, it must be noted that the November 5, 1987 memorandum was prepared at the explicit request of the Acting Director, who was the subject of an investigation by an impartial panel appointed slightly more than one week before, in light of charges of mismanagement that had been leveled by staff members against him; its preparation under these circumstances and long after the selection decisions were made in July 1987 cast grave doubt upon the credibility of its contents. Moreover, the negative comments set forth in the November 1987 memorandum and assertedly communicated orally as well to the Selection Committee some months before are flatly contradictory to the very positive evaluations contemporaneously made by that same supervisor in several previous annual evaluation reports.

49. The Tribunal for the same reason concludes that the Selection Committee ought not have given weight to such strongly negative evaluations when considering the Applicant for the audit analyst position. There is not the slightest suggestion that these critical views of November 1987 were ever called to the attention of the Applicant or of any other staff member at any time before; indeed, even the Acting Director in the Applicant’s 1987 PPR noted the praise given to the Applicant by her previous supervisor.

50. The Tribunal therefore concludes that the non-selection of the Applicant for the level 19 position of audit
analyst in IAD, at a time when three such positions were left vacant after the Reorganization, constituted an abuse of discretion.

51. Because the Tribunal has so concluded, the appropriate remedy is to order the Respondent to reinstate the Applicant to such a position. Such an order would help to place the Applicant in the position she would be in, had the Respondent not violated her contract of employment.

52. Fully to achieve this objective, it is also necessary to compensate the Applicant for any injury suffered by her from the date of her improper non-selection and her separation from the Bank until the date of her reinstatement. Because, upon her separation from the Bank in late 1987, the Applicant was paid cash benefits under the Enhanced Separation Package (Package B), which the record indicates to have been the equivalent of less than three years’ salary, the Respondent is correct in asserting that this amount should be credited toward any monetary award due the Applicant for this interim period.

53. One component of such an award is the amount of earnings that the Applicant would have received from his employment with the Bank had it continued throughout this interim period. Another component is an amount to compensate the Applicant for the intangible injury resulting from the Bank’s wrongful decision and the aggravating circumstances in which that decision was taken. The Tribunal concludes that these two components taken together approximate the cash payments already made to the Applicant under the Enhanced Separation Package. The Tribunal also notes that it would be unfair to require that the Applicant, as a condition of her return to Bank employment, pay back a substantial amount of money that she has received, and on which she has had to sustain herself, over a period of years since her separation.

54. Should the President of the Bank decide under Article XII(1) of the Statute of the Tribunal, that the Applicant should be compensated without further action being taken in the case, the Tribunal decides that the Applicant should be awarded compensation beyond that which has been noted in the preceding paragraph and already paid to the Applicant under Package B. The Tribunal sets this compensation, which should embrace her lost future earnings from Bank employment, in an amount equal to two years’ net salary as of the date of the Applicant’s separation from the Bank.

55. The Tribunal also awards to the Applicant ten thousand dollars ($10,000) as costs, including attorney’s fees.

56. A staff member of the Bank sought to intervene in this proceeding in order to protect his asserted right to confidentiality of the contents of the report prepared in late 1987 by the committee especially appointed to look into charges of mismanagement in IAD. He claims that on a number of occasions the Bank gave him explicit assurances that the contents of the report would not be disclosed, and the Respondent has in fact acknowledged its confidential nature. Because the Tribunal has taken steps to preserve such confidentiality in connection with its earlier Order to make an abridged copy of the report available to the Applicant, and has otherwise satisfied the interest of the petitioning staff member to the degree it deems proper and possible, the Tribunal, without ruling on the issue of admissibility, decides that the application for intervention is in any event without object.

Decision:

For the above reasons, the Tribunal unanimously decides that:

(i) the decision not to select the Applicant for the position of audit analyst at level 19 be rescinded; the Respondent reinstate the Applicant to that (or an equivalent) position; and the amounts already paid by the Respondent to the Applicant upon her separation from the Bank under the Enhanced Separation Package may be retained by the Applicant as compensation for the injuries sustained by her by virtue of the non-selection decision;

(ii) should the President of the Respondent, within thirty days of the notification of the judgment, decide in the interest of the Respondent that the Applicant be compensated without further action being taken in the
case, then the Respondent pay the Applicant (in addition to the payment ordered under paragraph (i) of this decision) a sum equal to two years’ net salary;

(iii) the Respondent pay the Applicant costs in the amount of $10,000; and

(iv) all other pleas be dismissed.

Prosper Weil

_______________________
President

C. F. Amerasinghe

______________________
Executive Secretary

At Washington, D.C., June 20, 1991